Environmental Audit Committee

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Rt Hon Michael Gove MP

Secretary of State

Department for Environment, Food and Rural Affairs

14 November 2017

Dear Michael

RE: Committee Hearing on 1 November

Thank you for attending my Committee's hearing on 1 November. We have some questions following from the answers you gave:

Environmental Enforcement

In answer to my questions and those of Anna McMorrin and John McNally you raised the possibility of different environmental regulators in Scotland, Wales and Northern Ireland (Q28-29). You also said you did not think there should be "regulatory divergence" with the devolved Governments on questions like air and water quality (Q33). Finally, you said that there should be common standards in some areas but that you did not want to be in the position of determining "how [devolved Governments and legislatures] exercise their right over devolved matters." (Q37)

We recognise that any UK-wide arrangements would need to be negotiated with the devolved institutions. Will you be consulting for a single body to oversee a common framework of a standards across the nations of the United Kingdom (which is effectively the role of the Commission at present)?

Chemicals Regulation

In answer to my questions and those of Caroline Lucas (Q47), you said you were "not sure whether I recognise" that registrations under REACH would cease to be valid on exit day. You said this because you did "not want to pre-empt what the outcome of our negotiations will be with the European Union." I am sure you will be aware of the European Chemicals Agency's advice on this matter:

> After 30 March 2019, the UK will no longer be a Member State of the EU. Hence, any UK-based registrant can no longer be a registrant. For the purpose of the EU's REACH Regulation, any registration by such a registrant will therefore be regarded as non-existent, as your company will, after the UK withdrawal, be based in a "third country" outside the EU/EEA.[1]

Is the continued validity of those registrations an aim of the UK Government in its negotiations? Is it your understanding that those registrations would be valid in the event of leaving the European Union without a negotiated exit deal?

Environmental Principles

We questioned you (QQ 15-27) on the future status of the environmental principles currently set out in Article 191(2) TFEU. You described the principles as "interpretative" and that they are best maintained in guidance documents. You acknowledged that "there is a need to ensure those principles are embedded in the way in which policy operates." When pressed on the mechanism to achieve that, you reiterated the argument that the principles should be incorporated into guidance documents. You have since refined this to refer to a "policy statement":

1. You noted that your comments reflected the view of many environmental lawyers. Could you cite published examples of the relevant work of the environmental lawyers to which you refer?
2. Do you accept that the validity of EU legislation can be tested against compliance with environmental principles, and thus has a stronger effect than guidance?
3. You suggest that it is inappropriate to place these principles on a statutory basis in UK law, but they not already so by virtue of their inclusion in the Treaty? Would you accept that there is a case for EU retained environmental law, modified as appropriate, to continue to operate on the basis of the same statutory basis as is currently the case?
4. On what basis can you be confident that inclusion of the principles in guidance documents would provide as strong a basis for environmental protection as under current arrangements?
5. At Q18, you noted that there is already statute and precedent in UK case law that ensure that these principles are observed. The precautionary principle is aimed at ensuring a higher level of environmental protection through preventative decision-taking in the case of risk and extends to EU legislation governing food safety. The principle has also been reviewed and applied by the Court of Justice of the European Union in the process of developing a body of case law around it. The anchoring of the principle in treaty,

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[1] https://echa.europa.eu/support/qas-support/browse/-/qa/70Qx/view/scope/The+UKs+withdrawal+from+the+EU/REACH?_journalqadisplay_WAR_journalqaportlet_INSTANCE_70Qx_backURL=https%3A%2F%2Fecha.europa.eu%2Fsupport%2Fqas-support%2Fbrowse%3Fp_p_id%3Djournalqadisplay_WAR_journalqaportlet_INSTANCE_70Qx%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_pos%3D2%26p_p_col_count%3D3

Communication and jurisprudence makes this a powerful analytical tool for environmental risk assessment. In contrast, the precautionary principle has been historically under developed and cautiously utilised in UK courts. Case law shows the principle is less onerous in the UK and more deferential to the authority or organisation whose decision is brought under review. While you alluded to government guidance on the issue, how this will enhance observance of the principle above the EU standard is difficult to foresee. Could you please clarify how you see the precautionary principle being applied in the same rigour and to the same standard as it is currently applied in the EU?

Trade Deals

In answer to John McNally's question (Q99), you said you would "talk to your colleagues in Government before making a firm commitment" to ensuring future trade deals are subject to published Environmental and Sustainability Impact Assessments. Could you please tell us the outcome of those discussions?

Thank you again for coming before us and we look forward to the answers to our questions. We also look forward to engaging with you on your proposals on an environmental oversight and enforcement body and the 25-Year Plan.

Yours sincerely,

Mary Creagh MP

Chair of the Environmental Audit Committee