Department for Environment Food & Rural Affairs

Department of Energy & Climate Change

Call for Evidence

Environment and Climate Change

May 2013

Review of the Balance of Competences

Contents

CALL FOR EVIDENCE ON THE GOVERNMENT'S REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION

Environment and Climate Change

Department for Environment, Food and Rural Affairs and Department of Energy and Climate Change

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Closing date: 12 August 2013

Introduction

1. This review is part of a Coalition commitment to examine the balance of competences between the UK and the European Union (EU). The review will provide an analysis of what membership of the EU means for the UK national interest. It aims to deepen public and Parliamentary understanding of the nature of our EU membership and provide a constructive and serious contribution to the national and wider European debate about modernising, reforming and improving the EU in the face of collective challenges. We have not been tasked to produce specific recommendations or to look at alternative models for the UK's overall relationship with the EU.

2. The review is broken down into a series of reports on specific areas of EU competence, spread over four semesters between autumn 2012 and autumn 2014. The review is led by the UK Government but will also involve non-governmental experts, organisations, businesses and other individuals who wish to feed in their views. Foreign governments, including our EU partners and the EU institutions, are also being invited to contribute.

3. The Department for Environment, Food and Rural Affairs (Defra), in collaboration with the Department of Energy and Climate Change (DECC), is leading this review of the balance of competences relating to environment and climate change. Improving the environment and growing the UK rural economy are key Defra priorities, while DECC works to promote international action to mitigate climate change.

Call for evidence

4. This public call for evidence sets out the scope of the review of the balance of competences in the areas of environment and climate change. We invite input from anyone with relevant knowledge, expertise or experience.

Please send your evidence to balanceofcompetence.enviro@defra.gsi.gov.uk by 8 August 2013. The same email address should be used for any related enquiries.

5. Your evidence should be objective, factual information about the impact or effect of the competence in your area of expertise. We will expect to publish your response and the name of your organisation unless you ask us not to (but please note that, even if you ask us to keep your contribution confidential we might have to release it in response to a request under the Freedom of Information Act). We will not publish your own name unless you wish it included. Please base your response on the questions listed on page 30 and indicate clearly the subject area(s) you are referring to.

Devolution

6. The review of the balance of competences is a UK Government initiative. The subject areas covered by the Environment and Climate Change Report are devolved matters where the administrations in Scotland, Wales and Northern Ireland are responsible for the implementation of EU legislation so their views will be an important factor. The issues should be examined from the point of view of the best interests of the UK as a whole and, as this is a UK wide review, we would encourage contributions from interested parties from across the UK.

Scope of this report

What is competence?

For the purposes of this review, we are using a broad definition of competence. Put simply, competence in this context is about everything deriving from EU law that affects what happens in the UK. That means examining all the areas where the Treaties give the EU competence to act, including the provisions in the Treaties giving the EU institutions the power to legislate, to adopt non-legislative acts, or to take any other sort of action. But it also means examining areas where the Treaties apply directly to the Member States without needing any further action by the EU institutions.

The EU's competences are set out in the EU Treaties, which provide the basis for any actions the EU institutions take. The EU can only act within the limits of the competences conferred on it by the Treaties, and where the Treaties do not confer competences on the EU they remain with the Member States.

There are different types of competence: exclusive, shared and supporting. Only the EU can act in areas where it has exclusive competence, such as the customs union and common commercial policy. In areas of shared competence, such as the internal market, environment and energy, either the EU or the Member States may act, but the Member States may be prevented from acting once the EU has done so. In areas of supporting competence, such as culture, tourism and education, both the EU and the Member States may act, but action by the EU does not prevent the Member States from taking action of their own.

The EU must act in accordance with fundamental rights as set out in the Charter of Fundamental Rights (such as freedom of expression and non-discrimination) and with the principles of subsidiarity and proportionality. Under the principle of subsidiarity, where the EU does not have exclusive competence it can only act if it is better placed than the Member States to do so because of the scale or effects of the proposed action. Under the principle of proportionality, the content and form of EU action must not exceed what is necessary to achieve the objectives of the EU treaties.

7. This review is subject-based rather than Treaty-based; we will be focusing on EU competence in relation to the environment and climate change and how it is exercised in practice. This is a very complex area which covers a wide range of issues, most of which are interlinked in a number of ways. For example, climate change, biodiversity, natural resources, environment and health are themselves interconnected but they are also inextricably entwined with other policies such as agriculture, energy and transport which are also subject to EU competence, and to principles such as the free movement of goods in the internal market.

8. This Call for Evidence covers the principal policy areas and legislation relating to environment and climate change. We have not attempted to list all EU environmental legislation; a separate list of the most important legislation is available at https://consult.defra.gov.uk/eu/balance_of_competences. 'Climate change' in this document covers international negotiations, the reduction of collective EU Member State greenhouse gas emissions via 'burden-sharing' arrangements and the EU Emissions Trading System (EU-ETS). It does not include renewable energy (which, whilst clearly climate and environment related, is also about security of supply) or energy efficiency, both of which will be discussed in the Energy Report – see below).

9. The Environment and Climate Change report will touch on the subject matter of a number of the other reports being produced as part of this exercise. Evidence submitted to one report which has relevance to others will be shared. For example, if evidence on renewable energy targets is submitted in relation to the Environment and Climate Change report it will be passed on to be dealt with in the Energy report (semester 3); evidence relating to EU competence for statistics will be dealt with in one of the cross-cutting issues reports in semester 4. Emerging findings and analysis will also be shared. Some of the other reports most relevant to environment and climate change are outlined below; a list of the principal boundary issues with other reports is available at https://consult.defra.gov.uk/eu/balance_of_competences. For further details, including how you can contribute evidence to these reports, visit: www.gov.uk/review-of-the-balance-of-competences.

- **Energy:** (semester 3, commencing in autumn 2013) will include a number of issues which are closely linked with the EU's competence for climate change, given the clear and fundamental links between energy use and emissions of greenhouse gases. Encouraging greater energy efficiency and reducing use of fossil fuels are the key means by which the EU aims to deliver its climate change objectives. This is the basis of the EU's "20-20-20" climate and energy package, adopted in 2007, which aimed at:
  - a 20% reduction in EU greenhouse gas emissions from 1990 levels by 2020;
  - raising the share of EU energy consumption produced from renewable resources to 20% by 2020; and
  - a 20% improvement in the EU's energy efficiency by 2020.

The renewable energy and energy efficiency elements of the "20-20-20" package and other actions to deliver emission reductions in the energy sector, including deployment of carbon capture and storage will be covered in the Energy Report. This will include consideration of the whole suite of energy efficiency legislation and targets, current and future renewable energy legislation and targets, and legislation for the promotion and regulation of carbon capture and storage as well as investment in energy infrastructure and the regulatory regimes for oil and gas exploration and for nuclear energy.

Evidence submitted in response to this call for evidence which reflect the links to the EU's competence in the energy field will also be taken into account in Energy Report.

- **Transport**: (semester 2, running concurrently with Environment and Climate Change) will consider the development of the Common Transport Policy and focus on five key themes, one of which specifically relates to the environment and climate change (reducing the transport-related impacts of noise, pollution, harmful emissions and greenhouse gases). The transport sector continues to be a source of significant environmental pressure, with emissions from transport a major source of the EU's greenhouse gas emissions. Transport emissions also contribute to poor air quality and to noise problems, particularly in urban areas. In addition, transport infrastructure can put pressure on biodiversity and ecosystems via the fragmentation of landscapes and ecosystems and the use of large quantities of raw materials.

  The Environment and Climate Change report will cover issues such as air quality, greenhouse gases, the Emissions Trading System (which includes the aviation sector) and adaptation to climate change. Air quality will be considered in the Environment and Climate Change report, but air quality is affected by emissions from transport, which will be covered in the Transport report. The extent to which some of these issues will be dealt with in either or both reports will depend upon the weight of the evidence received; aviation noise, for example, is more likely to arise under Transport. However relevant evidence will be shared and the appropriate links and cross-references made in both reports.

- **Internal Market:** There is potential for significant overlap between the Environment and Climate Change report and the Internal Market reports (Synoptic Report (semester 1); Free Movement of Goods (semester 2); Free Movement of Services (semester 3). Much of the early EU environment legislation related to common standards which, in the absence of a specific environmental protection provision in the EU Treaty, were adopted under an 'internal market' legal base. There is likely to be some discussion around standards in the Environment and Climate Change report, as outlined in paragraphs 25-26 below.

The Internal Market: Free Movement of Goods report will consider intra-EU trade in goods within the internal market, as well the way in which this trade is regulated; including through product regulation, product safety & quality labelling, market surveillance and standardisation. It will also consider customs controls at the external frontier of the customs union and at the UK border and the role of customs in trade facilitation, but will not cover external (third country) trade in goods as this will be considered in the Trade and Investment report. There is a significant EU and global market in environmental goods and services, and thus there will also be overlap between the Environment and Climate Change report and that on **The Internal Market: Free Movement of Services.**

The global market for Low Carbon Goods and Environmental Services (LCGES) had an estimated turnover of £3.3tr in 2010/11, with Europe accounting for around 28% of sales. The UK turnover for the LCEGS sector was £122.2bn in 2010/11 (the sixth largest in the world) with a forecast growth rate of around 5% up to 2014/15.

- **Agriculture**: will cover the Common Agricultural Policy (CAP) including its internal market aspects. The many environmental impacts of agriculture will be covered in the Environment and Climate Change Report; these include diffuse pollution of water and emissions of greenhouse gases and air pollutants.

- **Fisheries**: will cover the Common Fisheries Policy and other fisheries matters but wider impacts on the marine environment will be covered in the Environment and Climate Change Report.

Rationale for EU action on environment and climate change

10. Early EU environmental legislation was prompted primarily by concerns that different national environmental standards might distort competition and undermine the common market. However from the early 1970s legislation specifically aimed at protecting the environment was gradually introduced amid growing public concern about environmental degradation. Protection of the environment and the facilitation of trade within the internal market are twin themes informing EU action in this area.

Under the original Treaty of Rome, there was no specific legal basis for environmental measures. However, the EU adopted many environmental measures using its powers to regulate the internal market or under the general power (now Article 352 TFEU) to adopt legislation to pursue the EU's objectives when there is no specific legal base. The European Court of Justice confirmed that this was legitimate, holding that environmental protection was one of the EU's essential objectives.

In 1986, the Single European Act expressly included environmental provisions in the Treaties for the first time. The Maastricht Treaty, which came into force in 1993, modified these provisions and extended the application of qualified majority voting. It also introduced a requirement that environmental concerns should be integrated into other EU policies.

The powers are now set out in Articles 191-193 TFEU and for the first time include an express reference to combating climate change.

11. By the end of the 1980s there was

greater scientific understanding of the impact of human activity as well as increased public concern for the environment in general and a rise in membership of 'green' organisations and political parties. This period coincided with the adoption of the Single European Act in 1986, which introduced a specific Treaty base for EU action to protect the environment. Through the impetus it gave to the creation of the internal market, it also led to the harmonisation of emissions standards in order to avoid distortions to industrial competitiveness. Similarly, the harmonisation of product regulations was aimed at avoiding non-tariff barriers but also had the effect of equalising environmental standards. The relationship between economic growth and environmental protection is complex. Economic activity can, if properly conducted, also have environmental benefits, but compliance with certain environmental directives (such as the Nitrates and Urban Waste Water Treatment Directives) can require significant investment by the state and/or impose higher costs on businesses and consumers.

The environment is given an important place in the EU Treaties. Article 3(1) of the Treaty on European Union makes protecting and improving the environment a key objective of the internal market:

> "The Union shall establish an internal market. It shall work for the **sustainable development** of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and **a high level of protection and improvement of the quality of the environment**".

Article 11 of the Treaty on the Functioning of the European Union (TFEU) states that all EU policies must take into account the needs of environmental protection:

> "**Environmental protection requirements** must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to **promoting sustainable development**".

Article 191(2) TFEU also sets out some significant principles which govern EU environmental policy:

> "Union policy on the environment shall aim at a **high level of protection** taking into account the diversity of situations in the various regions of the Union. It shall be based on **the precautionary principle** and on the principles that **preventive action** should be taken, that environmental damage should as a priority be **rectified at source** and that **the polluter should pay**".

12. Many forms of pollution are cross-border in their impact: what happens in one European state (e.g. emissions to air or to watercourses in transborder catchments) can have serious consequences for others. Many of the measures in EU environmental legislation derive from commitments arising from international environmental agreements to which Member States and the EU are parties (see paragraph 76 below and the legal annex). The necessary cooperation to tackle cross-border issues affecting EU Member States could be achieved via such agreements, but these would not necessarily offer the economic benefits afforded by the EU internal market.

13. The legal annex to this call for evidence sets out in more detail the development of EU competence to date in relation to the environment and climate change. A significant body of EU environment and climate change policy and legislation has been developed over the years. This reflects the increasing understanding of the importance of taking the environment into consideration in broader policy-making and administrative decisions. Climate change, which did not feature at all in early EU environmental legislation, has since been recognised as a major issue which affects and impacts upon a significant proportion of environment and other related policies.

14. Much of the UK's environment and climate change policy is now agreed at EU level, with comparatively few areas remaining exclusively within the competence of Member States. A key example of remaining national competence is land use planning, although there are an increasing number of EU requirements affecting planning and development[1]. These include not only environmental impact assessment, strategic environmental assessment and public participation in decision making, but also other requirements relating to habitats, water, etc. Another example of national competence is the protection and management of soils, an area also relevant to planning and development. A proposal for a soil framework directive remains stalled at EU level.

15. While there are still some legislative proposals in the pipeline, the emphasis now is on more effective implementation and enforcement of existing measures to ensure a level playing field. The forthcoming 7th EU Environment Action Programme, which provides a policy framework from now until 2020, reflects this. At the same time there are calls for the EU to live up to its own 'smart regulation' principles by reducing unnecessary regulatory and administrative burdens (especially on smaller businesses). A number of comprehensive reviews or 'fitness checks' of existing EU legislation are being undertaken by the Commission, e.g. on water, chemicals and waste. A review of air quality policies is also being undertaken with a view to making further progress in reducing health/ecosystem damage from air pollution.

Strategic context

16. The current economic crisis poses many challenges but may also provide opportunities. The European Environment Agency's 2010 State of the Environment report[2] shows the continuing deterioration in (and declining stocks of) some natural assets. It concludes that significant environmental challenges remain and will undermine European prosperity if not appropriately addressed. This is set in a broader context by the accompanying assessment of global trends, including increasing world population and a relatively declining and ageing EU population, sharp middle class growth in emerging markets, increasing migration and accelerating technological change. Similar overall

[1] www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121206/wmstext/121206m0001.htm#12120639000227
[2] www.eea.europa.eu/soer/synthesis/synthesis

messages are echoed in the UK's National Ecosystem Assessment[3], which showed the strong economic arguments for safeguarding and enhancing the natural environment.

17. The Natural Environment White Paper, 'The Natural Choice[4]' published in 2011, recognised that the natural environment is sometimes taken for granted and undervalued, but that 'a healthy, properly functioning natural environment is the foundation of sustained economic growth, prospering communities and personal wellbeing'. There is a growing understanding across all sectors that the valuation and management of natural resources will be increasingly important for economic growth.

It is estimated that around £23bn of savings are available annually to UK businesses from measures that improve the management of resources such as materials, energy and water, and reduce waste (The Further Benefits of Business Resource Efficiency, March 2011[5]). At the same time this would save some 29m tonnes of CO_2 equivalent. Research for the European Commission has estimated that similar resource efficiency improvements (excluding energy) could provide net benefits to EU businesses in the range of €245bn to €604bn depending on uptake, an average of between 3% and 8% of annual turnover for all businesses (The opportunities to business of improving resource efficiency', European Commission, February 2013[6]).

18. The broad policy focus on growth and the development of infrastructure that EU leaders have endorsed means that difficult decisions may have to be made to reconcile economic needs with environmental protection while avoiding unnecessary burdens on business, industry and development. At the same time, establishing strong foundations for sustainable economic growth may support the emergence of new technologies, products and services to help realise the benefits of more efficient management of resources. These new developments may also help to improve the security of supply of key resources.

Key horizontal issues

19. This call for evidence is subject-based; a description of the broad policy areas covered by environment and climate change are set out below (see p. 14). However many of the issues that are likely to be raised are more cross-cutting in nature, affecting more than one policy area. These include some of the following, but there may well be other issues that respondents will wish to raise.

Tensions between the pursuit of economic growth and safeguarding or improving the environment

20. Growing the economy and improving the environment need not be mutually exclusive; in fact in many cases the two can, and do, go hand in hand. Sustainable growth is about ensuring a healthy environment and strong communities, whilst avoiding

3 http://uknea.unep-wcmc.org/Home/tabid/38/Default.aspx

4 www.ukeof.org.uk/documents/Defra-white-paper.pdf

5 http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=2&ProjectID=16943

6 http://ec.europa.eu/environment/enveco/resource_efficiency/pdf/report_opportunities.pdf

unnecessary restrictions on business, as well as about understanding and maximising the contribution the natural environment makes to the economy. Investment in infrastructure can have both economic and environmental benefits. For example, investment in public transport and in various forms of renewable energy will produce environmental benefits in the longer term in the form of reduced emissions, although in the shorter term there might be adverse environmental impacts which need to be taken into consideration at the planning and construction stage. Investment in infrastructure can also provide resilience as well as economic benefits – domestic investment in flood and coastal erosion defence generates a return of £8 for every £1 spent just from avoided flood damage, and the overall benefits may increase two or even three fold if wider economic benefits like regeneration and inward investment are included.

21. Similarly action to address EU climate goals could also help deliver sustainable growth through boosting innovation across a range of technologies helping to create and drive the global market for low carbon and environmental goods and services. Improvements in energy efficiency, a key plank of the EU policy response to meet climate change objectives, as well as reducing emissions can also reduce business costs, boosting competitiveness, and creating new employment opportunities. The UK's Green Deal, for example, is expected to create up to 250,000 new jobs

Delivering jobs and protecting the Severn Estuary environment

In 2006, Bristol Port Company made an application for a major new container terminal on the Severn Estuary, which would have direct and indirect impacts on an important and protected winter feeding area for around 3,000 waterbirds. The company engaged positively with the nature conservation obligations and worked closely with regulators and nature conservation NGOs to identify key impacts and agree mitigation, compensation and monitoring measures. These were set out in a detailed legal agreement. As a result of this agreement, statutory advisers and the RSPB withdrew their objections. This allowed for the development to be successfully approved without recourse to a public inquiry. It is estimated that this expansion will eventually create 1,800 new jobs and safeguard nearly 8,000 current jobs, as well as generating over £114m a year to the local economy.

22. Infrastructure investment is essential to growth, and land-use planning remains a Member State competence. However related requirements on the protection of species and habitats, which require environmental impact assessments to be undertaken when seeking planning permission, are seen as a burden by developers as they entail additional costs and sometimes delays. A review has recently been undertaken of the implementation of the Habitats and Wild Birds Directives in England, one of the outcomes of which was the establishment of a Major Infrastructure and Environment Unit to plan ahead for major cases and deal quickly with problems that arise with implementation of the Directives. In addition the review set in motion radical streamlining of guidance so businesses can quickly and easily understand their obligations under the Directives.

23. Another area where work is being done is exploring more radical market-based approaches, e.g. looking at a biodiversity offsetting system whereby the ecological impacts of development are offset by the creation or restoration of habitat elsewhere.

Is EU action needed at all and, if so, what approach should it take?

24. A fundamental question is whether legislative action is necessary in regard to a particular issue and, if so, at what level decisions are best taken. Where does the EU best add value – should all EU measures have some sort of cross-border effect, and how does it benefit the UK for action to be taken at the EU level rather than at the national or devolved level? Can action at the EU level help or hinder raising minimum standards across the EU? If it is deemed appropriate for action to be taken at EU level, is that EU action to deal with the issue proportionate to the problem and the risk? EU legislation relating to GMOs takes a risk-based approach[7], but does not operate this way in practice as a result of societal/political pressure to adopt a more precautionary approach.

What kind of legislation – what is the best way to achieve the outcome?

25. Historically, common environmental standards have been set at an international or EU level because what happens in one country (e.g. emissions to air, or to transboundary watercourses or the marine environment) has effects in others. The creation and maintenance of the EU internal market has also had an impact on environmental regulation, aiming to ensure open and fair competition and create a 'level playing field' across the EU for business. Some Member States argue that a properly functioning internal market requires commonality of standards, not just products.

> Some EU environmental legislation takes the approach of **exhaustive harmonisation** of standards, laying down the specific levels of protection which must be achieved in all Member States and requiring Member States to remove inconsistent national legislation. An alternative approach is **minimum harmonisation**, where the EU legislation sets the minimum standards which Member States must achieve in relation to a particular issue, leaving individual Member States free to adopt stricter protective measures in their own territories provided that these are compatible with the other requirements of the Treaties.

26. However debate can become polarised over whether standards are set at the right level: some argue for higher standards to protect or improve the environment and/or public health irrespective of cost; others argue that setting standards should take account of their effect on EU competitiveness. The level of detail is another issue: should there be exhaustive harmonisation, or should minimum standards be set at EU levels which allow Member States the flexibility to go further if they wish? In other words, is it better to give Member States the freedom to determine how to achieve outcomes or legislate in a prescriptive manner to ensure a completely level playing field?

27. Some argue that targets should be set as political aspirations, others that they should be based on evidence. Where adopted EU standards prove insufficient to meet existing EU targets (e.g. failure of the technical standards regulating vehicle emissions to

[7] http://ec.europa.eu/food/food/biotechnology/evaluation/index_en.htm

achieve air quality limit values) this can also be controversial. But given that this is a widespread problem among EU Member States it may also be an indication of unwillingness to make the necessary societal adjustments and/or investments.

28. EU legislation can take significant time to negotiate given the need for the agreement of a qualified majority of Member States. Once legislation has been adopted it can be difficult and time-consuming to subsequently amend or repeal. This, it has been claimed, can lock the EU and Member States into a particular policy approach or technological solution that does not easily allow the impact of subsequent policy innovation, new scientific evidence or developments in technology to be reflected. Equally, longer-term credible EU targets are seen as important for sending long-term signals for industry to innovate and adjust over time, reducing the costs for making important changes.

Differential interpretation / implementation of EU legislation by Member States

29. Linked to the question of common standards and targets is the extent to which Member States should be allowed to interpret or apply EU legislation differently from each other and whether it always matters. Arguably, consistent implementation matters where there are internal market or transboundary considerations (a 'level playing field' is seen as important by many businesses), but some argue that a 'one size fits all' approach is inappropriate, for geographic or other reasons. Ensuring that all Member States implement EU requirements in a consistent manner can be seen as unnecessarily bureaucratic and process-oriented, imposing costly administrative or regulatory burdens on businesses, especially the smaller ones.

30. One example of an increasing move towards harmonisation of rules in recognition of the strong internal market considerations is the EU Emissions Trading System (EU ETS). The UK has pushed for consistency across the EU to ensure that UK industry is not put at a competitive disadvantage in the EU ETS, and has managed risks around the level of administrative burden by influencing the design of EU ETS rules to ensure that regulation takes place on a risk basis with lower burdens for smaller emitting installations.

Reducing regulatory and administrative burdens as well as costs

31. There are questions around whether the balance of EU burdens and benefits for businesses is appropriate and whether the regulatory and administrative burdens on businesses (especially on the small or medium sized enterprises (SMEs)) should be reduced. Or, in some cases, whether 'micro-businesses' should be exempt altogether. The UK Government is currently undertaking a 'Smarter Environmental Regulation Review', the first phase of which has focused on developing proposals to improve environmental guidance and make data reporting less onerous for business. An ambitious programme is now underway over the period to March 2014 to: rationalise and significantly reduce the volume of environmental guidance; critically review what environmental information is currently required from business and plan how to

implement the changes; and pilot a simplified approach to how businesses submit that information and develop a plan for how to extend the approach. The aim is to reduce the costs to business of complying with environmental regulations and unblock growth potential, while maintaining or improving the effectiveness of environmental regulations.

32. But should we be pressing for more innovative approaches? For example, emissions permits are currently required for each individual site. Could we introduce business-wide permits, rather than insisting on one for each site? Is there a case for more voluntary, market-led action perhaps reducing or obviating the need for legislation? Areas where this could be beneficial include resource efficiency, material security and eco-innovation, where there are significant opportunities for businesses to make savings and increase exports.

33. The following section contains a description of a number of individual environmental policy areas where the EU has exercised its competence. More information on the relevant legislation is contained in the legal annex.

Environment and climate change policy

Climate change

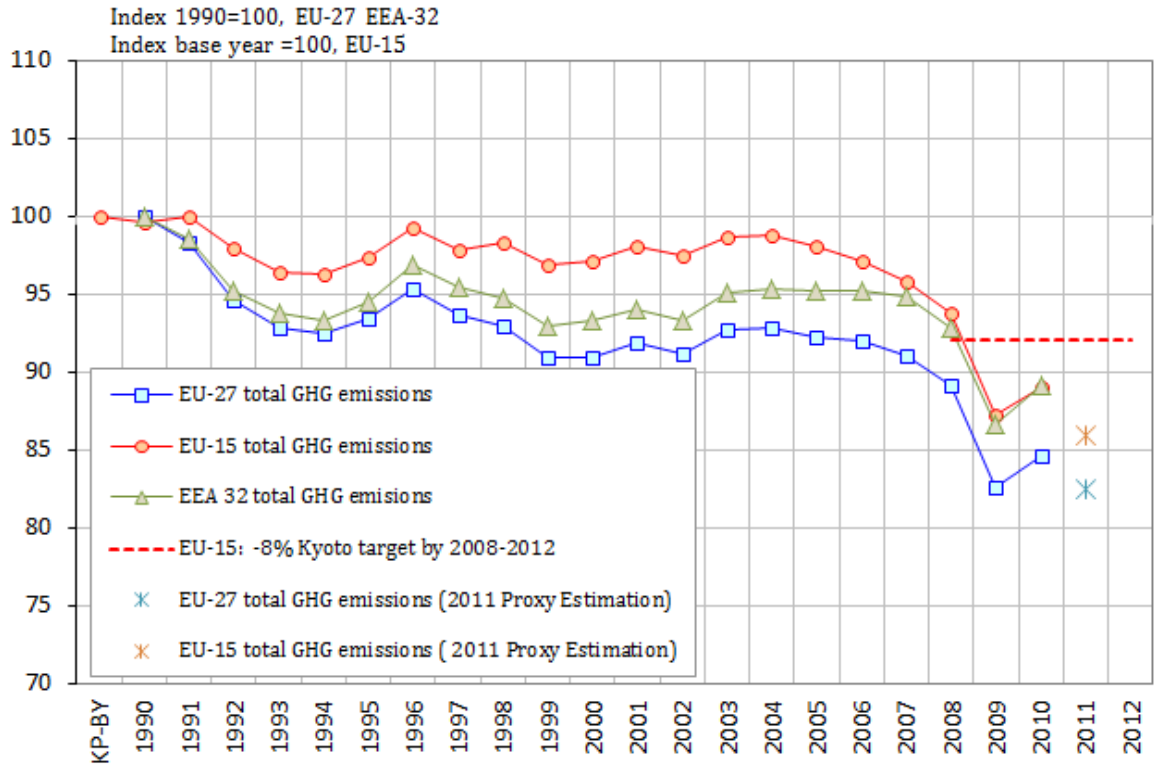
34. Carbon dioxide (CO_2) levels in the atmosphere have increased by about 40% since the beginning of the industrial revolution. The Earth's surface has warmed by about 0.8°C since around 1900, with much of this warming occurring in the past 50 years. To help to avoid the risks of the worst impacts of climate change, the international community has agreed that global temperature rise needs to be limited to 2°C above pre-industrial levels. To have a 50% chance of achieving this, it is widely recognised that greenhouse gas emissions need to peak before 2020 and then decline steeply thereafter.

Between them, EU Member States are responsible for around 10% of emissions (in 2010). This is lower than the US (14%) and China (23%) but is still a significant proportion. Under the Kyoto Protocol, the 15 countries that were EU members before 2004 ('EU-15') committed to reducing their collective emissions to 8% below 1990 levels by the years 2008-2012 via a burden-sharing agreement, which sets out the minimum contribution of each Member State to meeting the overall greenhouse gas emission reduction commitment, and they are well on track to meet this target. Member States that joined the EU since 2004 have their own Kyoto reduction targets for the period 2008-2012 which they are also on course to achieve.

35. Although EU climate policy and legislation have been developed relatively recently, they now have a significant impact across all sectors of the economy, and address what is widely accepted to be the most significant environmental issue now facing the EU. In June 1990 the European Council urged "all countries to introduce extensive energy efficiency and conservation measures and to adopt as soon as possible targets and strategies for limiting emissions of greenhouse gases". The Council also requested concrete proposals from the Commission "in particular, measures relating to carbon dioxide emissions, with a view to establishing a strong Community position in

preparation for the second World Climate Conference". In October 1990 the Environment and Energy Councils looked for action to stabilise CO_2 emissions in the Community at 1990 levels by 2000 (in the context of negotiations for international agreement to that effect, which culminated in the adoption of the United Nations Framework Convention on Climate Change in Rio in 1992).

36. The earliest EU legislation directly relating to climate change was Council Decision 98/389/EEC for a mechanism to monitor Community CO_2 and other greenhouse gas emissions made under what is now Article 192 of the TFEU. However, the cornerstone of current EU legislation on climate change is Directive 2003/87/EC, which established the EU's Greenhouse Gas Emissions Trading System (EU ETS). This was amended by Directive 2004/101/EC which included international aviation emissions within the scope of the EU ETS, and Directive 2009/101/EC which modernised the scheme and made detailed provision for the period to 2020 and beyond. These Directives were all made under what is now Article 192 TFEU.



Graph one: Trends in EU greenhouse gas emissions compared to 1990/base year
Source: European Environment Agency

37. The EU ETS covers energy intensive industry, including electricity generation, which is responsible for approximately 45% of greenhouse gas emissions in the EU. For emissions not covered by the EU ETS, Decision No 406/2009/EC of the European Parliament and of the Council lays down the minimum contribution of Member States to meeting the greenhouse gas emission reduction commitment of the Community (currently a reduction of 20%) for the period from 2013 to 2020 in the fields of energy

(including fuel combustion and fugitive emissions), industrial processes not covered by the EU ETS, solvents and product use, agriculture and waste.

The EU Emissions Trading System

Launched in 2005, the EU ETS is the first and largest greenhouse gas emissions cap-and-trade system in the world and is the cornerstone of EU climate policy. The system covers energy intensive industries, including electricity generators, who must surrender one allowance for every tonne of carbon dioxide equivalent they emit. A limited number of allowances are issued, capping total emissions at a fixed level, which reduces over time so emissions fall. The limit gives allowances a value, incentivising businesses to reduce their emissions. A harmonised EU system, with allowances traded freely, allows those reductions to occur where most cost-effective across the EU, reducing the overall cost. There is general agreement from companies regulated by the EU ETS that acting at the EU level is appropriate because it avoids competitive distortions by providing a common level of ambition within the internal market.

38. In 2012 the European Commission published a roadmap for building a low-carbon European economy setting out the reductions that would need to be achieved by 2030 and 2050 respectively. These are set out in the table below.

GHG reductions compared with 1990	**2005**	**2030**	**2050**
Total	**-7%**	**-40 to -44%**	**-79 to -82%**
Sectors			
Power (CO_2)	-7%	-54 to -68%	-93 to -99%
Industry (CO_2)	-20%	-34 to -40%	-83 to -87%
Transport (incl. CO_2 aviation, excl. maritime)	+30%	+20 to -9%	-54 to -67%
Residential and services (CO_2)	-12%	-37 to -53%	-88 to-91%
Agriculture (Non-CO_2)	-20%	-36 to -37%	-42 to -49%
Other Non-CO_2 emissions	-30%	-72 to -73%	-70 to -78%

Percentages have been based on a large number of different decarbonisation scenarios.

Source: The European Commission

39. Subsequently, in March 2013 the Commission issued a Green Paper on a 2030 framework for climate and energy seeking views on what goals should be set for 2030, how coherence between different policy instruments can be assured and how best policies can contribute to EU competitiveness and security of energy supplies whilst taking into account Member States' different capacities to act.

40. The EU and its Member States also play a leading role in international climate action, particularly in the context of negotiations under the United Nations Framework Convention on Climate Change and the related Kyoto Protocol. This is discussed in the 'external dimension' section (see page 27), which also describes the UK's role in international climate finance.

41. The key questions on the relationship between the UK and EU and our climate change objectives revolve around the UK's ability both to meet our own targets and push and encourage others to do likewise. Would the UK's own climate change policy be more or less difficult to pursue without EU competence in this area and how best are we able to influence others in the global debate.

Water and marine

42. **Water:** Clean water is fundamental to human health, so measures to reduce water pollution featured among the earliest environmental proposals. Extensive water legislation has been developed at EU level relating to the quality of freshwater, drinking water and bathing water; pollution control, urban waste water treatment and marine management, as well as the assessment and management of flood risks (see legal annex at https://consult.defra.gov.uk/eu/balance_of_competences).

43. The discharge of pollutants to fresh and coastal waters has fallen over the years, leading to improvements in the quality of freshwater and bathing water. However pollution by nutrients, biocides, industrial and household chemicals and pharmaceuticals remains a problem, and the concentration of nitrates in rivers and ground water is a persistent challenge. Some consolidation of EU water legislation was undertaken when the Water Framework Directive 2000/60/EC was adopted in 2000, although some new requirements were also added. A number of other Directives have been or will be repealed by the Water Framework Directive because it now supersedes them.

44. The Commission recently undertook a review (or 'fitness check') of EU freshwater policy and published its 'Blueprint to Safeguard EU Water Resources' in November 2012[8]. This contained a number of proposals to improve implementation of the existing legislative framework but not to further simplify it.

45. **Marine**: The marine environment is affected by many different pressures and its management requires cooperation with neighbouring countries and other policy areas. For example, most pollutants in the sea originate from land and freshwater, fisheries have a major influence, offshore renewable energy development is a new and growing activity, and the impact of climate change may add to risks such as those from invasive alien species. Existing regional seas conventions (for the UK, the OSPAR Convention on the north-east Atlantic) have a role in promoting coherent approaches. However, the Marine Strategy Framework Directive 2008/56/EC was also developed because previous European legislation was sectoral and fragmented.

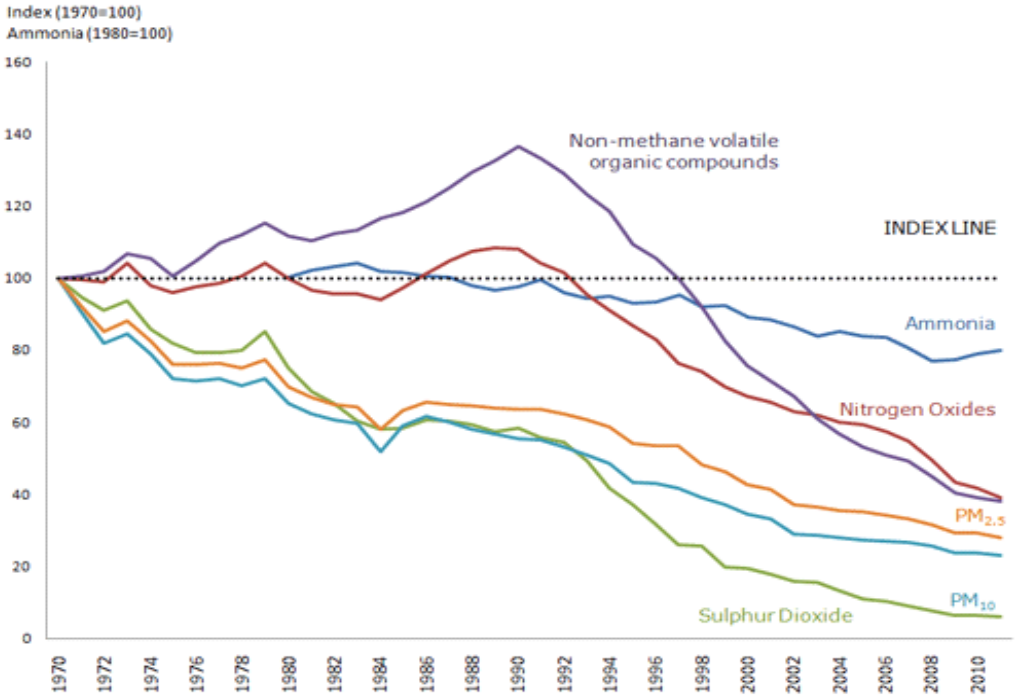
46. In addition, a Commission proposal aims to establish a consistent framework for maritime spatial planning and integrated coastal management in order to promote growth and sustainable use of coastal and marine resources. For marine biodiversity, conservation requirements stem from the Wild Birds and Habitats Directives (as noted

[8] http://ec.europa.eu/environment/water/blueprint/

below). There are also strong links with reform of the Common Fisheries Policy, as measures to protect the environment or vulnerable species (e.g. sharks or cetaceans) may require controls on fishing.

Air quality

47. There has been a significant reduction in air pollutants over the past 20 years across the EU. However, significant human health and biodiversity impacts remain. Important pieces of EU legislation in this area are the National Emission Ceilings Directive (2001/81/EC) aiming to reduce transboundary air pollution, and air quality Directives (2008/50/EC and 2004/107/EC) setting mainly health based standards for concentrations of pollutants in outdoor air. Other EU legislation has controlled emissions from key sources such as industry, energy generation and transport to help achieve the EU standards.



Graph two: Trends in air pollutants emission compared to 1970/base year
Source: Defra 2013

48. Air pollution is not just a local or national problem. Our air quality is affected not only by UK emissions but also by emissions from northern Europe (some of which can be strongly influenced by weather conditions), and beyond that, especially in the case of pollutants such as tropospheric ozone. So it has to be tackled as a cross border and wider international issue. Setting health and ecosystem protection targets and emission controls for key polluting sectors at a European level therefore makes sense, as does working on wider international agreements, for example the Montreal Protocol on Substances that Deplete the Ozone Layer through the United Nations Economic Commission for Europe (UN ECE). But the deadlines and levels of ambition for the EU health based limits have not always been well aligned with those for key EU source

control legislation. Furthermore no provision was made to account for the possibility of significant underperformance of key EU source control legislation. The result is now widespread non-compliance across Member States with both air quality standards and emission ceilings. The European Commission is currently undertaking a review of EU air quality policies, expected to conclude in autumn 2013.

Industrial pollution

49. The Industrial Emissions Directive 2010/75/EU applies in various ways to some 10,000 installations in England and Wales, ranging from power stations to intensive pig farms and from waste incinerators to dry cleaners. Every installation it covers needs a permit from the national competent authority containing conditions to control likely polluting emissions. For the larger installations, these conditions have to be based on the application of best available techniques (BAT). Pollutant emissions from the larger installations have to be reported annually, under Regulation (EC) 166/2006 which established a European Pollutant Release and Transfer Register (PRTR)[9]. This enables trends in pollutant emissions to air, water and land to be assessed. Also of relevance under this heading is EU legislation on the control of major accident hazards arising from the storage on an industrial scale of hazardous chemicals (see below).

Chemicals

50. **REACH**: The EU's approach to regulating the production and use of chemical substances is largely contained in the Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) 1907/2006. REACH combines traditional regulation with other approaches, notably enhanced producer responsibility. The Regulation aims to protect human health and the environment as well as enabling the free movement of chemical substances and enhancing competitiveness and innovation. All chemical substances manufactured or imported in quantities of one tonne or more must be registered by the manufacturer/importer with the European Chemicals Agency. The REACH Regulation also provides a framework for the risk management of **Nanomaterials**[10]. The Commission's definition[11] will be applied in EU legislation where appropriate and reviewed and adapted in future as necessary.

51. The process for controlling the most harmful chemicals, known as authorisation, entails identifying substances of very high concern with a view to phasing out use where there are safer alternatives or where the risks to human health or the environment outweigh the benefits of continued use. Alternatively, where an unacceptable risk is identified a particular use of a chemical can be restricted. Both the authorisation and restriction processes can be initiated either by the European Commission or by a Member State. A recent broad-based review of REACH carried out by the European Commission[12] concluded that for reasons of stability and predictability no changes should be made to

[9] The E-PRTR is accessible through the UK PRTR at: http://prtr.defra.gov.uk/

[10] http://ec.europa.eu/nanotechnology/pdf/second_regulatory_review_on_nanomaterials_-_com(2012)_572.pdf

[11] http://ec.europa.eu/environment/chemicals/nanotech/

[12] http://ec.europa.eu/environment/chemicals/reach/review_2012_en.htm

the legal text at this time. However a recent consultation[13] also undertaken by the European Commission identified REACH (on the basis of responses from businesses) as the most burdensome of EU regulations for small and medium enterprises.

52. The UK and the EU are Parties to the Rotterdam Convention on the prior informed consent procedure for the **import and export of hazardous chemicals**, applied in the EU by EU Regulation 649/2012, which also implements certain aspects of the Stockholm Convention on persistent organic pollutants.

53. **Control of major accident hazards**: EU regulation of on-shore major accident hazards involving dangerous substances has been in place for a number of years through what has been commonly called the 'Seveso' Directives (named after Seveso in Italy where in 1976 an industrial accident happened at a chemicals manufacturing plant). The system operates on the basis of a two-tiered approach to the storage of dangerous substances: the larger the quantities of dangerous substances stored on site, the stricter the controls imposed on the site operator. It also includes land use planning requirements. The system was most recently adapted in 2012, through the 'Seveso III' Directive (2012/18/EU), mainly to reflect changes to the EU's chemicals classification criteria.

54. **Pesticides**: Plant protection products have been subject to regulation for a number of years to ensure that chemicals designed to control living things which are often released into the environment do not cause harm to people or unacceptable damage to the environment. Regulation 1107/2009, and a number of detailed guidance documents, set out a two tier process of scientific risk assessment and decision-making. Active substances are assessed and approved at EU level; products containing these substances are assessed and authorised by Member States.

55. **Biocides:** Biocides include a wide range of products that aim to control harmful organisms including wood preservatives, insecticides, disinfectants and in-can preservatives. The Biocidal Products Directive 98/8/EC aims to ensure a high level of protection of human and animal health and the environment in view of the risks that biocides can pose. There is a two tier risk assessment and authorisation process similar to that for plant protection products. The Directive will be replaced on 1 September 2013 by Regulation 528/2012 which is intended to streamline the existing system and address delays and high costs associated with the ongoing review of active substances.

Genetically modified organisms (GMOs)

56. EU controls on the release of GMOs aim to protect human health and the environment and ensure the free movement of safe GM products in the internal market. There are two main pieces of relevant EU legislation. Directive 2001/18/EC ('the Directive') deals with the deliberate release of GMOs into the environment for experimental purposes (such as field trials) or commercial marketing. In this context "release" means without

[13] http://ec.europa.eu/enterprise/policies/sme/files/top10report-final_en.pdf

any specific measures to prevent contact with humans or the environment. Regulation 1829/2003 ('the Regulation') deals specifically with applications to market GM food and feed products, including the release of GM crops for commercial cultivation. Decisions on trial releases of GMOs are taken at Member State level under the Directive. Decisions on commercial releases of GMOs are taken at EU level, under the Regulation if the GMO is intended for food or feed use or under the Directive if it is a non-food/feed product (e.g. cut flowers). Whatever the context, the general principle is that authorisation for release is subject to a case-by-case, science-based risk assessment, and that the public can submit comments as part of this process. Member States may invoke safeguard clauses to restrict the use of EU-authorised GMOs in their territory, if new evidence emerges of a risk to human health or the environment.

57. Increasingly, the practice at EU level on the deliberate release of GMOs into the environment has moved away from a case-by-case science based approach to risk, with a significant number of Member States opposing any proposal to authorise the commercial planting of GM crops. Because of this political impasse, only one GM crop has been approved for cultivation since 1998. This lack of predictable market access is deterring investment in the development of future GM crops of potential benefit to EU farmers and consumers.

Waste

58. In 2010 total UK waste generation was estimated at 259 million tonnes, a decrease of 12 per cent from 2008 (334 million tonnes) and 30 per cent from 2004 (372 million tonnes). The largest contributing sector was construction and demolition with 106 million tonnes; household sources contributed 29 million tonnes to the total. The responsible management of waste is essential to minimise environmental risks and reduce emissions to the atmosphere as well as reducing energy use. Additionally recycling and reusing can significantly minimise the use of finite raw materials. The EU's approach to waste management is based on three principles: waste prevention; recycling and reuse, and improving final disposal and monitoring. The Waste Framework Directive 2008/98/EC sets out a more detailed waste hierarchy, including requirements for the separate collection of specific wastes; it also established recycling targets for Member States.

59. Alongside the revised Waste Framework Directive sits a raft of other EU legislation that has developed over time. This deals with supporting provisions for the revised Waste Framework Directive (e.g. on hazardous waste); sets out rules for particular waste management operations (e.g. on the incineration of waste, and the landfill of waste), and provides sector-specific rules (e.g. on the disposal of waste oils; on packaging; on waste electrical and electronic equipment, and on batteries and accumulators). Internal market legislation has also been adopted to ensure common standards within the internal market on recyclability, and the use of hazardous materials which cause problems for waste disposal, across a range of products, including waste electrical and electronic equipment, cars and packaging. These rules are partly designed for

environmental protection purposes but also have a role in ensuring that introduction of a range of different standards at Member State or regional level do not cause problems for the free movement of goods in the internal market.

60. Waste management operations across Europe are focused on limiting the contaminants entering waste streams (e.g. by reducing the use of hazardous materials in products) and ensuring that appropriate controls are in place to prevent the pollution of our waters, air and human and animal health. The proper disposal of waste is a significant cost to industry and having a single set of standards for disposing of certain kinds of waste aims to provide a level playing field in competition terms. The EU is reviewing its waste policy and legislation including key targets in the Waste Framework, Landfill and Packaging and Packaging Waste Directives.

Nature protection / biodiversity

61. The principal EU nature protection legislation consists of the Wild Birds Directive 79/409/EEC (subsequently codified by 2009/147/EC), and the Habitats Directive 92/43/EEC. The Habitats Directive contains a wide range of obligations designed to protect a range of habitats and species. The Wild Birds Directive provides protection to all naturally occurring bird species and singles out the rarest and regularly occurring migratory species for additional protection. Together the Habitats and Wild Birds Directives protect biodiversity in Europe through the conservation of natural habitats and of wild fauna and flora. One of the principal measures for achieving this is through the establishment of a network of European protected sites (the Natura 2000 network) namely:

- Special Areas of Conservation (SACs) for certain habitat types/species under the Habitats Directive
- Special Protection Areas (SPAs) for the protection of certain wild bird species and their habitats under the Wild Birds Directive.

62. The Habitats Directive requires that regard be had to the coherence of the Natura 2000 network in planning and development policies, and that plans or projects are only agreed once it is ascertained that they will not adversely affect the integrity of a protected site (or must nevertheless be carried out for imperative reasons of overriding public interest).

63. The Natura 2000 network is largely complete, except in the marine area. As originally interpreted the Directives were not considered to apply the territorial sea of Member States. The UK courts[14] have held that the Habitats Directive extends beyond territorial waters to the UK Continental Shelf and to the superjacent waters up to a limit of 200 miles from the basis from which the territorial sea was measured. This was subsequently confirmed by the European Court of Justice (Case C-6/04[15]). Both the

[14] *R v Secretary of State for Trade & Industry & ors, ex parte Greenpeace Ltd* (1999).

[15] http://curia.europa.eu/juris/liste.jsf?language=en&num=C-6/04

Wild Birds and Habitats Directives are now taken to extend beyond territorial waters, but the Natura 2000 network is not yet fully established in the offshore area, and there remain tensions between these Directives, the Common Fisheries Policy and EU targets on renewable energy, e.g. developments of offshore windfarms.

64. The UK Government undertook a Review of the Implementation in England of the Habitats and Wild Birds Directives[16] between November 2011 and March 2012. This identified 28 measures to improve the implementation of the Directives in England and relevant UK waters. These measures fall into four main areas: facilitating nationally significant infrastructure projects; improving implementation processes and streamlining guidance; improving the quality, quantity and sharing of data, and improving the customer experience.

65. The Review found that in the large majority of cases the implementation of the Directives is working well, but that in some cases there were costs and delays arising in the implementation process. As a result of the review a new Major Infrastructure and Environment Unit has been established within Defra to help resolve issues pre-application, and a Marine Evidence Group has been set up to help improve the quality and quantity of evidence relevant to protected sites and species in the marine environment. A range of related guidance is also being produced that, while consistent with these legal requirements, will also encourage regulators to be pragmatic in implementing them so as not to block development unnecessarily or add to its costs.

66. In 2001 EU Heads of State and Government endorsed the aim of halting the decline of biodiversity in the EU by 2010 and to restoring habitats and natural systems[17]. Progress was made in some areas but the overall target was not met and the loss of Europe's biodiversity remains a persistent problem. Species decline is particularly marked in agricultural and grassland areas, mainly due to intensified farming and unsustainable land management practices. EU Environment Ministers agreed a new biodiversity target in March 2010 to halt the loss of biodiversity and the degradation of ecosystem services by 2020 and restore them as far as feasible, as well as increasing the EU contribution to averting global biodiversity loss. The explicit addition of ecosystem services to the target was a reflection of the increased recognition of the value of biodiversity to society and the economic value of biodiversity and ecosystem services in the policy process. A new biodiversity strategy to 2020, with a range of targets, actions and measures, was endorsed by the Environment Council in 2011. However implementation of existing measures remains a challenge, while at the same time new proposals are being developed to meet issues such as invasive alien species.

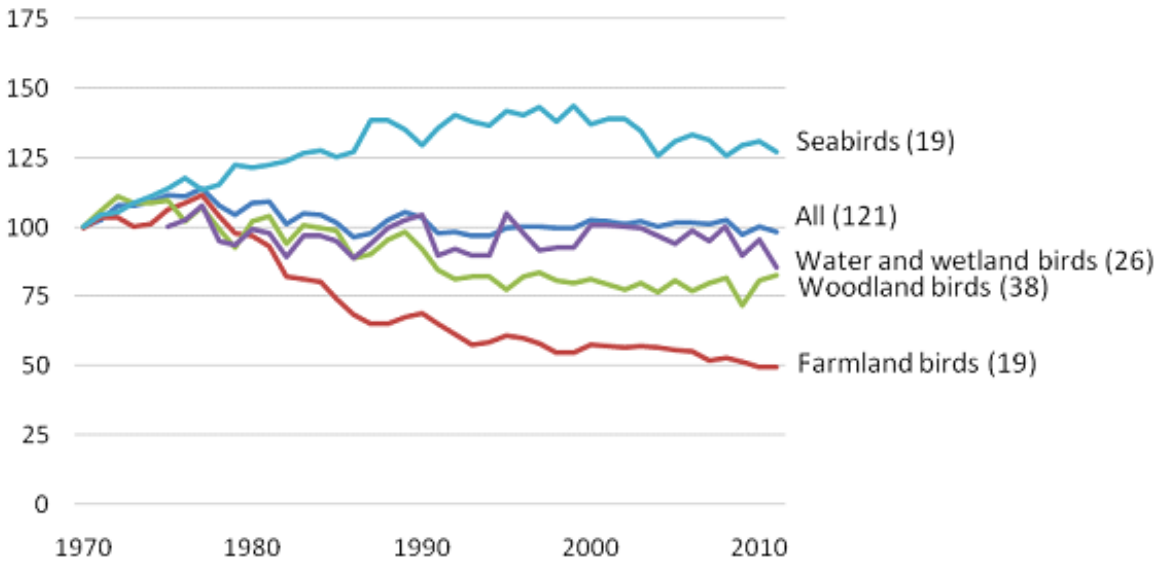
[16] www.gov.uk/government/publications/report-of-the-habitats-and-wild-birds-directives-implementation-review
[17] http://ec.europa.eu/environment/biodiversity/international/

Birds

Bird populations are considered to be a good indicator of the broad state of wildlife and the countryside because they occupy a wide range of habitats and tend to be near the top of the food chain; they also score highly on many of the broad criteria defined for selecting biodiversity indicators.[18] In 2012 breeding farmland bird populations in the UK were more than 50% lower than in 1970.[19] Most of the declines occurred between the late 70s and the early 90s, but there has also been a decline of 9.4% overall in the last five years. Breeding woodland bird populations in the UK were 19.4% lower in 2010 than in 1970. In 2010 breeding water and wetland bird populations in the UK were 4.3% lower than they were in 1975.[20] In absolute terms the UK has lost more than 44 million breeding birds in less than half a century, including an average of 50 house sparrows every hour. On the other hand, breeding seabird populations and wintering water-birds in the UK in 2010 were 30% and 83% higher than in 1970 [21]. Bird declines have ecological consequences on ecosystem processes, particularly decomposition, pollination, and seed dispersal.

Graph three: Wild bird populations in the UK, 1970-2010

Index (1970=100), water and wetland birds (1975=100)



Source: Defra, 2012: https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs/about/statistics

Noise

67. Noise impacts on health, quality of life, well being, amenity and the natural environment. The Government's policy on noise is set out in the Noise Policy Statement for England[22]; the devolved administrations have their own equivalent policies. The Environmental Noise Directive 2002/49/EC requires Member States to map noise from the transport sector, industry and in large urban areas, to make this information available to the public and to draw up action plans to manage and if necessary mitigate

18 www.birdlife.org/action/science/indicators/birds_as_indicators.html
19 www.rspb.org.uk/Images/SUKB_2012_tcm9-328339.pdf
20 www.gov.uk/government/organisations/department-for-environment-food-rural-affairs/about/statistics
21 Ibid.
22 www.gov.uk/government/uploads/system/uploads/attachment_data/file/69533/pb13750-noise-policy.pdf

the harmful effects. Noise emissions have also been the subject of a range of internal market product standards, and aircraft noise is relevant to the Transport Report.

Environmental impact assessment

68. Environmental impact assessment provisions ensure that consents on projects are made with full knowledge of any likely significant effects on the environment and that there is public participation in decision making. This applies to projects ranging from large scale major infrastructure projects such as power stations or industrial plants to smaller projects such as a housing estate or a small factory, as well as projects located in environmentally sensitive areas. The process is set out in the Environmental Impact Assessment (EIA) Directive 2011/92/EU. A proposal to amend the Directive is currently being negotiated.

69. A **strategic environmental assessment** (SEA) (Directive 2001/42/EC) is carried out for plans or programmes which cover a much wider area. They are prepared for a wide range of issues including agriculture, transport, tourism, or for planning future land use. For example a local authority preparing a local plan would also prepare a SEA for that plan and ensure that the public were consulted on both documents. A national government putting together a national energy strategy would also follow the SEA process.

70. The early **public participation** elements of the EIA and SEA Directives stem from the Aarhus Convention[23] which establishes a right to participate in environmental decision-making procedures. During the project, or plan or programme assessment period, the public concerned must be kept informed and have the ability to comment on the proposals, with the aim of enabling competent authorities and developers to make well-informed decisions. The **access to environmental information** provisions of the Aarhus Convention have also been implemented in the EU through Directive 2003/4/EC on public access to environmental information.

Environmental liability

71. Directive 2004/35/EC aims to establish a common EU framework of environmental liability based on the “polluter pays” principle, to require operators of specified occupational activities to prevent or remedy damage to protected species and habitats, to water resources, and in respect of land contamination where there is a significant risk of adverse effects on human health. The scheme covers certain specified occupational activities which are subject to strict liability, and to other activities in cases where the operator is at fault or negligent. In general, competent authorities require operators to take preventive action where there is an imminent threat of damage or to take action to remedy any damage; and to bear the costs of their actions.

[23] UN Convention: ‘Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters’: www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf

Environmental crime

72. Directive 2008/99/EC covers acts that breach environmental legislation and cause significant harm or risk to the environment and human health, e.g. the illegal emission or discharge of substances into air, water or soil, illegal trade in wildlife, illegal trade in ozone-depleting substances and illegal shipment or dumping of waste. The Directive provides a list of those acts that must be considered criminal offences in all EU Member States and for which the perpetrators must be held liable. The details of criminal procedures and levels of penalties are left to Member States to decide, subject to the provision that offenders should face 'effective, proportionate and dissuasive penalties'.

The external dimension

73. The EU plays an active role in the negotiation and implementation of international agreements concerning the environment. This is consistent with Article 3(5) TEU, which states that the EU "shall contribute to . . . the sustainable development of the Earth". Article 21(2) TEU also stresses the importance of environmental considerations in the EU's international relations: "The Union . . . shall work for a high degree of cooperation in all fields of international relations, in order to: (f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development".

74. The EU's external competence was first given an explicit Treaty base in 1987 by the Single European Act; prior to that the EU had concluded environmental agreements with third countries on the basis of an implied external competence in areas where either the EU had already implemented internal measures on the basis of an internal competence or where the exercise of external powers was necessary to obtain the EU's objectives. Article 191(4) now sets out the scope of the EU's competences for external relations:

> "Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned.
>
> The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements."

75. Both Member States and the EU may adopt international agreements in the area of environmental protection but Member States may only exercise their competence to the extent that the EU has not exercised its competence. The EU has exclusive competence for the conclusion of an international agreement when its conclusion is provided for in EU legislation or is necessary to enable the EU to make internal rules, or in so far as its conclusion may affect common EU rules or alter their scope (Article 3(3) TFEU). Where the EU has laid down internal harmonising rules relating to environmental protection, the Member States will no longer have the competence to

enter into international agreements affecting those rules. However, where the EU has only laid down minimum standards relating to environmental protection, Member States retain the power to enter into international agreements establishing other standards provided that these are not incompatible with the EU ones.

76. The EU is a party to numerous multilateral environmental agreements, including for example the 1985 Vienna Convention for the Protection of the Ozone Layer, the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer and the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes (see legal annex). However the EU can only become a party to a treaty if the other parties agree. Thus the EU has not so far been permitted to accede to the 1973 Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (although this is imminent). However the EU does apply measures equivalent to the provisions of this Convention unilaterally, through Regulation 338/97, and exercises its competence in respect of the Convention through the Member States. The EU is also currently an observer, but has had enhanced rights of participation, at the global Environment Assembly of the UN Environment Programme.

77. The Lisbon Treaty provides no specific arrangements to manage the shared competence of the EU and its Member States in international negotiations such as those relating to the UN Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (CBD), where a pragmatic approach has been adopted.

78. Under the UNFCCC the UK is also committed (with other developed countries) to jointly mobilise USD 100bn of public and private finance a year by 2020 for meaningful mitigation of, and adaptation to, the effects of climate change. The UK will provide £2.9bn of

UNFCCC: In order to maximise the influence of the EU and its Member States in negotiations under the UNFCCC, a political decision was taken to negotiate as a bloc, with agreement on EU positions reached by consensus among Member States and the European Commission. As this is an area of shared competence, in which both the EU and its Member States are Parties to the Treaties, the EU negotiating mandate has been agreed in the form of EU Council Conclusions encapsulating both matters within EU competence and matters of Member State competence. Rather than the Commission speaking on behalf of Member States, a pragmatic approach has been established whereby members of the Commission and representatives from some Member States work together in a "Team EU" arrangement.

This arrangement requires continuous EU co-ordination, intensifying in the run up to UN negotiations. During UNFCCC sessions the Commission and Member States hold daily co-ordination meetings to reach a common position on relevant areas of detail. All Member States are invited to participate in the EU's negotiating team (or "Team EU") at the UNFCCC. This is how Member States are able to best influence the EU position. The UK has taken up this invitation and within Team EU one of the three EU Lead Negotiators is from the UK, as is one of the EU cluster coordinators. We also have several other UK officials acting as Issue Leads, Focal Points and participating in EU expert level groups, including the legal group.

This approach allows us to exert considerable influence over the EU's position at all stages of the negotiation process and maximise UK leverage by operating as an EU bloc. It has delivered outcomes at the last few UN climate negotiations in line with UK objectives, including at COP18 in Doha last year.

international climate finance through our International Climate Fund by March 2015. Much of this finance goes to support projects in developing countries and, as such, climate finance falls under the field of 'development cooperation and humanitarian aid' under Article 4(4) TFEU, which means that although the EU has competence to carry out activities and conduct a common policy, the exercise of that competence does not result in the UK being prevented from exercising its own competence in this area.

79. The EU has competence to negotiate trade agreements with third countries on behalf of Member States. Most if not all of the EU Free Trade Agreements negotiated to date feature a sustainable development chapter which provides for cooperation on environmental issues. The EU has also recently entered into a number of bilateral agreements in order to combat illegal logging. This is an area where the Commission and Member States work together within the spheres of their respective competence (see case study).

THE EU & TACKLING GLOBAL DEFORESTATION: FLEGT – A CASE STUDY

The EU is one of the largest consumers of timber in the world – consuming around 35% of primary forest products. While forestry remains a Member State competence, trade is an EU competence. Part of the EU's approach to tackling global deforestation is through trade-related measures to combat commercial activity linked to illegal logging.

The EU has negotiated bilateral agreements with several major timber producing countries under which only timber or timber products which originate from a legal source in those countries will be allowed to enter the EU market, in accordance with the Forest Law Enforcement Governance and Trade (FLEGT) Regulation 2173/2005. The first active FLEGT scheme is expected to begin later this year.

The EU leads on the development of the bilateral agreements between the EU and the producer countries, but Member States have worked with the Commission to develop the agreements and to help producer countries to set up legality assurance schemes. Member States are also responsible for implementing and enforcing the FLEGT Regulation in their territories, setting penalties and giving powers to national enforcement bodies to investigate and, where necessary, seize illegal timber.

Future policy development and non-legislative strategies

80. The 1993 Maastricht Treaty established a Treaty base for the concept of environmental action programmes – although in practice they have been adopted by the EU since the 1970s to set out a broad strategy for the development of EU environment policy. Negotiations are currently under way on a 7th Environment Action Programme, which sets out a possible overarching framework for EU environment policy up until 2020. It aims to establish nine priority objectives for EU environment policy; key elements being to improve the implementation of environmental legislation and reducing conflicts between environmental legislation and growth.

81. In addition, there are a number of areas where the Commission has proposed non-legislative strategies as a mechanism for securing progress. These include:

Resource use/efficiency

82. The Resource Efficiency Flagship Initiative under the Europe 2020 Strategy sets out a strategic policy framework to deliver more sustainable use of natural resources and a shift towards resource-efficient growth. A Roadmap to a Resource Efficient Europe[24] was published in 2012. The UK is working in partnership with industry to develop policy approaches and provide support and advice (e.g. through the Waste and Resources Action Programme (WRAP)) to encourage businesses to be more resource-efficient to ensure they take advantage of the opportunities for growth and competitiveness and to manage risks around the supply of materials. The UK Resource Security Action Plan was published in March 2012.[25]

Eco-innovation

83. The Eco-Innovation Action Plan[26] stresses the importance of research and innovation to produce more innovative technologies and bring them to market. The UK broadly supports this initiative, encouraging the Commission to focus on removing trade barriers, work with international bodies to ensure a level playing field for global business and ensure its proposals are coordinated with other initiatives such as the Roadmap to a Resource Efficient Europe.

Eco-innovation can achieve both environmental and economic objectives and help to deliver smart, sustainable and inclusive growth, as well as providing export opportunities for business. The global market for Low Carbon Goods and Environmental Services (LCGES) had an estimated turnover of £3.3tr in 2010/11, with Europe accounting for around 28% of sales. The UK turnover for the LCEGS sector is £122.2bn with a forecast growth rate of around 5% up to 2014/15. The EU also has a comparative advantage in waste management and recycling technologies, for example, with 50% of global market share. In the UK the waste and resource management sector employs over 100,000 people and generates over £12bn sales, and is forecast to grow 3-4% a year.

Adaptation to climate change

84. Building on commitments in the EU Adaptation White Paper (2009), adaptation to climate change in Europe has so far focused on developing an EU Adaptation Strategy, which was published in April 2013. The strategy is non-legislative and concentrates on identifying the main climate change challenges for Europe both at global and regional level. It focuses on mainstreaming adaptation in EU policies and institutions, encourages all Member States to adopt adaptation strategies and promotes LIFE as a funding tool for those strategies. By creating a strong common understanding of opportunities and risks at the European level the EU should be able effectively to complement action already taken by Member States at national level.

[24] http://ec.europa.eu/environment/resource_efficiency/pdf/com2011_571.pdf
[25] www.gov.uk/government/publications/resource-security-action-plan-making-the-most-of-valuable-materials
[26] http://ec.europa.eu/environment/ecoap/index_en.htm

Call for evidence – questions

Where possible please provide quantitative and/or qualitative evidence (e.g. published research) to support your answers. Where this is not possible, please use and describe your knowledge or experience. Please see definition of competence on page 4.

Advantages and disadvantages

1. What evidence is there that EU competence in the area of environment and/or climate change has:
    i. benefited the UK / your sector?
    ii. disadvantaged the UK / your sector?

Where should decisions be made?

2. Considering specific examples, how might the national interest be better served if decisions:
    i. currently made at EU level were instead made at a national, regional or international level? (What measures, if any, would be needed in the absence of EU legislation?)
    ii. currently made at another level were instead made at EU level?

Internal market and economic growth

3. To what extent do you consider EU environmental standards necessary for the proper functioning of the internal market?
4. To what extent does EU legislation on the environment and climate change provide the right balance between protecting the environment and the wider UK economic interest?

Current legislation

5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:
    i. focused on outcomes (results)?
    ii. based on an assessment of risk and scientific evidence?

Doing things differently

6. How could the EU's current competence for the environment be used more effectively? (e.g. better ways of developing proposals and/or impact assessments, greater recognition of national circumstances, alternatives to legislation for protecting/improving the environment?)
7. How far do you think the UK might benefit from the EU taking:
    i. More action on the environment/climate change?

ii. Less action on the environment/climate change?

8. Are there any alternative approaches the UK could take to the way it implements EU Directives on the environment and climate change?

9. a. What advantages or disadvantages might there be in the EU having a greater or lesser role in negotiating and entering into agreements internationally or with third countries?

   b. How important is it for the UK to be part of “Team EU” at the UNFCCC?

Future challenges and opportunities

10. a. What future challenges or opportunities might we face on environmental protection and climate change?

    b. Going forward what do you see as the right balance between actions taken at international, EU, UK, and industry level to address these challenges and opportunities?

    c. What would be the costs and benefits to the UK of addressing these future challenges at an EU level?

Anything else?

11. Are there any general points you wish to make which are not captured in any of the questions above?

This document/publication is also available on our website at: consult.defra.gov.uk/eu/balance_of_competences

Any enquiries regarding this document/publication should be sent to us at: balanceofcompetences.enviro@defra.gsi.gov.uk

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