Prof Colin T Reid – Written evidence (LPF0001)

House of Lords EU Environment Sub-committee

Environment and the Level Playing Field

I wish to make the following brief comments in response to the above inquiry. These comments are made on a wholly personal basis and do not represent the views of any organisation or institution.

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1. In discussions of the level playing field there is often reference to "UK standards", but it must be remembered that as a consequence of the devolution settlements, many matters, especially in relation to the environment, lie within the responsibilities of the devolved administrations, not the UK government. Accordingly, there is not one single UK standard to consider, but four different standards which may or may not diverge; at present the content is largely aligned as a result of EU membership. The UK Government does not control these matters across the whole UK and its views on standards may not be shared. Over time divergence within the UK is likely, simply through incremental drift arising from such things as different parliamentary and electoral timetables. Where there are different views on specific issues, e.g. over GMOs, where there are wider policy differences, e.g. the Scottish Government's commitment to "dynamic alignment", or where the special legal arrangements for Northern Ireland require particular steps to keep in step with the EU single market, the divergence may be more explicit.

2. Although the UK has stated that it does not want to be bound by EU standards as such, there seems to be a commitment to maintaining rules which achieve equivalence with current outcomes. One difficulty here is judging equivalence, and this brings to mind earlier issues over the implementation of EU Directives. Since Directives require not direct application but that measures are adopted to ensure that their outcome is achieved, the UK and other Member States on occasions embedded the relevant requirements in their own terminology and legal frameworks rather than following closely the text of the Directive. It was found, however, that it was very hard to persuade the EU Commission that such different approaches (not adopting the wording of the Directives) did indeed achieve the required result. This led to an almost invariable adoption of the "copy-out" approach, simply repeating in domestic law the words of the Directive as the simplest and clearest way of showing that the result was achieved, even though this did not necessarily create the best fit within the domestic legal context.

3. The same issue of how one can be satisfied of the equivalence of results seems to lie behind some of the current disagreement. If an external state directly follows the EU's standards, it is easy to for the EU to accept that equivalence is achieved. If not, there is scope for the external state to claim

equivalence without this actually being delivered, leaving an issue of who is to decide, by what process, whether or not this is the case. If the EU requires that outcomes are being achieved (albeit by a different route), then there must be framework that gives it confidence that this is the case, as well as a mechanism for the effective resolution of any disputes. Without these, the EU may show less willingness to move away from insisting on the use of the EU's own standards.