



Call for evidence on the government's review of the balance of competences between the United Kingdom and the European Union (Balance of Competences Review): Environment and Climate Change

1. I am writing with the response of the United Kingdom Environmental Law Association ("UKELA") to the above call for evidence.

Who are UKELA?

2. UKELA is the UK's foremost membership organisation comprising both lawyers and non-lawyers. Our aim is to improve the understanding and awareness of environmental law, and to make the law work for a better environment. UKELA monitors and, where appropriate, comments on the development of environmental policy and legislation.
3. The membership of UKELA comprises those with an interest in environmental law and draws upon lawyers in private practice, public and administration, academic institutions and non-governmental organisations (NGOs). This means that it is able to comment from both a theoretical and practical point of view.
4. In responding to consultations, UKELA's aim is to ensure that the proposed policy measure or law will work including within the policy and legislative landscape within which it is framed.

UKELA's response to the Balance of Competences Review

5. UKELA's response to the Balance of Competences Review will focus principally on climate change, nature protection and biodiversity, water and waste.

OVERVIEW

6. As a general position, UKELA strongly supports continued EU competence in the areas of the environment and climate change.
7. Most (estimated as being over 90%) of the environmental legislation currently in force in the UK is derived from EU legislation which, in itself, is influenced by member states' own policy positions and priorities through dialogue with the Commission. This has resulted in a considerable improvement in the quality of marine, freshwater and terrestrial environments both within the UK and across

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Europe as a whole. It has also brought economic benefits. The improvements and benefits are elaborated further below.

8. UKELA considers that EU competence brings with it significant advantages over dealing with environmental issues at a purely national level.
9. Many environmental issues – from water and air pollution to global climate change - do not respect national boundaries. There are, therefore, important technical advantages in dealing with interconnected environmental issues through common controls. If neighbouring member states are bound by common requirements, they can work together to enhance the quality of the environment as a whole.
10. EU competence in this area brings with it mechanisms for ensuring all member states comply with their obligations under the environmental legislation. Proceedings for breach of EU law – including infraction proceedings brought by the Commission against member states – are a means of ensuring that member states meet their obligations. If, for example, the UK were to experience harmful pollution caused by another member state failing to implement a directive (perhaps giving that other member state a competitive advantage over the UK due to cost savings from that non-compliance), the other member state could be compelled to comply through legal proceedings and the imposition of fines.
11. This raises another issue, namely that subjecting all member states to the same duties under environmental legislation provides a level playing field for internal market competition. Even the 'greenest government ever' will be cautious about regulating for an environmental problem that is unregulated in other member states, for fear of their country losing its competitive edge.
12. As a member state, the UK is not only bound by EU law, it can also shape it. This can be done through negotiations on working drafts of Directives and Regulations, at Council meetings and by MEPs. For example, Directive 96/61/EC on integrated pollution prevention and control (IPPC) drew heavily on the UK's integrated pollution control law as a result of effective influencing work by UK representatives. In this way, UK can use its position as a member state to push for laws that meet specific national priorities; but that will apply to all member states thereby ensuring a level playing field.
13. UKELA recognises that there are some areas where current EU environmental legislation needs to be improved to make it more effective. UKELA identified a number of such areas in the course of its research project on the state of UK

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environmental legislation.¹ They include a need for more detailed legal guidance on the definition of waste and end-of-waste criteria for particular waste streams; and a need for reforms to integrate better the requirements of the Habitats and Environmental Impact Assessment Directives. In its final report on that research project, UKELA recommended that the government takes appropriate action to negotiate suitable reforms, and more generally to 'seek to influence the drafting of EU legislation with a view to minimising its ambiguity of terms and maximising the integration of substantive and administrative obligations'. UKELA urges the government to act on those recommendations.

COMMENTS ON SPECIFIC ISSUES

NATURE PROTECTION AND BIODIVERSITY

Advantages and disadvantages

14. The legislation (The Conservation of Habitats and Species Regulations 2010 which transposes the Habitats Directive 92/43/EEC into national legislation (E&W)) is robust ensuring that appropriate protection is afforded to species and habitat types of European importance.
15. The legislation has resulted in a complementary development in the underpinning national legislation providing greater protection for habitat types and species of national importance (for example, the measures contained in the Countryside and Rights of Way Act 2000 to manage and protect Sites of Special Scientific Interest (SSSIs)).
16. Prior to the EC Directive 92/43/EEC, the protection of wildlife under national law was restricted to land and waters within Territorial Waters. Following a legal challenge the provisions of the wildlife Directives were extended to UK Offshore Waters. The provisions are transposed into national legislation by means of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (S.I. 2007/1842).
17. The introduction of the precautionary principle to safeguard sites of European importance (SPAs and SACs) has been a challenge. However, its application does not necessarily preclude potentially damaging plans and projects being approved,

¹ *The State of UK Environmental Law in 2011-2012: Is there a case for legislative reform?* May 2012, paragraphs 4.11-4.12. A copy of that report (the 'Final report') is attached to this consultation response. The Final report and the more detailed Interim Report are also available to download at <http://www.ukela.org/Aim5>.

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only that the necessary checks and balances are in place to ensure that the overall conservation status of a habitat type or species is not detrimentally affected.

18. The Habitats Directive (92/43/EEC) required the establishment of an ecologically coherent network of sites comprising of Special Areas of Conservation (SACs) designated under the Directive and Special Protection Areas (SPAs). It also requires that Member States in securing the coherence of the network, take measures for the complementary management of the wider countryside. This provision has provided the impetus to securing nationally important ecological networks.
19. The only marine protected areas prior to the Habitats Directive were 3 Marine Nature Reserves established under the Wildlife and Countryside Act 1981 (as amended) and the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (1985 N.I. 1) (as amended). The Directive and its application to Offshore Waters has resulted in a major boost to marine conservation.
20. The Habitats Directive requires that every 6 years Member States report on their implementation of measures taken under the Directive (Article 17). This includes the assessment of the conservation status of species and habitat types of European importance and measures taken to maintain or restore them at favourable conservation status. The subsequent consolidated assessments undertaken by the European Commission considers status at biogeographical and European levels. These overarching reports identify the respective value of species populations and the distribution of habitat types within Member States. This information is used to develop action programmes to secure the favourable status of species and habitats of European importance.
21. Cross compliance between the requirements of the wildlife Directives and meeting EU biodiversity targets and those of the Common Fisheries and Common Agriculture Policies are essential. Measure under the latter are established but need improvement. Considerable work is need on the former.
22. The overlap and complementary legislative provisions to secure overarching environmental benefits are found between the Water Framework Directive in seeking to secure good ecological status, the Marine Strategy Framework Directive in seeking to secure good environmental status and the Habitats Directive in seeking to secure favourable conservation status. The communication and co-operation between the relevant statutory bodies in producing their respective programmes has been essential to securing a better environment. Note that the

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definitions of 'status' also set the benchmark for damage under the Environmental Liability Directive.

23. Certain issues benefit from having a European consideration and the coordination of measures. These include migratory species, plant diseases and non-native invasive species.
24. At global conferences or convention standing committees, EU coordination and representations ensure a greater weight is given for agreed positions rather than that taken by individual Member States.
25. Much criticism is made of the precautionary principle as set out in the Habitats Directive. The perception is that the provisions prevent those plans and projects at risk of damaging a European interest feature from being undertaken. This is incorrect. Such plans and projects can be approved and undertaken where there are no alternatives and imperative reasons of overriding interest. Compensation is required, that is to secure commensurate measures to address the impact of the damaging plan or project. This is consistent with the accepted 'polluter pays principle' applied to the general environment.

Future challenges and opportunities

Keeping the Directives up to date and relevant.

26. Many of the Directives came into force when there were only a dozen or so Member States and whilst changes have been accommodated by means of accession treaties the context and detail of some elements require review. For example the species and habitat types listed in Annexes in the Birds and Habitats Directives.
27. The European Union now comprises 28 Member States. Ensuring that legislation remains relevant and is consistently applied, is a challenge.

CLIMATE CHANGE REGULATION

Advantages and disadvantages

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

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Benefits to industry:

28. The launch of the EU Emissions Trading Scheme (EU ETS) in 2005 as the world's first greenhouse gas (GHG) cap-and-trade scheme set a high level of ambition in managing GHG emissions for other regions and countries to emulate. It raised the profile of climate change as a global problem requiring ambitious and international solutions to combat it. While it is acknowledged that the scheme suffers from issues which the EU is currently taking steps to resolve (principally the surplus of allowances,) it is fair to say that in engaging the financial and business communities on GHG emission reductions, the scheme has pushed climate change up the corporate agenda and provided a valuable learning experience on the challenges involved in reducing GHG emissions. Entities that are responsible for 45%² of the EU's GHG emissions are now familiar with the idea that they must monitor and reduce their emissions. A national scheme could not have had the same impact.

Benefits to the UK:

29. EU climate change policies have benefited the UK in the following ways:

- Providing an environment that coincided with the UK's own climate change aspirations. This has encouraged the UK to take the steps it has to tackle its GHG emissions. The UK economy has benefited from the growth of a low-carbon industry that has evolved in response to EU and UK policy drivers. In 2011/12 the global market for low carbon goods and services (LCEGS) was worth £3,442 billion and the UK's share of LCEGS was 3.7% (i.e. worth £128 billion).³ In relation to the EU ETS, the financial markets in London have readily adapted to include this new product range. Many investment banks have a "carbon desk" based in London and the ICE Futures Europe derivatives exchange lists a range of emissions products⁴.
- Helping the UK to achieve its commitment under the Kyoto Protocol and the EU Burden Sharing Agreement (*Council Decision 2002/358/EC concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder*⁵) to reduce its GHG by 8% during the first

² http://ec.europa.eu/clima/policies/ets/index_en.htm

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224134/LCEGS-underlying-data.xls.

⁴ <https://www.theice.com/emissions.jhtml>.

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:130:0001:0001:EN:PDF>
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Kyoto Commitment Period (2008-2012). The EU achieved GHG reductions of 15.4% in 2010 compared with a 1990 baseline. The UK's GHG emissions over the same time period were reduced by 23%.⁶

- It is also worth noting that where the UK has wanted to go further on climate change mitigation or to do things differently, the fact that the EU has introduced policies and legislation in this area has not unduly fettered the UK's policy in this area⁷. This is demonstrated by the fact that the UK has set itself a binding target of an 80% reduction in GHG levels (below 1990 levels) by 2050 under the Climate Change Act 2008. The UK has also introduced a number of climate change policies that are independent of EU action, for example the CRC Energy Efficiency Scheme, the Climate Change Levy (CCL), Carbon Floor Price and Climate Change Agreements (CCAs)

Where should decisions be made?

Considering specific examples, how might the national interest be better served if decisions:

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?)

Currently made at another level were instead made at EU level?

30. In our view, as climate change is a global problem, decisions need to be taken collectively by countries acting in the common interest. Ideally, decisions should be taken in fora such as the United Nations Framework Convention on Climate Change (UNFCCC) but in the absence of such a global agreement, decisions taken across a region such as the EU are more likely to have an effect on global emissions than unilateral action by individual countries. Evidence of this can be found in the fact that island nations in the Pacific and other oceans, that are affected by rising sea levels as a result of climate change, have formed the Alliance of Small Island States

⁶ <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&code=tsdcc100>

⁷ Environmental matters are a matter of shared competence so that both the EU and member states are both authorised to adopt binding acts in these fields (Treaty on the Functioning of the European Union (TFEU), Article 4, paragraph 2(e), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF>). Member states may exercise their competence only in so far as the EU has not exercised, or has decided not to exercise, its own competence. Article 193 TFEU states that these measures shall not prevent any member state from maintaining or introducing more stringent protective measures relating to the environment. Such measures must be compatible with the Treaties. They must also be notified to the Commission.

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(AOSIS)⁸ to improve their negotiating positions at the UNFCCC. There are also a number of other groups representing a number of nations with similar interests or positions that lobby the annual UNFCCC Conference of the Parties (COP) meetings, for example, the G-77 (which represents developing countries) and the BASIC countries (which include Brazil, South Africa, India and China)⁹.

31. The difficulties¹⁰ that the EU has faced in adding aviation to the sectors covered by the EU ETS demonstrates how difficult unilateral action would be for a country with ambitious climate change mitigation plans.
32. There is also value in the EU taking action on climate change (for example, in agreeing targets under the EU Burden Sharing Agreement¹¹). This is because EU legislation can be more readily enforced than international agreements (which often suffer from weak enforcement mechanisms) to ensure all member states comply (for example, by way of infringement proceedings etc). This benefits the UK as it avoids the risk (at least within the EU) of losing a competitive advantage to other countries that ignore the law. Notwithstanding this point, we consider international action on climate change is vital and EU action should be supplementary rather than a substitute for international action.
33. The EU's ability to negotiate at the UNFCCC COP meetings as a bloc of 27 nations responsible for approximately 11%¹² of total global CO₂ emissions, is greater than the UK's position as it is responsible for approximately 1.75% of total global CO₂ emissions.

⁸ <http://aosis.org/>

⁹ http://unfccc.int/parties_and_observers/parties/negotiating_groups/items/2714.php

¹⁰ These difficulties include the application for judicial review by the Air Transport Association of America, American Airlines, Continental Airlines and United Airlines in 2009, against the Department of Energy and Climate Change, concerning the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2009 (SI 2009/2301) (see [R \(Air Transport Association Of America Inc\) v Secretary Of State For Energy And Climate Change \[2010\] EWHC 1554 \(Admin\)](#) and Case C-366/10). Although the US aircraft operators withdrew their judicial review challenge in March 2012, a group of 26 non-EU countries, including China and Russia, that oppose inclusion of their airlines in the EU ETS agreed a package of retaliatory measures. To try and prevent such measures, the EU has put in place the "stop the clock" decision (*Decision derogating temporarily from Directive 2003/87/EC of the EP and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community*), which will suspend the inclusion of flights to and from non-EEA countries from the EU ETS for one year.

¹¹ Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020.

¹² http://ec.europa.eu/clima/news/articles/news_2012071801_en.htm

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34. If the EU's competence on environmental matters was changed so that it could not make decisions on climate change issues, it is anticipated that this would have result in a much lower level of action on this issue by the majority of member states. In addition, the impact of the actions by countries such as the UK that aspire to be leaders on this issue would be considerably reduced. By being part of the EU's decision making processes on climate change regulation, we think that the UK's influence on climate change mitigation is amplified. If the UK were to leave the EU, the push for greater action on climate change mitigation at EU level would be weakened as the Commission would have lost one of its most vocal champions on climate change mitigation. The EU would be affected by finding it harder to push through ambitious climate change policies. The UK would be affected as what it can achieve acting unilaterally would be so much less than when it is one of the leaders of a bloc of countries that account for such a large proportion of global CO₂ emissions.

Doing things differently

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?

EU's negotiating power

35. Where the EU can negotiate on international issues such as a global agreement on climate change mitigation, it should be able to achieve a greater success than individual countries negotiating such agreements can hope to achieve given that it represents 11% of the world's CO₂ emissions. If EU member states decide not to allow the EU to negotiate on their behalf and insist on maintaining separate negotiating positions, not only is the EU's negotiating power diminished but EU officials' time is distracted from negotiating with other countries by having to try and convince member states to buy into the EU's ambition on climate change mitigation.

9(b). How important is it for the UK to be part of "Team EU" at the UNFCCC?

36. We think that the EU will achieve more if the UK is part of the EU Team at the UNFCCC. The UK's ambition on climate change mitigation will help to ensure that the EU is not persuaded to weaken its ambition by other member states that have lower levels of ambition on climate change mitigation. The EU needs member states that are in favour of taking decisive and ambitious steps on climate change mitigation in order to influence other member states that this is an important goal.

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37. If the UK leaves the EU so that it no longer negotiates as part of the EU at the UNFCCC we think that both the EU and the UK's positions will be weakened and less will be achieved.

Anything else

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

38. **Cost of exiting the EU:** If the UK decides to leave the EU, the original basis and rationale for much of the UK's environmental legislation would be lost. If the UK remains in the European Economic Area (EEA), some international environmental laws including some relating to climate change, will still apply to the UK but other environmental laws will not¹³. The UK will presumably then need to decide whether to repeal any UK implementing legislation (assuming the relevant EU legislation was a directive) or to preserve that legislation. This would take up a great deal of government and parliamentary time which has implications for departmental budgets and also for the other policies that could be pursued if the relevant department's and Parliament's time were taken up with EU "exit issues".

39. **UK ability to influence EU climate change law and policy:** If the UK decides to leave the EU but remain in the EEA, we would (as noted above) remain subject to certain EU laws on climate change but our ability to influence the development of those laws would be very limited¹⁴.

WASTE

¹³ Articles 73-75 of and Annex XX to the EEA Agreement (*Agreement on the European Economic Area*, <http://www.efta.int/~media/Documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf> and <http://www.efta.int/~media/Documents/legal-texts/eea/the-eea-agreement/Annexes%20to%20the%20Agreement/annex20.ashx>) provide how EEA states should protect the environment and specifically what EU legislation will apply to them. For example, the EU ETS Directive (2002/358/EC) and its associated Regulations and Decisions apply to EEA states.

¹⁴ EEA participation in the EU legislative process can be by (i) European Free Trade Area (EFTA) experts participating in Commission committees; (ii) the EEA EFTA submitting comments on EU legislation (iii) adopting

resolutions responding to Commission initiatives (see <http://www.efta.int/~media/Files/Publications/Bulletins/eeadecisionshaping-bulletin.pdf> and also <http://www.efta.int/~media/Documents/eea/1112099-basic-features-of-the-EEA-Agreement.pdf>).

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Advantages and disadvantages

40. According to the Call For Evidence (paragraph 58) the UK produced 259 million tonnes of waste in 2010. In a global economy in which resources are becoming increasingly scarce, it is vital that the UK recognises the value of its waste and transitions from a linear to a circular economy. The UK has traditionally been slow to recognise the value of waste, with landfill being the preferred method of disposal, but the EU has driven change in the UK's waste management industry by stimulating recycling and energy recovery. The certainty of direction which EU competence has provided since the original Waste Framework Directive (75/442/EEC) has provided investors with long-term certainty in a way that national policy has not and has allowed the marketplace for waste and resources to develop and grow stronger throughout the EU. In its [UK Waste Management and Recycling Industry 2010 Labour Market Investigation](#), Energy & Utility Skills estimated that the waste and recycling industry directly employed 142,550 people in the UK in 2010 and identified a number of pieces of EU legislation as key political drivers for the growth of this industry, namely the Landfill Directive (1999/31/EC), the Packaging Waste Directive (94/62/EC), the Waste Electrical and Electronic Equipment Directive (2002/96/EC – now recast as Directive 2012/19/EU), the End of Life Vehicles Directive (2000/53/EC) and the Batteries Directive 2006/66/EC).
41. If waste is to be treated as a resource, then UKELA believes that it needs to be subject to the EU's single market rules in the same way as any other raw material or commodity. However, waste is different to other raw materials and commodities in that in some cases it may pose a risk to human health and the environment. Trans-boundary shipments of waste therefore need to be regulated at supra-national level.
42. The case law of the European Court of Justice/Court of Justice of the European Union on the definition of waste has caused much confusion across the EU, but the revised Waste Framework Directive (2008/98/EC) attempts to resolve this confusion through the adoption of provisions dealing with by-products (Article 5) and end-of-waste status (Article 6).

Where should decisions be made?

43. UKELA is of the view that the current balance between EU and national decision-making in waste management legislation is about right. However, one area where UKELA believes that greater EU involvement should be encouraged is in setting end-of waste criteria. Although under Article 6 of the revised Waste Framework Directive (2008/98/EC) the European Commission can set EU-wide end-of-waste criteria for certain waste streams (which are those for the materials that are most

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likely to be traded across the EU for recovery or recycling), there is little or no certainty over the end-of-waste status of recovered or recycled materials falling outside these EU-wide criteria. Different Member States' competent authorities may view these materials differently and have the power under the Waste Shipments Regulation (Regulation (EC) No 1013/2006) to reject consignments. This not only hinders the development of the single market for these materials, but also puts exporters and importers at risk of criminal liability.

Internal market and economic growth

44. UKELA believes that the standards set by the EU for the waste management industry are vital for the proper functioning of the internal market. An example of this is the Waste Incineration Directive (2000/76/EC) (now incorporated within the Industrial Emissions Directive (2010/75/EU)) and the Landfill Directive (1999/31/EC), which have established common standards for waste incineration plants and landfill sites respectively across the EU. This has prevented Member States adopting lower environmental standards in order to attract waste streams, thereby distorting competition within the internal market.
45. As mentioned above, the UK has traditionally been slow to recognise the economic value of waste materials. Reliance on landfill as the principal means of dealing with waste not only has adverse environmental consequences, but also results in the loss of large quantities of scarce natural resources from the economy. The Waste Electrical and Electronic Equipment Directive not only prevents hazardous materials in waste electrical and electronic equipment being sent to landfill, but also enables substances such as precious metals and rare earth metals to be recovered. In a global economy in which there is global competition for resources, the UK cannot hope to compete against countries such as the US and China for natural resources; the only way in which it can hope to compete is as part of the EU.

Current legislation

46. There are examples of both outcomes-based legislation and standards-based legislation in EU waste management legislation. UKELA does not consider that there are any particular advantages or disadvantages of either, but that the nature of the legislation should depend on what it is trying to achieve.
47. UKELA believes that EU waste legislation is generally properly based on a robust assessment of risk and scientific evidence. As an example, the process of developing the Waste Incineration Directive and the related BAT Reference Note took approximately two years of work. UKELA also notes that the quality of legislation is directly related to the quality of the data and evidence fed into the

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legislative process. If poor and/or incomplete data and evidence are fed into the legislative process, then poor quality legislation with inappropriate targets is more likely to emerge. This highlights the need for the UK Government to properly engage in the EU, rigorously and from an early stage, taking full account of the views of the Devolved Administrations.

Doing things differently

48. UKELA believes that there is sufficient flexibility in EU waste legislation to allow Member States to adopt different approaches to transposition. Even within the UK, this can be seen in the way that England, Wales and Scotland have each implemented the revised Waste Framework Directive. The Devolved Administrations are now able to develop their own policies and solutions to waste issues governed by EU legislation. This means that within the UK Member State, EU legislation may be implemented differently. That said, waste does not necessarily respect administrative boundaries, so there is a need for compatibility in respect of the implementation of EU legislation between the various countries within the UK.
49. UKELA believes that the EU must continue to play a role in negotiating and entering into international treaties and agreements relating to matters such as trans-boundary movements of waste and the disposal of waste at sea (examples include the Basel Convention and the London Convention), given the potential cross-border impacts of such matters.
50. UKELA would also support the regular review of EU waste legislation, in particular how it is being implemented in Member States.

Future challenges and opportunities

51. One of the principal challenges that the UK's waste management industry faces is the uncertainty generated by the current debate over the UK's relationship with the EU! As the Government should be well aware, regulatory and political uncertainty creates concerns for investors, who may be less likely to invest in the UK. There is an opportunity for the UK to create a circular economy, which would provide great economic benefits, but the UK is unlikely to be able to achieve this in isolation from the EU.
52. UKELA is aware of the pressing energy, water and resources challenges that the UK will face over the coming decades and suggests that the Government needs to be more open about the potential consequences of certain policy decisions on other sectors. For example, if significant unconventional hydrocarbon resources are

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developed, then this could have an impact on the viability of many waste to energy plants.

WATER

Advantages and disadvantages

53. UKELA considers there to be significant advantages from there being EU competence to address water issues because:

- water is a vital resource. It is fundamental to human life, nature and the economy.
- water flows freely across frontiers, and pollution does not respect national boundaries. Given the scope for activities in one member state to affect the water resources of another, it therefore benefits all member states if they are bound by the same controls (albeit with appropriate discretions as to implementation: see further comments below about the Water Framework Directive).
- subjecting all member states to the same requirements provides for a level playing field (avoiding countries gaining a competitive edge by applying lower standards) that can be enforced through legal proceedings.

54. Given these advantages, it is no surprise that over the years there has been significant EU level activity to address water pollution. The First Environment Action Programme (“EAP”) in 1973 placed water pollution as a priority matter and there have been many Directives since. These have increased standards for emissions and water quality, and driven improvements across a wide range of water issues. As a result, water quality across the EU has improved significantly, and EU citizens now enjoy some of the best water quality in the world.

55. EU action on water issues has had a significant impact on UK’s domestic water pollution law, policy and practice over the last forty years. EU legislation and policy has been the major impetus for reforms including: the development of a formal system of water quality classifications and objectives; regulations on drinking water quality; a shift in relation to the control and regulation of the discharge of sewage effluent to the sea; and the introduction of specific standards for the control of dangerous substances.

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Examples of benefits from measures introduced as a result of EU competence in this area

(a) Improvements to bathing waters

56. In 1970s and 1980s, Europe's seas were heavily polluted. Raw sewage and floating litter were a common sight in UK bathing waters, posing risks to human health, harming the environment and adversely impacting on tourism.

57. The Bathing Water Directive (76/160/EEC) introduced standards for the quality of bathing waters and required member states to take measures to meet those standards. Over the years since the Directive was introduced the UK has had to react and change approaches to sewage treatment and releases of nitrates. As a consequence, bathing water quality in England has improved significantly over the last 20 years. Cleaner beaches attract more tourists and bring economic benefits.

58. Under the revised Bathing Water Directive (Directive 2006/7/EC) bathing waters in England now have more stringent water quality targets to achieve by 2015. As well as improving water quality there is a much stronger emphasis on managing beaches and providing information. Bathing waters are to be classified as Excellent, Good, Sufficient or Poor. The UK aims to have all bathing waters classed as Sufficient by 2015. By driving further improvements to bathing water quality and making better information available, the Directive is expected to enhance the attractiveness of UK's beaches to tourists, bringing more economic benefits.

(b) The introduction of adequate sewerage treatment systems.

59. The Urban Waste Water Treatment Directive (Directive 91/271/EEC) was adopted in 1991, with the objective of protecting the environment from the adverse effect of urban waste water discharges and discharges from certain industrial sectors. It requires member states to provide waste water collecting systems (or sewerage networks), and to treat sewage to certain standards before it is discharged to rivers and the sea.

60. Over the years since 1991, the UK and other member states have invested heavily in improving sewerage infrastructure to meet the requirements of this directive. Water quality has improved significantly due to a reduction in untreated discharges and overflows, and improvements to the quality of treated effluent. This has benefited human health and sanitation, and the animals and plants that live in and

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around water. Others to benefit include recreational users of waters previously adversely affected by sewage discharges, and associated economic sectors such as water sports and tourism.¹⁵

61. Although the directive has often been seen as costly, it addresses key waste water challenges and has clear and binding objectives. It allows member states to provide alternative solutions and encourages innovations both in waste water collection and treatment.

(c) Integrated catchment-based approach to managing the water environment

62. Currently, the Water Framework Directive (Directive 2000/60 EC) sets the framework for community action in the field of water policy. A key benefit of this directive is to provide for a more integrated approach to managing the water environment.

63. Prior to the Water Framework Directive, a patchwork of different directives each addressed specific water issues, such as: certain polluting activities (e.g. waste water discharges, agricultural use of nitrate fertilisers); particular kinds of pollutants (e.g. certain dangerous substances); and the quality of particular kinds of waters (e.g. bathing waters and groundwaters). This organic, incremental approach led to a rather incoherent, piecemeal regulatory system with some unnecessary duplication of controls.

64. The Water Framework Directive represents an ambitious attempt at comprehensively overhauling EU water policy. It requires member states to manage the water environment at catchment level, through river basin management plans, thereby recognising the interactions between different waters within a catchment. Successful implementation will help protect all elements of the water cycle and enhance the quality of groundwaters, rivers, lakes, estuaries and seas.¹⁶ Thus the Directive provides for objectives to be set for *all* water bodies rather than just certain types of water. Under the Directive, standards must be set for all aspects of water status rather than just certain pollutants (through classification systems for good ecological and chemical status, and good groundwater status). And, whilst previous

¹⁵ See further

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69592/pb13811-waste-water-2012.pdf (see pages 19 and 20);

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69592/pb13811-waste-water-2012.pdf

¹⁶ See <http://www.environment-agency.gov.uk/research/planning/33106.aspx>

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directives focused on controlling 'point source' pollution (e.g. from sewage works), the Water Framework Directive also requires controls on 'diffuse pollution' (e.g. run-off from agriculture and urban areas).

65. The Water Framework Directive has brought significant 'better regulation' benefits, by streamlining the legislation in this area. It repeals a number of older directives that have been superseded.¹⁷ It also brings the other directives that had developed piecemeal to address specific issues within its overarching integrated framework.

Where should decisions be taken?

66. UKELA is of the view that the current balance between EU and national decision-making in water legislation is about right (see further, comments on advantages of harmonised laws, above; and comments on doing things differently, below).

67. The EU institutions have been critical in maintaining momentum for improvements in this area, driving up standards, facilitating data sharing, pushing for implementation and driving the 'better regulation' agenda. Given continued pressures on water resources, UKELA considers it crucial that the EU maintains its leading role on water policy. For example, UKELA supports action to implement the Commission's November 2012 Blueprint to Safeguard Europe's Water Resources – a strategy for ensuring that enough good quality water is available to meet the needs of people, the economy and the environment.¹⁸ The UK should continue to influence the development of European policy to ensure it best meets domestic objectives, through negotiations, decisions in Council etc.

Doing things differently

68. UKELA believes that there is sufficient flexibility in EU water legislation to allow Member States to adopt different approaches to transposition. For example, the Water Framework Directive sets the framework for an integrated catchment-based approach to managing water, but leaves discretion to member states to:

- decide on appropriate environmental standards (through the Annex V process for developing classification schemes);

¹⁷ Article 22 of the Water Framework Directive repeals by the end of 2007 the Surface Water Abstraction Directive (75/440/EEC), Exchange of Information on Surface Water Decision (77/795/EEC) and Surface Water Abstraction Measurement / Analysis Directive (79/869/EEC). It repeals by the end of 2013 the Freshwater Fish Directive - 78/659/EEC; Shellfish Waters Directive (79/923/EEC); Groundwater Directive (80/68/EEC); Dangerous Substances Directive (76/464/EEC).

¹⁸ <http://ec.europa.eu/environment/water/blueprint/>



- set the environmental objectives for each water body, taking into account socio-economic considerations (under Article 4);
- and decide on programmes of measures to achieve environmental objectives, taking into account socio-economic considerations.

Future challenges and opportunities

Raising standards and continued implementation of EU water legislation

69. UKELA considers that a key challenge facing the UK is the need properly to implement the Water Framework Directive with a view to bringing all waters to good status. This is particularly important given the increasing pressures on water resources and the impacts of climate change (for example, 2012 was the wettest year on record but in the South there were still water shortages, drought and hose pipe bans). We are faced with ever competing demands for water from industry, business and households but have an old and ageing water infrastructure.
70. The 7th Environment Action Programme provides that “there is likely to be a global shortfall of 40% in water by 2030 unless there is significant progress in improving resource efficiency” and “despite considerable efforts to date, the requirement under the WFD to achieve ‘good ecological status’ by 2015 is likely to be met for only for some 53% of surface water bodies in the EU... there is also a risk that the Marine Strategy Framework Directive to achieve ‘good environmental status’ by 2020 may be missed...”
71. As noted above, UKELA believes that the EU should maintain a leading role developing water policy to address these challenges, and ensuring the legislation is properly implemented by member states.

Business opportunities

72. UKELA believes that ambitious European environmental policies offer business opportunities to UK firms as they can become leaders in developing new technologies. Thus, the European Innovation Partnership has commented:
- (a) “With its pathfinder legislative standards world class companies and cutting edge technology providers, Europe is already a leader in the global water sector... Europe should take the responsibility to take lead in developing

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innovative solutions to tackle the global water challenges whilst seizing the market opportunities this will bring...”¹⁹

73. In the UK (and across Europe as whole), the EU’s environment policy (including water legislation and policy) has stimulated innovation and investment in environmental goods and services, water technology, goods and services thereby generating jobs and export opportunities.²⁰

74. In order to be exposed to and take the real benefit of innovative water technologies and the development of the same, the UK needs to, and should be, at the heart of the EU.

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¹⁹ European Innovation Partnership on Water (“EIP”), European Commission. See the work of the EIP/EIP Water Task Force. <http://ec.europa.eu/environment/water/innovationpartnership/>

²⁰ For an example of innovative water projects in UK see <http://www.environment-agency.gov.uk/news/147461.aspx>

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