

MONDAY 30 NOVEMBER 2009

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Present

Bradshaw, L  
Freeman, L (Chairman)  
James of Blackheath, L  
Powell of Bayswater, L  
Walpole, L

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Witnesses: **Mr Steve Coldrick**, Head of Long Latency Health Risks Division, Health and Safety Executive, and **Mr Robin Foster**, Head of International Chemicals Unit, Health and Safety Executive, examined.

**Q78 Chairman:** I think, in the interests of time, I am going to ask the questions for the record, but any colleagues that have supplementary questions or further comments to make, perhaps you would permit them, or agree with me that this is the most efficient way of proceeding. I want to just preface my remarks by saying we are two thirds of the way through into an inquiry into Better Regulation, and we have evidence that will be taken from the Minister for Better Regulation in two weeks' time, and we would hope to produce a report some time in the New Year. Therefore, to get some practical examples of how the procedure works is going to be very helpful, and the chairman of the relevant board in Brussels was extremely helpful last week on our videolink. Therefore, unless there are any other procedural questions, may I commence by asking for the record the first question, of which you have had notice, I hope. Your Explanatory Memorandum reached us as we were embarking on an inquiry into Better Regulation, and the Explanatory Memorandum was, of course, concerning health and safety. We were therefore interested to note that the impact assessments supplied with that explanatory memorandum was based on figures extrapolated from the Commission's impact assessment on the dossier. As far as you are aware, does this

happen often? I will just add two more questions if I may before you respond: what use have you made of such an impact assessment, and was there ever an intention to use this impact assessment as a negotiating tool in working groups? Perhaps for the record, before we commence, you could introduce yourselves.

**Mr Coldrick:** Thank you, My Lord Chairman. My name is Steve Coldrick, I am head of HSE's Long Latency Health Risks Division.

**Mr Foster:** I am Robin Foster, Head of International Chemicals Unit, HSE.

**Mr Coldrick:** My Lord Chairman, this does not happen often, and if I may explain, it reflects actually the context. The potential for this piece of work coming forward has been around for some time, and obviously HSE has to make best use of the resources it has. To put it succinctly, that which we thought was the position as to when it was going to come forward turned out to be misplaced, and it came forward a lot quicker than we actually anticipated, in the context of the intelligence we had had at that time. So the position we were in was that in June, they announced this, so in the context that we had to move swiftly, given the speed at which the Presidency wanted to work at, what we did was a matter of a few weeks later issue a consultative document where we made use of the device of taking a proportionate amount of the figures in the impact assessment as a means of giving as much information as we could, but also in the consultative document did actually invite consultees to comment on what they thought about the figures in the impact assessment. In terms of their response, if this is helpful, My Lord Chairman, with regard to what they thought about the figures, whether they thought they were reasonable or otherwise, we received 45 responses. 20 thought they were reasonable, and 25 thought not. That tended to support our own views about the impact assessment in that sense, so the use we have made of the impact assessment firstly is in fact to help us get out as comprehensive a consultative document as possible, within the short time that we had. Secondly, to gauge the validity of the Commission's position and its

assumptions, and they were the two main purposes. In terms of the intention to use this impact assessment as a negotiating tool, absolutely not. It was a means of allowing us to get that initial position, and in the meantime, we wanted to gather our own data for an impact assessment, and it is that impact assessment, when that is complete, that will be the basis of our approach in terms of the negotiations. I do not know if there is any more you want to add to that?

**Mr Foster:** No, I think that is it. I mean, clearly we will use the Commission's impact assessment, sometimes to challenge them a little bit, but not overtly in the negotiations themselves typically. It might be of interest, My Lord Chairman, to know what happened in the Council Working Group in regard to the impact assessment. The Swedish Presidency invited comments, the UK submitted a six-page document, broadly critical of the impact assessment, but acknowledging all the work that had been done. Denmark submitted a one-page document broadly supportive of what the UK said, the Czech Republic submitted the usual pro forma, and that was it. When it came to discussing the impact assessment in the Council Working Group, this is the Environment Council, there was very limited discussion.

**Q79 Chairman:** So as you have advised us, this particular procedure, with this particular dossier, was unusual in the sense that there was great pressure of time. Could you help the Committee by indicating whether this was a one in 10 or a one in 20 example or occurrence of using the Commission's impact assessment for consultation in the UK?

**Mr Coldrick:** My Lord Chairman, I can only speak with some certainty in the context of the work of the Health and Safety Executive, I cannot really speak more widely across Government. Our recollection is that this was last used I think about ten years ago, that is the sense of how often this is done; ironically, with the Biocidal Products Directive, but you should not read any more into that, I think it was circumstantial rather than, if you might like, a cultural attitude. Our history is quite the reverse.

**Q80 Chairman:** If I could move to question two, looking back on the Commission's impact assessment, would anything have made it more useful on this particular dossier?

**Mr Coldrick:** Yes, My Lord Chairman, we could talk at length on this one, but I am going to confine myself to three points. The Commission's impact assessment: basically, in general terms, there is a lack of transparency about how some of their figures are estimated. Secondly, we have doubts about the credibility of some of the baseline assumptions from which cost savings are estimated, and perhaps if I can give you an example, some of them just do not seem realistic. For example, cost savings in data sharing are based on investments in animal testing of somewhere between €7 billion and €13 billion, which seems implausible when you consider that the total size of the market is around €1.5-3 billion per year. So there is an example of that. Then thirdly, although there is a mention of small and medium sized enterprises in some policy areas and examples of individual level impacts, there is not enough information to gain an overall picture of how small and medium sized enterprises will be affected by all policy areas, and so by the regulation as a whole. We have a document which we can submit which gives further particulars if my Lords would find that helpful.

**Q81 Chairman:** I think it would be very helpful, particularly in the preparation of the first draft of our report on Better Regulation which hopefully will arrive some time in January from the clerks. Perhaps I could move on to question three of which you have had notice: the progress of negotiations in the working groups on this particular dossier, you have alluded already in part to what is going on, do you think that the final impact assessment will be ready in time to influence those negotiations? That is the amendment coming from the Commission. Do you propose to use the United Kingdom's impact assessment as a means to discuss proposed UK amendments to the proposal itself?

**Mr Foster:** I am going to answer that, My Lord Chairman, as I am actively on the frontline of this. In fact, after this meeting, I go to St Pancras Station to catch the Eurostar for

a negotiating meeting in Brussels tomorrow on this biocides regulation as proposed by the Commission. So what is the state of play? The Swedish Presidency has picked up the proposal with enthusiasm, we have had about one meeting every three weeks or so, they have taken a very sensible thematic approach to looking at issues. Negotiations are still at a very early stage, I would say, but we have talked about Community authorisation, and with that low risk products; we have talked about treated materials and articles; we have talked about comparative assessment and exclusion criteria for active substances, in other words when should they not be allowed. The discussions, although still at an early stage, are working towards a policy debate at the end of December in the Environment Council. We envisage negotiations will continue through the Spanish Presidency at least, and well into 2010. So to answer your question, do you think the final impact assessment will be ready in time to influence the negotiations? Yes, we will have an impact assessment in final form by the end of February, but clearly, we will be in touch with the emerging outcomes before then, so it will be helpful to us in formulating our negotiating lines. Then the question: do you propose to use the UK IA as a means to discuss proposed UK amendments? We will certainly use it to formulate our amendments. Maybe this surprises your Lordships, I do not know, we will be rather cautious about deploying cost benefit assessment in the negotiating meetings themselves, and the reason for that is experience, which says that there are many Member States who will visibly recoil if the UK advances pure cost benefit arguments in the meetings themselves. So trying to be good negotiators, you do not use that sort of language. In short, My Lord Chairman, the currency of the debate in the Environment Council is very rarely cost benefit. The currency of the debate might be risk, proportionality, coherence, consistency, but very rarely direct cost benefit, and that is our experience.

**Q82 Chairman:** In your experience, is the United Kingdom in a very small minority in terms of looking at cost benefit?

**Mr Foster:** Yes, at least taking it as seriously as we do, because we do take it seriously, the UK certainly does, and I do not want anything I say to be interpreted otherwise, because we do take it seriously, but in the European context, the culture is very different. I have seen people recoil when we talk about things which imply monetisation of life, putting a value on life, or putting a value on animals or earthworms or any other parts. The biocides dossier is very interesting, in that it covers people, both the public and employees, and the environment in all its various forms.

**Mr Coldrick:** My Lord Chairman, if I may supplement to perhaps explain a little further, you may be aware that the basis of health and safety law has this concept of "so far as is reasonably practicable", which implicitly brings in costs. That is not a concept which is recognised in the rest of Europe, and indeed, we had a long argument, if I may summarise it that way, which came from our perspective to a successful conclusion that we were able to keep our concept of reasonable practicability as a test. So in that sense, that underlines the real difference in approach; so in that sense, one should not be surprised if the rest of our European partners have real difficulty with a concept they never use.

**Q83 Chairman:** That is very interesting, and I anticipate that that might well be something that we will look at very carefully in our report. Could I ask a final question, and then perhaps if any of my colleagues wish to follow up anything that you have said or add any questions, please may they do so. We note from Lord McKenzie's letter of 13 November that your consultation process has provided little hard evidence that might help inform the final impact assessment; we would be interested to know why this is so, and are there any other ways of gathering data in order to produce the final impact assessment?

**Mr Foster:** I will start off, My Lord Chairman. We elicited views from our stakeholders in two separate ways. We had a consultation exercise, and we had an open meeting of stakeholders, which was actually very positive and very useful, I chaired that. When it came

to the section on impact assessment, I was there really trying to encourage people, "Tell us what you think, give us information that we can use to improve it". Although they had been really helpful throughout the rest of the meeting, in contributing to issues about the biocides directive, we just could not enthuse them, they had very little to say. I have been thinking about this, I have no great insights really, but what I have been able to say so far, in my own mind at least, is the impact assessment is done for the UK as a whole, it is a high level document, it has to be, because when we look at cost and benefits, it is to the UK as a whole. But when you gather together individual duty holders, who are responsible for complying with the requirements of the law, in any of the 23 product types in the directive, it is very difficult to get them to relate to the UK impact assessment, because it appears very high level, and they cannot really see anything in there to get excited about. They may agree or not agree with the total figures, that is absolutely fine, it is just too high level. It is very difficult for them to relate to, notwithstanding our best efforts to elicit a response. It is too remote, I think. So that is the main reason that we can think, because our stakeholders, they have plenty to say on other things, there is no holding them back in other ways, but when it comes to inputting, as we would dearly like them to do, to help us refine the impact assessment, we find not very much comes forward. That is how it is.

**Chairman:** That is also another very useful insight into the whole process, and perhaps the example we have picked, which was timely for us, may not be typical of many of the dossiers that would pass through Whitehall.

**Q84 Lord Walpole:** There is just one thing I would like to ask: many years ago, I seem to remember there was a chemical directive, was there not?

**Mr Foster:** Are you talking about REACH?

**Mr Coldrick:** Chemicals agents directive.

**Q85 Lord Walpole:** A long time ago, was there not, which took all chemicals and said they had to be approved; do you remember that?

**Mr Foster:** REACH is talking about registering all chemicals for sure, but all chemicals approved, no, because approval is a very intensive process, where regulators get very much involved, so it is only reserved for things like pesticides and biocides or medicines.

**Q86 Lord Walpole:** No, I think that is probably the answer I wanted to hear actually, because one wondered how on earth they would ever work out what chemicals were safe to use, and that sort of thing.

**Mr Foster:** Absolutely, yes.

**Lord Walpole:** We started off by knowing that washing powders or washing detergents are not -- no one had ever done any work on them. They have now, of course, and I suspect several of them are biocides as well, which they jolly well should not be, at least I do not think they should be. That is only my opinion. No, I found this actually very interesting, My Lord Chairman, and I am adding to my knowledge.

**Lord Bradshaw:** I will just add that I am extremely sceptical about cost benefit analysis, I think it is deployed far too frequently in this country, it is a totally inexact science, and it depends on some very dubious econometrics, but I will leave it there.

**Q87 Chairman:** Well, it is interesting, there are passions that arise on the subject of Better Regulation, but unless my colleagues have further questions, any further pieces of advice or any additional points that you think would help us?

**Mr Coldrick:** My Lord Chairman, there is one, I am not certain just exactly whether it is totally germane, but I would think it would be remiss of me if I did not say this: one of the concerns that we are aware of are small and medium sized enterprises being caught up in this particular process. The progeny of this process was almost using the model that was applied

to pesticides; what characterises pesticides are usually large companies, large volume of products, but the same thinking and process was then applied to biocidal products, which I might summarise as being -- it is euphemistically described as a bit of a cottage industry, you are talking typically of smaller content. When you are talking about the need to assure people about the safety to either human health or to the environment, that requires data. Data costs, and I think one of the issues, which is inescapable, is that we can streamline as much as you like with some of our negotiating positions on being proportionate, you do not apply the same handle turning approach to low risk materials that you do to high risk materials, but nevertheless, data costs, and therefore it would be disingenuous of us to leave you with an impression that seeking to streamline this will then automatically enable small and medium sized enterprises to succeed in a regulated environment that requires a lot of data. So in that sense, it was just what I might describe, My Lord Chairman, as a reality check.

**Q88 Chairman:** Thank you for that cautionary statement, and I think you have, in this very brief session, helped us enormously to shed light on some of the practical problems of producing not only impact assessments but better regulation.

**Mr Foster:** I was going to add one thing, as my Lords are showing a keen interest, it complements what I was saying about the cultural and political aspects of value of life, or value of aspects of the environment; impact assessment is one part of a picture, and I recognise from what you say, sometimes the assumptions are heroic in doing impact assessments, but it is one part of the picture, and unless you have the whole picture in terms of regulating risks, whether it is from chemicals or indeed from anything else, it is always going to have a feeling of insufficiency. You have to have, as a regulator, a picture of where risks are so high that the chemical or activity has to be banned, and you have to have a view about the level of risk where regulators do not need to interfere any more, you back off, because the risks are acceptably low. So that you can apply, if you are going to apply, a cost benefit

assessment to the bit in between, because that is the only bit that it actually relates to. Of course, you have to be able to do this in the context of biocides for the people, public and the workers, and those levels will not necessarily be the same, and you have to be able to do it for the environment in all its diversity. So this is quite difficult. Now HSE, in terms of regulating risks at work, and to the public from work activities, has that sort of picture. The UK Government is working towards it, I would say. That framework does not exist at European level at all really, and to my mind, this is another reason why pure cost benefit considerations are difficult to input in European negotiations, because you do not have the rest of the framework of which cost benefit assessment is a part. I hope that was helpful, and sorry to delay.

**Chairman:** Yes, and of course it will depend on the dossier. There are some where that can be a crucial determinant, and others, as you have just indicated for me, HSE, where there are many other issues, some which cannot be objectively measured. Thank you very much, the session is closed.