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Public Bill Committee

ENVIRONMENT BILL

Fourth Sitting

Thursday 12 March 2020

(Afternoon)

CONTENTS

Examination of witnesses.
Adjourned till Tuesday 17 March at twenty-five minutes past
Nine o'clock.
Written evidence reported to the House.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

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The Committee consisted of the following Members:

Chairs: SIR ROGER GALE, † SIR GEORGE HOWARTH

Afolami, Bim (<i>Hitchin and Harpenden</i>) (Con)	† Morden, Jessica (<i>Newport East</i>) (Lab)
† Ansell, Caroline (<i>Eastbourne</i>) (Con)	† Oppong-Asare, Abena (<i>Erith and Thamesmead</i>) (Lab)
† Bhatti, Saqib (<i>Meriden</i>) (Con)	† Pow, Rebecca (<i>Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs</i>)
† Brock, Deidre (<i>Edinburgh North and Leith</i>) (SNP)	† Sobel, Alex (<i>Leeds North West</i>) (Lab/Co-op)
† Docherty, Leo (<i>Aldershot</i>) (Con)	Thomson, Richard (<i>Gordon</i>) (SNP)
Edwards, Ruth (<i>Rushcliffe</i>) (Con)	† Whitehead, Dr Alan (<i>Southampton, Test</i>) (Lab)
† Graham, Richard (<i>Gloucester</i>) (Con)	Adam Mellows-Facer, Anwen Rees, <i>Committee Clerks</i>
† Longhi, Marco (<i>Dudley North</i>) (Con)	† attended the Committee
† McCarthy, Kerry (<i>Bristol East</i>) (Lab)	
† Mackrory, Cheryllyn (<i>Truro and Falmouth</i>) (Con)	
† Moore, Robbie (<i>Keighley</i>) (Con)	

Witnesses

George Monbiot, Journalist and Environmental Campaigner

Dr Richard Benwell, Chief Executive Officer, Wildlife and Countryside Link

Libby Peake, Head of Resource Policy, Green Alliance

Richard McIlwain, Deputy Chief Executive, Keep Britain Tidy

Dr Michael Warhurst, Executive Director, CHEM Trust

Bud Hudspith, National Health and Safety Adviser, Unite

Nishma Patel, Head of Policy, Chemical Industries Association

Lloyd Austin, LINK Honorary Fellow and Convener of LINK's Governance Group, Scottish Environment LINK

Alison McNab, Policy Executive, Law Society of Scotland

John Bynorth, Policy and Communications Officer, Environmental Protection Scotland

Public Bill Committee

Thursday 12 March 2020

(Afternoon)

[SIR GEORGE HOWARTH *in the Chair*]

Environment Bill

Examination of Witnesses

George Monbiot and Dr Richard Benwell gave evidence.

2 pm

The Chair: We now come to the first panel of witnesses this afternoon. We will hear oral evidence from Mr George Monbiot, a journalist and environmental campaigner, and Dr Richard Benwell, chief executive officer of the Wildlife and Countryside Link. Welcome. I have already introduced you, but can I invite the two witnesses to say a few words about who they are and what they bring to proceedings?

George Monbiot: George Monbiot; I have a long-standing interest in wildlife, environmental and countryside issues. Many of those wildlife issues are covered by this Bill.

Dr Benwell: Wildlife and Countryside Link is a coalition of 56 organisations working to improve the natural environment, animal welfare and people's access to a healthy environment.

The Chair: We have until 2.45 pm before we reach the end of this session. I will call Dr Alan Whitehead to open up with one or two questions and then go to the Minister.

Q154 Dr Alan Whitehead (Southampton, Test) (Lab): Good afternoon. A pretty direct, straight initial question: do you think this Bill is up to the task of protecting the environment in its own right? If you do not, what do you think is missing from the Bill that would enable it to do that job better?

George Monbiot: There are several areas that are clearly missing, because of the scale of the impacts and a long-standing failure to engage with them. One is the unlicensed release of game birds. They amount at some times of year to a greater biomass than all the wild birds put together and have a massive ecological impact, yet their release is unregulated and uncontrolled.

The Chair: Sorry to interrupt, but the acoustics are not brilliant in this room. If people could speak up a little, it would be helpful.

George Monbiot: I am so sorry. Associated with that is the widespread use of lead shot. It is completely incomprehensible and unacceptable that in the 21st century we are still allowed to spray lead shot all over the countryside with, again, significant environmental impacts. We have also, as a nation, completely failed to get to grips with phytosanitary issues; as a result, we are in a situation where just about every tree will eventually meet its deadly pathogen, because we are so successfully moving tree and other plant diseases around the world.

A previous Environment Minister, Thérèse Coffey, said that one dividend of Brexit would be that we could set much tighter phytosanitary rules. Well, I think we should cash in that dividend and see how far we can

push it. There might be an option to say, "No live plant imports into the UK that are not grown from tissue culture." At the moment, ash dieback alone is likely to cost around £15 billion in economic terms. The entire live plant trade has an annual value of £300 million, so in raw economic terms, let alone ecological terms, it makes no sense to continue as we are.

A fourth issue that I would like to introduce as missing from the Bill is the release of the statutory environmental agencies from the duty imposed on them in section 108 of the Deregulation Act 2015: to "have regard to...promoting economic growth."

Doing so might be appropriate in some Government agencies, but when you are meant to be protecting the natural world and ecosystems, that should come first. Very often, promoting economic growth is in direct opposition to the aims of protecting the living world, so it seems perverse to me that agencies such as the Environment Agency or Natural England should have a duty to promote economic growth.

Dr Benwell: I would like to start by saying that this is not a run-of-the-mill Bill; it is a really, really exciting piece of legislation that has the potential to be amazing. It has a huge job of work to do. The latest "State of Nature" report found that 44% of species are in long-term decline and that 15% of species here in the UK are at risk of extinction.

The trend of the decline of nature has been going on for a very, very long time. To put a Bill before Parliament with the aspiration of finally bending that curve to improve nature is a really big aspiration, and this Bill has many of the building blocks to start doing those things. It is really exciting; in particular, the promise of legally binding targets for nature is a tremendous step forward from where this Bill started—we really welcome it, so thank you for that. I hope that the Committee is excited about the prospect of considering a Bill that, hopefully, people will talk about for a very long time. That said, of course, I think that improvements need to be made to realise that ambition. If we were able to talk about two areas of improvement and one area of missing provisions, I would be very grateful.

Two areas really need improvement. The first is the targets framework. Although we have that promise of legally binding targets, at the moment the duty in clause 1 could be satisfied by setting a single target in each of the priority areas of air, water, waste and wildlife. Consequently, I think the first thing that we need to think about is how to shore up that provision, so that enough targets of the right ambition are set to deal with that whole natural environment improvement.

The second area that I would like to turn to if possible this afternoon is the nature chapter, in which there are, again, some really positive provisions. The system of local nature recovery strategies has the potential to start directing how we spend our natural environment money with much greater efficiency. At the moment, we spend our environment money in separate silos in the most inefficient manner imaginable—we spend our flood money here, our biodiversity money there and our air quality money there, and all that is usually tagged on after the end of the development process. In those local nature recovery strategies, we have the chance to align development planning and environmental spending in a way that can really up value for money and improve the way we use our cash.

The second bit in the nature chapter that really has good potential is the promise of net environmental gain in development. I have always thought of this as a sort of Jekyll and Hyde policy: if it is done badly, it can be a licence to trash, but if it is done well, it can be extra money from development to internalise some of that environmental cost that at the moment is not factored into the damage of development.

Again, those areas need a couple of improvements. Particularly on net gain, we need to ensure that it is properly covering the whole of development. At the moment, major infrastructure projects—nationally significant infrastructure projects—are not included. That is a big lacuna.

On local nature recovery strategies, the things that we need to tighten up are the duties to use those strategies. At the moment, there is a duty to do five-yearly planning and policy making, but that does not necessarily feed through into day-to-day planning and spending decisions. Focusing in on that duty, which is the one that also operationalises the local nature recovery strategies, is another really important way to fix the Bill.

If that can be done, not only can we start to think about bending that curve here in the UK—it is really important to remember that some big international negotiations are coming up this year: in Glasgow in November and before that, in autumn time, in Kunming, for the convention on biological diversity, where the world will come together to set biodiversity targets.

If we can fix this Bill and make it one that genuinely says, “Here in the UK, we will have a legal commitment to restore nature and the tools to do that”, not only could we start to bend the curve here but we could once again set a model for improving nature around the world.

Q155 Dr Whitehead: Thank you for that; it very much coincides with my general thoughts about the Bill. I guess that, as part of your homework for your appearance this afternoon, you may have had the misfortune of having to read through the entire Bill, from end to end.

I wonder whether you have any thoughts on how the Bill, though its various clauses and powers and permissions, actually does the task that it needs to do between Administrations and different stages of the process of protecting the environment, which will take place over a number of years. I am talking about how the Bill really does the job of surviving between Administrations and perhaps doing something like the Climate Change Act 2008 is doing—not necessarily binding future Administrations, but standing there as something that has to be done, so that an Administration must have very good reasons why they should not do the things subsequently, even if they are not as well disposed towards environmental improvement as the one we have at the moment.

Dr Benwell: I will make three points on that: two about the targets framework and one about the Office for Environmental Protection.

We want the targets framework to be a legacy framework—one that will keep having statutory force from Administration to Administration and ensure that the suite of targets can work for the natural environment as a system in place over time. That is why, even if this Government intend to set a really strong set of targets, we need to ensure that the duties in the Bill are strong enough so that when we come to a period of review later, any gaps that emerge are once again filled.

We talked earlier about the marine strategy framework directive targets, which end in 2020. We talked about the water framework directive targets, which end in 2027. We have thought about the ambient air quality directive targets, which end in 2030. The Bill needs to do the heavy lifting of ensuring that when those targets come and go, future Governments are obliged to revisit them and see which need to be put back in place.

I thought the Minister started a really fun game earlier of, “What’s your favourite target?”

Caroline Ansell (Eastbourne) (Con): You should chip in!

Dr Benwell: Thank you; I could do a little list now.

On biodiversity, we would have species abundance, species diversity and extinction risk. On habitat, you would have habitat extent and quality. On waste and resources, you would have resource productivity and waste minimisation. On air quality, you would have SO_x, NO_x—sulphur oxides and nitrogen oxides—ozone and ammonia. And on water, you would have biological quality, chemical status and abstraction. There is a great set there, but some of those exist in law at the moment, so we do not need them now. What we do need is a framework that will ensure that when they come and go, future Governments have to fill that gap.

There are several ways to do that. You have heard about the options in relation to an overarching objective that could be a touchpoint for setting targets. You could simply list those targets in the Bill and say that they all have to exist somewhere in law. Alternatively, you could look at the significant environmental improvement test in clause 6 and make it clear that it needs to achieve significant improvement for the environment as a system—not just in the individual areas listed, but across the whole natural environment. That is so we know that we will have a strong set of targets now and in the future.

I will be briefer on the next points, but that was point one. Point two would be about ensuring that action actually happens. The environmental improvement plans should link to targets. There should be a requirement for environmental improvement plans to be capable of meeting targets and for the Government to take the steps in those plans. And the interim targets to get you there should be legally binding.

Point three—I promised I would be faster—is about the Office for Environmental Protection and ensuring that it has the independence and powers to hold the Government to account on delivery.

I have just remembered one thing missing from the Bill, in response to Dr Whitehead’s first question: the global footprint of our consumption and impacts here in the UK. Adding a priority area for our global footprint and a due diligence requirement on business would be a really remarkable step, again, to show our leadership around the world.

George Monbiot: All I would add to that brilliant and comprehensive review is that there has been an extraordinary failure on monitoring and enforcement of existing environmental law in this country. We see that with Environment Agency prosecutions and follow-ups, and similarly with Natural England.

You can have excellent laws in statute, but if the resources and the will to enforce are not there, they might as well not exist. At every possible opportunity in the Bill, we need to nail that down and say, “That money

will be there, and those powers will be used.” That is particularly the case with OEP, but it also applies to the existing statutory agencies.

Q156 Rebecca Pow (Taunton Deane) (Con): Thank you so much for coming in. How lovely to have some enthusiasm! I will build on that enthusiasm for a second. I know there are probably lots of things that people think ought to be tweaked. Overall, can you sum up what you think the opportunities from this Bill will present to us?

Given that we have left the EU, I personally see this being a much more holistic system. I would like your views on that. You might also touch not only on the opportunities for improving the overall environment, but how this will touch on our society and business; we have to bring those people along with us.

George Monbiot: I think there is a fantastic opportunity in clause 93, which inserts the words “and enhance biodiversity”. That is something we can really start to build on. We find ourselves 189th out of 216 countries in terms of the intactness of our ecosystems. We have seen a catastrophic collapse in wildlife diversity and abundance, yet for far too long our conservation mindset has been, “Let’s just protect what we have”, rather than, “Let’s think about what we ought to have.” I would love to see that built on.

We can further the general biodiversity objective by saying, “Let’s start bringing back missing habitats and species to the greatest extent possible,” with the reintroduction of keystone species, many of which we do not have at all in this country, others of which we have in tiny pockets in a few parts of the country, but we could do with having far more of.

We could re-establish ecosystems that might in some places be missing altogether, such as rainforests in the west of the country; the western uplands of the country would have been almost entirely covered in temperate rainforest, defined by the presence of epiphytes—plants that grow on the branches of the trees. There are only the tiniest pockets left, such as Wistman’s wood on Dartmoor or Horner wood on Exmoor. Those are stunning, remarkable and extraordinary places, but they are pocket handkerchiefs. They would have covered very large tracts.

We need to use this wonderful enhancement opportunity, which the Bill gives us. There is a lot to build on in clause 93. We can say, “Okay, let’s start thinking big and look at how we could expand that to a restoration duty and, hopefully, a reintroduction and re-establishment duty.” That harks back to clause 16, where we have five very good environmental principles; I think they have been introduced from international best practice. But perhaps we could add one more to those, which would be the restoration of damaged or missing habitats and ecosystems and the re-establishment of nationally extinct native species. We will then not only be firefighting with the Bill, but looking forward to a better world, rather than a less bad one than we might otherwise have had.

Dr Benwell: That is a lovely way to put it: starting to think about restoration and improvement, rather than clinging on to what we are missing. That is the opportunity provided by the Bill.

Q157 Rebecca Pow: It does say “significantly improved”. That is the purpose of the Bill.

Dr Benwell: I am with you. I am saying that is a very good thing. Ensuring that we do that at a systemic level rather than improving one or two cherry-picked areas is something that we need to lock down in the targets framework.

You are right: the approach of doing things in a holistic manner, rather than just choosing one or two favourite options, is so important. It is the core insight of such a broad swathe of environmental thinking, from James Lovelock’s Gaia theory, on the one hand, to Dieter Helm’s theory of natural capital on the other. The common insight is that the environment has to operate as a system. If you choose one thing to focus on, you end up causing more problems than you solve. Think of tree planting. When that is the only, myopic target, we end up planting trees on peatlands and making things worse, or doing what was proposed the other week: planting trees on beautiful, wildflower meadowland. You have to think about the system. That is the promise here.

There are two other big opportunities, if you are asking where we could get excited about with the Bill. We need to think about the benefits of the environment for human health. If we could get a handle on the World Health Organisation target regarding the 40,000 premature deaths from air pollution a year, and demonstrate to the Government that there are wide-ranging benefits from environmental improvement, that would be thrilling.

On the business point, it is such a cliché but it remains true that what businesses really want is certainty. In the natural environment sector, they have never had anything more than fluffy aspiration. So many environmental policies of the past have said, “Ooh, we’ll do nice things for nature and we might see some improvement.” If we nail it down with a strong set of legally binding targets, businesses will know that they need to start changing their practices and investing money, and we will see some change on the ground.

There are lots of particular provisions in the Bill that could work well for businesses, such as net gain—at the moment, it is a patchwork from local authority to local authority, but we can standardise that now—and local nature recovery strategies, where we will know about targeting business investment in the future. There are big opportunities. We just need to tighten up those few provisions.

George Monbiot: To pick up on Richard’s second point about health and connectedness, almost all Governments have always agreed that outdoor education is really positive, yet nobody funds it. There is a massive loss of contact between schoolchildren and the living world, and I hope the Bill might be an opportunity to put that right. That is another thing that I would add to the shopping list.

Rebecca Pow: Thank you very much, gentlemen. The 25-year plan is being enacted through the Bill, and the plan does touch on the area that you mention, but thank you.

Q158 Deidre Brock (Edinburgh North and Leith) (SNP): I will ask two questions that I put to previous witnesses. The first is about clause 18, and the exemptions for the armed forces, defence or national security, and

for taxation, spending or the allocation of resources within Government, and whether you think that is appropriate. I have been doing some work on munitions dumps around the UK coast. I have also called for environmental audits to be done of the Ministry of Defence's activities—for example, on land and sea—so I would be very interested to hear your thoughts on that.

On clause 20, and the requirement in the Bill for the Secretary of State to report on international environmental protection legislation every two years, do you think it might be more appropriate for the OEP to do that, and to decide what international legislation is really important, rather than the Secretary of State?

Dr Benwell: On the exemptions from the principles policy statement, it is important to think about the weaknesses in that section as a whole. It is unfortunate that the legal duty attached to the principles is to have due regard to a principles policy statement, rather than some sort of direct duty on the principles themselves. I am hopeful that the principles policy statement, when it comes out, will do some beneficial things, if it reaches into all Government Departments and sets a clear process for the way the principles should be considered. I hope that the Department will be able to share its thinking on the principles policy statement as we go. Engagement has been very good, on the whole, with the Bill, but it would really help to see that principles policy statement in public.

The exemptions are very wide-ranging. It perhaps makes sense for certain activities of national security to be exempt. However, there is no reason to exempt Ministry of Defence land, for example, which includes areas of extremely important biodiversity. In fact, that is probably one area where we will see net gain credits generated on public land under the net gain clause, so it is strange that that is exempt.

Perhaps the weirdest exemption is the one that essentially takes out everything to do with the Treasury. When we are thinking about things like the principle of “the provider is paid and the polluter pays”, it is very strange that nothing to do with taxation or spending will be considered in the principles policy statement.

As for clause 20, I think you could do both. It would be perfectly possible for the Government and the OEP to consider international examples, and I think it would be very useful to benchmark both primary legislation and secondary legislation, in terms of non-regression. The Bill as a whole can make sure that we never have to rely on that if it is strong enough and brave enough.

The Chair: Mr Monbiot, do you have anything to add?

George Monbiot: No, that was a lovely answer.

Q159 Caroline Ansell: Dr Benwell, thank you for sharing your favourite targets and your points. I want to pick up on two points that you made. One was around operating as a system, and the other was around opportunity. Clearly, through the Bill, the Government are looking to lead on this, but I think it is widely acknowledged that it is going to take everybody. In terms of local nature recovery strategies and their production, what role and opportunities do you see as part of that system for your organisation and for the wider partnerships?

Dr Benwell: The opportunities are to align spending in a much more targeted manner and to build in environmental thinking at a much earlier stage in development and other decision making at the local level. At the moment, there is no real strategic planning for nature above the local authority level. This is an opportunity for local know-how to combine with national priorities in a way that will help to bake in the environment right at the start. That should explicitly link to policies such as environmental land management, so that farmers who invest in measures that make sense for the local environment will be paid more. That is a very sensible way to target agri-environment schemes and a very good way to target things such as net gain spending.

The problem is that, at the moment, the duty to use local nature recovery strategies is a duty to have regard to local nature recovery strategies in the exercise of the new biodiversity duty, which itself is a duty only to make plans and policies. There are several levels before anybody actually has to use a local nature recovery strategy. The worst-case scenario is that we put a new obligation on local authorities to come up with these plans.

Q160 Caroline Ansell: Is that where your organisation might step in? How will your organisation and the wider partnerships contribute to that production?

Dr Benwell: We hope that all sorts of stakeholders will be involved in the production. We hope that Natural England will sign off the plans, to show that they are ecologically rational, and that non-governmental organisations will come together with water companies, developers and local businesses to make it happen. However, all of those need to be sure that the plans will actually be used in day-to-day planning and spending decisions; otherwise, they will waste a lot of time and money putting together things that will just sit on the shelf. The duties to actually use them are not quite there at the moment.

Q161 Kerry McCarthy (Bristol East) (Lab): I must have revised the questions I was about to ask about 20 times, Richard, because you just kept saying, “And another thing,” so I was like, “That one is gone.” There are a couple of things that you both touched on, but not in that much detail.

We heard from one witness that the Bill is slightly lacking an overarching vision, which they thought could be addressed by having not just environmental objectives but objectives on health and wellbeing—I see that they are debating that in the Lords today—a bit like in the Well-being of Future Generations (Wales) Act 2015. The other issue mentioned was resource use, because there is stuff about reducing single-use plastics but not about consumption patterns overall. Decarbonisation was mentioned as well. Do you feel that the Bill could encompass those things without being unwieldy?

The other thing, which is slightly connected, is the global footprint, and I have put down some amendments on that. I entirely agree that there is not much point in doing things here if you are buying in stuff that causes environmental degradation elsewhere, or if we are funding it. I wonder whether you can say a bit more. George, on that point, one of my amendments would add to the four priority areas of the global footprint. What would be the sort of targets that we would be looking at? What would be the first things that we would address on that front?

George Monbiot: Of course, footprinting is now quite a technical and well-documented field, in which we can see what our footprint is as a proportion of our biological capacity. In land use, for example, we are using roughly 1.7 times as much as the agricultural land that we have here. A fantastic objective—it would be a long-term one—would be bring that down to 1. If we were to look at living within our means as far as key ecological resources are concerned, that would be a wonderful overarching objective for anyone.

Dr Benwell: On global resources, we should set out with an aspiration to deal with the UK's entire environmental footprint eventually, including embedded water, embedded carbon and all those sorts of things, but for now it is very difficult to come up with reliable metrics for everything, so we should start where we can. One of the most straightforward ways is dealing with products in the supply chain that cause deforestation. It is basically the point that George was making. We know what those products are—it is things like leather, beef, soya, cocoa—

George Monbiot: Palm oil.

Dr Benwell: Palm oil, of course. It is perfectly possible to measure that footprint and set a target for reducing it. Businesses themselves came up with a voluntary commitment back in 2010, and it has had no real effect on the UK's impact on global deforestation in some of the most amazing areas of the world. It is time to back that up with a regulatory commitment, and that would be good for the businesses that have shown a lead. At the moment, the only ones who properly investigate their supply chains, disclose what they find and take due diligence are the ones that are trying really hard. Unfortunately, it makes them look bad when the ones that are doing the worst and most damaging practices are just not bothering to report.

We should start off with a priority area for the global footprint being a metric for deforestation. Then we should have a due diligence duty that requires all businesses to look across their supply chain for deforestation risks and, crucially, to act to reduce those risks where they find them. That would be a massive step forward. It would be such an unlocker in international negotiations, where the refrain is always that developed countries are not doing their bit, but are just exporting their harm. If we show that we are not going to play that game anymore and are actually going to take responsibility, that would be an amazing thing to lay on the table in international talks.

George Monbiot: To Richard's list of commodities with very damaging impacts, I would certainly add fish. We currently import all sorts of fish with devastating by-catch rates. The Fisheries Bill aims to improve performance within UK waters, although it is pretty vague at the moment. It would be profoundly hypocritical if we were to carry on importing fish from places with very poor environmental performance.

Q162 Kerry McCarthy: On the health and wellbeing point, it was mentioned as a possible objective, but we took evidence this morning about air quality and water quality, and witnesses in both sessions suggested that we were ignoring the impact on the human population. Should there be something in the Bill that talks about people, or should it be a Bill that talks about the environment? Should we bring people into it as well?

Dr Benwell: It should definitely be in there. I think there is full potential for that to be covered in the Bill. If there is not, it should be broadened out. Yes, definitely, we should think of our approach to the natural environment as serving wildlife and people. Setting an overarching objective is one way to do it, or you could deal with specific areas.

George Monbiot: And specifically listing children and future generations as people for whom there is a particular duty of care in terms of protecting the natural environment.

Q163 Cheryl Mackrory (Truro and Falmouth) (Con): Thank you for your evidence so far, which has been really informative. I want to take you back to the discussion on targets—we are hearing about these things quite a lot from different stakeholders—and to your example of Dartmoor, if I may. You might know more about this than I do, but it is my understanding that about half a millennium ago Dartmoor was actually an ancient woodland, and they cut down the trees to make the ships to build Henry VIII's navy. I do not know whether I am right about that, but that is what I have heard. I do not know whether the target for somewhere like Dartmoor should be to keep it as moorland or to regenerate it to woodland, if that was case.

I feel that the Bill is the overarching framework for a positive way forward, and that were we to try to lock in all sorts of specific targets it would lose what it is trying to achieve, because there would be so much going on. What is your opinion on taking the matter to secondary legislation in the future so that we could listen to experts? I do not know what the experts would say about somewhere like Dartmoor. They might have differing opinions, and then how would we know what success looks like?

George Monbiot: You raise the fascinating issue of baselines. What baseline should we be working to? Should we be working to an Eemian baseline—the previous interglacial, when there were elephants and rhinos roaming around, with massive, very positive environmental effects, and there was an identical climate to today's? Should we be aiming for a Mesolithic baseline, when there would have been rainforest covering Dartmoor; a Neolithic one, when it would have been a mixture of forest and heath; or a more recent one, which is basically heath and grass, with not much heath left?

The truth is that baselines will continue to shift because we will move into a new climatic regime. All sorts of other environmental factors have changed, so we will never be able to recreate or freeze in time any previous state. That is why I think that a general legislative aim should be restoration and the re-establishment of missing species, without having to specify in primary legislation which ones they will be. The restoration of missing habitats, as well as the improvement and enhancement of existing habitats, is the bit that is missing from clause 93. We could add in habitats that we no longer have but could still support. However, we should not lock it down too much.

A big problem with existing conservation, particularly with its single-species and interest-features approach, has been to lock in place previous instances of environmental destruction. You will go to a site of special scientific interest and it will say, "The interest feature here is grass no more than 10 cm high." Why is that the interest feature? Because that is the condition in

which we found the land when we designated it as an SSSI. Is it the ideal condition from an ecological point of view? Certainly not.

We need flexibility, as well as the much broader overarching target of enhancing biodiversity and enhancing abundance at the same time. We could add to that a target to enhance the breadth and depth of food chains: the trophic functioning of ecosystems, through trophic rewilding or strengthening trophic links—“trophic” meaning feeding and being fed upon. Having functioning food webs that are as deep as possible, ideally with top predators, and as wide as possible, with as many species at every level, would be a really great ecological objective.

Dr Benwell: You are right: we would not want to set detailed targets for the condition of Dartmoor in the Bill. That would not make sense. Nor, indeed, do we necessarily want to set numerical targets for anything else. What we need is the confidence that the suite of targets will be comprehensive and enough to turn around the state of nature. In the Bill at the moment, that legal duty could be fulfilled by setting four very parochial targets for air, water, waste and wildlife. I do not think that that is the intention, but when it comes down to it, the test is whether the target would achieve significant environmental improvement in biodiversity.

You could imagine a single target that deals with one rare species in one corner of the country. That could legitimately be argued to be a significant environmental improvement for biodiversity. Unquestionably it could, but what we need—I think this is the Government’s intention—is something that says, “We are not going to do that. We are going to treat the natural environment as a comprehensive system and set enough targets to deal with it as a whole.”

I can think of three ways of doing that. You could set an overarching objective that says what sort of end state you want to have—a thriving environment that is healthy for wildlife and people; you could list the different target areas, as I had a go at before, on the basis of expert advice, and make sure that those are always there; or you could look again at the significant environmental improvement test and make it clear that it is not just talking about individual priority areas but about the environment as a whole, on land and at sea. It does not matter how the Government do it. I think that is their intention. However, at the moment, we are not convinced that the legal provisions in the Bill would require that now or in future iterations of the target framework.

Q164 Abena Oppong-Asare (Erith and Thamesmead) (Lab): I wanted to follow up on your earlier comments about the target framework, when you said it needs to have more teeth—I agree about that. You specifically talked about how environmental improvement should be linked to targets. As you know, when it comes to targets, this Bill hangs a lot on significant improvement tests. Can you tell me more about those tests, and whether you think they are appropriate metrics?

Dr Benwell: The test is not really a metric; it is a subjective opinion of the Secretary of State. Of course, that will be an informed opinion, but the significant improvement test is, “In the opinion of the Secretary of State, will a significant improvement be achieved through a particular target?” I am sure the Secretary of State will take advice on that, but it is a fairly loose test at the moment, and one that does not necessarily guarantee

that sort of overarching improvement. I will leave it at that, because I am hopeful that in 3.5 minutes, we might return to net gain.

Q165 Abena Oppong-Asare: George, do you have any comments on that?

George Monbiot: No, I will leave the space for—
[Laughter.]

Q166 Marco Longhi (Dudley North) (Con): Building on what you said a few moments ago, do you feel that the Bill sufficiently empowers all Government Departments to protect and improve our environment?

Dr Benwell: “Empowers”, possibly; “requires”, not quite yet. We are hoping that the environmental improvement plan will be cross-departmental, and that it will contain specific actions that are demonstrably capable of reaching a target, just as we do with carbon budgets. That environmental improvement plan should set interim targets that are binding, and it should say, “These are the steps we are going to take to get there in the Department for Transport, in the Ministry of Housing, Communities and Local Government, and in the Department for Environment, Food and Rural Affairs.” That will give us the confidence that stuff is going to happen, rather than waiting 14 years and then realising we are going to miss it.

George Monbiot: To add one small and specific thing to that, clause 86 contains what appears to be a very heavy reliance on internal drainage boards and a potential enhancement of their powers. Those drainage boards are not accountable to any Government Department, so there is a remarkable democratic deficit there. If you go ahead with clause 86 in its current form, you are effectively letting go of governmental control over a very important and large area. They are a quite extraordinary, almost feudal set of organisations; for instance, there is a property qualification for voting in internal drainage board elections. They really are effectively a law unto themselves, with appalling environmental credentials and very poor flood prevention credentials as well. If you want departmental responsibility, I would disband the internal drainage boards—as they have done in Wales—and bring their duties into the Environment Agency or another statutory agency.

The Chair: I am afraid there will not be time for any further questions; we have to move on. [Interruption.] Well, I am afraid we have a very tight timetable. I will try to make it up subsequently to those who were unable to get in, but we have to conclude this session by 2.45, and it is now 2.44 and 35 seconds. Anybody who asked a question would be unlikely to get anything like a coherent answer in the time available, so we have to close this session.

I thank our two witnesses for the benefit of their experience and the advice they have given. We are very grateful. It has been useful and helpful to our deliberations.

Dr Benwell: Thank you.

Examination of Witnesses

Libby Peake and Richard McIlwain gave evidence.

2.45 pm

The Chair: We will now hear evidence from Keep Britain Tidy and the Green Alliance. We have until 3.15 pm for this session. I ask our witnesses to briefly introduce themselves and their organisation.

Richard McIlwain: I am Richard McIlwain, deputy chief executive of the charity Keep Britain Tidy. We work on issues of litter, resource and waste consumption, sustainable living and the improvement of quality places. We ultimately want to see a zero-litter and zero-waste society.

Libby Peake: I am Libby Peake, head of resource policy at Green Alliance, which is a charity and think-tank focusing on ambitious leadership for the environment. To achieve that, we work with other NGOs, including through the Greener UK coalition, as well as businesses, to identify the most resource-efficient policies.

Q167 Dr Whitehead: The framework I am looking for, particularly in the waste and resources section of the Bill, is something that encompasses all the stages of the waste hierarchy, and particularly reflects how that waste hierarchy is put forward in the waste and resources White Paper, which is supposed to be taken on board as part of the Bill. Do you have any thoughts about the extent to which the Bill focuses on the design, reuse and minimisation stages of the waste hierarchy? If you think that it does not fully do that, are there ways that it could be made more useful in that respect? Do you have any particular thoughts on how the Bill might be pointed more in that direction?

Libby Peake: I think you are absolutely right. We would certainly welcome the framing in the resources and waste strategy, which is trying to maximise resource use and minimise waste—we think that is the right strategy. There are some things in the Bill that would lead in that direction. The resource efficiency clauses could be very useful. One of our concerns is that these are enabling measures and we are not entirely sure how they will be used.

In terms of what has been talked about and debated, the focus has overwhelmingly been on municipal waste and plastics. To give a bit of perspective, it is worth remembering that plastics make up about 10% of municipal waste; municipal waste makes up about 12% to 13% of all waste; and waste is the final stage of the material cycle. Looking at the overall material impact that the UK is responsible for, 81% of the materials that meet final UK demand occur outside the UK. In terms of measures that we would like to see in the Bill, which we think could improve things, it would be really useful to take greater account of the global material footprint. That would send a powerful signal.

There are some simple measures in the Bill that could potentially be changed quite easily. The extended producer responsibility clauses are welcome. The clauses themselves look at things such as preventing material becoming waste and products becoming waste. The overall framing of it, however, is still on end of life and disposal costs, which does not necessarily point people in the right direction in terms of preventing waste and respecting the hierarchy.

I am sure that we will come on to the single-use plastics charge, which is also potentially worrying because it applies just to plastics. There are lots of other materials with impacts that could be avoided if the Bill took a bigger view towards that sort of thing.

Richard McIlwain: I completely agree. In many respects, all the key words and phrases are in the Bill, but it is about looking for the joined-up flow from a waste hierarchy perspective.

To go back to clause 1, where it sets the idea of long-term targets at 15 years-plus, it is very brief about waste and resource. I wonder if there, in terms of painting a picture, it could outline the sorts of issues that we are looking to push targets towards, such as becoming more resource efficient, reducing the amount of waste we produce overall, and improving our recycling rates across the whole range of wastes.

As Libby says, when we talk about recycling rates, we often talk about household waste and municipal waste, but a lot of inert waste and soil still go to landfill. There is an opportunity there to look more broadly across the whole piece.

Libby touched on a number of points, including the specific detail about extended producer responsibility and charges for single-use plastics. There are opportunities there to frame the language a bit more and, as Libby said, to be specific when we are talking about things such as charges for single-use plastics. We should not get hung up on the issue of plastic. Plastic pollution is an issue, but plastic itself is a valuable material. We want to reduce consumption of it but keep what is in the system going round and round as far as we can. That is where the targets that look at resource use, waste minimisation and recycling will be key.

Q168 Dr Whitehead: Those are excellent succinct responses. The circular economy directive already exists, but we are not now bound by it, as we are not an EU member. Do the measures in the Bill reflect the UK moving on from that directive—capturing what is in it and moving ahead of it? Are there things that could be done in the Bill to ensure that that happens?

Libby Peake: The Government have said that they are going to adopt the measures in the circular economy package, but we have not determined yet whether we are going to exactly match what the EU does in future. Yesterday, the EU published a circular economy action plan, which we will not be bound by. It is really welcome that the Government have said on multiple occasions that they want to at least meet, and preferably exceed, what the EU does, but there are some ways in which the document that was released yesterday is potentially more ambitious than the measures laid out here.

One of the things in that document is that the EU is planning to regulate and tax single use and planned obsolescence, and it is not focused specifically on plastics. If the UK wants to get a jump on the EU, there is an opportunity to do that by simply changing the language in the Bill so that we are tackling single use, rather than just single-use plastics.

Richard McIlwain: I agree that the EU has already talked about an ambition, even by 2030, to halve waste produced. That is very ambitious, granted, by 2030, but that is the level of ambition it is looking at.

As is always the case with enabling legislation, primary Acts, the devil will be in the detail of the statutory instruments, but there may well be some framing to do in the Bill to set the level of ambition about where we are ultimately trying to get to on the materials we consume, the amount we recycle, and the amount of waste we produce.

Even in the circular economy package, there are some targets that have been talked about in the resources and waste strategy, such as 65% household waste recycling. We are currently bumping around 45%, so we have

some way to go, but Wales is up above 70%. Perhaps we should be looking across at Wales as a leader, as much as we look to the EU.

Libby Peake: An earlier leaked version of the circular economy action plan that was released yesterday included a much more ambitious target, which was to halve resource use—not just halve residual waste. That did not make it into the final version, but it would have been revolutionary. It was widely applauded by the environment sector. It has not made it into the EU legislation, but that does not mean that the UK cannot aim for that and up its ambition. That is certainly something that we would like to see in the targets.

Q169 Rebecca Pow: On that point, one of the ideas is that we can do our own thing on our environmental targets. We do not have to do what Europe says, and potentially our targets could be better.

Yesterday, we had some business interests explaining how the measures in the Bill would help them change the design of their products so that they are more reusable and recyclable, longer lasting and so forth. What are your views on measures in the Bill that would help consumers to take more considered actions towards reducing waste and recycling? I am thinking particularly about the requirement for local authorities to be more consistent in their waste collections.

Libby Peake: I would say that, in terms of recycling collections, a lot of the things that the Government have proposed will certainly correct some of the long-standing shortcomings of the system we have had in the UK. We have a postcode lottery, because people do not necessarily know what can be recycled and it is quite confusing.

In terms of getting people to feel responsible for their decisions and the materials they create, the main mechanism in the Bill that does that is the deposit return scheme, because that is the one thing that will indicate to people that the material they have actually has a value; it is not just a waste material that you need the council to take away. We would certainly encourage the Government to come forward as quickly as possible with plans for an all-in deposit scheme that can encourage such thinking.

Richard Mellwain: I completely agree. There has been an awful lot of focus over the last few years on how we incentivise business to do the right thing. Often, that is about economics and the bottom line, and we sometimes forget that that is equally important for the citizen. We often come up with campaigns and ways to raise awareness—they involve pictures of dolphins and whales—and we appeal to people’s sense of morality rather than making it cheaper for them to do the right thing.

Libby mentioned a deposit return scheme, which works brilliantly in over 40 countries and regions around the world. We should absolutely be doing that on time, by 2023; we should not be delaying. Charges on single-use items, not just single-use plastics, is another economic nudge for people. On recycling, there are twin sides of the coin. We need to extend producer responsibility and simplify the types of packaging material, which will hopefully all be recyclable. On the other hand, having a harmonised collection system that allows people to collect those at home will make a big difference.

One further step that could ultimately be considered is whether you could place an economic incentive in the home through a scheme such as “save as you recycle”. Once you have harmonised people’s collection systems, you would make waste a separate chargeable service, so people pay for what they have taken away—in the same way that, if you are on a water meter, you pay for what you use. That would really focus minds. There is a real relationship between the producer’s responsibility and the citizen’s responsibility, but we need to incentivise both—not just business.

Libby Peake: That is a logical extension of the “polluter pays” principle. It is great that that is part of the Bill and that part of Government thinking is that the polluter must pay. At the moment, however, you are tackling only one side: the producers. People’s decisions produce waste as well, and not having “save as you recycle” variable charging, or what is traditionally called “pay as you throw”, puts people off a bit. Not having that does not necessarily carry through the logic of producer responsibility and “polluter pays”.

Q170 Rebecca Pow: I have a quickfire question. We have our resources and waste strategy, which sets our long-term targets for reducing waste and for sending zero biodegradables to landfill by 2030. Overall, do you see the measures in the waste and resources section of the Bill, which is large, as a big step forward in putting all this together?

Libby Peake: I think it is a really big step forward in sorting out the long-standing problems of the recycling system. It is not yet clear how it will deliver the Government’s commitments and aspirations on waste reduction and resource use reduction. In a way, it is slightly unfortunate—not that I would want to delay the Bill—that this has come out before the waste prevention plan update, which was due last year and which I understand will be consulted on soon. Hopefully, that will set out some more ambitious policies for how resource use and waste will be minimised before we get to recycling.

Richard Mellwain: That is a fair point. Absolutely, from a Keep Britain Tidy perspective, we welcome the measures in the Bill. The extended producer responsibility, DRS and charging for single-use items—we hope it is not just single-use plastic items—are big steps forward. As Libby says, in terms of extended producer responsibility, it talks about promoting not just recycling but refill. You would hope that the modulated sums applied to each piece of packaging would be far less if an item can be refilled or reused rather than simply recycled.

There does not seem to be much in there in terms of how we reduce our material footprint overall and how we reduce our waste overall. That is probably an area that we need to consider.

Q171 Deidre Brock: I want to ask about the targets timeframe. In the Bill, the targets do not have to be met until 2037. Does that date reflect the urgency of the situation we find ourselves in?

Richard Mellwain: In a word, no.

Q172 Deidre Brock: What do you think might be a realistic but slightly more ambitious target?

Richard McIlwain: The Bill allows for five-year plans and for interim targets within that. I do not believe they are statutory targets. We should be looking at statutory targets that are within a parliamentary cycle.

It is all very well having long-term, 15-year targets—that is absolutely the right way; the Climate Change Act 2008 is a classic example of that—but having statutory targets that are agreed at the beginning of each Parliament and then enforced through that Parliament will be key, not just in terms of arriving at the 15-year target, but in terms of giving investors, business and others confidence that they can invest in things that are not ultimately going to be stranded assets.

Libby Peake: It is quite difficult to say, because we do not know what the targets are going to be. Obviously whatever the targets are, we want them to be as ambitious as possible, and we want to have interim statutory targets to make sure that we are meeting them, like you get with the Climate Change Act.

The Chair: We have 14 minutes left and six people who want to use up that time. It is highly unlikely that I will get all six people in, but those who do get the opportunity to ask questions, please be as rapid as possible.

Q173 Marco Longhi: Do you feel that sufficient consideration has been given to the impact the Bill has on local authorities?

The Chair: That is exactly what I mean by a well-targeted question.

Richard McIlwain: I guess it depends what you mean by the impact on local authorities. If extended producer responsibility transfers the costs of dealing with packaging—whether it is in the recycling stream, the residual waste stream or as litter—and if that is a 100% net transfer and is fairly apportioned, that is a win for local authorities.

I do think there is a transition period; we need to look at how we transition from the systems we have towards the systems that we may well need, for instance in terms of harmonising waste collections. There is a role for the Government in looking at where they can overcome some of those transition needs, such as in contractual matters—for example, if local authorities look to break contracts early to comply with the harmonised systems, because some of them will be in longer-term contracts with the waste providers—to ensure that the costs do not fall unfairly on local authorities.

Ultimately, what I say in my role—we work a lot with local authorities—is that local authorities should look at this very positively. There are a lot of benefits coming down the line, not just in terms of the cost transfer but in terms of the service that they can provide to citizens, such as allowing people to recycle more and better, as long as those material cost considerations are ironed out early on.

Libby Peake: We know that local authorities are concerned about the impacts of the Bill, but as Rich said, what they need to remember is that the extended producer responsibility reform could really help them. We are moving from a system where local authorities and, ultimately, taxpayers pick up about 90% of the costs for our recycling system to a system where the producers pay 100% of the costs.

Certainly, in terms of how DEFRA officials have been looking at it and the consultations we have seen so far, they are very aware that they do not want to negatively impact local authorities. If you look at things like the commitment to bring in universal food waste collections, which is an incredibly important bit of this legislation, they have said that that will be fully funded. That is really important.

Q174 Alex Sobel (Leeds North West) (Lab/Co-op): The Government have brought forward legislation to ban certain types of single-use plastics, including straws, cotton buds and stirrers. Last year I ran a campaign in my constituency called “Sachet Away”, which reduced the use of single-use sauce sachets. How do you think the Bill could help in that? You mentioned charges, Richard. What do you think the effects of the Bill will be?

My second question, quickly, is that on the Environmental Audit Committee we had a lot of evidence, including from Zero Waste Vietnam, that our waste that was being exported was not being recycled or reprocessed, but was literally being dumped. Do you think that the Bill can raise people’s confidence that that that will no longer happen?

Richard McIlwain: Yes, that is ultimately what we should strive for the ambition to be. When we talk about single-use plastics, we must also remember cigarettes and cigarette butts, which are a form of single-use plastic. By count—by the number of them—they are the most widely littered item across the country. There is no reason, for instance, that an extended producer responsibility scheme could not be applied to the tobacco industry as much as to the packaging industry. Let us get some money in to sort that issue out, and plan prevention campaigns to stop that sort of littering.

Evidence from Cardiff University, Wouter Poortinga and others suggests that citizens respond more strongly to the idea of a loss than a benefit. I would argue that is why there is single-digit use of refillable coffee cups, as compared with paper cups. The discount is not attractive to people, and not many people know that if you turned that into a charge, every single person buying coffee would be subject to that charge, and it would get home much more quickly.

We did some YouGov polling—it is two years old now—which suggests that once you get to a 20p or 25p charge, not many people say that they would like to continue paying that for the benefit of having a paper cup. If we get this right and we look across the spectrum of single-use items, plastic items and cigarette butts, and apply extended producer responsibility charging and deposits correctly, those economic incentives could make a big difference, and we could take the public with us.

Libby Peake: I would like to add to the bans and charges point. Bans on stirrers, cotton buds and straws absolutely make sense, because those things are likely to wind up in the ocean. In advance of those bans coming in, we have seen lots of shifts to other equally unnecessary single-use items made from other materials. McDonald’s is now switching from plastic straws to 1.8 million straws a day that are made out of paper and are not recyclable. We know that bans will cause environmental problems down the line that could be avoided if we used foresight now. It would be great if the Government took

that stance and did not simply look at plastics. They can anticipate the perverse outcomes that we know are coming, and that can be prevented right now if we introduce the possibility of charging for all materials.

In terms of waste dumping, it is important to remember that it is absolutely illegal for the UK to send polluting plastic and polluting waste abroad. We are an independent signatory to what is called the Basel convention, which obliges wealthy countries such as the UK to ensure that we are not sending any material abroad if we have reason to believe that it will not be reprocessed in an environmentally sound manner. It is welcome that the Government are saying that they want to stop the practice, but what really needs to be done to stop it is much better resourcing of the Environment Agency and the other sorts of regulatory bodies. The EA's funding went down by 57% from 2010 to 2019, and that has had the knock-on effect of not allowing it to carry out the necessary inspections and ensure that this sort of waste crime, or this sort of contamination, is not leaving our shores. In 2016-17, it only carried out about one third of the targeted inspections of recyclers and exporters. In 2017-18, it only carried out three unannounced inspections. There is a vanishingly small possibility that people who are deliberately exporting contaminated waste are going to get caught. I think that speaks to the importance of properly regulating and resourcing all the regulators and the Office for Environmental Protection going forward.

The Chair: We are really running short of time now, so I am going to take two questions and put them to the witnesses. First, Richard Graham, and then Jessica Morden.

Q175 Richard Graham (Gloucester) (Con): My questions will be very quick, but they are separate ones for you both, if that is all right, Chairman, and please—swift answers.

Richard, you have said how important it is to have the cost of collecting waste separated, so that people know what they are paying for, are incentivised and so on. Do you think that those opportunities are actually in the council tax? That is what people are really paying, is it not?

Richard McIlwain: Yes, they are under council tax, and because they are under council tax—

The Chair: Sorry, I did say that we would take two questions first. Jessica Morden.

Q176 Jessica Morden (Newport East) (Lab): Very quickly, as a Welsh MP, thanks for pointing out that there are lessons to learn on recycling from Wales, as the fourth best recycling nation in the world. Are the provisions in the Bill effective in tackling fly-tipping and organised waste crime?

Richard Graham: My question was only for Richard.

Richard McIlwain: It is within the council tax—absolutely. People sometimes think that they pay an awful lot for waste disposal, when actually it is quite small as an overall approach to council tax. I would perhaps like to see local authorities being more obvious about the way that council tax breaks down. I know that sometimes you get a letter with your council tax bill and a nice little

pie chart, but I think we could be more active in explaining to people exactly what that tax does, which would then allow us at some point to break out waste as a chargeable service, as people would be used to it by then and would see the cost. Also, potentially, they would see the benefits of reducing their waste and having a smaller residual waste bin, because it will save them money.

Do you want me to say more, on fly-tipping?

Q177 Jessica Morden: Yes, fly-tipping and organised waste crime.

Richard McIlwain: The Bill touches on elements of fly-tipping. I think the electronic waste tracking will be a big step forward, but again there are some people who simply do not bother with a written transfer or an electronic system, no matter what. I think it will make the system more effective and more efficient, but I also think that there is work to do to think about how we drive down 1 million fly-tipping incidents every year.

What we need to do, in my opinion, is reform the system of carriers, brokers and dealers, so that it is much harder to become a registered waste carrier. I would then have a big national campaign that makes people aware that if they give their waste to anyone who is not a registered waste carrier, they can receive a £400 fine, or potentially a criminal conviction, because far too few people are aware of that. Make the system better and more robust, and make people aware that they should ask about the system, and I think you could cut off the source of waste to fly-tippers at the very beginning.

Richard Graham: Next, for Libby, if I may—

The Chair: Sorry, is this an additional question?

Q178 Richard Graham: Yes, I had one question for Richard and one for Libby.

Libby, clauses 49 and 50 spell out in huge detail the opportunities for businesses to consider redesigning their products in a more environmentally friendly way. The Bill also talks about food collection, not only from households but from businesses. What encouragement do you think that gives to businesses to redesign products, and also to local councils to get stuck into anaerobic digesters?

The Chair: Before you answer that, can I bring in Abena Oppong-Asare to ask a very quick question, and then it will be the final two?

Q179 Abena Oppong-Asare: Mine will be very quick, Chair. What powers, duties and resources does the Bill need to clean up litter on highways and road verges?

Libby Peake: The resource efficiency clauses are welcome, and they are very broad. They are deliberately broad, and they can affect lots of things throughout the materials life cycle. At the moment, it is really difficult to say what sort of impact that will have on businesses, because there is no clear timeline yet for implementing any of these powers; they are enabling powers, and we do not know how they will be used.

One thing that is slightly concerning, which I hope the Government can clarify, is whether or not these sorts of powers and this sort of ambition will also apply

to energy-using products—to creating resource-efficient, durable, repairable electronics. That is one of the fastest growing waste streams. Those are the areas that you would most likely think would be useful. They have been deliberately left out of the Bill, on the grounds that those powers are coming to the UK through the withdrawal Act, but I do not think it is yet clear whether the ambition on energy-using products matches the ambition and the potential in the Bill to change how materials and products are used and made.

The Chair: Can we have a 10-second answer to Abena's question, if possible?

Richard McIlwain: Very quickly, roadside litter is an absolute disgrace. Most people agree on that. I would like Highways England to be given the powers and resources to enforce against littering. Local authorities need more resource to undertake the necessary work, because it is a very transient crime. A deposit return scheme, given that lots of cans and bottles get thrown out of cars, may damp down littering. Picking litter up is one thing; preventing it from being thrown in the first place is another.

The Chair: Thank you very much.

Examination of Witnesses

Dr Michael Warhurst, Bud Hudspith and Nishma Patel gave evidence.

3.16 pm

The Chair: We will now hear oral evidence from the CHEM Trust, the Chemical Industries Association and Unite. We have until 4 pm. I ask the three witnesses to introduce themselves briefly and state which organisation they represent.

Dr Warhurst: My name is Michael Warhurst. I am the executive director of CHEM Trust, which is an environmental charity that works on chemicals health and pollution at UK and EU levels.

Bud Hudspith: My name is Bud Hudspith. I am the national health and safety adviser for the trade union Unite.

Nishma Patel: I am Nishma Patel, policy director at the Chemical Industries Association.

Q180 Dr Whitehead: Good afternoon. My reading of schedule 19 to the Bill is that it enables the Secretary of State to change REACH—the registration, evaluation, authorisation and restriction of chemicals regulation—although there are a number of protected areas within it. However, the schedule does not appear to require consultation with the chemicals industry or wider public bodies that might have an interest, or that any consultation responses be made public. Are you, like me, concerned about that omission, or do you think that the way the Bill is structured regarding the possibility of change and consultation is adequate given the importance of the issues?

Nishma Patel: For us, it is—

The Chair: Sorry, may I stop you there? The acoustics are very bad in this room, so may I ask our witnesses to speak up a little?

Nishma Patel: Okay. For us, it is about the detail behind how the schedule will be implemented. At the moment, there is no clarity on consultation and how that will take place. We would like to know the policy behind UK REACH, how it will be implemented, and exactly how it will work—not just the protected parts, but the entire UK REACH regime. We, as industry, see a number of issues—perhaps others see them as well—on which further consultation will probably be required. For us, it is about clarity on the process behind it.

Bud Hudspith: I think there are some broad requirements in the Bill to consult, but they are very broad, and specify something like “other possible stakeholders”. We would like to see much more formal and arranged consultation. In the area I largely work in, health and safety in the workplace, we are used to being consulted. We think it is a very useful way for Governments to find out what is actually going on on the ground, so we would welcome that. I agree with you: we would like to see a slightly tighter indication of who should be consulted and when.

Dr Warhurst: The CHEM Trust position is that we agree with that. The consultation is limited, and the consultation on this measure as a whole has been limited; for example, there was no consultation on which protected articles should be in there, and there has been no rationale as to why those are protected and others are not. We are very involved in EU-level work on chemicals, and we find that process is a lot more open and consultative than the UK process.

Q181 Dr Whitehead: On the subject of protected articles, I share your view: I am somewhat mystified as to how those have landed on the Bill in this way, and about what is protected and what is not. Are there particular areas that you consider ought to be in the Bill as protected articles, in addition to the ones that we have at the moment, and are there any ways in which you think the protection element of REACH regulations—securing proper standards, inter-trading of chemicals and so on—might be better reflected in the Bill, or do you think the protected articles that there are at the moment fulfil that requirement?

Dr Warhurst: On the protected articles, REACH is a huge piece of legislation. You could decide to protect everything, but that might cause some problems. One of the things we particularly noticed is that article 33 of REACH is about consumers' right to know about the most hazardous chemicals in the product, and article 34 is an obligation on the supply chain to report problems with chemicals up the chain. Those would certainly be added to what we would view as protected.

However, it goes beyond that; as you said, it is about the level of protection for the public. The problem with chemicals regulation is that we are dealing with tens of thousands of chemicals in millions of different products. It is a very complex area, and it has been very challenging over the decades as Governments and regions have tried to control them. EU REACH is the most sophisticated system in the world, but it still has a huge amount of work to do. There are a lot of chemicals to be got through, because when one chemical gets restricted, the industry moves to a very similar one. Our worry is that some of the decisions around that require huge amounts of work and data, and are subject to legal challenge by industry. We do not see any way in which the UK can

replicate that system. In many ways, it would be more straightforward—although possibly not in terms of legal challenge—to be more focused on following what the EU does, rather than trying to create another system that to some extent may be a bit of a hollow shell, because there is not the resource to really control new chemicals.

Bud Hudspith: I pretty much agree with that. I do not think I need to add much to it.

Nishma Patel: Again, this comes back to the process and detail behind the Secretary of State being able to consult, who the consultation is with, and how it would take place. One point to consider is that anything that would be changed under UK REACH overall—any article—would have to be in line with article 1 of REACH, which is about providing the highest standard of environmental protection to consumers, as well as reducing testing where possible. It is not about the principle of “Is there a possibility for the regulations to digress, because a justification needs to be provided?” It is about how that will be consulted on, and how that information will inform policy making in the UK through various stakeholders.

Q182 Rebecca Pow: Thank you very much for coming in to talk to us. Obviously, exiting the EU provides us with opportunities for industry, such as integrating the most current scientific knowledge into the decisions we make concerning chemicals. In the Bill, we have the flexibility to amend REACH while retaining its aims and principles; I just wondered whether you could summarise what you thought the right balance was.

Nishma Patel: From an industry perspective, if we look at the trade of chemicals leaving and coming back to the UK, 50% of our trade goes to the European Union and 75% comes to the UK. To work from two pieces of legislation, which go in the same direction, communicate with each other and co-operate, makes sense from a commercial perspective, as it does from an environmental perspective.

The opportunities are there, in terms of doing something differently or making amendments. As it stands, however, we see that the need to stay close to the European chemicals regulations far outweighs the opportunities.

Bud Hudspith: I think we are coming from a similar position. We start from the basis that alignment is one of the most important things. We have interesting problems. We have members in the south of Ireland as well as in the rest of the UK. It would be pretty unacceptable to us if there were different protections, in terms of chemicals, for those two groups of people. That extends from a broader view across the whole of Europe among people at work.

I would agree with Nishma that alignment is most important. We accept that in theory there could be improvement made through the UK position, but I suppose I am a bit cynical about whether that is likely to happen. Therefore, we would be supportive of—I think an amendment was proposed—making it clear that the Minister needs to improve on what is there. Clearly, however, consultation about what we believe is an improvement and what is not is quite important, because an improvement to someone may not be seen by others as an improvement.

Q183 Rebecca Pow: So do you welcome the requirement in schedule 5 for consultation?

Bud Hudspith: Yes, we welcome that. That was the point made before. Parts of it are fairly vague and we would like it to be much clearer as to who should be involved. There should be clear consultation with the chemical industry—the people who work in the chemical industry and the people who represent them.

Dr Warhurst: The principles sound good, but the point of principles is how they are interpreted—not just the political decisions about interpretation, but these capacity issues. The problem we see is that it is very difficult for the UK to be in a position, even if it wanted to, to go ahead of the EU, which we have not seen as very likely. In parallel areas, such as chemicals and food contact materials, where the UK could have gone ahead of the EU, it has not, even though countries such as Germany, Belgium and France have.

I will give a practical example. Perfluorinated chemicals are in all our bodies. They are in our blood. They were talked about in a recent film, “Dark Waters”. They are in food packaging, ski wax and textiles. The EU is proposing to do a general restriction on these chemicals for non-essential users. This is thousands of chemicals. That will be a huge job for the 600-person ECHA and member states around the EU. There will be challenges from industry. We know that Chemours is already challenging a decision on one of the chemicals in the group.

We do not see it as credible that a UK-only agency, which will have to spend a lot of time just administering the registration system that is set up or the applications for authorisation, will really have the potential to copy that. But we would obviously like the Government to make a commitment that they will follow this and ban these chemicals.

Q184 Kerry McCarthy: I want to pursue the question about whether we would be better off in or out of REACH. Do you think there are concerns that the new regime would not provide the same level of consumer environmental protection? There is a particular issue about keeping pace with changes in the EU and whether our standards would fall below it. Do you have concerns?

Bud Hudspith: I would follow on from Michael’s point. We have concerns about the resources available to the Health and Safety Executive and the technical ability of people in the HSE to mirror what has gone in the European Chemicals Agency, its size and extent, and the amount of work that has gone on over many years to get to the position that it is in now.

It seems as though we will be in a situation where we will start again from scratch. Even if we achieve what has been achieved in ECHA, it will take us many years to get there. We are worried, especially about that intervening period. Where will we be? I do a lot of work with the HSE, and I am aware of the kind of pressures it is under. It is easy to say that the HSE will do this, or that the HSE will do other things, but unless it is given the resources and people to do that, it is words rather than action.

Q185 Kerry McCarthy: There is a balance between getting up to speed dealing with current regulations and keeping pace with innovation, which presumably will have an impact on some of the industries that you might be involved in.

Bud Hudspith: Yes. The position with the EU—ECHA—is that it has come an awful long way. We are getting to the stage where it is probably working better than it has before, and I do not want to wait another five years to get to that position in the UK. It may take more than that—I do not know whether or not it will be five years.

Q186 Kerry McCarthy: This is part and parcel of the same question—

The Chair: Sorry, Kerry, but we are a little short of time.

Kerry McCarthy: I was trying to clarify what I was asking about.

The Chair: Very briefly.

Kerry McCarthy: The UK, in “The Future Relationship with the EU” document, talks about “the separate regulatory requirements of the two markets”.

What impact would that have on the chemicals industry, if there is that level of divergence—or is it about trying to keep up?

Nishma Patel: Following on from what Bud said, REACH has been there for 10 years, and a big chunk of the work under REACH has been done in the past 10 years. The UK contribution has been second in that, in terms of registrations and in providing the data behind the chemicals. To start that process again would put us on a behind path on EU REACH and REACH in general.

The annex, in what we see of the UK position at the moment, allows for the two regulations to co-operate, to talk to each other, if that is the way the negotiations go. It might also allow a mechanism to share data, evidence, on the input put into the European Chemicals Agency database. It is not completely negative. The door is still open in terms of starting from the same evidence base and regulating chemicals; it is just how UK REACH will work—that will depend on what is negotiated in that annex on chemicals, and the extent of the co-operation.

Dr Warhurst: We would agree with many of the points that have been made. We have to remember that, at the beginning of the process, the UK will essentially have an empty database and will be asking for material to be submitted to it from industry. There are already a lot of complaints from industry about the new costs that that will generate—for the chemical companies that are used to doing it, and then for all the people who import substances registered in REACH in a different country, who will suddenly have to register as well. There is a lot of cost to get a database that, even when it is full—in two years or however long—will be much less detailed than the EU one.

It is worth saying that the UK is already not good at enforcing chemicals laws at the moment. We talk a lot about the risk-based approach in the UK regulations, but we did a survey a couple of years ago of how councils were enforcing the laws on the safety of consumers—toys with illegal levels of phthalate chemicals, for example—and we found that large numbers of councils do no testing at all, and that even the ones that do some testing do not do much. Yet, when they do testing, they find lots of failure. We know that banned chemicals are

on our high streets and in our markets, now. That really does not give us confidence that somehow there will be this amazing leap in UK capacity to implement and enforce these laws.

Q187 Marco Longhi: What are your views, please, on the safeguards in the Bill to protect against deterioration of chemical standards?

Bud Hudspith: I must admit that I was not clear what the safeguards were. Broadly speaking, we are supportive of the Bill and the things that it is trying to do. Our doubts lie with how deliverable that is and what resources and expertise the UK is able to apply. As I saw it, there did not seem to be too many safeguards. I was aware, again, of the amendment whereby at least there is some effort to institute safeguards.

Clearly, large parts of the REACH regulations are being transferred into the UK position. An example is that the stuff on data sheets, which is currently held within the EU REACH regulations, is going to be transferred into the UK REACH regulations, and that is fine. There are lots of things that we are happy with in respect of the change. I suppose that, on a broader level, we would like to see huge improvements to the speed at which things are done and the way things are regulated, but whether that is going to happen is, I think, questionable.

Dr Warhurst: We would back that position. The problem is that the Bill is so much about a process, and the process itself has no targets and timelines. It does not say, “You will assess this many chemicals each year. You will check this many chemicals.” This is a problem at EU level. There has been pressure, and now it has set its own targets and is doing much more.

The danger is that you end up with this sort of hollow system here. It exists in theory, but if the system does not say, “Actually, this chemical is not adequately controlled so we are going to restrict it,” it could essentially just sit doing very little, dealing with all the things that it needs to exist, and you end up with something that is hollow.

We are already in a situation where you can have a chemical such as bisphenol A in till receipts; you ban that; and then the industry moves to bisphenol S. This is demonstrated with tonnage data. That is what has happened in the EU, and the EU has not yet restricted bisphenol S; it is just going to define it as a reproductive toxin, hopefully in the next few months. These things are happening. Movement is happening. The market is moving from one chemical to another. Will the regulator move? We have no evidence. There is no obligation in the Bill for the regulator to actually do new restrictions or new authorisations.

The Chair: I think that this might be the last question to these witnesses.

Q188 Richard Graham: There has been quite a lot of discussion about the value of creating a UK REACH, but in a sense the principles behind those decisions have already been established, so the key thing now is really all about implementation. I welcome the fact, Mr Hudspith, that you are broadly supportive of schedule 19, which is really all about—

Bud Hudspith: We are broadly supportive of the whole Bill. We have lots of interest in other aspects of the Bill as well.

Richard Graham: Good. But you are supportive of it, I think you said.

Bud Hudspith: Broadly.

Q189 Richard Graham: So what is there in schedule 19 that causes you concern, other than the greatest fear being fear itself? You have made a huge contribution to REACH. It has not always been popular with UK businesses. There have been plenty of complaints over the last decade. REACH has not done anything and everything perfectly, as we all know, so surely you have confidence that, with the range of businesses that we have in this sector, we can create a regulatory body that can do a good job—or do you think that we are now so incompetent that we cannot?

Bud Hudspith: In principle, REACH has been more popular with people such as Unite and various trade unions than it has with many parts of the UK chemical business. What is interesting is that, in spite of all the complaints in the past about REACH, once REACH was under threat it was clear that industry was much more supportive of its continuance. We support very much what people such as the Chemical Industries Association are saying and what the chemical business is saying. Obviously, we have members who work in the chemical industry and we want a strong, thriving chemical industry, because we want it to employ people whatever.

On a secondary level, we are also concerned about some of the things that Michael was raising about the hazards of various chemicals. Although REACH is predominantly environmental, that has a knock-on effect for workplace requirements. If you have a chemical that is on the list or is banned—those things need to happen—it affects our members.

Q190 Richard Graham: I get that, but I am interested in why you think that will be more dangerous under UK regulations than the existing REACH ones.

Bud Hudspith: Predominantly because of the resources and the expertise.

Q191 Richard Graham: But the resources, in terms of the councils that Dr Warhurst was just describing, have not been there as it is. Why will it suddenly deteriorate?

Bud Hudspith: Do we accept a position where things are massively bad and say, “We’ll carry on with things being bad”? That is nonsense.

Q192 Richard Graham: No, but you could take the view that this is an opportunity to increase and do things better.

Bud Hudspith: I think I have already said that, in theory, that is the case, but we are very doubtful about whether that will actually happen.

Q193 Richard Graham: Dr Warhurst, what is your position? You have said that you are worried that there are chemicals on the high street that are not great, because we do not have people from the council wandering around having a look at them and so on. What is your solution to that?

Dr Warhurst: There are two different issues. There is the enforcement of the laws, which is about what the councils are doing and the fact that there is no real

national co-ordination of that. That has been entirely the UK Government’s decision, inasmuch as it has been an active decision. That is different from the broader regulatory system. The councils example shows that the UK has not been very effective in this area so far.

On the broader regulatory system, you can put a lot of people in an agency, but they will start with an empty database, and we are dealing with more than 20,000 chemicals in many applications. It is also wrong to assume that there is no opportunity for close collaboration with REACH. The UK currently talks about some sort of memorandum of understanding. Our view would be that it needs to go further up from the countries that it is mentioning at the moment that do not have access.

Q194 Richard Graham: That is a lobbying opportunity, effectively, for you in the chemicals sector, with the negotiators and so on. At this stage, in terms of what is in schedule 19, is there anything that gives you concern?

Dr Warhurst: Yes, a lot of it gives us concern, because we are not convinced that it will provide the protection of public health. The consultation is very limited. The idea that you can replicate REACH—

Q195 Richard Graham: How many UK officials are there in REACH at the moment?

Dr Warhurst: I do not have the figures. I know that ECHA is about 600 at the moment. It was said, a year ago, that the EA and HSE would have something like £13 million a year in full operation. You are dealing with 23,000 chemicals and however many registrations.

Q196 Richard Graham: Nishma Patel, in your view—it is the easiest thing, and I understand it, for everyone to say, “We’re very worried it won’t turn out quite as well as the Government hope it will,” and, “What’s in the Environment Bill looks fine, but how’s it actually going to work?”. What is the opportunity, rather than just the concern?

Nishma Patel: In terms of UK REACH in particular?

Richard Graham: Yes, in terms of UK REACH, the Environment Bill and the measures in it.

Nishma Patel: We think the measures in the Environment Bill are adequate and appropriate, primarily because we have article 1 in REACH, which protects the regulation itself. In terms of opportunities, the biggest opportunity for UK REACH is essentially to try to look at what the national issues are, in terms of environmental protection, and to look to address them. That could potentially be in the UK chemicals strategy that is being developed and is under consideration.

The Chair: I think this will be the last question.

Q197 Alex Sobel: It is interesting that this is the first panel where we have had representatives from the ownership and the workforce of the industry. The chemicals industry is huge in this country, with a turnover of £32 billion and more than 100,000 workers. It also has a lot of workers who are highly skilled and on good wages and terms and conditions, as I am sure Bud would agree. Does the Bill go far enough, first, to protect jobs and workers in the industry and, secondly, in terms of the business and the potential additional costs to business that could affect the industry?

Nishma Patel: For us, the Bill and some of the amendments that we have seen so far are doing what is intended around environmental protection. The only other thing that I would ask to be considered is the other justified reasons, for which, as we have seen under EU REACH and under UK REACH so far, regulations have had to be amended. For example, the European Commission put forward regulations around data sharing and cost sharing to ensure that there is a level playing field on the cost of data between different businesses and how that has all been shared.

Some of the changes that may come forward under a UK REACH may not just be environment-related. UK REACH has itself been amended twice to help its implementation and workability, so there are other reasons for that regulation to be changed, particularly because we have not yet implemented. Fair enough, it is a transposition of an existing regulation, but we are already doing it slightly differently to EU REACH.

The Chair: We do not have any further questions, so I thank the three witnesses. It has been a really useful session, and we are very grateful for the expertise that you brought to our deliberations. Thank you very much.

Examination of Witnesses

Lloyd Austin, Alison McNab and John Bynorth gave evidence.

3.47 pm

The Chair: I welcome the three witnesses. Thank you for taking the time and trouble to come and act as witnesses before the Committee. I hope that starting slightly earlier has not inconvenienced you too much. The session has to conclude by 5 pm, although it does not have to go on until then if there are insufficient questions. We will open the questioning with Dr Alan Whitehead.

Q198 Dr Whitehead: Good afternoon, ladies and gentlemen. The Bill contains many sections that run on from a central theme and have what looks like pretty comprehensive legislation for the Scottish Government, the Welsh Government and the Northern Ireland Administration. I appreciate that you may have to act as a proxy for everybody rather than just for Scotland.

One of my concerns, about which I do not know enough, is the extent to which we are putting things in the Environment Bill and expecting everything to happen in the same way in all the different Governments and Administrations within the UK, which all clearly have quite different practices. Are you confident that the Bill, certainly as far as Scotland is concerned, will enable us to have UK-wide environmental protection standards that are good for everybody, bearing in mind that species, waste and various other things do not worry too much about borders and are of particular concern to the whole of this part of the world? Are you happy that the Bill does that job, or are there things that could go into it to better reflect the particular circumstances in different parts of the UK, particularly for the Scottish Government?

The Chair: Before anybody answers, I neglected to ask people to introduce themselves, so would you perhaps make up for my deficiency by introducing yourselves as you go along?

Lloyd Austin: We are all looking at each other to see who goes first. My name is Lloyd Austin. I am an honorary fellow of Scottish Environment LINK and convener of Scottish Environment LINK's governance group.

My answer to the question is that it depends. Different parts of the Bill work in different ways. It is clear that environment has been devolved for the whole time. Lots of environmental regulations and, as you say, practices differ between the Administrations already, and they will continue to do so. On the other hand, there is also a need, as you rightly say, for proper co-ordination, co-operation and joint working, so we would encourage all those things. In a way, it is not for us to comment on whether the devolution settlement or any other constitutional arrangement is right or wrong; we simply try to encourage the Administrations, in whatever arrangement there is, to try to achieve the best environmental outcome.

There are different ways of doing that for different things in the Bill. On the EU environmental principles, we have a question mark about how they are applied in Scotland and Wales in relation to reserved matters; that seems to be a gap in the Bill. We understand that the Scottish Government are bringing forward their own legislation in relation to the EU environmental principles, which will apply, obviously, to devolved matters. That is positive and welcome, but we would encourage the Administrations to work together to try to agree some form of statement about how those principles, which are the same at the moment because they are in the Lisbon treaty and therefore apply to all Administrations, will operate coherently across the piece and how they will replicate, in a sense, the way they work at the moment. We believe there are discussions between the Administrations about that at the moment, but it would be useful to stakeholders for such a thing to be consulted on before the different bits of legislation get finished off.

John Bynorth: I am John Bynorth, policy communications officer at Environmental Protection Scotland. Certainly, devolution is one of the main challenges facing the UK legislation that is coming in. It is important to ensure that standards are common between the different countries. There is no point having one set of standards in England and not having the same standards in Scotland. Ministers and civil servants in London, Edinburgh, Cardiff and Northern Ireland should talk to each other to ensure consistency, so we do not end up with two different types of air quality policy, for example, which could be quite damaging, and just in general, as Lloyd said, in respect of environmental standards.

The SNP Government launched their environmental strategy for Scotland last month. They have made it very clear that they will retain or even try to exceed the EU standards that we have just left behind by leaving Brussels. They have been a lot clearer on that. We do not see so much of that in the UK Environment Bill. Those are important distinctions. On the clampdown on domestic burning—the sale of solid wood fuels and wet wood—you cannot have two different policies in England and Scotland, for example, because somebody would just sell something across the border that was illegal in England. We need to have a look at things like that and to ensure that people are talking to each other and that the links we have are maintained.

Alison McNab: I am Alison McNab. I am a policy executive with the Law Society of Scotland. We are the professional body for solicitors in Scotland and have an interest not only in representing our own members but in acting in the public interest.

Your question raises an interesting point. It is important, of course, to bear in mind that deviation is a natural consequence of devolution. Equally, I agree with the comments by both Lloyd and John that there is merit in consistency and coherence in the approach. We know that, in attempting to avoid regulatory tourism, there are aspects where Scotland may be said to be slightly ahead. In Scotland, we have seen regulations on the introduction of a deposit and return scheme.

In terms of the Bill, Lloyd made a point about the environmental principles, and how reserved functions of UK Ministers in Scotland will be dealt with. We anticipate Scottish legislation in the coming weeks. That may give some clarity around that. There may be opportunities where the consistency of the work of the Office for Environmental Protection can be strengthened. There are provisions in clause 24 of the Bill about a requirement for the OEP to consult, and an exemption from the restriction on disclosing information in clause 40. There is potential scope for strengthening those provisions.

In relation to everything else in the Bill and common frameworks around environmental matters more generally, the extent to which consistency is sought is somewhat of a political matter for the Joint Ministerial Committee to give consideration to. At the moment, it appears clear that there is a desire to achieve consistency on at least a number of environmental matters.

Q199 Rebecca Pow: Thank you for coming. We have had extensive consultation already with all the devolved Administrations, which you welcome. Each of the areas is choosing to opt in or out of different parts of the Bill. The Scottish Government have opted in to some areas. How do you think being part of the Bill would benefit citizens of Scotland?

John Bynorth: Obviously, there are different laws in Scotland, particularly regarding regulation. They should definitely work more closely together, liaising between the Office for Environmental Protection and the body that has just been announced by the Cabinet Secretary for Environment in Scotland, Roseanna Cunningham, which will be set up as a similar sort of regulatory and enforcement body. It will be good to have the two talking to each other, so they can learn from each other's experiences. We should not have two distinct bodies that do not pick up the phone and talk to each other between Edinburgh and Bristol, or wherever the OEP will be based. We can see closer co-operation between the two, just to ensure that the whole of the UK is covered.

Things such as air pollution do not respect boundaries—it is a bit like the coronavirus, except it does not even respect inequality: it affects the poorest and those with underlying health conditions more than anyone else. Anything that is learned or being put into place by the UK Government should be taken up by the Scottish Government and vice versa, because they are doing a lot of work to improve air quality through air quality management areas. There are 38 in Scotland; they are introducing four low emission zones for the main cities in Scotland, to reduce the amount of transport pollution.

I see a lot of opportunities there. Politics should not come into it; whether there is an SNP Government, or a Conservative Government here, should be disregarded, because air pollution and the environment affect people's health. We are talking about it more from an air quality perspective. There are other views as well.

Rebecca Pow: Potentially, water would be the same.

Lloyd Austin: First of all, I agree with John about the need for the OEP and the Scottish body, whatever it is called, to have stronger powers and duties to co-operate and liaise. If a citizen of Scotland wishes to raise an issue and they go to the wrong body, it is very important that that body is able to pass on their complaint or concern. That relates to my earlier point about reserved matters. It is obvious that the citizens of Scotland will look to the UK Government and the Bill to address any reserved matters that fall within the definition of environmental law under the Bill.

It is not for us to say whether a matter should or should not be reserved. We would like what is reserved to be more transparent. There are quite a lot of discussions about which areas of environmental law are reserved. That is not very clear to citizens at this stage. The OEP will be responsible for reserved matters under the Bill as drafted, but as I indicated there is a lack of clarity about the application of the principles to them. The Committee might want to look at that, to see whether that gap could be filled.

As was commented on earlier, devolution leads to differences. There were differences between Scotland and the rest of the UK before devolution, when we had the Scottish Office and administrative devolution, and that has continued. From an environmental point of view, we would like those differences to lead to a race to the top rather than a race to the bottom. The more that each of the Administrations can lead the way and encourage others to follow suit, the better.

For instance, you indicated, Minister, that the Scottish Government have opted in to some and not other parts of the Bill. I think that is fine. It is very welcome that they are moving faster on a deposit return scheme. On the other hand, it looks as though there is agreement on extended producer responsibility, and all Administrations will move together. I hope that the race to the top will encourage all Administrations to move faster. The fact that the Scottish Government have moved faster and further on a deposit return scheme will encourage the other three, and vice versa. In relation to England, the Bill does some very positive things regarding biodiversity and the recovery of nature, and the setting of targets. I would argue that the Scottish Government could learn from that and then go beyond it.

Q200 Rebecca Pow: I am sure we will learn some lessons from watching your deposit return scheme. That will prove useful.

Alison McNab: I echo the comments made by Lloyd in relation to the OEP. I suppose the key thing is that the benefit to consumers may come in clarity on who is dealing with what, where they seek assistance, where they take complaints, and so on. It is important that the law is clear and that people are able to guide their conduct based on a clear understanding. That will be important to achieve in the context of the Bill and all that comes from its enabling provisions in particular.

Q201 Rebecca Pow: Will you welcome as much alignment as possible through your version of the OEP? We have made it clear who comes under that and where people go to report. Would you like to see a similar body?

Alison McNab: What is important is that whatever is set up can work well alongside the OEP. Perhaps there is scope for strengthening provisions in the Bill for the OEP to work alongside bodies in the devolved Administrations to ensure good working relationships, consistency, the sharing of information, and so on.

Q202 Deidre Brock: Good afternoon, and thank you for coming down. The Bill leaves a number of things out of its scope, including tax and spend and allocation of resources by the Treasury, and MOD activities, among others. Do you think that is a sensible way to go about things? Perhaps I should not say sensible. What are your thoughts on those exemptions?

Lloyd Austin: From the point of view of environmental NGOs, we agree. Greener UK colleagues made this clear earlier in the week, and we support those comments. The definition of environmental law is perhaps too narrow. We are interested in policies and measures that have an impact on the environment, because we are interested in environmental outcomes and achieving good environmental objectives. That is the key thing. If any policy or piece of legislation has an effect, whether good or bad—many things are good, and many may not be so good—it should come under the remit or gamut of somebody considering the impact on the environment. Therefore, the definition should be as broad as possible.

In reality, we accept that there will be exceptions. Those exceptions should be based not on the kind of broadbrush things indicated, but on a degree of justification for why—reasons of national security or whatever—the environmental issue has to be overwritten. Nobody thinks the environment will always trump everything but, on the other hand, where the environment is trumped, there should be a good reason, and that reason should be transparent to citizens.

John Bynorth: The question of exemptions may be for the military. I understand that they currently apply the principles of environmental law, but why should they be exempt? They use a huge amount of machinery and there are air quality issues there. It seems that the Secretaries of State will have the final decision on which targets are implemented, so there are concerns about that. It is a bit arbitrary and unjustified that the military, for example, should not be subject to the same conditions as everyone else.

Alison McNab: Without touching on the specific exemptions, it strikes me that there may be scope for greater specification within the Bill about what the exemptions are to be. If memory serves me correctly, when the Bill was consulted on at draft stage in late 2018 and early 2019, there was an additional exemption around anything else that the Secretary of State considered should be exempt. We have come some way from that view. There may also be greater scope for scrutiny within the Bill on the exemptions, which the Committee may wish to consider strengthening. Essentially, there are opportunities for more specification and more scrutiny.

Q203 Caroline Ansell: While recognising that devolution can mean deviation, and that that can have some positive effects, some of those opportunities can also turn into

risk because the environment is transboundary and business is transboundary too. What do you see as the risks if the Scottish body took a fundamentally different approach to that of the Office for Environmental Protection?

Alison McNab: I referred to environmental regulatory tourism earlier on—call it whatever you wish. There will always be issues around people trying to beat the system, and that is a risk if there are varying standards. However, on the flip side, there are opportunities to drive improved performance or improved outcomes. There may be commercial interests that need to be taken into account, so it may not be viable to do a different thing in one jurisdiction from another.

Q204 Caroline Ansell: Do you think that is a problem of clarity? It is incredibly important for people to understand exactly what the protections, standards and targets are, in order to be compliant.

Alison McNab: Absolutely. I referred earlier to clarity's being key for both individuals and businesses in determining how they conduct their business.

Q205 Caroline Ansell: Could that difference be confusing, if there were different standards and different targets?

Alison McNab: There is the potential for it to be. I suppose what is important is that there are clear routes for people to be directed to—not only legislation, but guidance and other information on how to take things forward. It is important to bear in mind that there may be opportunities to support businesses in how they work cross-boundary, and opportunities in the context of the Bill to think about the functions. One that springs to mind, for example, is the function of the OEP to advise Ministers. Of course, it may be advising on matters that relate to English or reserved matters, but that may have a cross-boundary effect, and it is important that that is considered.

Q206 Caroline Ansell: On that risk, what do you see as the most important areas for both Administrations to work most closely on together?

Alison McNab: Do you mean in terms of specific topics?

Caroline Ansell: No, areas within the Bill.

Alison McNab: The OEP is probably key. The environmental principles raise an interesting issue: at the moment, the Bill provides for them to apply in England and it is not clear how reserved functions of the UK Ministers that apply in Scotland will be covered. We do not yet know the detail of the Scottish legislation, but is there potential for a gap there? I suspect yes, but we do not know the detail of that yet.

REACH is an area that the Committee has already heard about this afternoon, and there are powers within schedule 19 for the devolved Administrations to make some regulations on that in terms of the enforcement. Given the wider scope of REACH in the reserved issues, that is perhaps something that would merit collaboration.

John Bynorth: Certainly, there is no point in having two sets of rules, two sets of penalties and two sets of punishments for each part of the country. In a multinational world, there are UK-wide operators such as haulage, oil refineries and petroleum companies. We have a problem

at the moment in Scotland with Mossmorran in Fife, an ExxonMobil-owned company, which is having problems with flaring that are affecting local communities. The Scottish Environment Protection Agency is trying to deal with it, but it keeps happening again and it is causing terrible problems for people living in the area, with noise and other issues. You need to have consistency in dealing with that between the different parts of the country.

The other issue is that if penalties in Scotland were different from those in England, companies might up sticks and move their business completely to England, which would affect the economy. Consistency is vital. The same applies with emissions: we have clean air zones down here, but low emission zones in Scotland. The types of restrictions on bringing petrol and diesel vehicles into cities, and on haulage companies, need to be very similar—I think that is happening—so that our economy is not damaged, but the rules and penalties are made clear to people and are UK-wide.

Maybe there should be a joint memorandum of understanding between the new protection body that we will get in Scotland and the OEP, once they are up and running. That could be a key part of what they do, with the civil servants from each body talking to each other and ensuring that they set out what our principles are, what we have in common and where the differences are, so that people, and businesses in particular, are clear on that.

Lloyd Austin: To follow on from the last thing John said, some kind of agreement about how the new bodies work together would be very useful. In terms of the Bill, that could be an amendment included within the clause dealing with the OEP's having to set its strategy. It already sets out various aspects of what should be in that strategy, and a simple line indicating that, as part of determining its strategy, it must set out how it plans to work with similar bodies in Scotland and Wales would be very useful.

Regarding your generic question about risks, the biggest risk is the race to the bottom, as I described it before. We must try to prevent that and to encourage the race to the top.

Regarding specific issues, the scale of the risk depends on the mobility of the risk. John mentioned the issue of businesses moving waste and Alison mentioned regulatory tourism. Those are risks, and waste tourism is another. If the two Administrations are too different in terms of their waste management policies, it is very easy for businesses to stick the waste on a lorry and take it over the border, and that sort of thing. It therefore depends on mobility.

From an environmental perspective, one of the key things is specific environments that cross borders. We have a very good system of cross-border river basin management plans, which is reflected in the water part of the Bill for, in our case, the Tweed-Solway area. That is a shared environment, where the Scottish Environment Protection Agency and the Environment Agency have to work together, and the plan is jointly signed off by Scottish Ministers and the Secretary of State. There is a similar model for the cross-border areas between England and Wales, and between Northern Ireland and the Republic of Ireland. Those types of cross-border arrangements should be continued for those cross-border types of environment; that is a good mechanism.

Having mentioned Northern Ireland, when we talk about these devolution issues within the UK, it is important that we remember that we also have a border between the UK and the Republic of Ireland and the EU on the island of Ireland. The issues that you are asking us about—regarding the difference between Scotland and Wales—apply equally between Northern Ireland and the Republic of Ireland. That is a challenge that needs to be addressed.

Equally, in relation to our marine environment, all of our marine environments have borders with other nation states—some with EU nation states and, to the north, with Norway and the Faroes. In managing our marine environment, we must work through mechanisms such as OSPAR to ensure that we have good co-ordination with Governments outside the UK, in exactly the same way that we need good co-ordination between Governments within the UK. The environmental issues—I always come back to focusing on the environmental outcomes—are in principle much the same, irrespective of whether the borders are national borders or sub-national borders, if you see what I mean.

Q207 Jessica Morden: It is getting quite complicated, isn't it? I know that you cannot speak for Northern Ireland or for Wales but, as far as you can answer this, are you aware that there has been strong collaboration so far between interested bodies and the Government on the Bill? If you are, do you think that has been working well so far? How effectively do you think co-operation on nature recovery networks might be?

Lloyd Austin: We cannot really answer in terms of co-operation between the Governments; we are not the Governments. We speak to all four Governments, and sometimes we hear signs of good co-operation and sometimes we hear signs of challenges—shall I put it that way?—whereby different Governments give us different indications of the nature of the discussion.

One thing that I am certainly aware of is that through our Greener UK and Environment Links UK network, there is good co-operation between the NGOs across all four countries. I am speaking as the co-chair of the Greener UK devolution group as well; that is how I am familiar with some of the work going on in Wales and Northern Ireland, as well as Scotland. There are examples of good co-operation; equally, there are challenges.

In relation to nature recovery, one of the key challenges is that the Bill requires the Secretary of State to set a target on biodiversity, and it is unclear whether that is for England or the UK. If it is for the latter, what will be the role of the devolved Administrations in delivering that target? Will they agree the UK target, and what proportion of it would be for England and would be delivered by the English nature recovery network? There is scope for greater thinking and clarity on how the Administrations might agree some kind of high-level objective, to which each of their individual targets and recovery processes would contribute.

Perhaps as a precedent, I would point you to a document that all four Governments agreed prior to passing separate marine legislation back in 2005 or 2006. The four Governments all signed a document on the high-level objectives for the marine environment. Subsequently, the Marine and Coastal Access Act 2009 was passed by this Parliament, the Marine (Scotland) Act 2010 was passed by the Scottish Parliament and the

Marine Act (Northern Ireland) 2013 was passed by the Northern Ireland Assembly. However, each piece of legislation contributed to the agreed high-level objectives document.

It would be beneficial to environmental outcomes if the four Governments could sign up to similarly generic, high-level environmental objectives. It would not involve one Government telling another what to do; the document would be mutually agreed in the same way as the one on marine legislation. The Secretary of State's targets would indicate what the English contribution to those high-level objectives would be, and Scottish Ministers would have their own process for the Scottish contribution—likewise for Wales and Northern Ireland.

John Bynorth: Anecdotally, I hear that the Scottish Government and civil servants talk quite regularly to DEFRA and other UK organisations—it would be stupid not to.

On air quality, we have two different strategies. The UK Government have the clean air strategy and Scotland has the “Cleaner Air for Scotland” strategy, which is currently subject to a review and will be refreshed and republished later this year. Within that, you have different sources of air pollution. The Scottish Government will be talking to DEFRA and there are continuous conversations, particularly about indoor air quality. Whether you are in Scotland or England, that does not change. Having different types of properties might affect indoor air quality, but it is fundamentally a national issue.

There is concern at the moment about the rise in ammonia from agriculture, particularly in Scotland. That is an issue where they will learn from what is happening down south with DEFRA. It is not just DEFRA; even though we have now left the EU, we should not shut the door. We have to keep the door open to the EU. There is a lot of really good work going on in the Netherlands and other parts of Europe that we can learn from. We need to keep the door open, although we have now gone and cannot do anything about that. Just keep the door open and learn from it.

There is close working, but it could always be better. Hopefully, the Environment Bill will improve that, as will Scotland's environment strategy. We need to keep those conversations going.

Alison McNab: I do not have much to add to the comments that have been made already. There are perhaps two things that strike me, one of which relates to the Joint Nature Conservation Committee—perhaps there is a role there. It demonstrates quite good collaboration across the UK.

Looking a bit more widely, Lloyd touched on marine issues as an example. The joint fisheries statement set up in the Fisheries Bill has the four agencies—the Secretary of State and the devolved Administrations—coming together to talk about how they will achieve the objectives. That perhaps presents quite a good model for thinking further about other things in the environmental field.

Q208 Rebecca Pow: I found this really interesting, actually. My general observation is that you are very keen on close co-operation, which is clearly something that this Government are very keen on, because there are no boundaries in the environment—in the air, as you have clearly explained, and water and all of those things. Would I be right in surmising that you would like as close co-operation as possible?

Lloyd Austin: You would be right, as long as it is co-operation. It is not for us to say where the boundaries of devolution or other constitutional arrangements should be.

Rebecca Pow: No, I understand that.

Lloyd Austin: The marine examples that I quoted and the fisheries examples that Alison quoted are areas where things are mutually agreed, and as I tried to say earlier, that applies beyond the UK as well as within it.

As John indicated, we should not forget our European partners, both those within the EU and those such as Norway, the Faroes and Iceland to our north that are not in the EU, but interestingly are all in the European Environment Agency. In terms of data collation, data reporting and environmental science, we would very much like to see some continued association with that agency, which goes well beyond the EU members. Norway, Iceland, Switzerland, Turkey, Belarus and lots of countries like that are partners in the EEA, engaging in simple sharing and publication of environmental data. It seems very short-sighted to pull out of the EEA when it has nothing to do with EU membership, so that is another form of co-operation that we would promote.

John Bynorth: Being in the EEA would be very good from an information and data sharing point of view, and for maintaining consistency of standards, so I definitely agree with that and support it. I go to a lot of conferences south of the border, just to find out what is going on down there regarding air quality and other environmental issues. Everyone is talking about similar things: transport emissions in urban areas, domestic burning—how we deal with wood-burning stoves and the problems they are causing with air quality—agriculture and industrial emissions. Those are all common issues, and there are nuances about the way you deal with them, but we can all learn from each other.

The Scottish Government might not be doing things right all the time, and the UK Government might not be doing things right. We should come together regularly to discuss these things and find out how we can improve and work together. We are still part of the UK, and it is very important that we do that.

Alison McNab: Strong collaboration between the UK Government and the devolved Administrations is essential. You have highlighted the transboundary effects of the environment, which are well recognised. Back in 2017, the Cabinet Office published a list of areas where EU law intersects with devolved powers. The revised list, which is from April of last year, highlights 21 remaining areas in which it is hoped that legislative common frameworks will be achieved. Seven of those 21 relate to environmental matters, so it is going to be crucial for there to be good collaboration between the UK Government and the devolved Administrations to achieve the desired aims regarding those matters.

Q209 Marco Longhi: Given what you know about the OEP's governance framework and the concerns you have highlighted about divergence and risks—race to the bottom and that type of thing—I am trying to gauge what importance you would place on there being a structure in the devolved Administrations equivalent to the OEP here in England.

Lloyd Austin: From my point of view, I would say it is very important that the governance gap, as we called it soon after the referendum result, applies everywhere in the UK, and it should be filled everywhere in the UK, whether that is for devolved or reserved matters. We very much welcome the recent announcement by the Scottish Government that they will be establishing some form of body. We are yet to see the detail; we understand that detail will be published later this month. We are less clear on the proposal for Wales. Of course, this Bill addresses Northern Ireland in schedule 2. Wales is the area that still has the biggest question mark, but we would want the Scottish body to be as good as or better than the OEP.

John Bynorth: I would totally back that up. The Scottish Government's environment strategy, which has only just been published, says that there will be robust governance to implement and enforce laws for their equivalent body. We do not know the detail of that—who will be leading it, and what sort of people will be on it and how they will be appointed, but it has got to be totally independent. You cannot have a body for the rest of the UK that has a different standard; they have to have the same standard and the same quality of people involved, and the same toughness to really crack down on people and organisations that breach the law. Our job as an independent and impartial organisation is to ensure that they are held to account on that, so once it is published and we know more details, we will be able to push on that.

I certainly think that having a strong figurehead for the two organisations is important—the OEP and whatever it will be called in Scotland. Personally, I think John Gummer, Lord Deben, does a brilliant job at the Committee on Climate Change. He has vast experience as a former Environment Minister, right at the top level of the UK Government. You need figures like that, who are also independent of politicians, so they can actually make decisions. Those sort of people inspire others to come on board. You need a strong staff who will stand up to organisations that flout the law—they have got to be very strong. It is up to us to ensure that whatever the Scottish Government produce is to that sort of standard. Hopefully, organisations similar to us down here will do the same with the OEP.

Alison McNab: I agree with the comments that have been made. It is clear that there is going to be a governance gap once we reach the end of the transition period, and it is important that there are provisions put in place to mitigate that. Whether that is done by way of a single body, as in the OEP, or by different bodies taking different roles, is a matter up for grabs. The Scottish Government have announced their intention to have a single body, which we presume will be similar to the OEP. I think what will be crucial is the way that those bodies work in terms of how they set their strategy. The OEP requirement to consult on the strategy is a good thing and will enable stakeholders to contribute to devising how that body is going to operate. I hope there will be similar opportunities for the body that is created in Scotland in terms of what direction it is going to take and how it will undertake its functions.

Q210 Deidre Brock: With a view to trying to learn from the possible mistakes of others, there is a provision in the Bill that would prevent public bodies from making complaints to the OEP. We could find ourselves with

the possibility that one public body could be aware of another committing a breach of the law without having the option of raising that complaint with the OEP, or perhaps one council being aware of another council breaching the law and not being able to take action with the OEP about it. Should we be looking at amending that in the Bill?

Alison McNab: I would have to go away and give further consideration to that. On the one hand, there are laudable reasons for having that provision, but, equally, we recognise that there is a potential for something like a race to the bottom, where bodies are perhaps not subject to the same degree of scrutiny that they might be.

Q211 Deidre Brock: Sure. I like the idea of the race to the top that you mentioned, Mr Austin. I noticed in your briefing, John, the air quality issues and the more stringent standards that we have in place in Scotland, for example. Hopefully, folk will learn from that.

I want to ask you, Ms McNab, about clause 19. In your Law Society of Scotland briefing paper, you raised a couple of concerns that I am keen to hear a little more on.

Alison McNab: Absolutely. The clause you refer to relates to statements about Bills containing environmental provisions. It provides some degree of scrutiny. However, it might be somewhat limited in its scope. There is no recourse provided in the Bill if, for example, Parliament or external stakeholders felt that a matter had not been given proper consideration. Also, there is a question around how that is tested. How is the statement tested and how is it subject to scrutiny?

Lloyd Austin: On your first point, like Alison I need to think about it a bit more, but I see that there is some degree of logic in one public body not being able to complain about another. Public bodies should have existing mechanisms to raise concerns with central Government.

From the point of view of NGOs and our members, ordinary citizens, the really important thing to make sure exists—this applies to the OEP and the Scottish or Welsh bodies—is a mechanism that enables ordinary citizens to raise concerns with the OEP. That is in there to some degree. There are ways in which that could be strengthened, but it is vital that that exists in the other bodies in Scotland, Northern Ireland and Wales, with, as I said earlier, an ability for the OEP and the Scottish and Welsh bodies to pass one citizen's complaint to another if that is necessary. If the citizen has inadvertently complained to the wrong body, it should be able to pass it on, and in some cases bodies maybe should be able to work together in a joint investigation. Some issues that citizens might be concerned about may be caused by both a reserved and a devolved matter, or may be caused by, as we discussed earlier, the Scottish and UK Governments not working together very well. The two bodies working together to encourage better co-operation might be one form of remedy that they would have available to them. We represent ordinary members of the public who are members of our organisation, and it is those citizens' right to complain. Most public bodies can normally find a citizen if they want to.

John Bynorth: There is an increased awareness of the environment. A poll last week showed increased awareness of climate change impacts, and the poll was taken even before the recent flooding in south Wales, Shropshire

and the midlands. People are increasingly taking an interest in these things. Communities in Newcastle, for example, and even in Edinburgh, have low-cost monitoring centres to check air pollution in the towns and streets where they live, so there is huge awareness of that and climate change as well. People will want an outlet where they can complain if they think something is wrong. The office will need to be aware of that and will need to respond to that. It is a changing environment: people's attitudes are changing all the time.

Deidre Brock: Good points. Thank you.

Q212 Saqib Bhatti (Meriden) (Con): I welcome your comments on closer collaboration. Are there any parts of the Bill that you like and think should be adopted in Scotland?

John Bynorth: Obviously, if the Office for Environmental Protection had teeth, clout and the ability to fine people in the rest of the UK, I would want to see that in Scotland, too. In other respects, certainly the Governments work together. There are differences, as I say, but if they could work together, that would be one of the best things.

Lloyd Austin: From my point of view, the varying extent of different parts of the Bill is appropriate, because it tends to reflect the arrangements that have been agreed between the Scottish Government and the UK Government. For instance, the deposit return scheme does not apply to Scotland, and that is because they have already got their provisions in place. Those other areas, such as extended producer responsibilities, are included and, as the Minister said earlier, they have opted in. I think the different extent is a consequence of developments to date; it reflects those developments.

The biggest gap is the issue of reserved areas, or the application of EU environmental principles to decisions by UK Ministers relating to reserved matters in Scotland and Wales. Those are excluded from the Bill, and it is a gap. It may be—as stakeholders, we do not know—that the Governments have agreed to legislate for that in some other way, through Scottish legislation or subsequent Welsh legislation. However, because we have not seen that, we do not know, and there has been no statement to that effect. As far as observers are aware, that gap still remains. It may be filled by an amendment to the Bill, or by Scottish legislation with the agreement of UK Ministers or whatever—we do not know—but we want to keep highlighting that it is a gap that does need to be filled.

Alison McNab: The Scottish Government have joined where they have felt that they can, or where they have felt that to be appropriate. Certainly Roseanna Cunningham, the Cabinet Secretary for Environment, Climate Change and Land Reform, made the statement before the relevant Committee in the Scottish Parliament back in October that an agreement had been reached in relation to the extended producer responsibility. There may be other areas where harmonisation can be achieved.

As Lloyd says, there is potential for a gap in the environmental principles. There is also some uncertainty around reserved matters and the OEP, and what those matters are; there may be some matters involved that appear in schedule 5 to the Scotland Act 1998. Product labelling and product standards spring to mind; there are certain exceptions there. There may be some issues that still need to be considered. REACH is another

example where there is quite a complicated mix of reserved and devolved issues. What is important is having clarity on those things. Where collaboration can be achieved, that is good, but you need to ensure that no gaps are left.

The Chair: I think this may well be the final question.
Robbie Moore.

Q213 Robbie Moore (Keighley) (Con): Carrying on with the theme of collaboration, do you think that the benefits of the Bill outweigh the risks associated with having separate bodies? In my view, there are potential risks that follow from having separate legislation and bodies.

Lloyd Austin: If I could borrow a term that my colleague Ruth Chambers used earlier in the week, I think that boat has probably sailed. Two years ago, I remember, we had discussions with Governments north and south of the border, and east and west of Offa's Dyke. We encouraged a discussion about which is the best route—separate bodies or one single body that would somehow be collectively owned by all the Governments, if you see what I mean. The challenge would be creating that sort of body that had the means to respect the devolution settlement, so that in relation to devolved matters it was accountable to the Scottish Parliament, and in relation to reserved matters it was accountable to this Parliament.

Creating a single body that is somehow accountable to different legislatures is a challenge, although I do not think it would have been impossible, because there are means of creating joint committees, and that sort of thing; but I think, given the way in which the devolution settlement is arranged, that kind of thing had to be mutually agreed. With the way in which the various Governments have proceeded, for their own different reasons, that was not possible. Therefore we are now in a situation where we have one body for England, reserved matters and Northern Ireland, because of circumstances over the years in Northern Ireland, and other bodies for Wales and Scotland. In a sense it is not for us to question the reasons why we arrived at this position. We are in this position, and the best way of addressing it is to ensure that the bodies work together in the way that we have described. I think you could answer that question with, "I wouldn't start from here"—but we are here.

John Bynorth: There is not much we can do about it, I think. The Environment Agency and the Scottish Environment Protection Agency work together. There are common areas—noise policy, for example—and the bodies feed off the World Health Organisation, and things like that, in policy areas. With devolution, you do have to have an organisation that is accountable to MSPs in Scotland, but there is no reason why the new Office for Environmental Protection cannot work very closely with whatever is going to be set up in Scotland. You would have to have that accountability, under the devolution settlement, to the Scottish Parliament, however. I do not know whether there is much more we can do or say about that, but that is the situation. I think you are going to end up with two bodies, really.

Alison McNab: I agree with the comments made. As I referred to earlier, I suppose the extent to which consistency is achieved is really a political decision. The reality is

that it appears that we will have the OEP and a separate Scottish, and potentially a separate Welsh, body as well. What is important is looking at how that can work together now—the practicalities of that, and how the risks can be overcome. Probably the greatest way to do that is to ensure that there are strong provisions in each of the relevant pieces of legislation for the bodies to work together. That may be a requirement to work together, strengthened from what at the moment is a requirement to consult on relevant matters.

The Chair: Thank you to our witnesses. It was really important for the Committee that we got a Scottish perspective on this. I think we got that very thoroughly, and we are very grateful for it.

Ordered, That further consideration be now adjourned.
—(*Leo Docherty.*)

4.49 pm

Adjourned till Tuesday 17 March at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

EB10 Greener UK and Wildlife and Countryside
Link

EB11 Game & Wildlife Conservation Trust (GWCT)

EB12 CHEM Trust

