



# **Business Perceptions of Environmental Legislation**



**A Response to UKELA's Interim Report on the Quality of  
UK Environmental Legislation**

Report by BRASS, with joint contribution from UKELA and King's College London

May 2012



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The final version of this report will be available free of charge on the UKELA website [www.ukela.org](http://www.ukela.org) (from 24th May 2012).

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## EXECUTIVE SUMMARY

This study follows and complements the UKELA 2011 Project by explicitly focusing on business perceptions of UK environmental legislation. The research was based on gathering both quantitative and qualitative data through an online survey and telephone interviews respectively.

The study captured perceptions of highly experienced persons representing both SMEs and large companies. It found that large companies educate smaller ones about environmental requirements through supply chain relationships.

### Main findings

**Over 70% of respondents agree that the quality of environmental legislation must be improved.**

**The ideal piece of legislation for interviewees would have to be 'clear'.**

### Perceptions of coherence of environmental legislation

For the majority of respondents environmental legislation lacks clarity, is not well structured and consists of conflicting concepts. Many respondents have problems in understanding key concepts in environmental legislation, which can be resolved to some extent by statutory guidance. The most cited legal issues posing problems of clarity were waste definitions and the recent developments concerning Carbon Reduction Strategies (CRS). Respondents have a fairly negative perception of guidance complementing environmental legislation.

### Perceptions of integration of environmental legislation

There is a need for consolidation stemming from earlier perceptions of the complexity and the lack of clarity in legislation. Large companies can deal with the problems of integration - smaller will struggle. There is too much 'red tape' in respondents work arising out of environmental legislation.

Respondents were critical as to the lack of uniformity in Environment Agency's handling similar issues in different regions of England and Wales.

Welsh Government was perceived to be more proactive in environmental matters by interviewees working in all UK jurisdictions.

### Perceptions of transparency of environmental legislation

The survey results suggest that there is the accessibility problem for business users as many of them do not know where to find environmental legislation. Over half do not know why and when environmental legislation is altered.

In contrast with the survey results interviewees did not report any major problems in accessing environmental legislation.

### Perceptions of environmental principles

The respondents take on board sustainable development, the polluter pays principle, the preventive principle, the rectification of pollution at source principle and the precautionary principle. Yet, majority never heard of principle of integration and the principle of inter-generational equity.

For some environmental legislation can hinder progress towards sustainability.

Organisations who embraced sustainable development principle and included into their culture are positive about long-term effects.

### Perceptions of government consultations

Majority of respondents are aware of the parliamentary processes involved in drafting and reviewing new environmental legislation. SMEs are less likely to receive invitations to take part in government consultations. Respondents who have taken part in government consultations rated their experience predominantly as average.

There are too many consultations taking place and respondents often perceive that they are ineffective in terms of consultation responses actually being taken into account or making any real difference.

## 1. Research background

### *Previous research*

1.1 This study (hereafter the UKELA Business Project) follows and complements a broader study conducted by the UK Environmental Law Association and King's College London on the state of UK environmental legislation in 2011 (hereafter the UKELA 2011 project). Initial findings for the UKELA 2011 project were published in an Interim Report.<sup>1</sup> The research for this UKELA business project builds on the Interim Report, capturing the business perceptions of UK environmental legislation through an online survey and telephone interviews. The final report for the UKELA 2011 project will be published in May 2012, and will be built on the Interim Report, this BRASS/UKELA business consultation report, and also an associated UKELA member consultation report.

1.2 The UKELA 2011 project reviewed the state of UK environmental legislation in 2011, isolating particular problems with regard to its quality. It focused specifically on the quality of environmental legislation while excluding issues concerning environmental governance such as compliance costs, policy outcomes or institutional matters. The assessment was made in terms of whether there are identifiable problems of lack of integration, coherence and transparency, and what the scrutinising methods are which seek these qualities in legislation. The report considered - if there are problems are they susceptible to reform or improvement? The report aimed to stimulate a broad debate about the state of UK environmental legislation in 2011 - a debate already emerging in the devolved administrations. The project covered the state of environmental legislation in all UK jurisdictions, that is England, Northern Ireland, Scotland and Wales. Given the extent of both primary and secondary environmental legislation, the UKELA 2011 project focused specifically on four areas of environmental law, namely: waste law, environmental permitting, environmental and habitats assessment (and its interaction with planning law), and the regulation of water quality and resources.

1.3 The UKELA 2011 project was subdivided into three main Strands:

- Strand 1 addressed effectiveness of environmental legislation within the four chosen areas. It addressed questions concerning 1) coherence; 2) integration and; 3) the transparency of legislation. The project found a number of examples suggesting that UK environmental legislation lacks coherence generating the potential for misunderstanding. Similarly, the project highlighted problems with the integration and transparency of UK environmental legislation.
- Strand 2 examined a potential role of environmental principles and their incorporation into UK environmental legislation or into UK law. The UKELA 2011 Project suggested that the incorporation of such principles into legislation could bring clarity to an otherwise complex array of environmental mechanisms. The project also discussed the potential problems that such incorporation could pose.
- Strand 3 focused on questions of legislative scrutiny and methods of legislative drafting. It also paid attention to the process of legislative consultations as part of the development of

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<sup>1</sup><http://www.ukela.org/content/page/2628/interim%20report%20for%20sending%20to%20members%203082011.pdf>

new legislation. The project highlighted instances of inadequate consultation of stakeholders.

1.4 The UKELA 2011 project included extensive desk research and 27 interviews with highly experienced respondents representing academia, professional lawyers, regulators, government, judiciary and NGOs. The project did not aim to capture perceptions from industry and business.

1.5 The current research follows and complements the UKELA 2011 Project by explicitly focusing on business perceptions of UK environmental legislation. A different methodology more suited to the business community was adopted. The research was based on gathering both quantitative and qualitative data through an online survey and telephone interviews respectively.

#### *Basic definitions*

1.6 This report will use the following terms:

- UK environmental legislation (or legislation) - understood in its broadest sense including Acts of Parliament and law made under powers conferred by Act of Parliament (delegated legislation);
- EU law - includes the Treaties of the European Union and all secondary EU legislation;
- Statutory guidance - understood in its broad sense including all guidance issued by statutory bodies in the UK, as required by statute or otherwise.



## 2. Methodology

### *Focus, timeframes and main questions*

2.1 The research sought to capture and document business views of UK environmental legislation. The survey was open, on-line for over two months (between December 2011 and February 2012) and the interviews were conducted in late January and at the beginning of February 2012. The survey attempted to gauge the extent to which business respondents actually use environmental legislation. An attempt was made to categorise businesses in accordance with their standard industrial classifications (SIC Codes) to gain a representative sample. The breakdown of the businesses consulted appears in Section 3 of this report.

The research questions mirror those of the UKELA 2011 project although two research questions were slightly different to those in that project because of the business focus. These are (e) and (f) in the box of research questions opposite.

**The study answered the following questions:**

- a) do businesses use environmental legislation when dealing with issues requiring knowledge of environmental legislation?
- b) is environmental legislation coherent for business users?
- c) is environmental legislation well integrated according to businesses?
- d) is environmental legislation transparent from the business viewpoint?
- e) do businesses take environmental principles into account when making decisions in their organisation?
- f) do businesses take part in government consultations regarding existing or forthcoming environmental legislation? ; and what is their experience with consultations?

### *Phase I - Online survey*

2.2 The online survey included 110 questions divided into six sections. The survey was hosted by *Bristol Online Surveys* - a common tool for conducting such research because it ensures that data remains confidential and secure. The respondents were given an option to complete the survey over more than one session if pressed for time. The survey included mandatory questions which a respondent must answer in order to complete the survey. It also included optional questions that respondents could omit.

2.3 The online survey was designed in such a way to make it as easy as possible for non-lawyers to complete. The research Team decided not to use overly technical and legal language. Before starting completing the surveys the respondents were prompted to read information about the origins of the survey, the purpose of the research and its limitations concerning the chosen areas of environmental legislation. However, they were invited to complete the survey even if they worked any area of legislation. The following structure was entrenched into the online survey:

**Table 1 Structure of the online survey**

Section title	Purpose
<b>About you and your organisation</b> <b>Your Views on Environmental Law</b>	to measure the respondent's role to capture the initial views on whether there is a need for improving the quality and/or reducing the amount of environmental legislation
<b>Your work with environmental law</b>	to capture the extent to which business respondents actually use environmental legislation when dealing with regulatory matters
<b>Your perception of environmental law</b>	to capture the views concerning coherence, integration and transparency of environmental legislation in line with the UKELA 2011 Project
<b>Specific environmental principles</b>	to capture the extent to which business respondents take environmental principles into account when making decisions
<b>Making and Influencing Environmental Law</b>	to capture views on government consultations on existing or forthcoming environmental legislation

*Respondents*

2.4 An invitation email was addressed to more than a thousand business users responsible for implementing environmental policies and laws in their organisation.

2.5 The survey population included environmental managers, environment and health and safety managers, procurement managers, sustainable development managers and others responsible for implementing environmental laws and policies. Yet, in practice many smaller organisations do not have assigned environmental responsibilities in this way so that the survey was also completed by company directors or persons responsible, for example, for waste policy within the organisation.

2.6 The survey was completed by one trust which helps communities buying land for sustainable business purposes. In total, the online survey was completed by 38 respondents representing all UK jurisdictions.

**The online survey was followed by qualitative telephone interviews with 13 respondents**

*Phase II - Telephone interviews*

2.7 At the end of the online survey the respondents were asked whether the Research Team could contact them to arrange further research. The respondents were prompted to leave their email address or telephone number. Out of 38 survey respondents the Research Team managed to interview 12 individuals by telephone as a result of this contact. Moreover, one additional interview was performed with a manager who missed the deadline for completing the survey raising the overall number of interviews to 13.

2.8 Telephone interviews were based upon a semi-structured interview guide consisting largely open-ended questions. The interviews gave an opportunity to explore in greater depth some of the matters in the online survey. Most of the interviews lasted approximately 40 minutes.

*Analysis and presentation*

2.9 The online survey was imported into the SPSS statistical package, which offers a reliable method of statistical analysis. For the purpose of this study it was sufficient to use descriptive statistics and cross-tabulation.

2.10. The presentation involved exporting outputs from SPSS to Excel since the latter offers better visual tools for data presentation. The structure of this Report follows largely the structure of the UKELA 2011 Project thus presenting the data on 1) business use of environmental legislation; 2) coherence; 3) integration; 4) transparency; 5) environmental principles; and 6) consultations.

2.11. Each section of this report will present the results of the quantitative analysis followed by examples from the in-depth telephone interviews. We give voice to business in this Report by supporting analysis with extended quotations.

### 3. Representation

#### Industry sectors

3.1 Table 2 contains a breakdown of the industry sector from which the 38 survey respondents were drawn. It was difficult to draw survey returns from sectors in a representative manner as certain companies work across a number of sectors. Manufacturing was overrepresented (7, 18.4 percent) but included a range of companies involved in producing different products such as chemicals, basic metals, pharmaceutical products, refined petroleum and petrochemicals. Further, the survey included considerable representation from business consultants (6, 15.8 percent) involved also in a variety of activities such as engineering, architecture, marine activities, water regulation advisory and transport. Further, 4 construction companies (10.5 percent) were predominantly engaged in property construction save for one involved in infrastructure development. Lastly, there were 3 companies (7.9 percent) classified under the "Water supply, sewerage, waste management and remediation activities" code. The group included two businesses engaged *sensu stricte* in waste management and one in water supply. Given the above more than half of surveyed entities (20) were engaged in resource intensive activities or processes that engage environmental regulation to a significant extent.

**Table 2 Representation according to SIC codes**

Sic Code	Count	Percent
Agriculture, Forestry and Fishing	1	2.6
Mining and Quarrying	1	2.6
Manufacturing	7	18.4
Water supply, sewerage, waste management and remediation activities	3	7.9
Construction	4	10.5
Wholesale and retail trade	2	5.3
Transportation and storage	2	5.3
Information and communication	1	2.6
Financial and insurance activities	1	2.6
Professional, scientific and technical activities (business consultants)	6	15.8
Administrative and support service activities	1	2.6
Education	1	2.6
Arts, entertainment and recreation	1	2.6
Other service activities (Industry associations)	5	13.1
Other	2	5.3
Total	38	

3.2 The survey captured also views of 5 (13.1 percent) industry associations representing the following sectors: aviation, chemical industry, farming, quarrying and waste.

3.3 In addition, the Research Team performed one telephone interview with a representative of a support services/construction company, which did not take part in the survey due to time constraints.

*Size of the organisation*

3.4 Respondents were asked to indicate the size of the organisation in terms of the number of employees. Table 3 below shows that the majority of respondents (20, 52.6 percent) worked in a large organisation employing over 250 employees. The second largest group of respondents (10, 26.3 percent) worked in a micro organisation employing up to 10 employees.

3.5 There are various definitions of Small, Medium and Large Enterprises. In the UK, for example, for general statistical purpose "a small company is one that has a turnover of not more than £6.5 million, a balance sheet total of not more than £3.26 million and not more than 50 employees. A medium-sized company has a turnover of not more than £25.9 million, a balance sheet total of not more than £12.9 million and not more than 250 employees"<sup>2</sup>. In 2009 Small and Medium Enterprises (hereafter SMEs) "together accounted for 99.9 per cent of all enterprises"<sup>3</sup>.

**Table 3 Size of an organisation according to the number of employees**

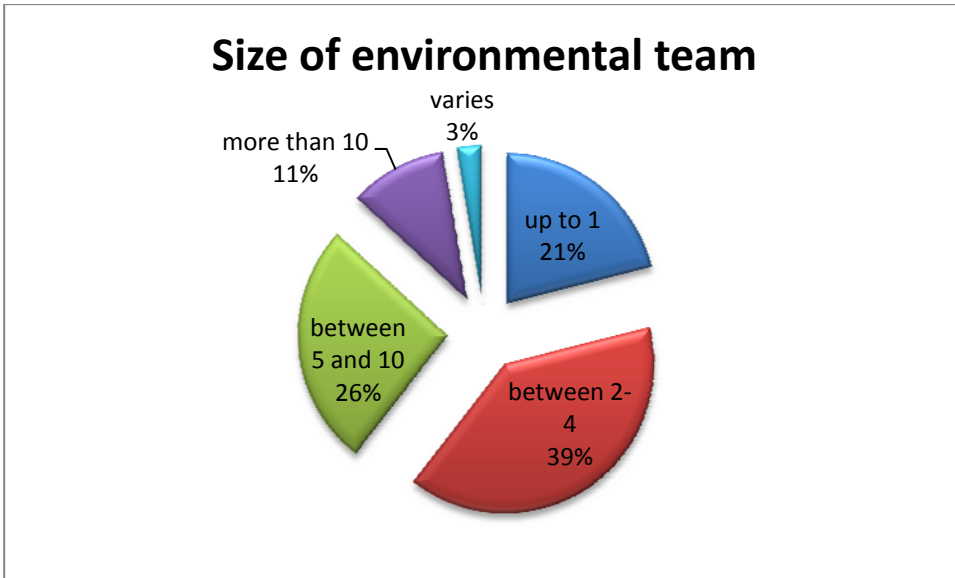
Number of employees	Count	Percent
1-9	10	26.3
10-29	1	2.6
30-49	1	2.6
50-99	3	7.9
100-250	3	7.9
Over 250	20	52.6

3.6 The findings of the study more strongly represent the views of large companies because of the sample of the survey returns (see Table 3). This may stem from the fact that the online survey was specifically addressed to persons responsible for implementation of environmental law and policies in their organisations. The large companies can afford to have such specialist posts whereas SMEs may assign such responsibilities to other employees.

3.7 As the survey sought informed views on legislation, many respondents worked in larger environmental teams. Eight respondents (21 percent) worked in a team employing up to 1 additional employee whereas most of respondents (15, 39 percent) worked in a fairly small team employing between 2-4 employees.

<sup>2</sup> <http://www.lib.strath.ac.uk/busweb/guides/smedefine.htm>

<sup>3</sup> <http://webarchive.nationalarchives.gov.uk/+/http://stats.bis.gov.uk/ed/sme/>



**Figure 1 Size of Environmental Team**

*UK jurisdictions*

3.8 Nearly half of the businesses responding (17, 44,7 percent) operate in all UK jurisdictions. A majority of businesses operate in England (22, 57.9 percent and are engaged in working with EU law (21, 55.2 percent). A minority of businesses (8, 21 percent) operate in Northern Ireland.

**Table 4 UK jurisdictions**

UK jurisdiction	Count	Valid Percent
England	22	57.9
Wales	15	39.5
Scotland	14	36.8
Northern Ireland	8	21
All UK jurisdictions	17	44.7
EU law	21	55.2
International law	10	26.3

*Respondents*

3.9 The survey, although open to all businesses, tended to attract highly experienced profiles. Table 5 below shows that there were only 8 respondents (21 percent) with less than 5 years of experience in dealing with environmental matters and 24 (63 percent) had 11 or more years of experience. This is reflected, perhaps, in terms of age with the majority of respondents (24, 63 percent) in the age bracket between 40 and 59.

**Table 5 Age and experience of the respondents**

Age	Years of experience					Total
	less than 2 years	2-5 years	6-10 years	11-20 years	over 21 years	
<b>below 30</b>	0	2	0	0	0	2
<b>30-39</b>	1	2	3	1	0	7
<b>40-49</b>	0	2	1	7	4	14
<b>50-59</b>	0	1	1	2	6	10
<b>over 60</b>	0	0	1	0	4	5
<b>Total</b>	1	7	6	10	14	38

3.10 The overwhelming majority of respondents had an educational background which did not include legal education (34, 90 percent). However, the legal background of 4 respondents did include a law degree (such as LLM or BA in Law).

3.11 Table 6 below shows that most common educational background was in Environmental/Natural Sciences (14, 44.1 percent) or Engineering (10, 29.4 percent). There were 6 respondents who declared other educational background that included 'arts', 'architecture', 'veterinary medicine' and 'the university life'. Some of the respondents declared more than one educational background (hence the overall count of 42).

**Table 6 Educational background of non-lawyers (34)**

Educational background	Count	Valid percent
<b>Environmental/Natural Science</b>	15	44.1
<b>Health/Medicine</b>	1	2.9
<b>Engineering</b>	10	29.4
<b>Chemistry</b>	2	5.9
<b>Business (eg. MBA)</b>	2	5.9
<b>Social science</b>	5	14.7
<b>Humanities</b>	1	2.9
<b>Other</b>	6	17.6
<b>Total</b>	42	

3.12 The survey also asked the non-lawyers to say whether or not they had completed any training in UK or EU law. The majority of respondents without a background in law had completed neither any training in UK law (21, 61.8 percent) nor in EU law (25, 73.5 percent).

**Representation: Main Survey Findings**

**The study captured perceptions of highly experienced persons working in the business environment.**

**Many respondents worked for companies engaged in resource intensive activities or processes that engage environmental regulation to a significant extent.**

**The overwhelming majority of respondents neither held a legal degree nor had completed any training on UK or EU law.**

**Telephone interviews:**

**Profiles of the respondents who took part in the telephone interviews can be found in Annex 1. Overall, the Research Team interviewed highly experienced managers representing both SMEs and large companies from a range of economic activities.**



## 4. How respondents work with environmental law and legislation

4.1 This section will review findings prompted by the research question on whether or not the business users actually work with environmental legislation when making decisions in their organisation. As the majority of respondents had not been trained in UK and EU law, our working hypothesis was that most of the respondents would not directly work with primary legal sources.

### Survey results

4.2 Figure 2 below indicates the frequency with which the respondents deal with the following types of environmental law: UK legislation, UK court cases, statutory guidance, EU law and international law. Figure 2 shows that half of the respondents work with UK legislation frequently or very frequently. Additionally, 12 respondents (31.6%) work with legislation occasionally. Only 3 respondents (7.9%) never work with legislation. The work with legislation is complemented by a reliance on statutory guidance. Yet, some users decided not to rely more frequently on guidance rather than on legislation. The majority of users work rarely, very rarely or never with UK court cases (22, 57.9 percent) or with international law (24, 63.2 percent).

4.3 The survey asked respondents how frequently they dealt with various types and sources of environmental information. Given the variety of such categories it is sufficient to highlight that the majority of respondents work frequently and very frequently with newsletters and guidance issued by trade associations or other organisations (28, 73.7 percent) and with guidance issued by their organisation (26, 68.4 percent).

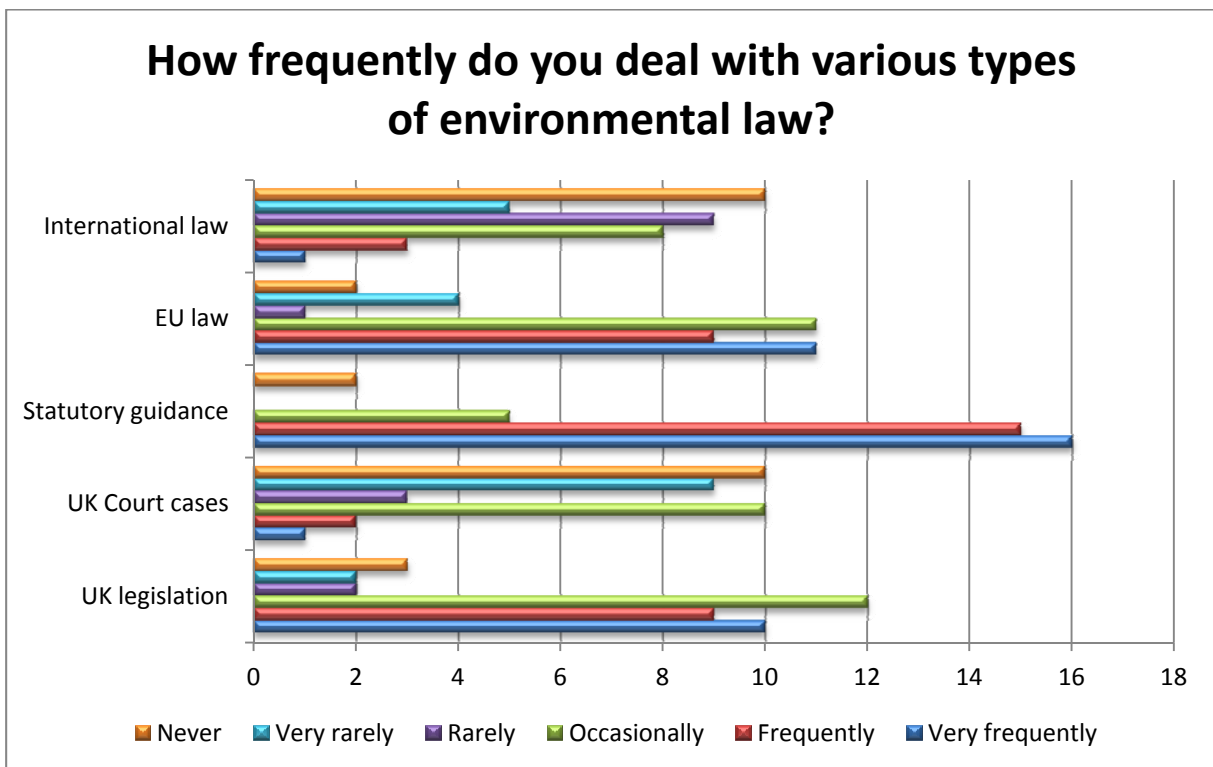


Figure 2 Respondents' work with various types of environmental law

4.4 Figure 3 below indicates that respondents very frequently or frequently deal with newsletters and guidance issued by trade association or other organisations (28, 73.7 percent) and guidance issued by respondents' organisation (26, 68.4 percent), information from specialist free databases (17, 44.7 percent) and attend specialist training meetings and conferences (12, 31.6 percent). Nearly half of the respondents (18, 47.4 percent) rely rarely or very rarely on lawyers from outside organisations though 12 (31.6 percent) do so occasionally. The respondents' reliance on in-house lawyers was fairly low as 42.1 percent of respondents (16) did not consult an in-house lawyer.

4.5 Respondents were also asked how frequently they accessed environmental legislation from online databases and whether they have problems getting up-to-date information from these websites. The survey focused on a variety of online sources of environmental legislation including: Legislation.gov website, NetRegs website, statutory bodies' websites (such as Environment Agency), law subscription services (such as LexisNexis Library) and Business Link.

4.6 The majority of respondents claimed to access environmental legislation or frequently and frequently from statutory bodies' websites (21, 55.3 percent). A further 12 respondents (31.6 percent) claimed to visit such websites occasionally to view environmental legislation. Further, Legislation.gov and NetRegs websites were most frequently or frequently visited by 14 (36.8 percent) or 12 (31.6 percent) respondents respectively.

4.7 Law subscription services were not used as a source of environmental legislation by 23 (60.5 percent) of respondents. Although, a substantial number of respondents (15, 39.5 percent) visit Business Link occasionally or rarely, 15 (39.5 percent) of respondents made no use of this.

4.8 In the survey, 13 respondents (34.2 percent) reported difficulty in getting up-to-date information from the websites of statutory bodies. Figure 3 below indicates that half of those who use such websites most frequently and nearly half of those who use them frequently reported that they had problems.

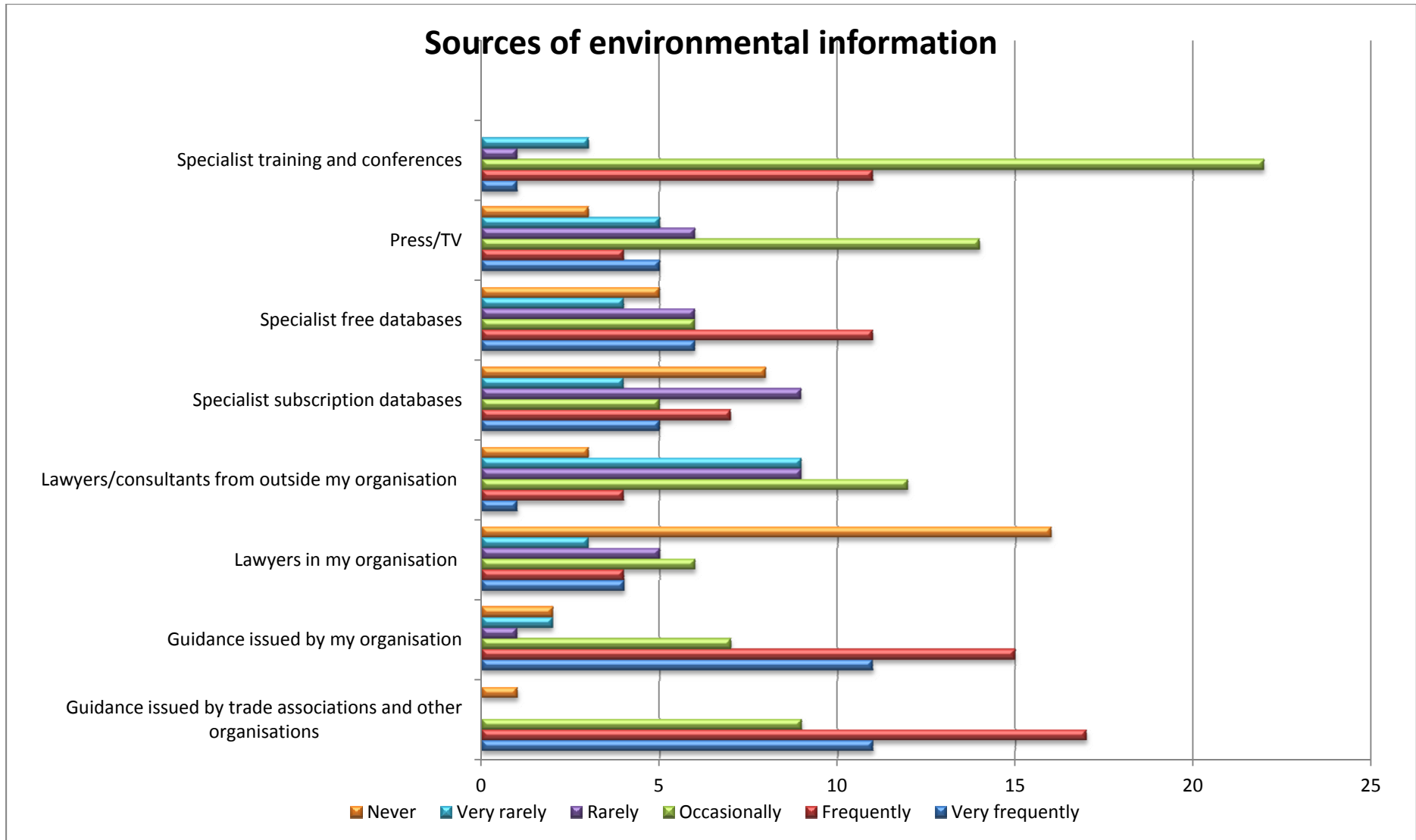


Figure 3 Sources of environmental information

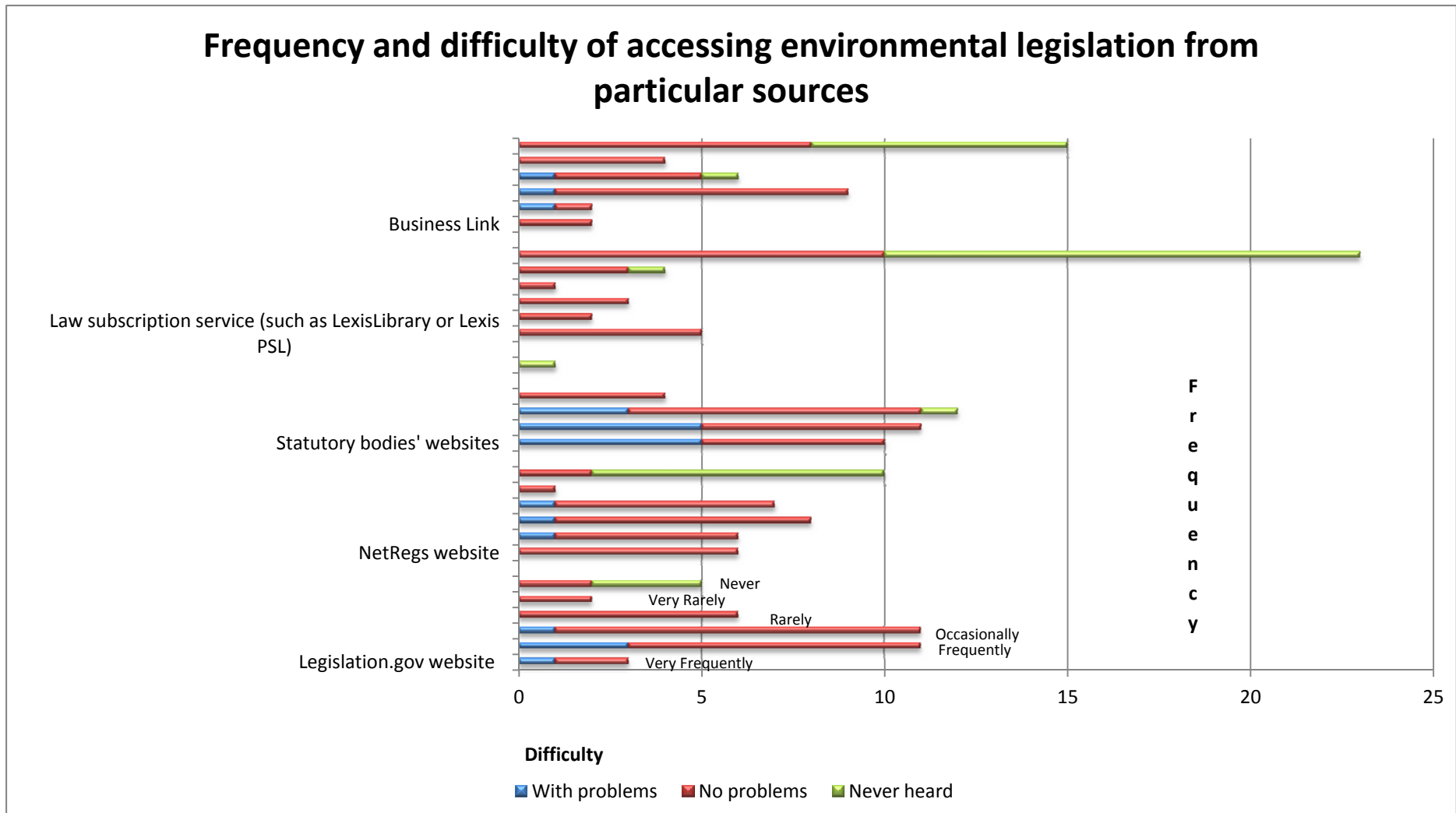


Figure 4 Frequency and difficulty of accessing environmental legislation from online sources

### *Telephone interviews*

4.9 The follow up interviews explored the survey finding that most respondents work with legislation. This time respondents were not asked explicitly to answer whether or not they worked with legislation. They were asked to answer the two following open-ended questions:

- Could you please describe a day of your work during which you deal with a matter that requires some knowledge of environmental legislation?
- If a new environmental requirement came along how would you find out about it? Do you actively seek out new legislative developments relevant to your organisation and its operation?

4.10 The analysis of the transcripts suggests that interviewees do not work directly with legislation or any other primary source of law even when working on a matter that requires some knowledge of environmental legislation. A minority of interviewees would access legislation directly. The majority of respondents are concerned with ensuring organisational compliance with environmental legislation though without checking its content on a regular basis:

"I would only read original legislation if it I was on a really crucial issue. I tend to rely on guidance that's coming from the government" Interviewee 24

One interviewee does "not bother" (Interviewee 26) to read legislation whereas another expressed their approach in the following manner:

"We'd be desperate if we had to read legislation up-front" (Interviewee 18)

Another interviewee representing SMEs admitted that they read legislative provisions indirectly by dealing with waste notices:

"It can be quite hard to read [*legislative provisions on waste notices* ] and in some respects that's the closest that I get to actually reading legislation I think when I read the documentation that those companies produce" Interviewee 23 [*explanation added*]

4.11 In terms of the second question concerning knowledge of new environmental requirements, none of the respondents mentioned that they would look directly at legislation to review a new provision. Some respondents admitted that they "would probably wouldn't..." (Interviewees 23 and 28) find out about new requirements until contravention was revealed or information came from an external source. A majority of respondents would rely on information about new legal developments from trade associations, newsletters, databases and the "grapevine". (Interviewee 23)

4.12 The interviews revealed a pattern whereby respondents working for large organisations would rely on advance information from the government or statutory bodies:

"We'd probably normally already be aware because of our relationship and contacts with DEFRA and Environment Agency" (Interviewee 21)

4.13 Further, respondents from the smaller companies admitted that they would learn from the larger firms in the supply chain about environmental requirements under legislation:

"But also suppliers [*which are bigger than us*] are quite good in giving you that kind of information because if they're producing product that you're purchasing from them and there're going to be changes in environmental law, you tend to find that there is some good commercial reason for them informing you about that change" Interviewee 23 [*explanations added*]

The representatives from the larger companies confirmed that, often, they would pass information about new requirements onto their suppliers from the SMEs:

"[w]e do a lot of work with our supply chain on environmental management systems; we have a programme they come to learn to us about legislation and we know [...] they [*SMEs*] don't understand the waste regulations and they [*SMEs*] don't understand planning regulations. Not necessarily that they are breaking the law but they don't understand their responsibilities [...] and we have that issue time and time again..." (Interviewee 19, explanations added)

Another respondent representing a large water company responded in a similar fashion to a question whether SMEs could unintentionally breach UK environmental legislation:

"Absolutely, absolutely and I'm sure that they [*SMEs*] sometimes [...] do things they think they are complying and they're doing for the right reasons [...] Yes, and we provide support and advice to them" [*SMEs*] (Interviewee 21, explanation added)

4.14 The telephone interviews' results appear to be in conflict with the survey results where half of respondents declared that they worked with environmental legislation very frequently or frequently<sup>4</sup>. The mismatch might stem from the different forms of data gathering. Yet, the qualitative analysis underpinned with the above quotations seems to suggest that businesses access certain provisions of environmental legislation indirectly - through suppliers, newsletters, databases, guidance. In this way the respondents do not frequently read the actual legislation to resolve their problems.

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<sup>4</sup> see section 4.2 above

### **Question A: Respondents Modi Operandi**

#### **Main Survey Findings:**

- **Most respondents work with UK environmental legislation and statutory guidance**
- **Many respondents deal with EU law**
- **Non-statutory newsletters and guidance are most frequently accessed sources of environmental information**
- **Respondents most often use statutory bodies' websites to access environmental legislation but**
- **Statutory bodies' websites are said to be difficult in terms of access**

#### **Interview findings:**

- **When interviewed respondents rarely refer to accessing legislation or other sources of law directly**
- **Respondents heavily rely on free sources of environmental law from trade associations and statutory bodies**
- **Large companies educate smaller ones about environmental requirements through supply chain relationships**

## 5. Coherence of environmental legislation

5.1 This section addresses the research question business respondents view environmental legislation as coherent. Coherence was defined in the UKELA 2011 Project to include the following questions:

- Are the provisions well drafted? If not, why not?
- Is the legislation organised in such a way as to make it comprehensible?
- What has been the effect of consolidation and amendment?
- Is there a perceived or real lack of understanding of key provisions? Has there been any relevant litigation, and has this added clarity?
- Is there adequate guidance as to important terms?

### *Survey results*

5.2 Figure 5 below shows that environmental legislation is not considered to be well-drafted by 18 (47.4 percent) of respondents. Only 2 respondents (5.3 percent) expressed the opposite view and a further 18 (47.4 percent) neither agreed nor disagreed with the statement that environmental legislation was well-drafted. This is consistent with earlier findings that many respondents did not read legislation in its original form. Further, environmental legislation was thought to be not well-structured by 23 respondents (60.5 percent) and there were only 3 respondents (7.9 percent) that expressed the opposite viewpoint. Here, too, a significant number of respondents who neither agreed nor disagreed with the proposition that environmental legislation was well structured.

5.3 For 25 respondents (65.8 percent) environmental legislation lacks clarity; for 18 respondents (47.4 percent) environmental legislation lacks explanatory detail; for 21 respondents (55.3 percent) it consists of conflicting concepts; and for 13 respondents (34.2 percent) environmental legislation is too technical. Overall, according to the vast majority of respondents (29, 76.3 percent) environmental legislation needs to be simplified.

5.4 When asked the question, as Figure 5 below indicates, 16 respondents (42.1 percent) felt that environmental legislation is not complemented with adequate guidance. However, there was a large number of respondents (17, 45.9 percent) which neither agreed nor disagreed.

5.5 The survey sought respondents' perceptions as to whether they felt that they struggled to understand key concepts in environmental legislation and whether statutory guidance assisted them by providing clarifications. Figure 6 below indicates that 15 respondents (39.5 percent) had problems in understanding key concepts in environmental legislation. For the majority of respondents (24, 63.2 percent) statutory guidance adequately resolved such ambiguities.



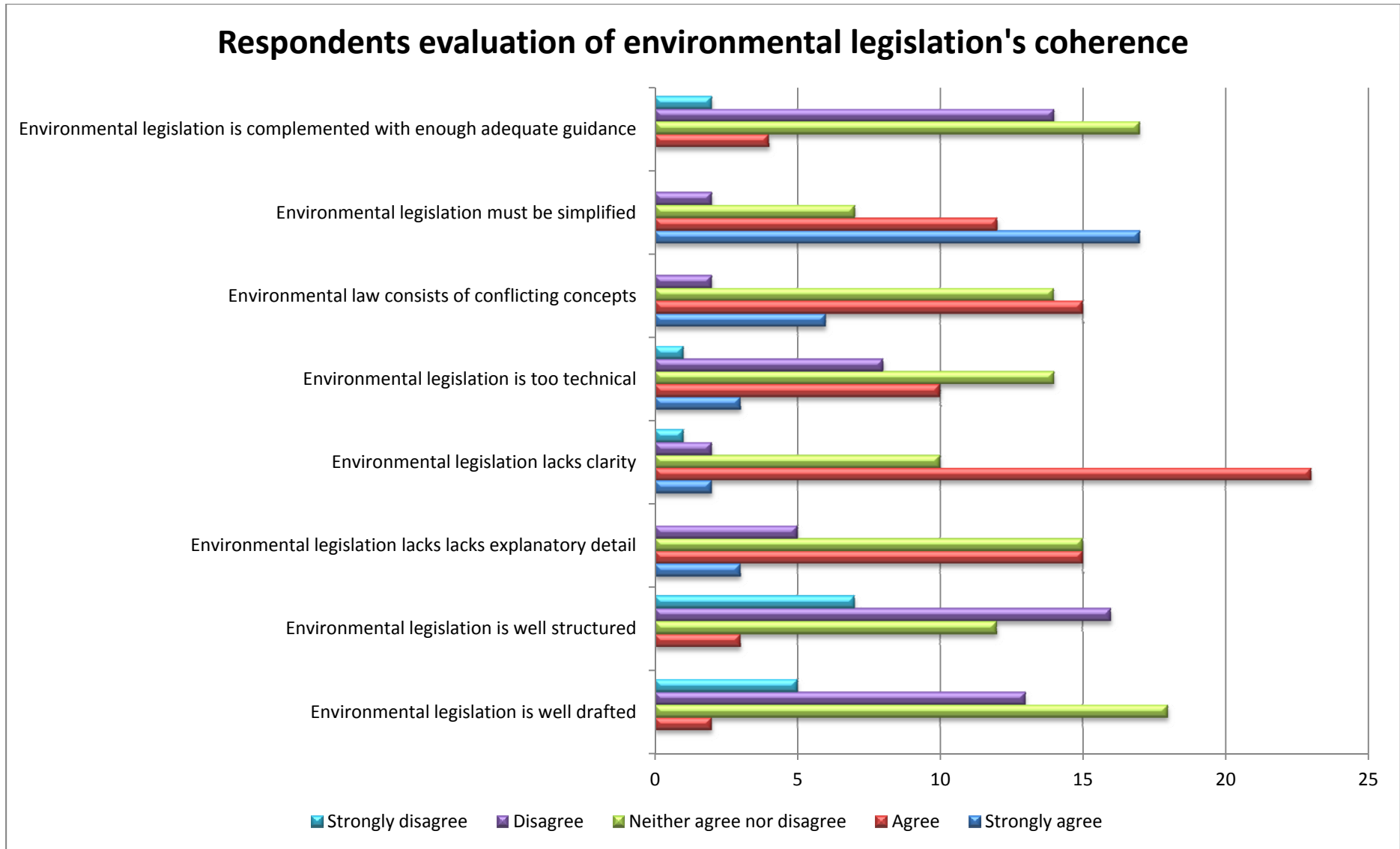


Figure 5 Coherence of environmental legislation

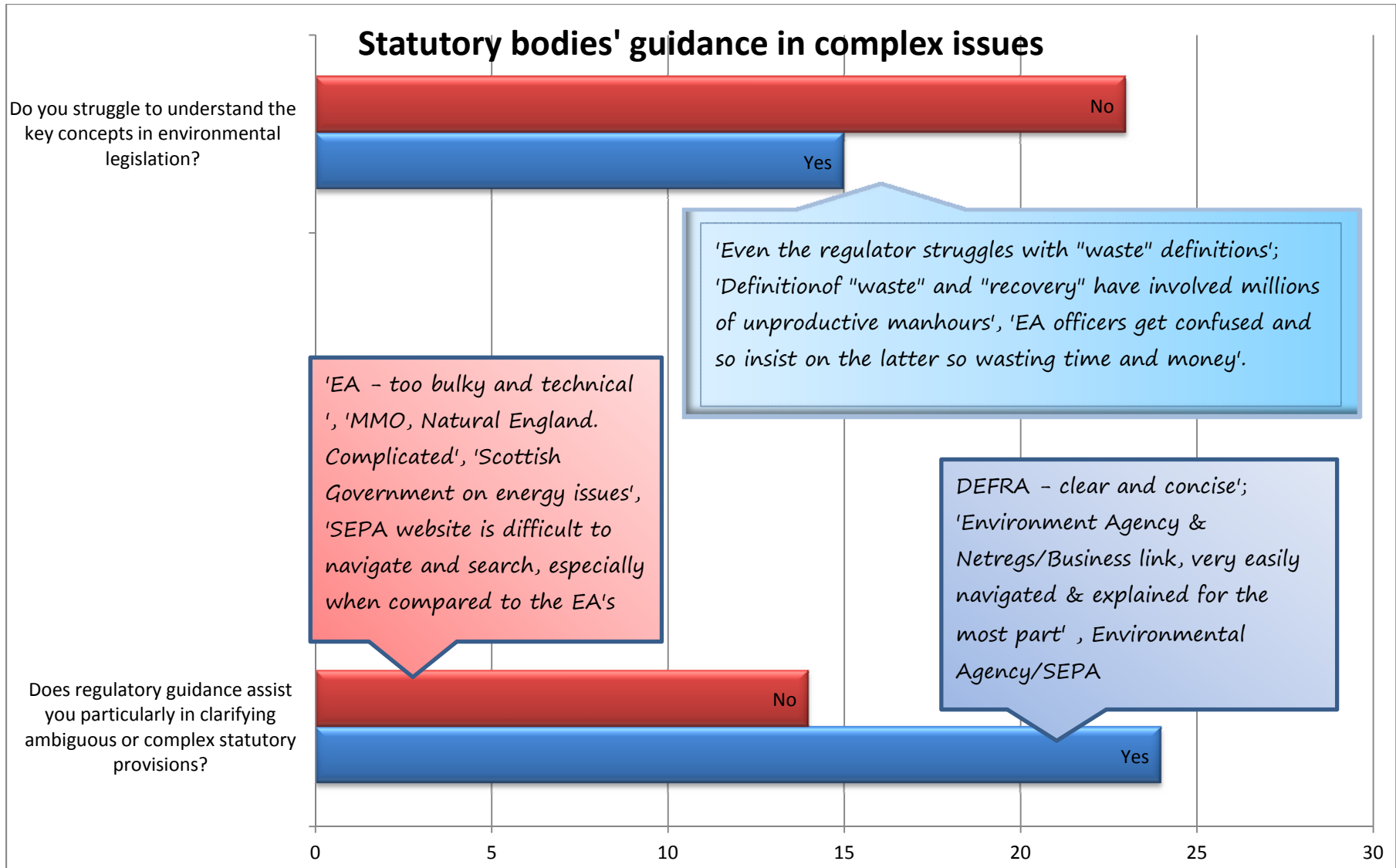


Figure 6 Statutory bodies' guidance in complex issues

*Telephone interviews*

5.6 The following questions were asked during interviews:

- Do you think that the quality of environmental legislation should be improved?
- And amount of environmental legislation reduced?
- Which one critical improvement would you identify?
- What are the other improvements that you would suggest?

The discussion about the potential improvements led the Team to focus questions on specific topics concerning coherence and integration as found in the survey . Additionally, the Team asked the following question:

- What should the ideal piece of environmental legislation look like for you?

5.7 The analysis of the transcripts confirmed the main survey finding that, for the majority of respondents, environmental legislation lacks clarity. This was the single most stated reason for concerns about the coherence of environmental legislation. The lack of clarity stems from the complexity of environmental legislation and, for some respondents, from conflicting and technical provisions.

5.8 A lack of clarity in UK environmental legislation was repeatedly reported to affect the respondents' businesses. The clarity problem was said to be leading to uncertainty, wasted time and financial downsides, and problems of communication within the commercial arena. This appeared to be out of step with cultures in the business organisations:

- ✓ "Yes, it's the uncertainty, it's the uncertainty and we're not being able to move forward and possibly not being able to agree what the required solutions are. And it takes us a lot of time, in discussion and negotiation, which could be better spent in actually delivering things". (Interviewee 21)
- ✓ "So I can understand it but when then I have to try and translate it to finance manager or retail manager [...] they just don't get it!" (Interviewee 22)
- ✓ "We talk in our organisation just keep it simple: the simpler the better the most straightforward the better. (Interviewee 22)
- ✓ [In relation to misunderstanding of legislation] "I suppose, from our point of view, is kind of working quite harder making the legislation to work for us rather than the other way round" (Interviewee 19)
- ✓ "It makes it very hard for our design team" (Interviewee 19)

5.9 The single most cited legal issue posing problems of clarity were waste definitions and the recent developments concerning Carbon Reduction Strategies (CRS). The majority of respondents working in such sectors as construction, engineering, quarrying, transport and support services would be dealing with waste regulation. The lack of clarity in relation to waste definitions presents

problems for both large and small companies. SMEs, as the previous section of this report highlighted, draw information from other organisations in the supply chain: In the case of waste, this was true for the waste chain:

"The major one [*the issue with waste*] when you've got what's called 'general waste' [...] I have to be careful what's going into that bin [...] It's quite hard because some of the language that waste disposal companies use to describe different types of waste - you have to ring them up occasionally and ask them to define more clearly what they're saying and when you get those waste notices through you can tell that each line is kind of legislatively phrased so they are obviously covering their backs in respect to legislation" Interviewee 23 [*explanations added*]

5.10 One interviewee representing a large water company highlighted a problem of definitions, which affects businesses:

"In the Water Framework Directive there are two exemptions [...]. Now, one of them is called The Technical Feasibility Test and the other one is called The Disproportionate Cost Test. They're not defined in the directive and they're not defined in DEFRA's guidance to Environment Agency on how to implement the Directive. So, and it's not just the water industry, I think that there're industries at large that are affected by the Water Framework Directive. We have an opinion on what technical feasibility and disproportionate costing means but the regulators don't necessarily agree with our interpretation of that; only because there is no guidance from government we end up disagreeing and spending a lot of the time discussing whether a particular action should go ahead or not because if it is possible and feasible for it to actually be done." Interviewee 21

5.11 Further, the analysis of the transcripts revealed a fairly negative perception of guidance complementing environmental legislation. The main reason for such a perception is the overly technical and legalistic language. One interviewee highlighted the issue of delay in issuing guidance:

- ✓ "Some of it does [*help in understanding environmental legislation*] some of it is confusing ; it [*guidance*] does it come out I suppose hand in hand with the legislation [...] it takes a while to get through the system or it takes a while to be fed out into the industry man [...] you can be waiting sometime for something that is actually quite practical to use so you kind of modelling through yourself on your own [...] before you can get something **definite** from somebody else " Interviewee 19 [*explanations added; emphasis original*]
- ✓ "I often think they [*guidance*] are not very well written" Interviewee 18 [*explanation added*]
- ✓ "Guidance does help sometimes; quite often it isn't written in plain English" Interviewee 16
- ✓ "I think that [*official guidance's*] language could be improved" Interviewee 14 [*explanation added*]

5.12. The ideal piece of legislation for respondents would have to be 'clear'. The clarity would stem from plain and concise language and possibility for 'digesting' it fairly quickly (especially for smaller

organisations). Many respondents who read legislation saw the need for including clear definitions and objectives at the beginning of a piece of legislation. A representative from a small organisation summarises it well:

*[there is a need for]* "a clear summary at the front and also the legislation should state its objective because so often masses are getting confused what the objective [...] you [*the lawmakers*] move away from the intention and you tied up with pedantry of the statute [...] intention should be there as an of umbrella statement [...] what you really want to achieve with this legislation" Interviewee 28 [*explanations added*]

## **Question B: Coherence of environmental legislation**

### **Main Survey Findings:**

- **Respondents' perceptions of the UK environmental legislation is largely negative**
- **Vast majority wish the legislation was simplified**
- **For the majority of respondents environmental legislation lacks clarity, is not well structured and consists of conflicting concepts**
- **Many respondents have problems in understanding key concepts in environmental legislation resolved to some extent by statutory guidance**

### **Interview findings:**

- **Lack of clarity was the single most stated reason for concerns about the coherence of environmental legislation**
- **Most cited legal issues posing problems of clarity were waste definitions and the recent developments concerning Carbon Reduction Strategies (CRS)**
- **Respondents have fairly negative perception of guidance complementing environmental legislation**
- **The ideal piece of legislation for respondents would have to be 'clear'**

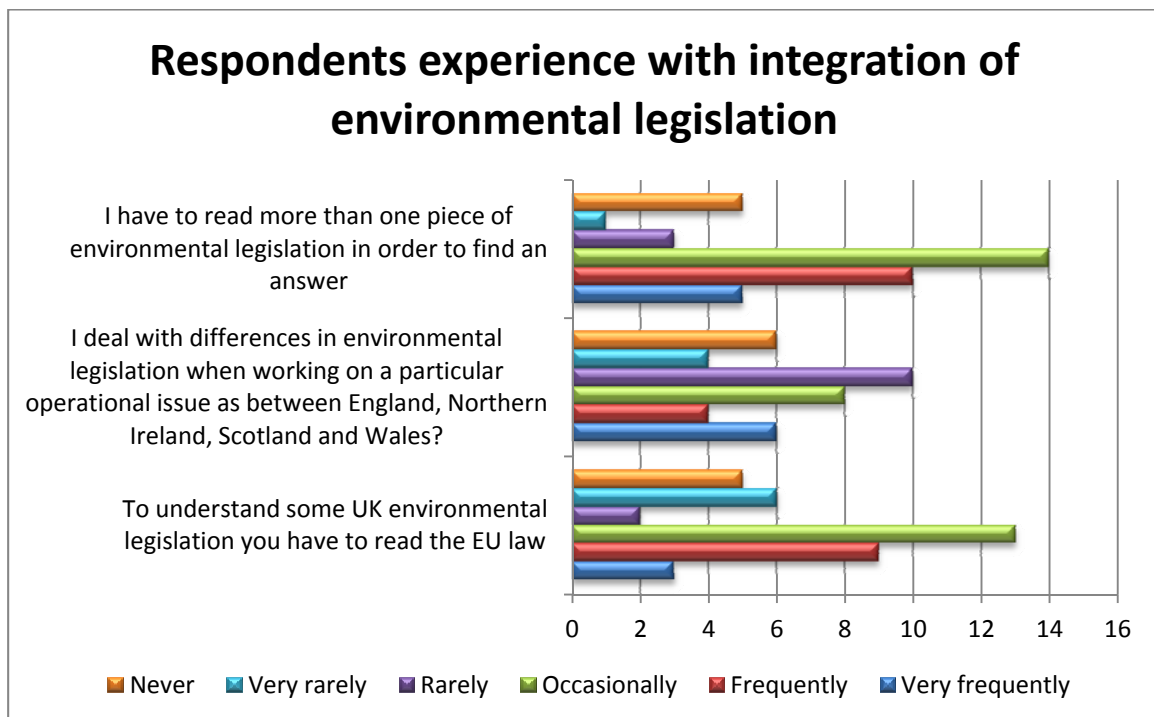
## 6. Integration of environmental legislation

6.1 This section addresses the research question of whether or not environmental legislation is well integrated in the view of business respondents. Integration was defined in the UKELA 2011 Project to include the following questions:

- Do separate laws cover the same area? Could they be consolidated? Or are they working at cross-purposes?
- Are responsibilities shared across a range of administrative bodies? With what effect?
- What has been the effect of devolution (including Scotland, Wales and Northern Ireland)?
- Does the legislation acknowledge the inter-relationship of environmental media?

The current research attempts to answer the above questions from business point of view.

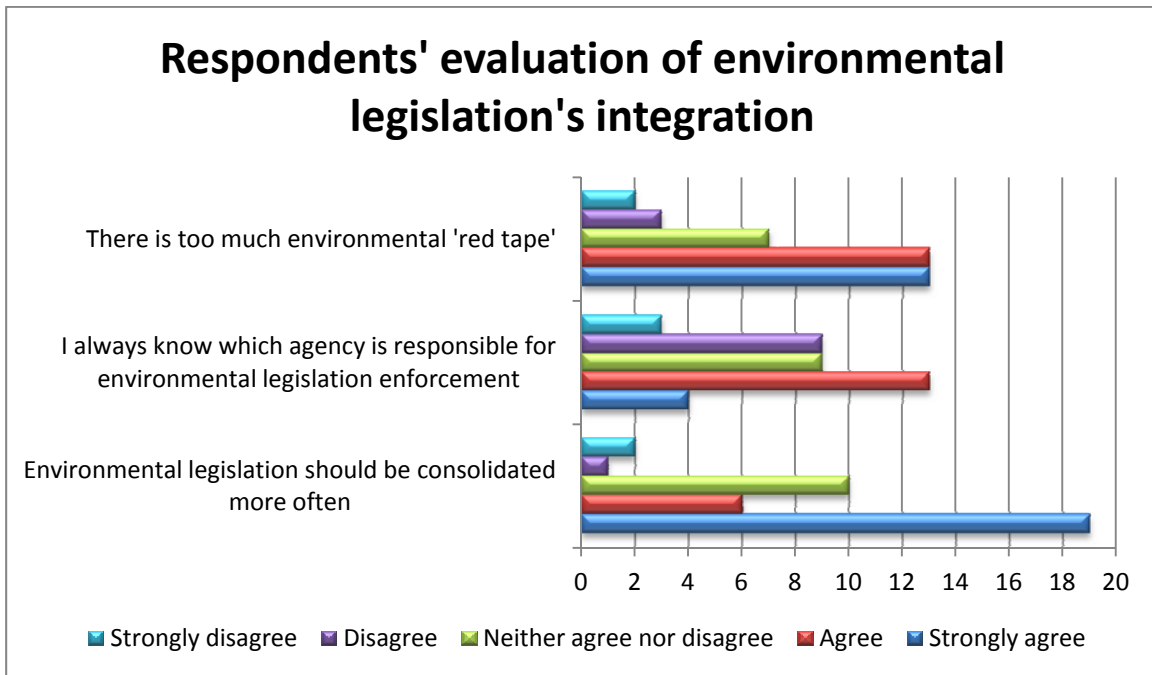
6.2 The survey asked whether or not the respondents have experienced working with integrated environmental legislation as identified in UKELA 2011 Project. Figure 7 below indicates that 15 respondents (39.5 percent) have to read very frequently and frequently more than one piece of environmental legislation to find an answer. Only 4 (10.5 percent) respondents do it rarely or very rarely with 14 (36.8 percent) doing it occasionally. Similar proportions of respondents (31.6 percent, 21.1 percent and 34.2 percent respectively) have to read EU law to understand some UK legislation. The proportions are more evenly distributed with regard to the frequency with which respondents deal with differences in environmental legislation when working on a particular operational issue between UK jurisdictions.



**Figure 7 Respondents experience with integration**

6.3 Figure 8 below demonstrates the respondents' evaluation of the integration of environmental legislation. For the majority of respondents (25, 65.8 percent) environmental legislation should be

more regularly consolidated. Only 3 respondents (7.9 percent) think the opposite. Nearly half of respondents (17, 44.7 percent) know but 12 (31.6 percent) do not know which agency is responsible for particular kinds of environmental legislation enforcement. As regards both statements there were substantial number of respondents who neither agreed nor disagreed (10, 26.3 percent and 9, 23.7 percent respectively). The vast majority of respondents (26, 68.4 percent) think that there is too much 'red tape' in their work arising out of environmental legislation.



**Figure 8 Respondents evaluation of integration**

6.4 Section 4 above showed the difference between SMEs and large companies in terms of their use of and access to UK environmental legislation. The Table 7 below analysed whether there is a difference between SMEs and large businesses as regards the knowledge of environmental managers about which agencies are responsible for different aspects of enforcing UK environmental legislation. It indicates that only 27 percent of SMEs (5 respondents) know and 44 percent (8 respondents) do not know which agency is responsible for environmental legislation enforcement. This contrasts significantly with the fact that 60 percent of large companies (12 respondents) know and only 20 percent (4 respondents) do not know which agency is responsible for environmental legislation enforcement.



**Table 7 Respondents evaluation qualified by size of business: agencies responsibility for enforcement**

	"I always know which agency is responsible for environmental legislation enforcement"					Total
Size of business	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	
<b>SMEs</b>	1	4	5	5	3	18
<b>Over 250</b>	3	9	4	4	0	20
<b>Total</b>	4	13	9	9	3	38

6.5 The above difference is significant when juxtaposed with similar analysis concerning the question whether there is too much environmental red tape according to the respondents. Table 8 below indicates that comparable large proportions of SMEs (12, 67 percent) and large companies (14, 70 percent) expressed the view that there was too much environmental 'red tape'.

**Table 8 Respondents evaluation qualified by size of business: red tape**

	"There is too much environmental 'red tape'"					Total
Size of business	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	
<b>SMEs</b>	4	8	3	1	2	18
<b>Over 250</b>	9	5	4	2	0	20
<b>Total</b>	13	13	7	3	2	38

6.6 Figure 9 below indicates that the majority of respondents (26, 68.4 percent) have found themselves in a situation where multiple or overlapping pieces of legislation apply to the same situation, giving rise to different sets of obligations and/or dealings with different administrative agencies. Over half (20, 52.6 percent) of respondents admitted that they have found themselves in a situation where there was a conflict between different pieces of environmental legislation. Figure 9 provides examples as stated by respondents in the survey.

## Overlapping and conflicting legislation

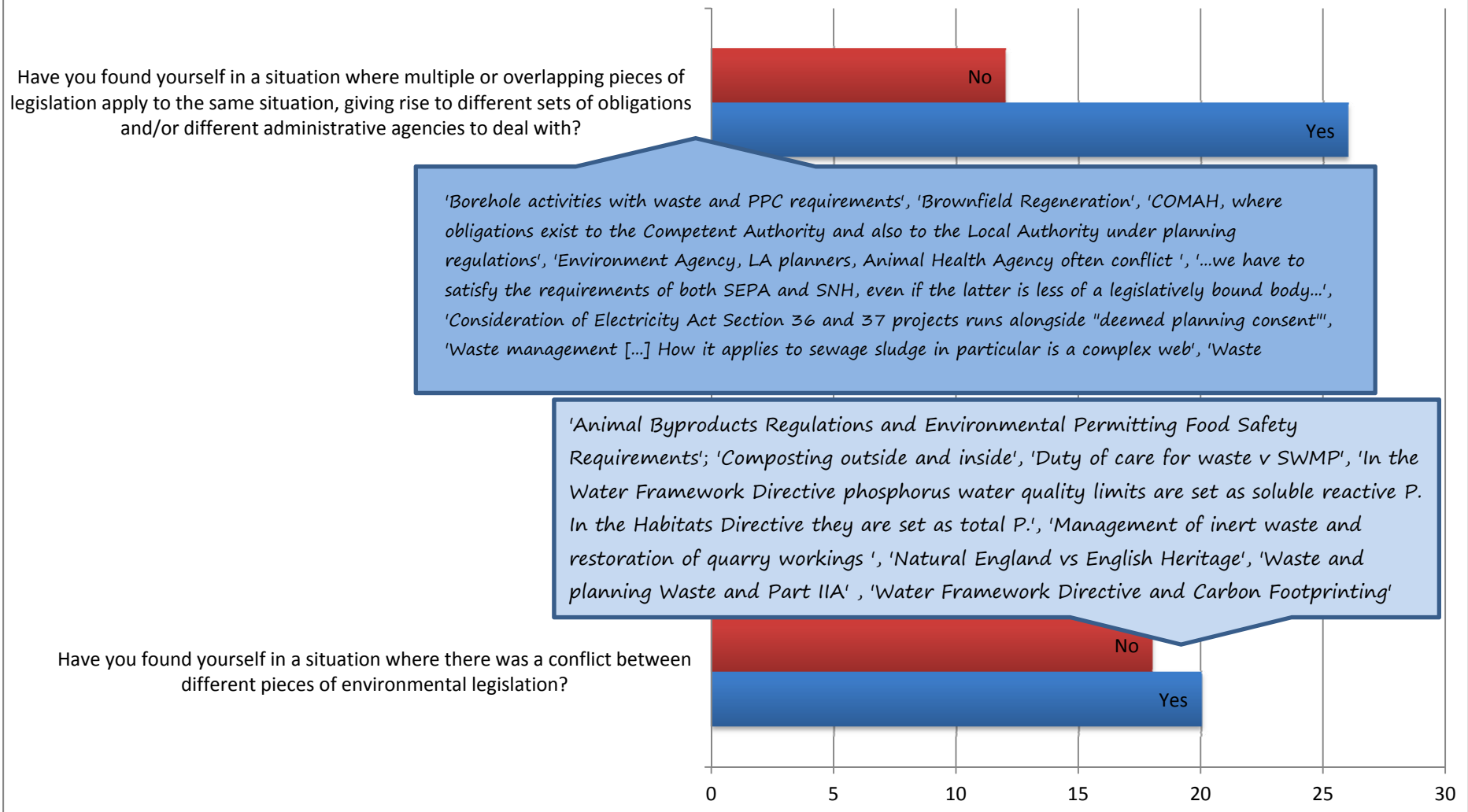


Figure 9 Overlapping and conflicting legislation

*Telephone interviews*

6.7 The UKELA 2011 in considering issues whether environmental legislation is well integrated distinguished between substantive and administrative integration whereby:

"Substantive integration refers to the interaction of overlapping environmental obligations and substantive provisions of different pieces of environmental legislation. Administrative integration is concerned with how environmental legislation and its obligations are administered – the processes of implementing environmental regimes"<sup>5</sup>

6.8 The interviews confirmed the main survey finding that, business believes that environmental legislation should be consolidated more often. Respondents highlighted the need for consolidation stemming from earlier perceptions of the complexity and the lack of clarity in legislation. There was one respondent who argued that consolidation could be achieved by rewriting the legislation from the 'scratch'. Moreover, large organisations stressed that consolidation should provide greater clarity for smaller organisations with whom they had supply chain or client relationships. The following citations illustrate these findings:

- ✓ "It is quite hard to keep up with associated amendments [...] Trying to keep track of that can be difficult in some cases" Interviewee 14
- ✓ "There's a huge quantity of environmental and water legislation and I think it needs to be looked at and it needs some kind of consolidation because it's very difficult, I mean, you know, in my team are employed people that understand everything and how it all links. Now, we're a big organisation, so we've got the luxury of having a team dedicated to that but I can't imagine what it's like in smaller companies that are trying to keep up the speed with all the environmental legislation that actually applies to them and their operations". Interviewee 21
- ✓ " I think environmental regulation is dire, I think it's really badly put together [...] lots of it is archaic, it's in little pieces that don't always match each other. My personal opinion is that it should be rewritten from scratch. [...] The problem is when you've got all bits of regulation with loads of amendments. For professional like me... I can sort of get around it, for a lawyer like you ...you probably have even better knowledge where all the bits and pieces are but for example when you are dealing with duty of care regulations and you are a small sort of 10 men band and you don't have a professional environmentalist in your team and you read one bit of regulation and you think you've read a lot. You could find yourself in trouble because it's been amended and the amendments aren't necessarily available in the draft that you just downloaded from the government website" Interviewee 16

6.9 One respondent representing a global business managing waste incinerators associated an ideal piece of legislation with consolidation:

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<sup>5</sup> UKELA 2011 Project, p. 44

"I think it should consolidate discharges to all different media so there should be one law that governs pollution from industry that goes to water, to air and to land. And that might help with some trans-media conflicts" (Interviewee 15)

6.10 The analysis revealed that most respondents representing large companies were critical as to the lack of uniformity in Environment Agency's handling similar issues in different regions of England and Wales. The lack of consistency was seen at least as difficult within England as between England and Scotland. However, respondents did accept that the EA has made effort to improve the consistency of regulation. The following quotations illustrate the point:

"We do have one site in Scotland so I do deal with SEPA [Scottish Environment Protection Agency]. I wouldn't say that their approaches differ greatly but there might be slightly different focuses in terms of what they are actually working on [...] but not a lot. What I see more of is differences between different regions in the UK [...] So, you will have a different approach from inspectors on topics in different regions and it's almost as if they have slightly different priorities in terms of what they're looking at [...] I definitely see a lack of consistency. [...] ...where we've had the same issue in different sites one inspector has seen that as very big issue, another inspector have seen it as a very small issue" Interviewee 14

- ✓ "The EA is a hugely complex animal and it depends who you're dealing with and what part of the country you are dealing with and what relationship you have with them region [...] it's less the case that it used to be [...] In the South East they are far more literal in their approach to regulation than perhaps they are further North [where] they tend to take a more pragmatic view of the environment" (Interviewee 16) *[explanation added]*
- ✓ "I mean, we get on well [with the Environment Agency] and we have regular liaison on local level but unfortunately, what we sometimes find is that there is inconsistency in approach. Not all the time but some things we find that one local team may be quite relaxed about something and, you know, be giving advice somehow to improve things and maybe another area might be a little more worried about taking a different approach. And if that happens we generally go and talk to the next level..." Interviewee 21 *[explanation added]*
- ✓ "It's generally positive [our relationship with Environment Agency]. Our current officer is very flexible and explains things...[...]. The previous officer was slightly different in he would criticise on every little issue and he was little bit more strict. [...] Our current officer would see guidance as exactly that: it is there to guide someone to a decision - the guidance does not make the decision for you. Our previous officer saw guidance as if it was the law and guidance in his view was absolute" Interviewee 15 *[explanation added]*

6.11 Respondents did not express any particular concerns as to the effect of devolution on the state of environmental legislation or environmental law more generally. One experienced respondent from Ireland criticised heavily the civil servants working for the Government in Northern Ireland. At the same time the respondent saw the potential advantages of devolution:

"I think there is potential for regional governments to actually take more progressive stance. I mean there is a little bit of evidence of this happening in Wales for example"  
Interviewee 24

6.12 Welsh Government was perceived to be more proactive in environmental matters by respondents working also in England, Scotland and Wales. In particular, the respondents mentioned the proactive stance of the Welsh Government in relation to sustainable development principle, which is currently being incorporated into legislation. Devolution could mean a better relationship between industry on the one hand and legislators and regulators on the other as explained by one respondents working within English and Welsh jurisdictions:

"Personally and professionally I would say definitely it is improved. [the state of environmental law in Wales post-devolution] Most definitely we've been able to control things now in Wales that we didn't have that much control over before. We seem to have a lot easier communication directly to Welsh Government [...] they do seem to make it a lot of easier for people to get involved in consultations [...] it is a bit more like personal and approachable that you know that [...] there'll always be a contact name that you can get in touch with and ask questions of" Interviewee 19

6.13 Even though devolution can lead to a more proactive approach to the environmental matters in the regions our respondents often highlighted the issue of legislation not keeping track with technological, scientific and societal development. Business sees itself as creating new opportunities that are then subject to regulation. One of the respondents working for a large retailer in the UK reminded it in context of devolution:

"So if you look at Wales for instance, I mean the plastic bag thing...We got rid of plastic bags [X] years ago and so it wasn't an issue for that store. And then Scotland for instance, when they do campaigns and things, they actually come to us and want to talk to us about it because they know we're proactive on this stuff" Interviewee 12 [*number of years deliberately erased due to confidentiality*]

### **Question C : Integration of environmental legislation**

#### **Main Survey Findings:**

- **About third of respondents experience working with more than one piece of legislation to find an answer to their question**
- **About the same number rely on EU law**
- **Environmental legislation should be more regularly consolidated for the majority**
- **There is too much 'red tape' in respondents work arising out of environmental legislation**

#### **Interview findings:**

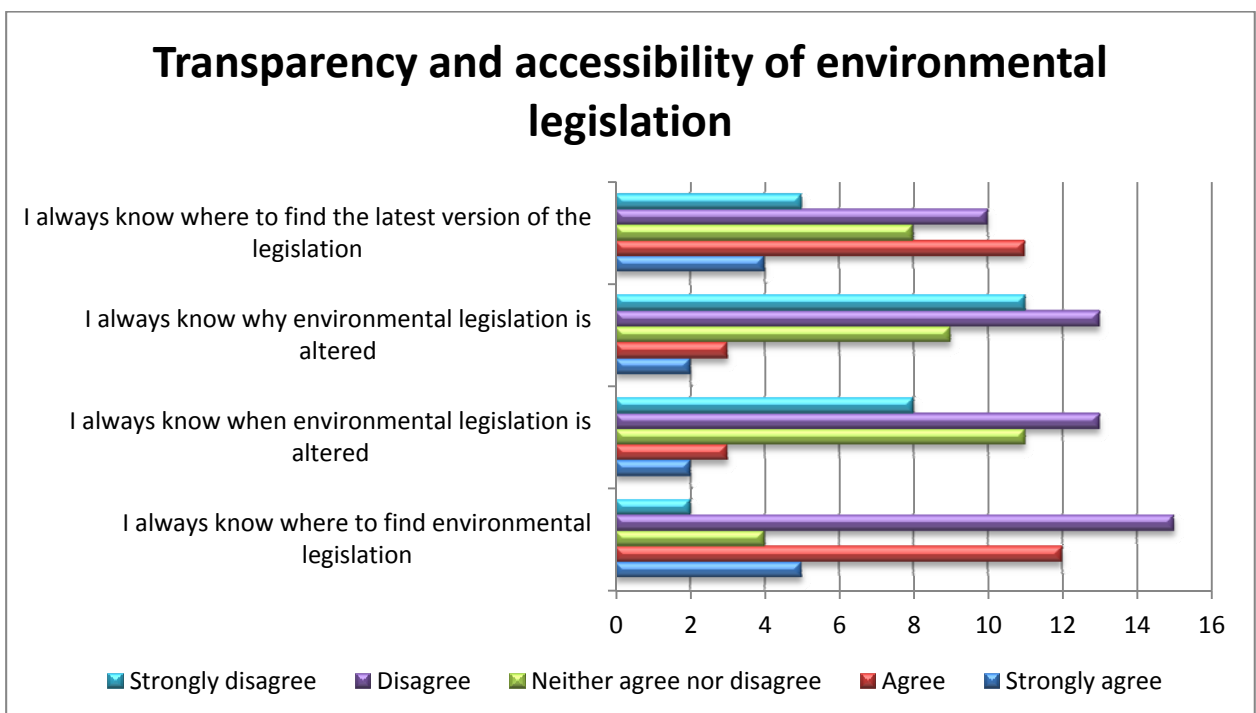
- **There is a need for consolidation stemming from earlier perceptions of the complexity and the lack of clarity in legislation**
- **Large companies can deal with the problems of integration; smaller will struggle**
- **Respondents were critical as to the lack of uniformity in Environment Agency's handling similar issues in different regions of England and Wales**
- **Respondents very positive about Welsh Government in relation to its proactive stance on sustainable development principle**

## 7. Transparency of environmental legislation

7.1 This section will address whether environmental legislation is transparent and accessible in the eyes of business users.

### Survey results

7.2 In terms of accessibility exactly the same number of respondents (17, 44.7 percent) know and do not know where to find environmental legislation. Similarly, exactly the same number of respondents (15, 39.5 percent) know where to find the latest version of environmental legislation. This finding signals the accessibility problem for business users.



**Figure 10 Transparency and accessibility of environmental legislation**

7.3 In relation to transparency issues concerning the reasons for legislative amendments and their timing the respondents' perceptions were even more negative. Over half (24, 63.2 percent and 21, 55.3 percent) do not know why and when (respectively) environmental legislation is altered. Only a few respondents were aware of processes of statutory amendment (5, 13.2 percent in each category).

### Telephone interviews

7.4 Respondents were directly asked whether, in their opinion, environmental legislation was transparent and accessible. Conversation on this topic was brief because in contrast with the survey results respondents did not report any major problems in accessing environmental legislation. Some would have problems with knowing where to look for new pieces of legislation but would know which websites to visit to resolve such issues. Some respondents highlighted that they would know

where to find legislation but would struggle with substantive transparency in terms of understanding certain provisions:

"Probably I wouldn't know where to look immediately but I would have a good idea of what kind of website [...] I would probably look at the DEFRA website or go through HSC [...] There are a number of sites that I use for other things and I am aware that the content of those sites just contain some references to that kind of information. But also I've got a couple of professional contacts"  
Interviewee 23

"I think it's accessible, I don't think it's understandable [...] NetRegs is pretty good and the Environment Agency" Interviewee 22

"In some cases yes, in some others no [environmental legislation is accessible]. Certainly in terms of waste it needs to be a lot better and carbon it needs to be a lot better" Interviewee 19 [explanations added]

"Not for me [*whether environmental legislation is inaccessible*] because it's my business [...] but it takes an effort" Interviewee 16 [explanations added]

7.5 Many respondents reported a problem with finding guidance on the Environment Agency website. The search engine was said not to provide accurate results.

### **Question D : Transparency of environmental legislation**

#### **Main Survey Findings:**

**There is the accessibility problem for business users as many of them do not know where to find environmental legislation**

**Over half do not know why and when environmental legislation is altered**

#### **Interview findings:**

**In contrast with the survey results respondents did not report any major problems in accessing environmental legislation**



## 8. Environmental principles

8.1 This section explores whether businesses take environmental principles into account when making decisions in their organisation.

### *Survey results*

8.2 As Figure 11 below indicates the majority of respondents take the following principles into account either often or sometimes when making decision in their organisation: sustainable development (34, 89.5 percent), the polluter pays principle (28, 73.7 percent), the preventive principle (27, 71 percent), the rectification of pollution at source principle (24, 63.2 percent) and the precautionary principle (29, 76.3 percent).

8.3 The majority of respondents had never heard of the principle of integration (19, 50 percent) or the principle of inter-generational equity (24, 63.2 percent).

8.4 However, respondents were more reserved in terms of usefulness of environmental principles in complying with environmental legislation. About the same number of respondents saw environmental principles as useful (9, 23.7 percent) and as unhelpful (10, 26.3 percent). Half of the respondents were neutral. One anonymous survey respondent summarised their anxiety with environmental principles which might explain the overall neutral position taken by others:

"The problem is that the principles listed above are often applied ambiguously meaning different things to different people depending on which direction they come from".

8.5 Figure 12 below indicates that nearly half of respondents (18, 47.4 percent) thought that environmental principles should be included in legislation or guidance. The remaining respondents thought the opposite or were undecided (10, 26.3 percent in each case).

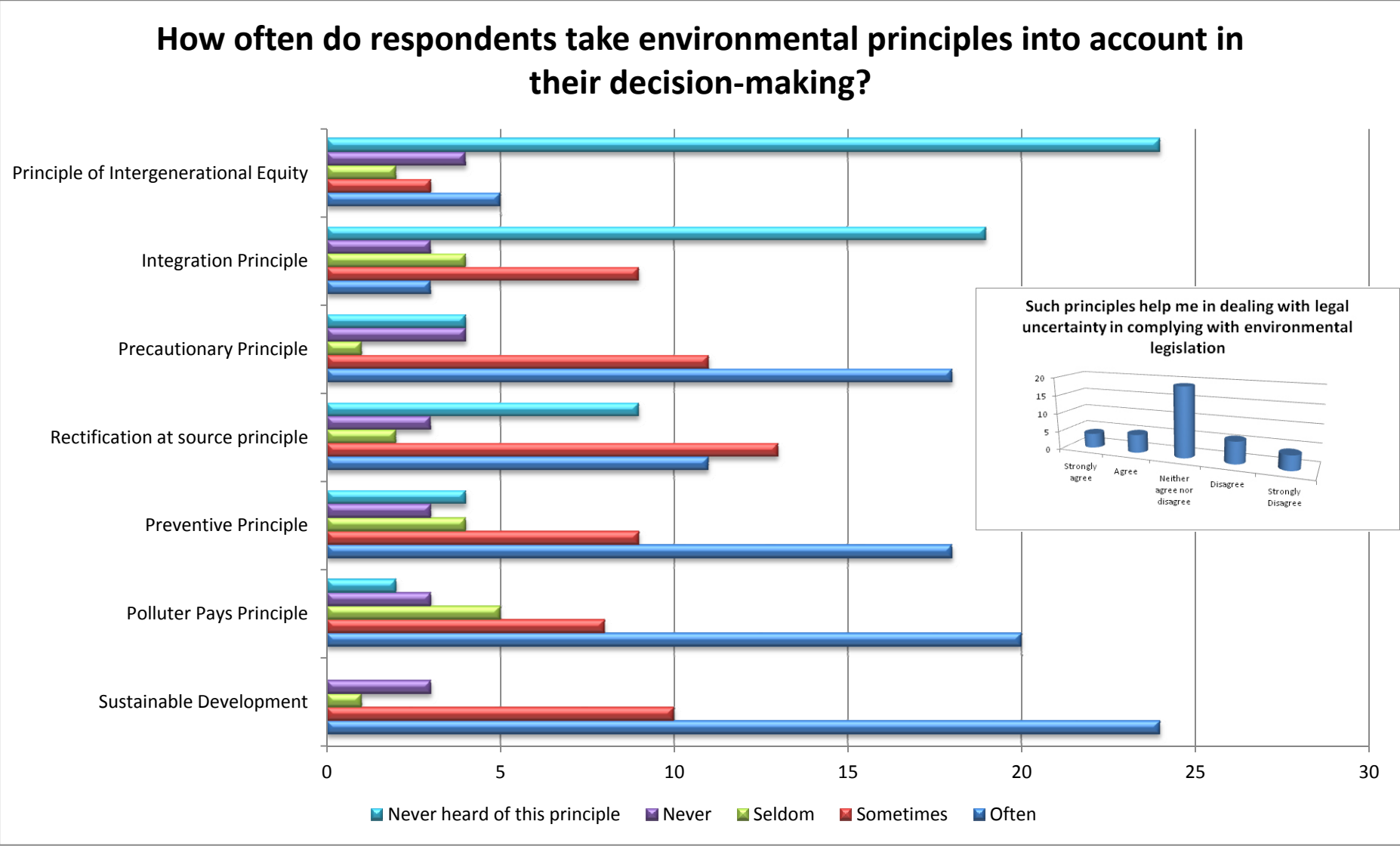
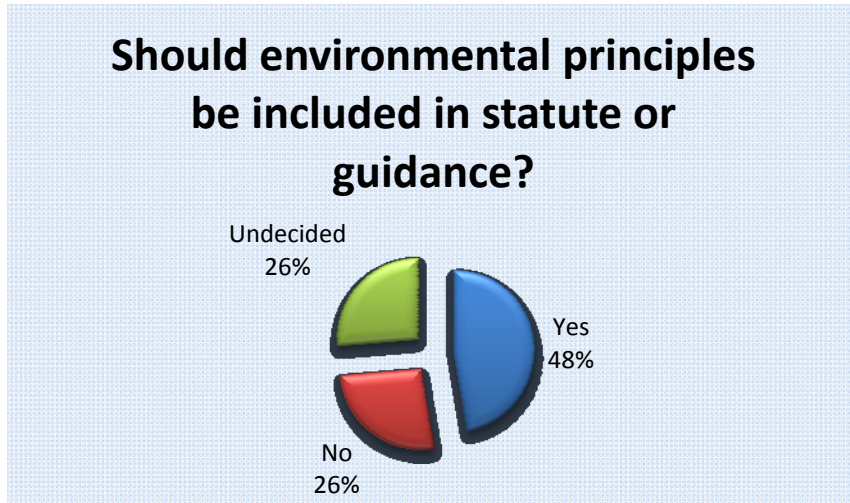


Figure 11 Environmental principles in business environment

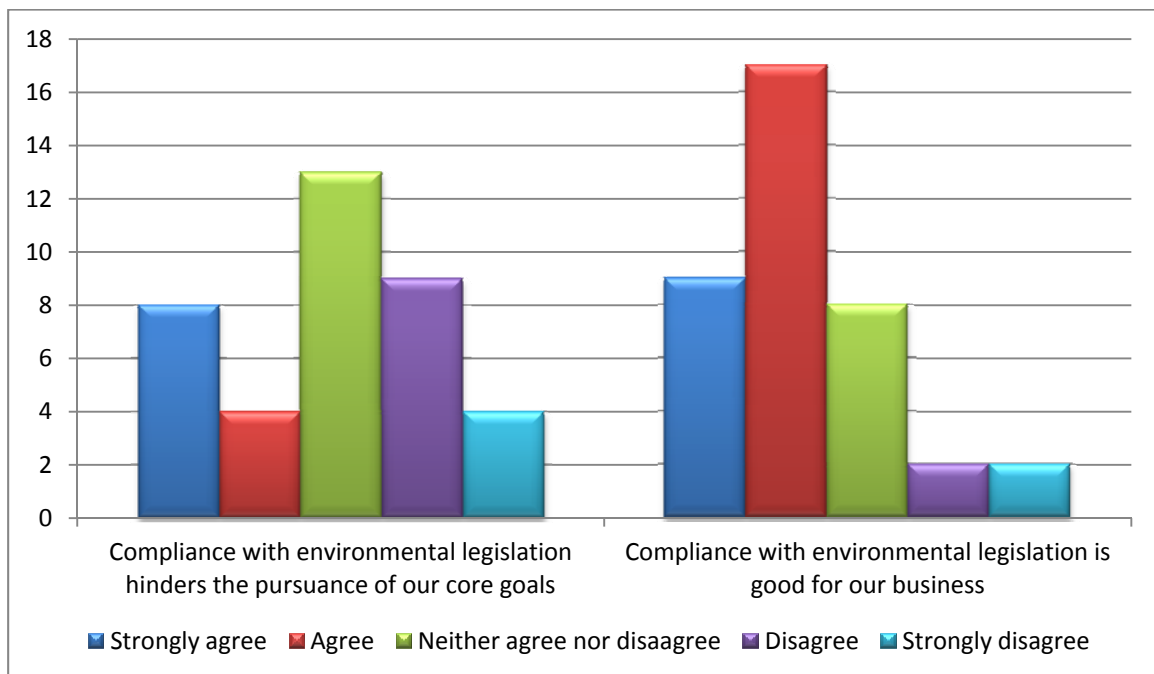


**Figure 12** Should environmental principles be included in legislation or guidance?

*Further analysis and telephone interviews*

8.6 The survey asked additional two questions of whether:

- 1) Compliance with environmental legislation hinders the pursuance of businesses core goals?
- 2) Compliance with environmental legislation is good for respondents business?



**Figure 13** Effect of compliance with environmental legislation

8.7 The analysis of Figure 13 indicates a paradox whereby many respondents highlighted that environmental legislation hindered the pursuance of the core goals of their organisation (12, 21.6 percent) yet a majority of respondents (26, 68.4 percent) highlighted that environmental legislation was good for their organisation. 8.8 The research team informed the interviewees of this paradox and asked them to respond. The majority thought that the principle of sustainable development and overall pro-environmental aims of legislation could be treated as a 'general good'. The hindrance to the core goals of the organisation is mainly for economic reasons: it sometimes takes more time and financial resources than it should to comply with environmental legislation. There was an overall perception that the businesses sometimes 'waste' money and resources in complying with UK environmental legislation, in comparison with other areas of legislation.

8.8 There were however positive voices especially from those who embraced environmental principles and entrenched into the culture of their organisation.

“From our point of view it is great but it does need to be more robust and a little bit clearer and a little bit easier for anyone else to get involved [...] yet, it is a nuisance: it is expensive, it can be quite intimidating but from the business point of view it’s definitely the way we need to be going [*towards sustainability*] Interviewee 19 [*explanations added*]

“I think this little paradox occurs sometimes because some people look at regulation as a cost [...] They see environmental regulation as slowing their business down [...] especially in times of recession [...] however [...] there are some businesses which from their internal culture are perhaps more open to ideas; who appreciate environmental improvements such as driving them towards greater energy efficiency can benefit their business”

### **Question E : Environmental principles**

#### **Main Survey Findings:**

**Sustainable development, the polluter pays principle, the preventive principle, the rectification of pollution at source principle and the precautionary principle taken by respondents into account**

**Majority never heard of principle of integration and the principle of inter-generational equity**

**Respondents more reserved about the usefulness of environmental principles**

#### **Interview findings:**

**Respondents focus on Sustainable development principle and some see environmental legislation hindering sustainability.**

**Organisations who embraced sustainable development principle and included into their culture are positive about long-term effects.**

## 9. Consultations

9.1 This section turns to consider respondents' experience with consultations as part of the wider process of legislative scrutiny.

### *Survey results*

9.2 Figure 14 below indicates that the majority of respondents (24, 63.2 percent) are aware of the parliamentary processes involved in drafting and reviewing new environmental legislation. These respondents are also aware how they could influence this process.

9.3 About the same number of respondents have been invited by the government to take part in consultations concerning existing (21, 55.3 percent) and draft (22, 57.9 percent) environmental legislation. As Figure 14 indicates: those who have been invited rated their experience predominantly as average.

### *Telephone Interviews*

9.4 The qualitative interviews revealed a pattern whereby representatives from SMEs would not be receiving invitations to take part in government consultations on environmental legislation. Thus they would not be taking part in such processes with one exception of a directors of an SME who is also a member (and former director) of a specialist trade association.

9.5 Further, the representatives of the large companies note that engagement in such consultations forms part of their duties. Some would be making preparations during the out-of-office hours.

9.6 Moreover, a number of respondents are active as members of trade associations and would be involved in government consultation through this avenue. Many respondents highlighted that such trade associations are well equipped to perform the analysis of the sectorial interests and can communicate well to the government. The below quotation well exemplifies the feeling:

"They could sit down [*government, statutory bodies*] and perhaps have regular face to face reviews with trade associations because the trade associations tend to collect anonymously different problems that different members may have and the people within the trade associations may be able to present those problems in a more professional way than sometimes people from the original companies" Interviewee 15 [*explanations added*]

9.7 The interviews identified two major reasons for the respondents average perception of the government consultations: the amount of consultations and the lack of effective participation in terms of outcomes.

9.8 Firstly, for some there are too many consultations taking place for which the respondents have no time to fully engage:

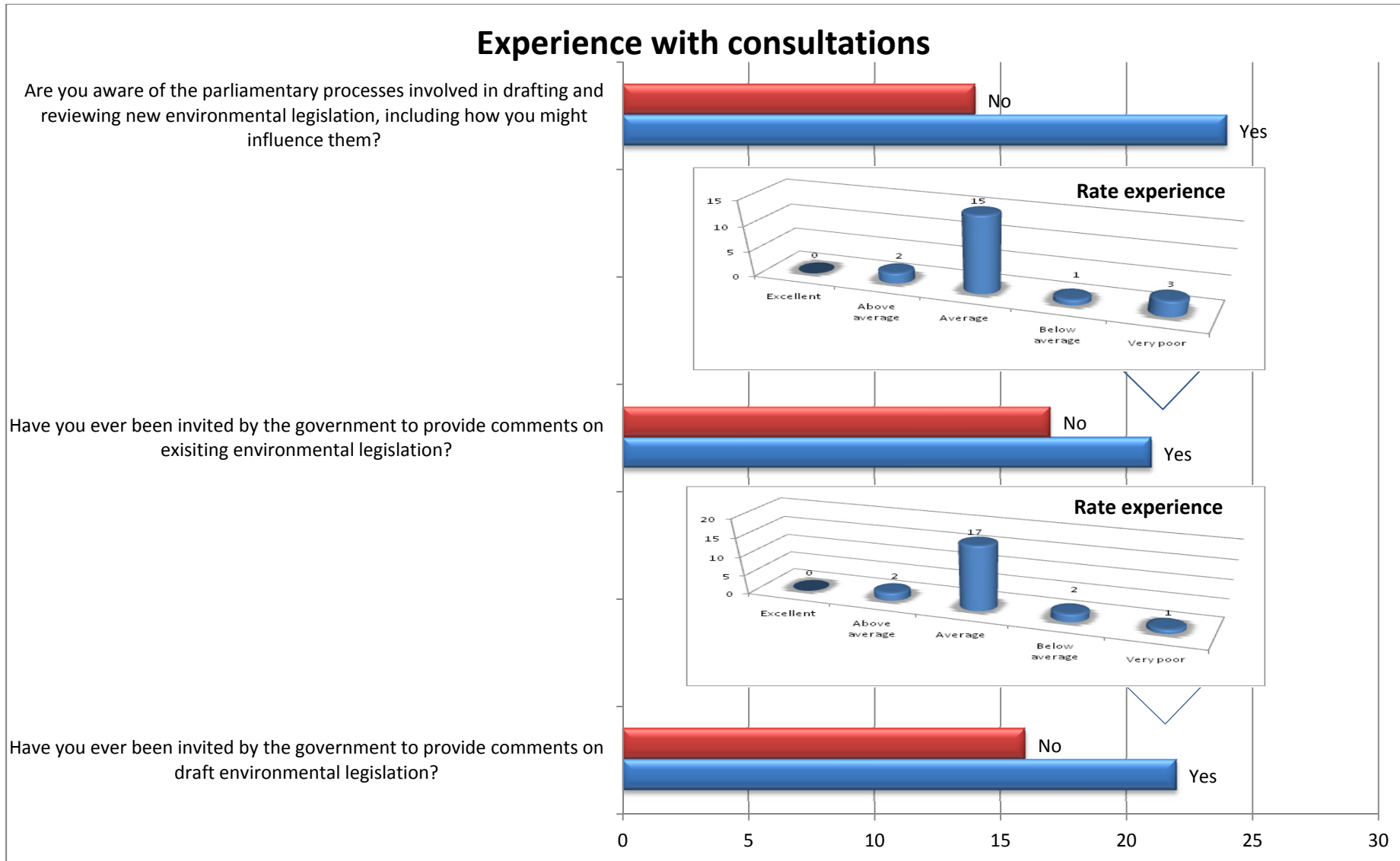


Figure 14 Respondents' experience with consultations

"We do [take part in consultations] but because they invite some many people, you know, it all gets watered down to the lowest common denominator [...] to upset the least amount of people rather than actually doing what needs to be done" Interviewee 22 [explanations added]

The above respondent, representing a large retailer, gave a good example where a consultation on plastic bags included participation of such industries as oil industry leading to difficulties of reaching tangible environmental outcomes. The lowest common denominator meant a decision whereby the stakeholder would reduce their impact by 50%, "which means nothing". The retailer thought that the complete ban, such as in Wales, would produce tangible environmental effect.

9.9 Secondly, the telephone interviews identified a pattern whereby the respondents are dissatisfied with the degree of influence they could exert on the decision-makers. The discontentment can lead to a perception of bias in government:

"[...] I think that, to large extent, a lot of the agencies're going to the consultations knowing what they want to do in the first place [I don't think that they take the industry view seriously]" Interviewee 16

"There is quite a bit of apathy within the industry in terms of well...if it really going to make any difference" Interviewee 17

"[W]e put quite detailed responses into consultations and often nothing changes and we don't hear any justifications for how our consultation response was considered and why the regulators decided not to make any changes with the result of it. So you put a lot of effort into it and you think, 'well, have they taken it into consideration and if they have why haven't they told us why they are not going to change it as we suggested'" Interviewee 21  
*(also a member of an industry association)*

9.10 There was interviewee who was particularly satisfied with how Welsh Governments runs consultations:

"Definitely! Most definitely [*whether their voice is heard*]" Interviewee 19

9.11 The findings are very important because the business perceptions of government consultations resemble the wider societal and NGOs opinions. In fact, the latter often tend to emphasise that the former are privileged in government consultations. This research suggests that the problem might be more widespread.



### **Question F : Government consultations**

#### **Main Survey Findings:**

**Majority of respondents are aware of the parliamentary processes involved in drafting and reviewing new environmental legislation.**

**Respondents who have taken part in government consultations rated their experience predominantly as average.**

#### **Interview findings:**

**SMEs are less likely to receive invitations to take part in government consultations.**

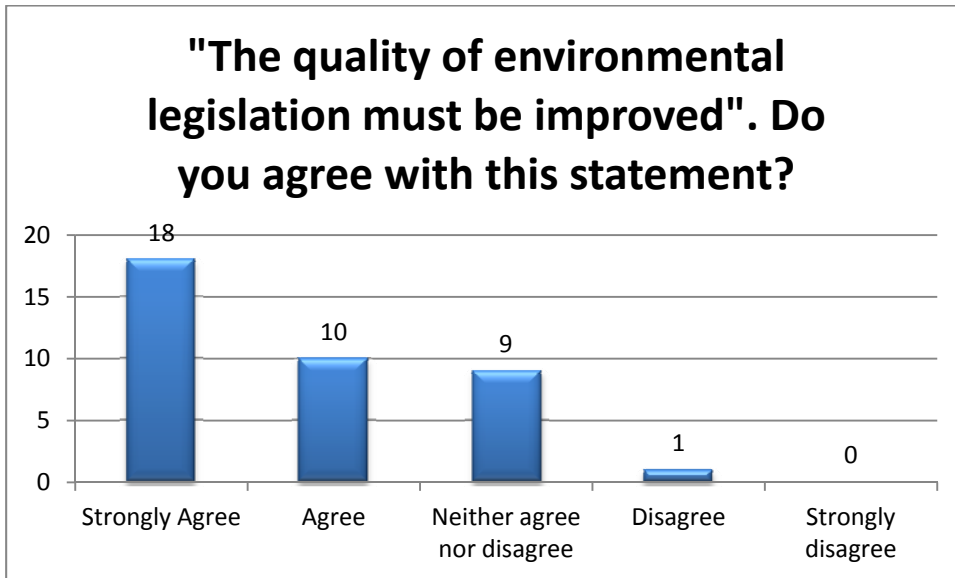
**There are too many consultations taking place and respondents often perceive that they are ineffective in terms of consultation responses actually being taken into account or making any real difference (with the exception of WAG consultations).**

## 10 Conclusions: need for improvement?

10.1 The research captured perceptions of highly experienced persons working in the business environment. It was based upon a quantitative online survey and qualitative telephone interviews. Overall 39 respondents representing a range of economic sectors took part in the study.

10.2 The study highlighted a number of problems with the coherence, integration and transparency of environmental legislation. Overall, legislation lacks clarity and should be simplified according to the respondents.

10.3 Lastly, the research asked a direct question whether the quality of environmental legislation must be improved. Figure 14 below indicates that the vast majority of respondents (28, 73.7 percent) strongly agree and agree that the quality of environmental legislation must be improved. Nine respondents (23.7 percent) neither agree nor disagree and only 1 representing disagrees with the statement.



**Figure 15 Need for improvement?**

10.4 The Research Team hopes that this Report will contribute to the UK-wide discussions concerning the state and reform of UK environmental legislation.

## Annex: Interviewees

Interviewee number	Company size/Team	Jurisdiction	Sector or area of work	Experience
14	Large - 500 people Team - 4 people	Worldwide United Kingdom	Manufacturer	Very experienced
15	Large - 1000 - 1200 Team - 2 people	United Kingdom Plants in Wales and England; trade in Scotland and Northern Ireland	Manufacturer/managing waste	Very experienced
16	Large - 300 people Team 4-5 people	England 99% Occasionally Wales and Ireland	Engineering	Very experienced 18 years
18	30 people Team - 4 people	Scotland	Trust (business orientation)	Very experienced
19	Large - 2500 Team - 32 people	England and Wales	Construction	Very experienced
20	Small - 5 people	International England and Republic of Ireland	Transport	Very experienced 25 years
21	Large - 3,000 - 4,000 employees Team - 12	England	Water industry	Very experienced 11years
22	7,500	United Kingdom	Retail	15 years
23	100-150 people Team - 14-15 people	England	Packaging	6 years as a manager; working for 20 years
24	5 people	Mostly in Northern Ireland Wales as well	Architecture	Very experienced

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26	200 Team - 10 people	England	Infrastructure construction	Junior
28	15 people	Wales	Art	Very experienced
30	7500	United Kingdom	Support services	Very experienced





BRASS Research Centre, 55 Park Place, Cardiff, CF10 3AT

UK Environmental Law Association, registered charity in England and Wales 299498; company registered in England number 2133283, registered office: City Point, One Ropemaker Street, London, EC2Y 9SS

King's College London, Strand, London, WC2R 2LS.