I wish to make one brief comment in relation to the Committee’s current assessment of EU/UK environmental policy. This comment is made in a wholly personal capacity and does not represent the views of any institution or organisation.

1. The comment I wish to make is to draw attention to the role of EU law in reducing the risk of the fragmentation of environmental law across the UK as a result of devolution. Views may differ on whether this level of constraint is a good or bad thing, but its role in this regard should be recognised.

2. Environmental law matters are largely devolved under the devolution settlements for Scotland, Wales and Northern Ireland. There were differences between the countries even before the current devolution structures were introduced, but these have become more pronounced since. The vagaries of the legislative timetables and drafting can by themselves introduce disparities even where policy aims are the same. Differences exist in relation to the administrative structures (e.g. the greater integration which has led to the creation of Natural Resources Wales), to enforcement mechanisms (e.g. the different scope of so-called “civil sanctions” in each country) and to the substance of the law and policy (e.g. in relation to the willingness to accept GMOs and new nuclear power stations). Yet in the face of the potential for radical divergence, a dampening mechanism has been provided by the fact that all the jurisdictions are bound to operate within the framework set by EU law, in a context where EU measures account for so much of our law on environmental issues. This has meant that the capacity for each country to head off in its own direction has been limited. No country can decide to develop its own rules wholly out of step with the EU norms; trying to do so would entail (for the devolved authorities) acting in excess of the legislative powers conferred by devolution as well as the risk of infringement proceedings from Europe. There is room for national differences to emerge, but within limits which avoid excessive fragmentation.

3. In the absence of EU obligations, this constraint would be removed and the different countries would have the capacity to develop radically different environmental laws, in structure and content. Providing the room for difference is, of course, one of the major justifications for and benefits of devolution in the first place, but too much disparity and fragmentation can have negative consequences. So far the divergence of environmental law within the UK has not been a major concern, since the need to fit within the EU framework has ensured that such divergence will be kept within limits. In the absence of the EU framework, those affected by environmental laws may be much more concerned at the prospect of increased disparities. The pros and cons of different levels of divergence within the UK (and with other neighbours) would have to be addressed as a fresh consideration in the debates on any new initiative and there may be calls for new mechanisms to discuss the consequences of varying levels of difference and to seek co-ordination and collaboration where appropriate.

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