

Environment, Food and Rural Affairs Committee

Oral evidence: Pre-legislative scrutiny of the Draft Environment (Principles and Governance) Bill, HC 1893

Wednesday 6 February 2019

Ordered by the House of Commons to be published on 6 February 2019.

[Watch the meeting](#)

Members present: Neil Parish (Chair); Alan Brown; Kerry McCarthy; David Simpson; Julian Sturdy.

Questions 71 - 141

Witnesses

I: Nigel Haigh, Honorary Fellow and former Director, Institute for European Environmental Policy (IEEP); Edward Lockhart-Mummery, Project Convenor, Broadway Initiative; Professor Colin Reid, Professor of Environmental Law, University of Dundee; Dr Viviane Gravey, Lecturer, Queen's University, Belfast.

Written evidence from witnesses:

- [- Nigel Haigh, Institute for European Environmental Policy \(IEEP\)](#)
- [- Professor Colin Reid, University of Dundee](#)

Examination of Witnesses

Witnesses: Nigel Haigh, Edward Lockhart-Mummery, Professor Colin Reid and Dr Viviane Gravey.

Q71 **Chair:** Thank you very much for coming for a second panel looking at the Environment Bill. We are doing pre-legislative scrutiny, so we are not just drilling down on what the Bill says; we are also trying to look at ways we might be able to change and improve it as we go through this process. It is very good to have you all with us this morning. Would you like to introduce yourselves? Then we will make a start.

Professor Reid: I am Colin Reid, professor of environmental law at Dundee University.

Dr Gravey: I am Viviane Gravey. I am a lecturer in European politics at Queen's University, Belfast.

Edward Lockhart-Mummery: I am Edward Lockhart-Mummery. I convene something called the Broadway Initiative. As we are the new kids on the block, can I say a bit about who we are and where we are coming from? We are an initiative entirely set up after Brexit, to work on post-Brexit environmental governance arrangements. We bring together the main business associations, which include the Federation of Small Businesses, CBI and the main sector groups, with professional bodies, academics and environmental groups. We are developing a consensus around what a really good Bill would need to do, not only to replace EU governance, but also to be practically effective in solving the environmental challenges ahead of us. We have produced a blueprint for the Environment Act and are now working on more detailed aspects of it.

Before that, I worked in Defra and for other environment Ministries for about 14 years, and led Defra's environmental regulatory reform programme, between about 2012 and 2015.

Chair: Would you say that you represent industry? Where do you sit in the spectrum?

Edward Lockhart-Mummery: We try to bring everyone together, really to work out what good would look like. What is the most practical way to meet the goals of the 25-year plan, as well as to replace EU governance? We come from a very practical perspective. We work with all the industry groups and say, "What is it you need to be able to manage the environment really well?" That is where we come from.

Nigel Haigh: I am Nigel Haigh. I am an honorary fellow at the Institute for European Environmental Policy, of which I was director for many years. I have followed EU environmental policy more or less since its beginning.



HOUSE OF COMMONS

Q72 **Chair:** The first question is an open-ended one, really. The Secretary of State has repeatedly made clear his intentions not just to match current EU protection of the environment, but to surpass it. Do you think the Bill reflects his level of ambition?

Nigel Haigh: First, let me say, I would like to concentrate on the principles rather than on the governance, for two reasons. Really, I have an idea that most people will find governance much more exciting than principles, and as a result the principles may be neglected.

Q73 **Chair:** We need both, do we not?

Nigel Haigh: Yes. The other reason is that I know more about the principles than about the governance.

If you compare the principles and objectives of EU environmental policy, which are set out in the treaty, against the principles that are in the draft Bill, some things are missing. One thing that is missing is that the EU says its objective is to go for a high level of protection, and the Bill does not have that, for all the political talk. In Michael Gove's introduction to the Bill, he says the eyes of the world will be on us to see that our standards are high. Having said that politically, he has not translated it into an objective or principle in the Bill, and that is a serious omission.

Q74 **Chair:** You would like to see that enshrined in the Bill itself, would you?

Nigel Haigh: Yes.

Chair: As I said when we started, you see, we are not only looking at whether the Bill is good, bad or indifferent; we are also looking at ways we can improve it. If you give that some thought, you could perhaps let us have something in writing as to exactly how we can do that.

Nigel Haigh: That is very easily done, yes.

Dr Gravey: If we are looking at the Bill, we have three different reference points we can take into account: the status quo of environmental governance in the EU; the withdrawal agreement as it stands with the requirements around environmental non-regression in governance there; and what the Government have said in the past on plugging that environmental governance gap.

Two years back, we had a report from the House of Lords on Brexit and the environment, which found the Government 'worryingly complacent', completely unaware of the environmental governance gaps that were coming in, and noted 'Ministers' apparent confusion between political accountability to Parliament and judicial oversight'. We have moved on a lot from there. Two years ago, Defra did not really recognise that there would be environmental governance gaps. This Bill recognises that there are some.

Q75 **Chair:** It is moving in the right direction, but not far enough.



HOUSE OF COMMONS

Dr Gravey: It is moving in the right direction, but it is not there yet. Especially if there is a deal and we take the withdrawal agreement, which is going to be changed potentially, this Bill falls short of what is expected of the UK through the environmental requirements in the withdrawal agreement. It falls short in terms of independence and resources; geographical scope, because the Bill right now is only England and reserved matters; sectoral scope, as it does not have climate change, for example; and, if there is no deal, the Government are back to being worryingly complacent. The Bill and the OEP will not be in place shortly, and we will have a big gap until everything is in place.

Q76 **Chair:** You see, Nigel, you talked about principles. The principles are important, but so is the enforcement. Otherwise, if you take air quality for instance, you had a situation where ClientEarth has taken the Government three times to the European Court. The Government had to come back with an improved plan, especially in the 43 hotspots across the country. In a situation like that, in the future, is there anything enshrined in this Bill that would hold the Government enough to account and make them change or improve their policy?

Dr Gravey: There are some good things, but they are only for England. Some of these cases where the UK Government were taken to court were also about the problems in Scotland, Wales and Northern Ireland. We will talk about this, but we do not have the same powers. The OEP, for now, does not have the investigation powers we would perhaps want to see. There is no possibility of halting action or stopping environmental harm happening. There are no fines. Not everybody is happy with the idea of putting fines in, but we need to make sure that this enforcement body has strong teeth, that it is a strong watchdog and not a poodle.

Professor Reid: We have to remember that, carrying over from the EU, we will have the existing law on things like air quality, bathing water quality and so on. Those are going to be part of domestic law, which can be enforced in the normal way. That leaves questions in terms of judicial review as to who has the standing to challenge bathing water quality and what the courts do if Governments are failing, because unlike the older domestic law a lot of the EU law sets particular targets, results that have to be achieved. You have to secure a particular target, and so on. Our system has not had to cope with that. We do not quite know what the court does if we are not meeting bathing water quality. It can simply make a declaration saying, "You have to do this", but what if it has not happened?

The air quality example with ClientEarth is a good example, but also a slightly different one, because within the law it is provided that, if you are not meeting the targets, you have to produce another plan, a better plan. That is provided for, whereas a lot of other laws just set the result that has to be achieved.

Q77 **Chair:** The question to you, really, is this: would judicial review achieve that? Judicial review in a way is about a process. It is about looking at a



HOUSE OF COMMONS

process that Government or councils have taken to deliver air quality. It would not necessarily direct the Government to come back and improve the situation. Do you see anything in the Bill that could be used for that purpose?

Professor Reid: There are two points to make there. First, we do not know how the courts are going to react to these outcome duties. There was a lot of discussion, when the climate change legislation was going through, about what it actually means to have a binding target. By whom, how and when is that enforced, and what does that mean? It is not a style of legislation we were used to in our domestic system beforehand.

When it comes to the Bill itself, the OEP can potentially make notices, take action against Government, but at the end of the day the powers of going to court refer back to particular individual decisions, particular actions, whereas failing to meet a bathing water river quality standard tends to be an accumulation of lots of individual decisions by various authorities with funding issues and all sorts of things.

Chair: Yes, and water companies.

Professor Reid: It is unknown territory, how the courts are going to react to that sort of obligation.

Q78 **Chair:** Bringing you in, Edward, I think the Bill relies an awful lot on political pressure. I am not quite sure how much legal pressure will be there. Do you think I am wrong in that assumption?

Edward Lockhart-Mummery: The Bill provides a very good starting point, retaining some really important bits of the EU governance framework. We should see the current provisions in the Bill as a starting point. They in themselves can be improved through this process, but alongside the Bill is a policy paper, which sets out that we also want to make sure this Bill is able to deliver the 25-year plan on the environment. Whereas, to some extent, the body and the principles are good at maintaining law as it is, we also need to think how we are going to solve these pressing long-term challenges.

Q79 **Chair:** Especially when the Secretary of State says he wants a very ambitious plan that is going to deliver something greater.

Edward Lockhart-Mummery: Exactly.

Q80 **Chair:** Do you think that is probably somewhere the Bill is lacking slightly?

Edward Lockhart-Mummery: At the moment, it holds what we have in current legislation. We need to consider how we are going to solve future challenges. The policy paper starts to talk about cross-cutting long-term targets. That bit of the Bill will be really important to set a long-term direction for improving the environment over time. Critically, from an industry perspective, you need policy certainty in order to do that. You



need a trajectory in which you know where you are going so you can make investments consistent with that path. The mechanism for how environmental law and policy will evolve over a period to solve these challenges in a way that works for those who have to put them into effect is very important.

In article 191 of the Treaty on the Functioning of the EU, there are environmental objectives set out, which largely guide the introduction of directives over time. It has that directional pull, whereas at the moment in the Bill there is nothing to say where we are going that brings everyone with it.

Q81 Chair: We are waiting to see more of it, naturally. We do not have the final Bill, but the whole point of our pre-legislative scrutiny is to find ways we can improve it.

Edward Lockhart-Mummery: Yes, the Committee has an important role in pointing to what a good, coherent Bill would ultimately look like.

Chair: That is right, exactly. That is our purpose, not just to take the Bill apart, but to try to put it together and improve it. Like I said, as we go through all the questions now, give us any ideas you have. When we finish, if there are ideas you think about afterwards, please let us have them in writing. We genuinely want to get ideas together to improve it. That is the whole idea of pre-legislative scrutiny.

Q82 Kerry McCarthy: Nigel, you made some comments about this following on from the idea of how we improve protection, rather than just transpose the status quo. You picked up the fact that "high level" is not included in clause 2. What are your thoughts on why this is not the case, and how important is it that it should be included?

Nigel Haigh: One of the oddities of clause 2 and all the documents surrounding it is that there is no explanation as to where that list of principles comes from, why they are there, how they have been selected out of other ones, and why they have left out "high level", which is in the EU treaties. It is worth saying that the EU has been prolific in its development of principles. There are a lot in EU legislation: the proximity principle, producer responsibility, burden sharing. There are a whole lot of principles relating to specific areas of environmental policy. Then there are these higher-level principles, which were in the treaties.

These things began, I believe, in 1972 when the Stockholm Conference on the Human Environment happened. That ended up with a statement of 26 principles. I actually have them here. The first one is a very grand statement as to what environment policy is about. That conference is usually regarded as the point at which environment policy was recognised as a major subject for international relations. It really put it on the map, and it is from the early 1970s that people started establishing Departments of the Environment. The DoE in Britain was one of the earliest.



HOUSE OF COMMONS

At that moment, the EU was beginning to develop its environment policy. The Council at which Britain was about to join the EU declared that the EU should have an environment policy. Germany then convened a little meeting of member states, saying, "We too need to have a statement of environmental principles". The British were involved and contributed to it, and they produced a statement of what they called 11 principles and objectives of EU environment policy. Then when the Commission drafted its first programme on the environment, it took that readymade and stuck it into the action programme. There they were.

At that point, there was no treaty requirement for environment policy in the EU. That first happened in 1976, with the Single European Act. The draftsmen of that Act looked at these principles, took some of them out and put them in the treaty. The precautionary principle was not there; it was added later. They were principles and objectives; the distinction was made between the two. It is not an easy distinction to make.

The draft Bill does not make that distinction; it just says "principles". Among them is sustainable development, which I am not sure is a principle. I think it is an overarching objective. I do not mind it being called a principle. I am prepared to be fairly elastic.

Q83 Chair: I always think "sustainable" is a very overused word. What does it actually mean?

Nigel Haigh: The Brundtland committee tried to define it. I entirely agree with you. John Gummer said, "If we want to get this understood, we have to find a better word". He did produce some words, which I will not repeat now.

The draft Bill talks about principles, and I have heard that people in discussion with Defra officials said, "We cannot put 'high level' into the Bill because it is not a principle; it is an objective". There are two ways to overcome this. One is to stop calling it a principle, and say "principles and objectives", and then you can justify it, or you could say it is a principle anyway. You can call it a principle. I am not bothered. What matters is whether it is there.

Having looked at all of those nine principles in the draft Bill, I would not take any of them out, but I would add others in. I would like to come back later and say which ones I should put in.

Q84 Chair: Who else wants to add to that? You are all being quiet here.

Professor Reid: I support the idea that there should be an overall statement of aiming for a high level of environmental protection. Where there might be tension between the different principles, that gives you an objective, a general aim to go to. In a narrow, lawyerly way, there are concerns that the final principles that are mentioned, coming from the Aarhus convention, are actually rights, recognised currently in EU law and international law, rather than just principles. Of this group of principles,



some are doing slightly different things, but it is not necessarily going to be a big problem.

- Q85 **Kerry McCarthy:** I agree with you; I am not quite sure it counts as an objective. I would see a principle as something that underpins the approach, and I would have thought this underpinned the approach. Is the idea that it would go into the environmental improvement plans, and therefore, if you adopt the 25-year environment plan as the first EIP and that has a commitment to high level, that is where you would find it?

Nigel Haigh: I would put it in clause 2.

- Q86 **Kerry McCarthy:** What is the difference between having it in the EIP and in the legislation?

Dr Gravey: It would just be political and not legal. You want a legal commitment. Currently, in EU law, the treaties are basically the constitution. We have a constitutional commitment to go for increased environmental protection. We would be shifting from constitution to just a policy statement, and that is much weaker. Ideally, you would have it in the same clause.

There is also a question around non-regression. Not everyone is happy with this whole idea of non-regression, because it is negative and not very uplifting. But, especially if it goes hand in hand with an objective for progression, we can just make sure we have a baseline, and then we might go in our different ways, with devolution, towards a high ambition.

- Q87 **Kerry McCarthy:** If you say “a high level of improvement”, to me that implies non-regression anyway. You cannot improve if you are going backwards. Would you want something more specific on non-regression?

Dr Gravey: For now, these principles are England only. It might be interesting and necessary to have some shared principles across the whole of the UK. You may have a different interpretation. We do not want to curtail devolution. But non-regression as a baseline across the UK, to maintain that UK single market, is really necessary.

Nigel Haigh: The difference between “high level” being in a policy statement or in the Act itself is this. If it is in the Act, where a matter goes to court, the court has to take account of the principle in the Act. If it is only a policy statement, the court may take account of it, but need not be bound by it. There is a big difference.

Edward Lockhart-Mummery: Can I draw a distinction between principles and objectives? It is important that the Bill has one or more objectives: what, ultimately, are we trying to achieve? Under that, you could have a process for setting targets, which starts to give a trajectory for society to meet and different sectors to invest in. You then have the environmental improvement plan, which is Government’s plan for keeping society on that trajectory, introducing the right policies so we are



HOUSE OF COMMONS

continually improving the environment, but it is clear to everyone how we are doing that.

An objective is a relatively hard-edged thing, which guides where we are trying to get to as a whole. Perhaps a principle—and Nigel will know much more about this than I—is more about how one takes individual decisions, rather than what we are trying to achieve overall, if you see the distinction.

Dr Gravey: To add to what Colin pointed out, the last three principles are rights under the Aarhus convention, and they are rights that every citizen in the UK has. There is a question about having these as principles that bind the Secretary of State and not rights for UK citizens to access information and justice in environmental matters. We need to make sure that these rights are not diluted to principles.

Q88 **Kerry McCarthy:** If they were classed as rights rather than principles, there would be a difference in how somebody could take legal action.

Dr Gravey: There I will say I am a political scientist. The lawyers will be better able to respond.

Nigel Haigh: Obviously, those last three are rights, which derive from the Aarhus convention. In turn, those rights derive from principle 1 of the Stockholm declaration, and if I may I will read you principle 1.

Chair: It is not too long, is it?

Nigel Haigh: No, it is not too long. "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations".

That was the first principle. That was a declaration in 1972. After that principle was announced, every single new constitution or substantial revision of any existing constitution in the world included this principle. Lawyers then started asking themselves, "What does that mean? How do you protect and improve the environment? How do you build that into a constitutional requirement?"

In 1980, the Austrian Government invited my institute to hold a conference to answer that question. We met in Salzburg. It was in December and there was a lot of snow. It was all very beautiful. We came out with what we called the Salzburg declaration on the environment and human rights. We said it amounts to three rights: a right to information about the environment, so everybody has a right to know about the state of the environment; a right to public participation; and a right to access to the courts. That is exactly what was then embodied in the Aarhus convention some 10 years later. They are rights, but I see no reason why they are not also a principle. They derive from a principle. I have no difficulty in seeing them in a list of principles.



Chair: That is an interesting point. We will note that.

Q89 **David Simpson:** Further on the subject of principles, how can the Bill be amended to ensure that the principles listed do not just apply to environmental policymaking, but are incorporated into decision-making across Government more broadly?

Professor Reid: It is a notable feature of the Bill that the principles apply to Ministers in making policy. If you look by contrast at the proposals in the Scottish continuity Bill, it said that the principles should apply to all public authorities in all they are doing. It is a policy choice in drafting the Bill as to how far it will apply. The Bill, as drafted now, takes a narrow view that it is only on Ministers. I believe that is partly trying to reflect the current EU position, where the obligations are on the UK as a whole, therefore on Ministers. If you are trying to integrate the principles to make sure they apply across the whole, having all public authorities take account of them would seem the obvious thing to do.

Q90 **David Simpson:** Viviane, I think you said at the beginning this applied to England.

Dr Gravey: Yes, and reserved matters.

David Simpson: Northern Ireland does not have the Assembly at the moment, as you know, but we live in hope. Where does this leave the devolved nations? How are we incorporated into all of that?

Dr Gravey: It leaves us nowhere.

David Simpson: Yes.

Dr Gravey: In terms of principles, Scotland and Wales are in a different situation, because they have Governments that are trying to develop alternatives. We would potentially have a gap in Northern Ireland, because there is no direct rule, but there is also no Assembly. That is really problematic, and that is why it would be nice to have, in this Bill at least, something that is not just Ministers. I agree it should be all public authorities, and it should be not just about policymaking. When you are implementing and enforcing, you should check that what you are implementing respects those principles. It would help councils in Northern Ireland, when they are implementing environmental policies, if they could make sure they directly try to meet these principles.

Q91 **David Simpson:** In the absence of Ministers in Northern Ireland, for example, the Northern Ireland Bill that went through here enhanced, we think, the powers of Permanent Secretaries, of our civil servants. I know it takes Ministers to sign off but, as far as the environmental principles or policy are concerned, surely the work can continue to build on that and try to get to a place where it is a matter of the Minister signing off.

Dr Gravey: It depends if we are going for a no-deal scenario, in which the gap is immediate, or if we have a deal. We continue to live in hope, but of course there are problems. These are fundamental changes to



HOUSE OF COMMONS

Northern Irish environmental governance, potentially. Asking civil servants to do most, if not all, of the work is really problematic, especially because there is, to be blunt, a bit less environmental concern in general among Northern Irish politicians than in GB. If Northern Irish civil servants start becoming much greener than their politicians would want, there is potentially a problem of democracy.

David Simpson: Yes, we do not want that. Edward, what do you think?

Edward Lockhart-Mummery: This point about applying to the whole of Government and not just narrowly environmental policies is really important, not only for the principles, but also, if we move to having an objective overall, you have to integrate that across all levers of Government. Take a problem like air pollution, for example. If it is only industrial pollution controls or something narrow that is considered within the scope of how you achieve environmental objectives, you end up massively hiking up industrial controls, where there may not even be a problem; it is much more about transport policy, planning policies or other policies. It is critical that this applies across Government and allows collective decision-making about the best ways of solving problems most effectively and efficiently. That also makes it much easier for those complying with these things, because then they have signals that go in the same direction rather than tensions, or they are asked to do something very extreme when it does not particularly solve a problem. The right mechanism would make sure it is not just the Defra bit of Government; it is also the DfT, Treasury, MHCLG, all those others working in concert. The environment is something that everyone shares, and everyone has to contribute to make sure we are managing it effectively.

David Simpson: Absolutely.

Nigel Haigh: There is the integration principle in clause 2, which states that environmental requirements shall be integrated into other policy areas. By extension, it is imported into transport policy, energy policy or agricultural policy.

Environment is pretty wide and touches most things. I suppose there are some areas that it does not touch. I am not sure the precautionary principle should apply to education policy. It is clear that the EU treaties say that EU policy on the environment shall be based on these principles and these objectives. It is only EU policy. It never said all national policy, all Irish policy or all Scottish policy should be based on them. That is a matter for the member state. That is what we now have to work out: whether it should or should not.

One of the fears in the minds of Government, if you extend it to more than just a duty on Ministers, is that you open the floodgates to litigation. If every local authority that makes a decision has these principles apply to it, and they are legally binding principles, aggrieved parties will say, "You did not follow that principle. We are taking you to court". That is the



HOUSE OF COMMONS

fear. There are ways of dealing with that. In principle, I think the principles should apply to all, but I can see why Government might be leery of putting that down in the Bill.

Dr Gravey: To add to what Nigel was saying, most public authorities have to publish impact assessments. They could also have a statement of how they took account of the principles when they publish it. It is not that difficult.

Q92 **Chair:** At point 212 of the explanatory notes, it says, "Conversely, legislation concerning the following matters, for example, would not normally constitute environmental law as defined here, and therefore the majority of legislation within these areas would be outside the scope of the OEP". Then it lists forestry, flooding, navigation, town and country planning, people's enjoyment of or access to the natural environment and cultural heritage. Why on earth would you exclude all that from the Bill? Do you understand that, because I do not understand it?

Dr Gravey: It is an excellent question.

Professor Reid: I find it equally odd. Some of these things have a huge direct environmental aspect.

Q93 **Chair:** Then it talks about animal welfare or sentience; then it goes on to animal or plant health; then it goes on to health and safety at work. It seems to cover virtually everything, which largely seems to be outside the scope of the Bill. Perhaps I am being slightly facetious.

Professor Reid: All of these things have huge environmental impacts. What you do on forestry or flooding has an impact directly on nature conservation and things that are expressly covered. It is interesting.

Q94 **Chair:** Is it Nigel's point that the Government are worried that too much is going to be judicially reviewed? I can understand that to a degree, but they have gone too far in the other direction, have they not?

Professor Reid: I think they have. Already there are a large number of duties on public authorities to have regard to biodiversity, to climate, to all sorts of things, and they do not.

Chair: Town and country planning surely has to be part of it.

Professor Reid: The authority only has to show that it has thought about them. It is clear that we do not have a vast stream of authorities being held to have failed in their duty to respect these things, even ones like the equality duty. There are a handful of cases where local authorities and others have been held not to have taken the equality impact properly into account. If they have thought about it, shown they have thought about it, that is usually enough.

Dr Gravey: There is a "get out of jail free" card in this Bill, in terms of making sure that the Secretary of State can decide not to abide by these principles. "There are lots of places where it would be potentially difficult



to apply them, so let us not do it". That is really problematic. Look at the sectoral scope of the environmental requirements in the backstop, which include planning, climate change and all that. The OEP has this big gap there.

- Q95 **Chair:** There is a balance that needs to be made. I can understand the Government not wanting everything stopped for environmental reasons, because there are times when you have to have developments and things have to change. They also have to be held to account environmentally, and I do not think there is enough here yet. What I am seeking from you is how we can improve that, really.

Edward Lockhart-Mummery: Can I make a distinction between the outcomes that it covers, and the activities and levers? It is important to define the scope of what outcomes we are covering. What do we mean by the environment? How far does that go? The Welsh future generations Act goes much broader, as do the sustainable development goals. We have to define what we are talking about and what we are going to improve. Ideally, it should be wide enough to be coherent and respect all the interconnections between water, soils and biodiversity. Defining that scope is important.

When you come on to the activities, all the different policy domains in Government, all the different business activities and all the different levers you could use, like taxes and subsidies, you do not want to exclude anything, ideally. You want to be able to look across all your artillery in order to address those issues, and as soon as you start cutting things out of scope it makes it much harder for certain people. If you are just saying, "We can only use this part of industry to achieve these objectives", it becomes much harder and less cost efficient.

- Q96 **Alan Brown:** There are inconsistencies between the principles and objectives of this Bill, and the provisions in the Fisheries and Agriculture Bills. What are the practical consequences of these inconsistencies?

Edward Lockhart-Mummery: It is not my specific area, how it links in, but we say in our evidence that coherence between the different pieces of legislation and the different bodies is absolutely essential, particularly for the others we are introducing at the same time, such as the Agriculture Act and the Fisheries Act. The starting point would probably be that the Environment Act defines where we are trying to get to on the environment. Therefore the systems being set up under the Agriculture Act for payments for public goods should take a lead from what we are trying to achieve overall as a society in the Environment Act, and ditto the Fisheries Act.

Ideally, the Environment Act is almost a parent Act, which sets long-term direction on the environment for all other legislation and policymaking, including those other Acts.

- Q97 **Alan Brown:** By that logic, the Environment Bill should go first, before



the other two Bills, in reality.

Dr Gravey: We are seeing a “make it up as you go along” approach. There is so much work, and the Bills are being drafted one after the other and pushed through a bit too quickly. There is some difference, for example, between the precautionary approach in the Fisheries Bill and the precautionary principle here. How do the two talk to each other? It would make more sense to have the same kind of wording. You do not have a regulatory floor or anything about the need to address questions of non-regression in the Agriculture Bill and the Fisheries Bill.

They are completely intertwined. Perhaps in the second part of the Environment Bill we will see our new land and farm regulator. Something we did not get in the Agriculture Bill we might get in the second part of the Environment Bill. Hopefully, if there is a deal, it will give us a bit of time to take a step back and make sure there is proper coherence between these Bills, because that is not the case now. Of course, if there is no deal, we need to get them very quickly through, so at the very least we need to put some kind of revision clause in these Bills to make sure we can solve this lack of coherence.

Professor Reid: I would agree with that. There is a pressing need to get legislation in place on all sorts of things. Inevitably, therefore, they are not necessarily going to fit together neatly, and there may be an opportunity, which is something we should be thinking of on this and other issues, to plan for a proper look at it after a few years, once there is a bit more time to see how things are fitting together, on both the devolution aspects and the integration between different sectors. Inevitably, because so much legislation is having to be done quickly just now, there is going to be a mismatch and things that grind against each other rather than fit neatly.

Q98 **Alan Brown:** Edward, sorry, I butted in when you were speaking. Is there anything else you want to add?

Edward Lockhart-Mummery: There are wider points of coherence. The point about coherence with the Agriculture Act and Fisheries Act has been well made, but there is coherence with the Committee on Climate Change or other oversight bodies that might now be set up to replace other EU functions. There is a set of coherence issues. This Committee has an important role in trying to create the time and space to say, “This Act is going to be in place for the next decades; let us make sure that it sits in a coherent way, and it is going to achieve its results, because it fits”.

There is the coherence across the UK as well. There are all these questions that need a bit of time and space, admittedly within a very tight process, to make sure we are not going to have big problems further down the line because we have not thought about how important things connect.



Dr Gravey: The environment is, in a way, in a very specific situation. The Commission and the Court of Justice are not environmental governance bodies. They are general governance bodies, and we are only talking about replacing them for the environment. This means that the role they play across all the other policy areas is still up in the air. Some of the gaps we have identified on the environment might also open up in other policy areas, later on.

Q99 **Chair:** What I think is in the Bill, and in the Agriculture Bill and the Fisheries Bill, is an awful lot of leeway and powers for the Secretary of State. In some ways, I can see why they are in there, because the game may move and things may change very quickly. The problem we have as scrutineers of Government is this: are there too many powers, and is it too flexible? We do not want to make it too rigid, either. As we look through it, this is what we are also concerned about. All of these Bills have an awful lot of powers for whoever is the Secretary of State of the day.

In some ways, that may be necessary. In other ways, we need to be sure. So much can be changed by statutory instrument now, and that is quite difficult to scrutinise as well.

Dr Gravey: You currently have an ambitious Secretary of State. What happens to these Bills if you have an unambitious Secretary of State is really problematic.

Chair: Exactly.

Dr Gravey: That is why we all agree we would want to see more parliamentary accountability and a greater role for Parliament in the appointment of the OEP, the funding of the OEP, all these things. If you end up having a Secretary of State who does not really have a very strong environmental ambition, we want the OEP to be protected. We have seen what has happened to Natural England. We have seen what has happened to countless watchdogs in the past that have seen their funding cut and their independence reduced. We do not want that.

Chair: Even in the eight or nine years that I have been here, there have been five Secretaries of State for Defra, and they have all been quite different on the environment. One, in particular, would have gone in a completely different direction to Michael Gove. That is why you have to watch what happens. I am not going to name the individual; I think you probably all know who it might be. He would have wanted to go in—

Julian Sturdy: It was a “he”, was it?

Chair: It was a “he”, and I think all the rest have been “she”, so that probably identifies him very well. That was a slip of the tongue, but you make a really good point. With a change of Government, a change of direction, you have to make sure that Parliament can hold the Secretaries of State to account. Like I said, we are very interested in anything we can do there.



Q100 Julian Sturdy: I would like to move on to environmental improvement plans. Edward, your group has come out and said there are still key gaps to be covered in the Bill, to strengthen the environmental improvement plans. With that in mind, do you feel the draft Bill provides a clear framework for setting environmental targets and the metrics behind that, so as to fill these gaps?

Edward Lockhart-Mummery: Not yet, on the face of the Bill. The policy paper alludes to it. It is what we expect and hope to see in phase 2 of the Bill.

If I could take a step back first, I would reiterate the point about why longevity is important in environmental policy. Everything in environmental policy takes time. Whether it is improving the natural environment, it is not something that happens overnight; it is something that happens over years, decades, centuries sometimes. Anything that different business sectors or parts of the economy can do to improve the environment and performance typically takes time. In our report, we have brought together a page of the timescales for different economic activities, whether it is the design and production cycles, or the operational lifecycles. If, for example, you are building houses, that has long lead-in times, it has build times, and then it has operational lives of 60 years. With a set of environmental objectives, you want to know right from the start where you are headed and what you might have to comply with.

Take the waste industry, for example. There is a target to reach 65% recycling by 2030. Without enough certainty that that is going to stick, you are not going to invest the hundreds of millions that are needed to get there. Whichever sector you are in, whether you are in a sector like the waste industry, the water industry or the environmental sectors, you need that sort of trajectory and certainty to be able to invest.

In mainstream infrastructure, the National Infrastructure Assessment says we have £30 billion per year of infrastructure investment. For them to put environmental asks into the design of projects, they need to know where we are going from the start. Otherwise, environment comes into conflict with economic activity where those things are introduced later in the day. That idea of having a trajectory of where we are trying to get to on the environment, the longer-term objectives, and our targets and milestones to get there is really important for everyone to plan, invest and collaborate to achieve those long-term objectives.

Q101 Julian Sturdy: You talk about that length of time, which I completely accept, but you are also saying that there is not enough clarity now, then, for businesses to actually set their targets going forward.

Edward Lockhart-Mummery: Yes. We are leaving the EU, which gave us some certainty. We will fall back on existing law, and we will not really have a clear idea of where we are going. The environmental improvement plans basically talk about the duty on the Secretary of State for the



HOUSE OF COMMONS

purposes of seeking to improve the natural environment. That does not really tell you where it is—

Q102 **Julian Sturdy:** It is an overarching power, but there is no detail behind it.

Edward Lockhart-Mummery: Yes. The plans say that an environmental improvement plan must set out the steps that Government intend to take, and then you have to report on what you have done. There is an obligation to have a plan and then report on it, but there is no obligation to meet any particular objective. You need that architecture of objectives, targets and milestones, and an ability to measure that, so that the environmental improvement plan can then be set up with the purpose of achieving those long-term objectives. It is a bit like the Climate Change Act having a long-term objective of reducing carbon emissions by 80%. That is then divided into budgets, but the Government have to bring forward proposals and policies to enable that objective to be met.

We have the plan, but we do not have the purpose. We do not have the clear objective of what the plans are trying to achieve at the moment.

Q103 **Julian Sturdy:** You talked a lot about businesses and that clarity for their long-term planning going forward, which I completely understand, but what about local authorities? You talked about housebuilders, but a lot of local authorities are in the process or have already put in place their local plans, which are 15-year plans. Does there need to be more clarity about what should be included in local plans now, to meet those targets going forward in 15 years, or are you envisaging local plans being reopened in five years' time, and these environmental criteria being put in at a later date?

Edward Lockhart-Mummery: There are two points there I can address. One is the national/local thing. Then, if one has already made a plan—the same with flood plans, the same with water plans at a national level; they are being developed and agreed at the moment—does one open them up when one has those objectives, or does one wait for the next cycle?

Q104 **Julian Sturdy:** You can have a five-year review, though, can you not?

Edward Lockhart-Mummery: You could have. Whichever way you decide on that, if you do not say now what the long-term objective is, even when you open it up in five years' time, that requirement will not be there. This is, to some extent, a long game. It may be that we have to wait for the end of the investment cycle to start incorporating it, or there may be mechanisms within local development plans to incorporate it mid-term. I do not want to say whether particular plans should be opened up now. I do think we should set that long-term trajectory so that, even if we have to wait for one project cycle, at least we get in the next one rather than the longer-term plan not being there, if you see what I mean.

Q105 **Julian Sturdy:** Okay, but a lot of local authorities are still going through it. It might come right at the very end of the process, might it not, the



clarity we are looking for?

Edward Lockhart-Mummery: Yes. Another thing we are working on as a group is how to inject more local ownership of these issues. The environment, particularly the natural environment, is very location specific. Flood mitigation works where there are flood problems. A wildlife corridor you can only put where it connects two things. With almost anything in the natural environment, it matters what is where. Therefore, you have to have a clear system of mapping, so that everyone has a common understanding of what the state of the environment is, but also what the priorities and opportunities are in particular places. That is an important mechanism.

Q106 **Julian Sturdy:** The mapping is really important for businesses and local authorities to understand where those key environmental corridors or specific sites are. Who is ultimately going to have the responsibility for that mapping? There has been a call. Where does that cost lie?

Edward Lockhart-Mummery: This is being developed at the moment. Proposals are being developed for this at the moment. There are different views as to where the costs are. In previous work, we have mapped that there are at least 35 different types of local environmental plan, addressing different sorts of micro-issues. There is a lot of resource already being put into that space, so there is an opportunity to use the resource that is there more effectively. I am not saying what particular level of resource should be dedicated to it, but there is certainly an opportunity to do what we are already doing, to give you better outcomes with the money that is being invested in that.

There is a question as to whether that process would be managed at local authority or national level. There are arguments both ways. There is a logic in having some things done at a national level. If you have an IT system, you do not want 350 IT systems; you want one that brings it all together. There is then local knowledge about where bits of the environment are, and you would want that to feed into an integrated map.

The other point is that local development plans have to have regard to a lot of the other environmental and spatial plans produced nationally. There is an argument for local authorities, at whichever level, to produce an environmental plan themselves. They are thinking about how, within their area, they achieve their flood, water, air quality, biodiversity outcomes, and then that could feed into the local development plan. That is something we have been discussing with the local government community.

Q107 **Chair:** Does that then fit into this Bill? It is largely being excluded by the explanatory notes, you see. That is why surely it needs to be incorporated.

Edward Lockhart-Mummery: Absolutely. If you have a set of national objectives, it is very difficult to achieve those if you do not have



HOUSE OF COMMONS

something at local level explaining what people actually have to do. There is a consultation out at the moment on net gain, which various industries are very behind. But they say, "If we are going to do our projects for net gain, we need to understand how that fits into something bigger. We do not want to be investing into fragments that wither and die".

Q108 **Julian Sturdy:** They will need to link up with this call about environmental corridors, then. That is what you are referring to there.

Edward Lockhart-Mummery: Yes.

Nigel Haigh: This talk of mapping comes down to collecting data, and one of the objectives of EU environmental policy is that it must be based on available scientific and technical data on environmental conditions in the various regions of the Union. That really needs to be carried over too. There needs to be a mapping system for that data, and it needs to actually be tied to the EU system. The European Environment Agency has the task of collecting data, which is supplied by the individual member states in a form that is comparable. If you are talking about biodiversity corridors, although we are an island, or two islands, birds fly. You cannot do biodiversity planning without cognisance of what is happening in other countries.

There is a very strong argument for the United Kingdom continuing to be a member of the European Environment Agency, which is open to any European country. Turkey is a member of the Environment Agency. I happen to be a member of the board of the European Environment Agency. I and another British former board member wrote to Michael Gove asking, "Is the UK going to join the EEA?" He wrote back very politely saying, "I am thinking about it". Perhaps he could be encouraged by this Committee to think a bit harder.

Q109 **Chair:** It is an interesting point you are making. It is partly political, but from a practical point of view you are right: air, water and all these things know no physical boundaries. There are many things on which we need to carry on having co-operation, but it is whether, politically, we can stay quite where you want us to be, Nigel. I can understand the logic behind it. It links into my question in a minute on devolution and how that is dealt with.

Dr Gravey: Both Edward and Nigel made a point around comparable data. This is what we have currently, of course, and there is a question here. If we just look at the 25-year environment plan, for example, we are already moving away from that comparable data. On water, we are moving from good status, which is what is in the water framework directive in the EU, to "close to natural state". We have no idea what "close to natural state" means, compared to good status, and that will be just for England. If you have transboundary water bodies between England and Wales, Scotland and England, there will be checks for different standards on both sides. We need not just to think about comparable data between the UK and the rest of the EU—Northern



HOUSE OF COMMONS

Ireland has shared water bodies with the Republic that are currently jointly implemented, so that matters as well there—but to make sure we measure the same kind of pollution on both sides of the Welsh and English border.

Q110 Chair: Viviane, that leads me very neatly into the question I have. What might be the practical consequences of not having a joined-up approach to environmental governance between the UK Government and devolved Administrations? There has to be a level of co-operation on the environment, I would have thought. How can that be done? We have to make sure that the devolved nations have enough devolved power, but also that there are environmental standards on river quality and all these sorts of things, because rivers flow out of Scotland and into England, from England into Wales and from the Republic of Ireland into Northern Ireland. There are lakes shared on the border. There are all sorts of issues there.

How do we achieve that? We have to allow the devolved nations enough independence to come up with their own ideas, but then we have to have an umbrella approach, I would have thought. How do you see that working?

Dr Gravey: We are talking about common frameworks, then. That is the term that has been used.

Chair: Yes, that is right.

Dr Gravey: There are lots of questions around the process of common frameworks—how we agree common frameworks in a way that respects the devolved settlement and the UK Government—the content and the number of common frameworks. To go back to water for now, the proposals for common frameworks suggest there is no need for any common frameworks on water policy, which, as you have just mentioned, is a transboundary environmental issue. So the discussions are not going well. There are questions of trust and respect. All of that is going on. Right now, the discussions are not going well, and it looks like the environment might lose out. Lots of these issues need to be tackled perhaps not fully but at least a bit.

In a way, it is simple. We just do not have an institution in the UK that brings the four Governments together to discuss policies. The Joint Ministerial Committee is not pleasing anyone. There was one created for European negotiations. It did not meet between January 2017 and October 2017. It did not meet when the UK Government were about to trigger article 50, for example. There is a question there around what is going to happen and whether the devolveds are listened to. We need something to replace the Joint Ministerial Committee and to find ways of getting these four Governments to agree on principles, co-operation or policies.

All MPs should now have read the Good Friday agreement. There are things there that we can look at. In strand two, we have the North South



HOUSE OF COMMONS

Ministerial Council, which is a very interesting example of how you can have meetings between civil servants, Ministers and Prime Ministers with parliamentary accountability all the time. That is something that we can see. It has worked in an international setting. In other meetings like this, some people, including the Welsh Government, were suggesting that we should perhaps import something like the Council of Ministers of the EU. Perhaps it will be less foreign to import the North South Ministerial Council than the Council of Ministers, but we need some kind of institution.

Chair: We need a framework, basically.

Dr Gravey: Yes, we need a way of agreeing these frameworks that respects all the different authorities.

Q111 **Chair:** The argument will be about whether we use existing frameworks that may be in other places or devise our own one.

Dr Gravey: Yes. The UK will devise its own one. It is important to look at what already exists, what is problematic in other places and to learn and do something good. Of course, we are very pressed for time. If we have a deal and we have transition time, we perhaps have time to set things up. In any case, we have the problem of how Northern Ireland is represented in this, because right now on the Joint Ministerial Committee Northern Ireland is represented by civil servants. The Northern Ireland Civil Service is doing a splendid job in preparing for Brexit, but, if you have a civil servant at a table with Ministers, their voice is not going to carry the same authority. We need to make sure these kinds of solutions are also developed, taking account of Northern Ireland.

Chair: Yes, it is very important to have Ministers.

Q112 **Kerry McCarthy:** You have now wandered into the territory I was going to ask about, because you are talking about the four Governments coming together. For Northern Ireland, there is no Government to do that. It is interesting. You say the civil servants are doing an excellent job preparing for Brexit, but I have heard that they are very cautious about straying on to political territory. They will keep things ticking over, but, understandably, there are issues they do not want to get too involved in because they see that as a job for politicians. When I try to raise it with the Northern Ireland Office here, I am told, "DAERA is running everything". Defra does not take an interest.

As a first question, is that a problem in terms of where we are going with this Bill? There is no political direction; there is no voice for Northern Ireland in the same way as there is for the other devolved Administrations. My other point is connected with that. In the past, we have had a seat at the EU where Defra has gone along. As I understand it, the Ministers from the devolved Administrations have sat behind them and often not agreed with what they are saying, but there has been one UK voice. We will not have that. That would be one mechanism where they would at least have to come together and be in the same room,



HOUSE OF COMMONS

where a UK position is put forward. Is that going to be difficult? We just do not have that UK seat at the table in the same way.

Dr Gravey: You will still have international commitments that will bind the UK Government. It is very hard to meet these international commitments if you do not have bottom-up action, whether at the level of local authorities or through engagement with devolved Administrations. There is a question there. From the perspective of someone who is interested in environmental policy, there are elements in the backstop that are extremely ambitious around the environment.

Kerry McCarthy: Sorry, what was that word?

Dr Gravey: "Ambitious".

Kerry McCarthy: Oh, right. I thought it was a new word I had not come across.

Dr Gravey: To be fair, environmental ambition is quite new. But was this actually discussed with the devolved Administrations before the Government signed up to it?

Kerry McCarthy: No, it would not have been.

Dr Gravey: There is a question there, then. As they stand, the common frameworks are all about the UK Government making sure they are limiting the ability for divergence for the devolved Administrations. If the devolved Administrations accept that, it has to be in exchange for a seat at the table or at least a voice on some of these reserved matters. We are not going to make trade policy devolved or that kind of things, but you need to make sure that their concerns are listened to when setting up these reserved matters on immigration, on trade, on any international commitments, because it is their work in their respective Administrations that will make sure the UK actually meets these commitments.

Q113 **Kerry McCarthy:** You said that it would be difficult for officials from Northern Ireland to argue at the same level as politicians, but would they also be a bit reluctant to try to assume the role of politicians?

Dr Gravey: They should be. In many ways, Brexit—and I do not necessarily agree with this characterisation of the EU—is about taking back control from bureaucrats; it is not about giving control back to bureaucrats. The way the Northern Ireland Bill giving power to civil servants is phrased is that they have to take account of what the Secretary of State says is in the public interest, but they are not bound by it. They are bound by their own interpretation of public interest. That puts them on the spot. It is a lot of pressure to put on civil servants, especially in a society like Northern Ireland.

Q114 **Kerry McCarthy:** When you say "Secretary of State", you mean the Secretary of State for Northern Ireland.

Dr Gravey: Yes.



HOUSE OF COMMONS

Kerry McCarthy: She is not a specialist in these issues, unlike the Defra Secretary.

Dr Gravey: No. The Civil Service is doing an incredible job in engaging stakeholders on environment and agriculture. They have given Michael Gove a lot of information on what actors in Northern Ireland actually want on these issues, but it is not their role as civil servants. We have a principle of political accountability in this country. It should be either Northern Irish Ministers or UK Ministers being held accountable for these kinds of huge changes.

Chair: I understand that.

Kerry McCarthy: It is a tricky one.

Q115 **Chair:** It is a particular political situation that has put you in this hotspot.

Dr Gravey: It has, yes.

Q116 **Chair:** I get that. Colin, before we leave this, what can be added to the Bill to ensure improved collaboration with devolved Administrations? Viviane has been talking about it. I am sure you have some ideas as well.

Colin Reid: Yes. At the more general level, it is more important to realise that the different devolved Administrations are starting in different places. In Wales you are not starting with a clean slate in terms of principles, because the sustainable management of natural resources and the well-being of future generations are embedded in legislation. There is machinery with a government architecture that could be used as a way of enforcing, implementing and reviewing what is happening.

In Scotland, the continuity Bill was talking about principles, with this overarching idea applying to all public authorities. We are still waiting for the detailed governance proposals, but there was more interest in using existing audit mechanisms than perhaps setting up a separate body, which is why what is in the backstop mechanism is quite interesting, as it seems to be committing to particular independent bodies and so on. There is that high level to be sorted out.

More practically, in the short term, there are two things that could usefully be added to the Bill. One is a provision that explicitly allows for collaboration, co-operation and the sharing of data between the Office for Environmental Protection and bodies fulfilling the same functions in the devolved Administrations. There may or may not be an equivalent office. It may be part of the audit mechanisms and so on. That would allow collaboration, because there is already a provision about sorting out how they work with the ombudsman in the Bill. Something along those lines, particularly including data sharing, would be important.

There is another perhaps more ambitious idea. Given where we are standing with the different Administrations and the shortage of time, it is extremely ambitious to think we are going to get commonly agreed unified arrangements by the time this Bill gets through. Perhaps we could



HOUSE OF COMMONS

put in a commitment to a review in so many years' time, which would require the Government—

Q117 **Chair:** Yes, that is a good idea. It would be a relatively short time, I would have thought, in some ways. Do you mean two or three years?

Colin Reid: It depends how long Brexit is going to take to work through.

Chair: Please do not have a discussion about that. What sort of timescale are you thinking about—two, three or four years?

Colin Reid: It could be two, three, four or maybe even up to five. You cannot commit the devolved Administrations, who for whatever reason may not want to co-operate in time. Having a formal sunset clause saying that everything lapses unless you do that would be a straitjacket that might cause more problems.

Q118 **Chair:** That would be a good idea, because it would bring the British or English Government as well as the Scottish Government and others to the table.

Colin Reid: You could do that. There is then a problem. Depending on elections and other cycles, there is too big a risk of things going wrong. You could put in a requirement to review it, inviting the devolved Administrations. Once the dust has settled, you might be able to sort out some of these issues about having different listed principles and slightly different arrangements. The fundamental point goes back to what Viviane was saying: we just do not have intra-UK arrangements for collaboration between the Governments that work just now, but that is going to be essential going forward, especially because of the UK's responsibilities for international affairs.

Q119 **Chair:** I have commented on this before, not just on the environment, but it is almost necessary to have some form of single market throughout the United Kingdom. This is an environmental matter, I accept, but we are going to have to create more co-operation. We have taken it for granted, because we have all been part of one particular customs union and so on. It is an interesting one, is it not?

Colin Reid: Yes, with the devolved settlements we were largely able to ignore this.

Chair: Yes, there is this umbrella approach.

Colin Reid: The idea was that, while the different Administrations could diverge to some extent, there was an envelope, the EU envelope. They could not diverge beyond that, so we did not have to think about that because there was that stop. Now that is not there, and there will be a particular tension around the role of the UK in international affairs, trade agreements and so on, which obviously can impinge on the devolved responsibilities.

Q120 **Chair:** It is not likely to happen, but from an environmental or animal



welfare perspective, if Scotland, Wales or Northern Ireland wanted to have a different level or system, when you came to trade that product internationally, it would be a huge issue, if you were not careful. It is not likely to happen, but they also need to have an input into what Government in Westminster decide as well. There is no real mechanism for that, is there?

Colin Reid: Many of the drivers for environmental ambitions may be affected by reserved matters. In air quality, the design standards for motor vehicles are going to affect how much scope the different devolved Administrations have to vary things.

Chair: That has stimulated Nigel into commenting here.

Nigel Haigh: The EU is governed by the principle of subsidiarity; it is enshrined in the treaty. It was introduced first for environment and it was then made a general principle of EU policy. The higher EU level should not do things that can be perfectly well dealt with by member states, regions or local authorities within them. That is a principle in the treaty. It was an environmental principle. In my written submission, I suggest that it should be a principle in this Bill. It would govern how you allocate these powers.

Some environmental things have to be dealt with at the level of the United Kingdom, such as the import and export of endangered species or chemicals policy. They are clearly not things that could be dealt with by Scotland alone. But there are plenty of things that can be dealt with by Scotland alone. The principle at least establishes how you allocate it. It does not say how you do it, but it sets out what ought to be done.

Q121 **Chair:** This is the idea of subsidiarity between the nations of the United Kingdom.

Nigel Haigh: Yes.

Chair: It is an interesting idea. Not all my colleagues here in Parliament would necessarily agree with that, but I can see it is a very practical solution. That quite neatly leads me on to Alan's question.

Q122 **Alan Brown:** This is probably almost a rhetorical question, especially given your comments earlier on, Viviane. In terms of the draft Bill as it is, in its current state, does this suggest that attempts to co-design post-Brexit environmental governance with the devolved Administrations have so far been inadequate?

Dr Gravey: Colin and I are working on a research project, and we have engaged with stakeholders across the devolved Administrations and in England. Something that comes up a lot is that there are different understandings of what co-design means. For a long time—it is just starting to change—for Defra and a lot of London-based Ministries co-design meant, the night before, you sent the proposal to your devolved counterpart and they said yes or no, or at least you let them know before the press got it. This is not what we would call genuine



co-design. In many ways, you did not need as much co-design before, because you had the EU common framework. It is normal. It takes time to have that kind of cultural change, especially given the amount of stress that all civil servants are under in preparing for Brexit. This Committee knows that better than others, from the work you are doing on whether Defra is prepared.

The point here is that we have talked about how we might need new institutions within the UK. Why not? You could start reforming the House of Lords and all these kinds of things. Brexit could be the start of a beautiful new institutional journey but, critically, what matters is that it is not just between the Administrations. Parliaments should be involved as well. There should be much more work involving Parliaments talking to Parliaments. The last Welsh devolution Bill included the possibility of the Welsh Affairs Committee here sitting jointly with some of the Welsh Assembly committees. If there are questions around the different roles, this Parliament and the devolved Parliaments could work together more, so it is not just between the Governments.

We are talking a lot about power grabs and central Government taking power away from the devolveds, but the other power grab going on is the Executive taking a lot of power and getting a lot of leeway to do things. That is not just the Executive here. It is going to be the tendency for all the Executives around the UK, because it is so stressful and you have so much to get done. Parliaments all across the UK need to make sure their voices are heard. Working together is a better way of doing that.

Colin Reid: We know there are contacts between the Departments, the officials, at different levels, but from the outside you do not know what is actually happening. It is not very transparent. You cannot judge how effective it is. There were pained expressions on the faces of some Defra officials behind me, I was told, when I was talking about the lack of co-operation; they were fuming because I was suggesting nobody had been speaking to them. But it does not come through, obviously. Where the ultimate power to decide lies is crucial.

The simple fact is that we have an Environment Bill that is based on UK-reserved powers in England moving forward at this stage. It is taking over the territory. The chances for the Scottish continuity Bill and the plans for environmental governance in that matching and being designed in collaboration with the Bill have gone, because of the six-month delay of the Supreme Court challenge and so on. In Ireland, we do not have anybody producing an equivalent. Wales is starting from a very different place, with its own existing structure.

Q123 **Alan Brown:** Following on from that, Colin, you mentioned the legal challenge to the Scottish continuity Bill and the six-month delay because of that challenge. Are you able to comment on what impact that has had on the desire to do the co-design we are talking about with the devolved Administrations? It is a kind of juxtaposition almost in itself.



HOUSE OF COMMONS

Colin Reid: The simple fact of different timescales gets in the way of co-design, especially when there is the time pressure from Brexit. We have already seen that. Between fisheries, agriculture, the net-gain proposal and this Bill, Defra has to do a whole lot of different things at the same time. The chances of joining them up properly are limited. When you then multiply it between the different Administrations, it is only going to get worse. Even if there were no political troubles, it would be incredibly hard to get everything joined up at this stage.

Dr Gravey: Ideally, you want a Bill going through right now to make sure there is some kind of environmental governance in place in case of no deal, but take a bit more time to wait on what is coming out of Scotland, wait to see what else is coming in, perhaps hope for the best in Northern Ireland and take the time for co-design. We are not in that situation right now. We have this Bill, and we need to make sure it is as good as it gets, but, yes, co-design has been left to the side.

Q124 **Chair:** Yes, it is not easy for civil servants sometimes, both in the devolved Administrations and in Westminster here, to come together when perhaps their political masters are not particularly seeing eye to eye. It is a difficult one, but we have to try to set up a system that can work. There are always going to be differences north of the border or wherever. We have to accept that, but we have to try to come up with something through this Bill where there is a level of co-operation on the environment that could work. It would be crazy not to. Like you said, the water, air and everything else will not stop at the Scottish border, the Welsh border or the Northern Irish border; it will probably go into the Republic of Ireland as well sometimes, I expect

Is there anything more that we can put in here to make it work or to try to make it work? It is one of these things where we have to set up a mechanism that has an opportunity to work. Does anybody want to answer that?

Edward Lockhart-Mummery: I wonder whether at the moment we are lacking the right mechanism to have the most productive conversations between the four countries. As Viviane said, this has operated within the shared framework of the EU. These are now devolved issues.

Q125 **Chair:** They are clearly laid down as well, you see. In a minute, they are not going to be.

Edward Lockhart-Mummery: Yes, this would be each of the four countries effectively deciding to pool sovereignty when they are devolved. There has to be a recognition of the mutual interest in doing that. To get there, you almost need an independently facilitated process where everyone can say, "This is why I think this is a good idea, and this is what would work from our perspective with our constitutional issues". At the moment, it has not been like that. There has been a bigger player in the room, which has inevitably taken the lead. Because there are devolved issues, it needs independence in the mechanism, however one



does that. To get to the place we all want to get you, you would need something that gets people to the table in a more positive mode.

- Q126 **Chair:** My political life has been between district council, county council, European Parliament and Westminster. Every institution wants to hold on to its little bit of power. It is always worried that the next tier up or wherever is going to steal some of its powers, and wants to steal some powers from them. Somehow or other, we have to get to a situation, as you say, where we bang everybody's heads together and say, "Look, for goodness' sake, there is a mutual interest in air quality, water quality and all these environmental matters that should be able to overcome the politics". That is what happens, really.

Edward Lockhart-Mummery: Those things fall out if you get the conversation right. We hosted a discussion at the Institute for Government with academics from the four countries and asked, "Where is the mutual benefit?" We got people to come forward and say, "These are the things we want to be able to do ourselves". For example, on a map of Wales, it looks as if about half of Wales' river basins are shared with England. How could you possibly not want to collaborate in some form in order to manage that? It is about identifying that clear common interest and the right mechanisms that we can all sign up to mutually to do that. That is the forum that is missing. Almost before the Bill, one needs some kind of independent mechanism. I completely take what Colin says about timescales, but, to get whatever provisions one can get into the Bill, one needs that independent process in order to identify the right solutions.

Dr Gravey: Going back, I mentioned the Good Friday agreement because, in the purpose of the North South Ministerial Council, it has something we could perhaps have in the Bill here. You spoke about pushing the Governments more politely to talk to each other. There is this mention of exchanging information, discussing and consulting with a view to co-operating on matters of mutual interest within the competence of the devolved Administrations. That could work well. We want the four Administrations to exchange information. If something is starting to go wrong in Scotland, England will want to know. They have to use best endeavours to reach agreement on the adoption of common policies in areas of mutual cross-border and all-UK benefit—as it would be here—that are within the competences of the Administrations.

Especially for plans, for example, we could say, "Okay, ideally, when you develop your plans you want to at least have these discussions about whether these plans will work for the whole of the UK", or have some other principle. Perhaps there could be an invitation to work. Your policy might end up being only for England and reserved, but you have to start by saying, "Let us try to get a UK-wide policy and then, if that does not work, let us have an England and reserved-only policy".

- Q127 **Chair:** The issue is that Scotland, Wales and Northern Ireland may well have some good ideas, but is England going to recognise that? Westminster will see itself as all powerful. That is the problem. How do



HOUSE OF COMMONS

we do that? Every now and again, there are good ideas that come out of Scotland, believe it or not.

Alan Brown: It happens every single day.

Chair: For me, looking at it objectively, sitting here, if everybody behaves reasonably, it can be done, but if they do not behave reasonably there is not a mechanism that pushes people together.

Colin Reid: I am a bit less optimistic about the ability to isolate the environment from the wider issues, because any concession on the environment would be seen as giving ground on other things, which is why in the short term what you can do is make sure there are no obstacles in the Bill to collaboration.

Chair: Yes, to make the situation worse, you mean.

Colin Reid: That is why it is important to have express provisions on collaboration, data-sharing and agreed standards on the collection of information, the sort of stuff that will be regarded as technical but that provides the basis for going forward in future. You can have the ambition or the hope of trying to get people to work together, but you want to make sure there are no obstacles.

Q128 **Chair:** You have to be able to walk before you can run. Is that what you are saying? You have to put the necessary data together, collaborate with that and then gradually collaborate more, hopefully, across the nations.

Colin Reid: If you build from the bottom up, it might be easier. The benefits of co-operation, the benefits of doing thing together, might become greater. Hopefully in a few years' time the political situation all over the UK will be a bit less tense. It may be easier to move forward.

Q129 **Kerry McCarthy:** This question is about how the OEP would work with the Committee on Climate Change. The Committee on Climate Change itself has suggested that the OEP should be responsible for enforcement of climate policy. But some time ago—I am not sure whether it was this Committee or the Environmental Audit Committee—we had Michael Gove in front of us. I thought he did not do a very good job of sounding enthusiastic about it, but he said that was because the departmental responsibilities did not work. What is your view on it? How will having the two things separated work? Should they all be under the OEP?

Dr Gravey: Yes.

Kerry McCarthy: They should be. Why?

Dr Gravey: First, just from an environmental perspective, it is sometimes very hard to separate what climate is, what environment is and where climate change stops, especially if you look at adaptation. If the OEP looks at flood risk and biodiversity but does not look at climate, you could have a situation where there is a policy that is really bad for climate but really good for the others. We need to have the same enforcement body here.



HOUSE OF COMMONS

Q130 **Kerry McCarthy:** Yes, especially if you look at things like sequestration, soil policy, peatlands, trees.

Dr Gravey: You do not want siloes in enforcement. You want a body that can look at the whole range of environmental issues together. Otherwise, you risk having really big problems when it comes to enforcement. Of course, climate change is a huge issue. While for now the UK is leading the way, in many ways, in Europe, as a whole, the EU is not doing enough to get us to that 1.5 degree target. We know it is going to get harder, so we want strong enforcement of these climate change rules. For now, the Committee on Climate Change does not have enforcement powers. One of the most critical environmental issues of our time would not have enforcement compared to the rest. That would be very problematic.

Q131 **Kerry McCarthy:** Would it be difficult, though? There obviously is quite a lot of overlap, but then there are some things that very much fall within the energy side of things or within transport policy. That perhaps would not sit quite so neatly, if we are looking at, say, the renewable transport fuel obligation and that sort of thing, or where we get our power from. Would you see there being some things that would not come over? Should anything that is related to climate change be in there?

Dr Gravey: That is where we are going back to what I was saying before. The Commission was EU-wide and in all sectors; the Court of Justice was in all sectors. You had one body that was looking at all of this. You did not have these questions about where the remit of the watchdog stopped. It is better to have a watchdog with too broad a remit, and then perhaps revise it and say, "We want to exclude this", than the other way around. I would rather start broad and narrow it down than the other way around.

Q132 **Kerry McCarthy:** How would political accountability work? It is the responsibility of other Departments. Should climate change come over to Defra as well?

Colin Reid: There is a bigger issue there, which is that the Committee on Climate Change acts for both the UK Government and the Scottish Government under separate statutory provisions. The Climate Change (Scotland) Act allows for a separate climate change committee. For the time being, by agreement that role is exercised by the one Committee on Climate Change for the whole UK. You are hitting this division of responsibility between the two Administrations, quite apart from anything internal to the UK Government.

Chair: It can be done.

Colin Reid: It can be done. It is an example of where the Scottish legislation says that there has to be a Scottish committee but allows that function to be fulfilled by another committee. For the time being, the Committee on Climate Change is the designated body to fulfil that role,



HOUSE OF COMMONS

but in relation to Scotland it reports to and it is accountable to the Scottish Parliament. It deals with the plans separately.

Dr Gravey: This is the whole ministerial question. The 25-year environmental plan is a whole-Government plan; it is not just Defra. If we take environmental policy integration seriously, it should not just be this Secretary of State who is bound by these principles; it should be the whole of Government in their actions. All policies should make sure they are not wrecking the environment. If we broaden the scope to all public authorities anyway, there would be less of a problem with the fact that it would sit outside Defra.

Q133 **Kerry McCarthy:** Do the others agree that climate change ought to come under the OEP?

Edward Lockhart-Mummery: Yes, Viviane is totally right. If you were starting with a blank sheet of paper, you would definitely want it to be one body. It is harder from where we are, with a bit of legislation. I just wanted to explain the other way of splitting it. You have climate change and the environment, but you also have the advice and scrutiny roles and the enforcement role.

After all, an organisation is a set of people. The Committee on Climate Change is very good at analysing the issues, understanding the science, where we are trying to get to and the economics. It is very good at that. The next set of issues to be resolved to solve climate change are largely around resource efficiency, land management and some of these things. There is an argument for putting those analytical issues and the advice and scrutiny alongside the Committee on Climate Change, because it all fits together and you want to look holistically at these things.

In a way, on the procedural and legal thing about enforcement, you could think of putting climate change in with environment there.

Kerry McCarthy: It is a different role, yes.

Edward Lockhart-Mummery: It is a different way of thinking about splitting it. I know we already have a draft Bill, so I do not know what room there would be to do that. Logically, it might work quite well.

Kerry McCarthy: We have part of the draft Bill. There are other bits to come. The whole point of pre-legislative scrutiny is that we are not caught up in the cycle of only being able to amend it in Committee and tweak it. We could be quite radical.

Q134 **Chair:** Playing devil's advocate, is the OEP necessarily the right body to look at climate change and enforce if parts of the Government are not meeting their climate change targets? What is the OEP? What sort of beast is it? The Committee on Climate Change is very long term. As Kerry said, it embraces energy; it embraces a lot. I am not against it doing this, but is it the right beast to do it? Is it set up in the right way to do it? This is what I am not quite sure of, you see. I do not know whether anybody



HOUSE OF COMMONS

wants to take that on.

Kerry McCarthy: On that point, there have been issues about not presenting the carbon budgets in time. We are on track for the third one, but not to meet the fourth one. There is no real mechanism if we do not meet those targets. There is just political pressure. You could argue that there ought to be something that steps in.

Chair: Yes, would that be able to do it?

Dr Gravey: It is similar for air quality and climate change. For these kinds of things, we know there is a great possibility that the Government will not meet them. If the OEP stays as it is and we just add climate, it might be very bad because currently the Government can very easily reduce the amount of resource the OEP has and very easily appoint whomever it wants to the OEP, to make sure they are taking a very positive view.

Q135 **Chair:** Different Secretaries of State could change it quite dramatically, could they not?

Dr Gravey: Yes. Just look at what, for example, Donald Trump is doing to the Environmental Protection Agency in the US. Those are the kinds of things we need to protect the OEP against trying to cut the budget, appointing only climate sceptics, these kinds of things. We need to be very careful there. For me, we need to first deal with the concerns about the independence of the OEP, how it is funded, parliamentary accountability and the role of Parliament, then strengthen and increase its scope to add climate. First it needs to be stronger.

Q136 **Chair:** But is the OEP actually capable, as it is set up at the moment, of looking at climate change or not? That is the direct question. Does anybody want to tackle that one?

Edward Lockhart-Mummery: If it is able to do the environment job, it should be able to do the climate change job. There is a lot of commonality.

Chair: One is much more long term, and it includes energy and many other things. I am not against it doing it, but it has to be set up in the right way.

Kerry McCarthy: As we heard in the last session, in some ways, because you have the five-year carbon budgets, climate change is not as long term as the environmental thing. You have what I think is quite an odd provision that any IEP would be at least 15 years long and the first one will be the 25-year environment plan. That is the long-term side of things, is it not? That is a 20-plus-year plan. At least with climate change you have the interim objectives. I am not sure I agree with what you just said.

Q137 **Chair:** What I am trying to get at is this. I am not against it having climate change as part of its remit, but, as it is set up at the moment, would it have the right powers to hold Government to account on climate



change matters?

Colin Reid: It is a classic dilemma in environmental matters. The environment is interrelated, so you can go for integration but, if you have integration, you lose specialisation or focus. If you have separate bodies focusing on particular aspects, they have a clearer focus and they can look at that with a different form of integration from the formulation of policy all the way through.

You have the split in Wales. Natural Resources Wales is trying to integrate all sorts of resource management issues. In England, you have separate bodies doing it. There is no perfect solution. It is a question of what is going to work, which relies on the particular design, the particular powers, how bodies are created, appointed, founded and so on. You need to do a bit of thinking about what we want these bodies to do.

Q138 **Chair:** I want you to do that thinking. That is why you are here this morning.

Colin Reid: Exactly.

Chair: Perhaps we could partly finish there, really. We have covered a lot of ground this morning. If there are particular aspects on some of these questions that you think about, you can let us have something in writing as to how it would work.

Colin Reid: It partly depends on what the OEP is going to do. As the Bill stands, it has a number of functions in terms of advisory, reporting on the environment plans and direct enforcement action, depending on how it develops and which of these roles becomes more important.

Q139 **Chair:** At the moment, it is inclined to be all things to all people. Somehow or other, it needs to become much more targeted and have teeth when it needs to have them. Another lawyer was talking about how it needs to have rubber teeth, but I said it might need to have composite teeth that have enough bite when it needs it. That is what I and the Committee are particularly interested in, because naturally, as I started off by saying, this is pre-legislative scrutiny. We are looking for ideas. The Bill team is behind us making notes and watching what is going on. From our point of view, the whole thing is a collaborative process. Are there any final comments that anybody would like to make?

Dr Gravey: Not enough teeth to not enough people is more the case right now. If the OEP does not get climate change, we still need some kind of body that does enforcement on climate change. If it does not do planning—

Q140 **Chair:** I am not saying it cannot do it, but is it set up in the right form at the moment?

Dr Gravey: It is not, but it is not just because of climate change that it is not set up correctly right now. We need a much more independent, stronger body. In any case, if we are serious about being this



HOUSE OF COMMONS

environmental superpower, we need to be serious about meeting our international commitments. For now, the Bill as it is set up does not do that.

Nigel Haigh: To revert to the question of principles, I just want to add one point. Earlier on I said I was happy that, of the nine principles in clause 2, all nine should be there, but some were missing. I have already covered the high level of protection; we discussed that. I mentioned subsidiarity, which should also be there. I have not mentioned prudent and rational utilisation of natural resources. It is in my written evidence, but I just want to put it on the table here.

Q141 **Chair:** Yes, and get it on record. Thank you all for your written submissions. I would ask you to go away and think about it. If there is anything else you want to add, please let us have it. This is very much an ongoing process. I want to make sure we do, as a Committee, take a positive approach to improving the Bill, improving the OEP and getting greater co-operation even between devolved nations and Parliament. That is going to be a challenge in itself.

Edward Lockhart-Mummery: The important question is whether the Committee is going to have an opportunity to look at the whole Bill, because there is a lot at that point—

Chair: We are probably not. That is the trouble.

Edward Lockhart-Mummery: There is another question, which may then be for now. If there is constrained time in terms of the Bill, what does one prioritise? There is a long list of potential things that could go in the Bill, but some things are more important than others, particularly in establishing the framework we have been talking about. The Committee could probably say something useful about that and perhaps prioritise the framework bits before specific policy.

Chair: That is right. In terms of the timing, we probably need to get our report done by April. I suspect we are not going to see the Environment Bill, naturally, until the new Session of Parliament. There is a certain amount of time, but I always describe Government policy as being like a cement mixer. It is all fluid and can be changed, and then all of a sudden it is poured on the ground, it is concrete and you cannot change anything. The process now is to make sure, as it is going round in the mixer, that we do actually change it, so you are right about timing,

We appreciate your evidence this morning. It has been very good. Thank you to all of you. It will help us piece the whole thing together and hopefully have some good ideas for pre-legislative scrutiny. Thank you very much.