



Consultation Response: Environmental Principles and Governance after the United Kingdom leaves the European Union

A submission from the British Academy
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Introduction

The British Academy is the UK's national academy for the humanities and social sciences. A Fellowship of over 1200 of the country's leading academics, the Academy received its Royal Charter in 1902. It exists to promote and speak up for its disciplines, and awards funding to researchers at all career levels.

The humanities and social sciences provide a critical lens through which Government and society can address the wide-ranging challenges we face today. From security to health, climate and demographic change and technology, the humanities and social sciences can provide a crucial means of focusing on the issues facing our world and offer solutions to seemingly intractable problems.

The British Academy has a strong track record in bringing both the expertise of our fellowship and insights from our academic disciplines to bear on public policy issues. This response represents the views of the British Academy, not of one specific individual, but Fellows of the British Academy (FBA) with leading expertise in the areas covered by the Consultation were extensively consulted in drawing together this response. The response was coordinated by the Public Policy Team at the British Academy.

This response does not aim to address each of the Consultation's questions. We provide general comments and recommendations on the Government's proposed approach to environmental principles (p3) and to accountability (p9). Direct responses are provided to all the Consultation Paper's questions in Part 1 (1-3) and questions 4-10 and 14 in Part 2.

Part 1: Environmental principles

The approach to environmental principles

- *The Academy strongly supports the inclusion in the forthcoming Environmental Principles and Governance Bill of a set of clear environmental principles to underpin policy.*
- *The principles should function as a whole to provide a robust and coherent basis for environmental policy.*
- *A clear statement of principles according to internationally recognised definitions will itself play an important part in securing accountability.*

The set of principles will need to be carefully constructed to achieve the Government’s stated objectives—to leave the environment in a better state than the one in which the current government inherited it, and not only to maintain, but also to strengthen environmental protection post-Brexit¹. Five key considerations should guide this endeavour:

- 1) **Principles function as a whole.** The value and acceptability of each principle depends to some extent on the others included and how they are constructed. For example, the Polluter Pays Principle might seem to imply that pollution is acceptable as long as its cost to others is covered. The Prevention and Rectification at Source principles would prevent such misapplication.
- 2) **Principles need to be clearly adhered to and robustly implemented.** It is in the nature of principles that they must be able to withstand pressure when their implementation is inconvenient. There is some danger of the quest for the ‘most important’ principles becoming a popularity contest, given that the Consultation is “seeking initial views on which principles to include”². All the principles cited in the EU (Withdrawal) Act 2018 and in the Consultation are important for policy.
- 3) **Principles vary in their scope and specificity.** For example, the principle of ‘Sustainable Development’ provides a framework for other principles like inter-generational justice or human stewardship for the environment (Q1 below). Some principles, like Integrated Pollution Control, have greater specificity and operational relevance.
- 4) **Flexibility should not become a weakness.** Some flexibility is desirable as new principles emerge in the light of new understandings and developments, just as many currently accepted environmental principles have emerged over the past half-century. However too much flexibility might allow principles to be removed or downgraded if they become inconvenient. Principles should not in themselves require modification in the light of new scientific knowledge or economic developments.
- 5) **Principles should be consistent with internationally recognised formulations.** The jurisprudence of the Court of Justice of the European Union (CJEU) and of the World Trade Organization (WTO) Appellate Body have been important in developing an

¹ Department for Environment Food & Rural Affairs (2018), *Environmental Principles and Governance after the United Kingdom leaves the European Union: Consultation on environmental principles and accountability for the environment*. London: Crown copyright.

² Ibid, p7.

understanding of, for example, the Precautionary Principle. The danger of weakening the principles by loose definition should be avoided.

Responses to questions in Part 1 of the Consultation Document

Q1: Which environmental principles do you consider as the most important to underpin future policy-making?

- *The Academy supports the inclusion in the forthcoming Environmental Principles and Governance Bill of each of the principles listed in the EU (Withdrawal) Act 2018, including the sub-set outlined in the Consultation Document (The Precautionary Principle, the Prevention Principle, the Polluter Pays Principle, the Rectification at Source Principle, the Integration Principle and the Sustainable Development Principle). We are unclear as to why the Consultation did not include all the principles but consider all to be important.*
- *The Academy also notes that there are important principles that have not been included in either document, for example the principle of ensuring a high level of environmental protection.*

In what follows we make some specific points about selected principles, though, as noted above, we consider all, of the principles listed in the EU (Withdrawal) Act, to be important³. We also suggest additional principles for inclusion in the forthcoming Bill.

Sustainable Development

As a widely accepted general principle, sustainable development provides a broad basis to underpin policy making. The core idea of sustainable development was set out by the Brundtland Commission as development that “meets the needs of the present without compromising the ability of future generations to meet their own needs”⁴. The concept of sustainable development was also used by Brundtland to designate a set of requirements on sound public policy, including effective citizen participation in decision making, a technological system that was continuously searching for new solutions and a flexible administrative system, which is why it can be regarded as a framework rather than simply a principle.

The Sustainable Development Principle should be linked in policy to the Sustainable Development Goals (SDGs) set out by the United Nations. A number of the 17 SDGs are of clear relevance including: Good Health and Well-being (SDG3), Clean Water and Sanitation (SDG6), Affordable and Clean Energy (SDG7), Sustainable Cities and Communities (SDG11), Responsible Consumption and Production (SDG12), Climate Action (SDG13), Life Below Water (SDG14) and Life on Land (SDG15).

As a general environmental principle, Sustainable Development functions as a guide to policy and the role of other important concepts, frameworks and principles including, for example:

- **The Natural Capital Framework**, which has been adopted as part of an approach to sustainable development that seeks to take account in policy-making of the

³ See also Haigh, N. (2017) 'Concepts and principles in EU environmental policy at a time of Brexit', *Journal for European Environmental and Planning Law* 14(2) 155-158.

⁴ World Commission on Environment and Development (1987). *Our Common Future*. Oxford: Oxford University Press. p 8.

contribution of natural resources to human welfare. This idea has provided important intellectual support for the work of the Natural Capital Committee (NCC). It typically involves attempts to value resources through ‘shadow pricing’, including considerations of a time-discount rate for investments and resource abstraction. We believe that the natural capital approach has helped substantially to raise the profile of environmental issues, but needs to be supplemented by a wider set of considerations, exemplified in the principles contained in the Consultation.

- **Intergenerational fairness**, which is often seen as a fundamental component of sustainable development; it was central, for example, to the Brundtland Report and the Stern Review on Climate Change⁵. It has implications for many dimensions of policy, including the setting of time-discount rates, the prevention of serious and/or irreversible environmental damage, and protection from the cumulative unintended effects of human activities such as transport and energy production.
- **The circular economy**, which is seen as a way of moving towards sustainable development by minimising (non-renewable) resource depletion and the degradation of natural environments by using them as a sink for waste and pollution⁶.

The Precautionary Principle

The Precautionary Principle urges careful regulation, control and monitoring in cases where the available evidence and science-based risk assessment are insufficient to provide a reliable guide to policy or regulation. Such cases typically involve substantial uncertainties so that it is not possible to offer a meaningful assessment of risk because, for example, pathways are unknown and potential effects are widespread, large-scale, irreversible, and/or arise from novel processes whose impacts are poorly understood.

The Precautionary Principle has been extremely important as an expression of the need to act when scientific proof of harm and evidence of causality are incomplete. It is not a license to invent hypothetical damaging effects⁷, and this has been recognised both by the CJEU⁸ and the WTO Appellate Body⁹. Rather, its application should sensitise decision makers to the range and variety of evidence that might be relevant to policy, including evidence that might constitute a minority opinion at any one particular time. In this sense, to counterpoise the Precautionary Principle with ‘sound science’ is to set up a false dichotomy¹⁰.

We note that **without the Precautionary Principle important developments in policy would never have taken place, including early action on climate change** or policy to deal with the links between BSE in cattle and nvCJD in humans¹¹. The Principle is an expression

⁵ Stern, N. H. (2007). *The Economics of Climate Change: The Stern Review*. Cambridge, UK: Cambridge University Press.

⁶ See also the Ellen Macarthur Foundation reports and publications on the circular economy. www.ellenmacarthurfoundation.org/publications.

⁷ Department of the Environment (1995). *A Guide to Risk Assessment and Risk Management for Environmental Protection*. London: The Stationary Office.

⁸ Case T-13/99 *Pfizer Animal Health SA v Council of the European Union* (2002). ECR II-03305.

⁹ Appellate Body Report, *EC Measures Concerning Meat and Meat Products (Hormones)*, WT/DS26/AB/R / WT/DS48/AB/R, (1998).

¹⁰ Owens, S. (2006). ‘Risk and Precaution: changing perspectives from the Royal Commission on Environmental Pollution’, *Science in Parliament*, 63(1), 16-17.

¹¹ Packer, R. (2006). *The Politics of BSE*. Houndmills: Palgrave Macmillan.

of, and has itself contributed to, a broad trend towards the achievement of a high standard of environmental protection over the past half century. Its application will extend as newly emergent technologies will require rigorous environmental impact assessment.

“We [regard the Precautionary Principle] as a rational response to uncertainties in the scientific evidence relevant to environmental issues and uncertainties about the consequences of action or inaction. ... even the best scientific assessment may not provide a clear basis for taking a decision on an environmental issue”.

Royal Commission on Environmental Pollution (1998)¹²

Polluter Pays Principle

The Polluter Pays Principle plays a vital role in assigning responsibility for the costs of pollution to the right place. However, **the Principle should not be interpreted to mean that pollution is acceptable provided that polluters are prepared to pay in some way for its costs.** Rather it implies that their responsibility is to minimise pollution, and the payment of costs is a way of incentivising responsible behaviour.

With dispersed and multiple sources of pollution, it may be difficult in practice to identify a source that can feasibly be taxed or regulated, so that the Principle is easier to operationalise in some settings, for example where obvious point sources of pollution demonstrably cause harm. Many contemporary problems including particulates, microplastics or endocrine disruptors, are more diffuse and more closely bound up with lifestyles, so that ‘the polluter’ may be more difficult to pinpoint and penalise. Nevertheless, the Principle is an important reminder that, insofar as sources of pollution can be identified, they should be controlled. It also underscores the importance of preventive and precautionary action so that clean-up costs are not borne by those who currently suffer the pollution or may do so as members of later generations.

Integration Principle

The Consultation Document identifies the Principle of Environmental Policy Integration—the idea that effective environment policy requires the integration of an environmental dimension into all other policy sectors (energy, agriculture, transport and so on). A key implication is that policy instruments should be checked for adverse effects. For example, subsidies to farming may generate a problem of pollution from pesticides and fertilisers. This is now the central element of the concept.

However, we note that integration is sometimes used to refer to two other aspects of policy:

- **Integrated Pollution Control.** Integrated pollution control (IPC), now widely adopted, recognises that serious pollutants need to be dealt with in an integrated manner, rather than being regulated separately in relation to air, water and land. Currently within the EU it is given effect in the Industrial Emissions Directive.

¹² Royal Commission on Environmental Pollution (1998) *Twenty-first Report: Setting Environmental Standards*. London: The Stationary Office. p60.

- **Integration of policy instruments.** This integrative concept recognises that different environmental policy instruments, including, for example, regulatory and fiscal instruments, should pull in the same direction.

Public Access to Environmental Information

The Principle of Public Access is included in the European Union (Withdrawal) Act 2018, but it needs to be understood in its broad form as found in the UN Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters, which both the UK and the EU have ratified.

Although Aarhus is an international agreement, the EU is a Party to it, and the Court of Justice of the EU (CJEU) has a role to play in enforcing it, with important effects on environmental decision making in the UK¹³. CJEU decisions have emphasised the standing of environmental organisations in representing legitimate public interests, and UK governments have been required to improve financial protection for those bringing environmental cases before the courts¹⁴. Incremental reinforcements to public rights to information and the enablement of public engagement have also been provided by ‘the Seveso Directives’, in respect of the control of major accident hazards¹⁵.

Additional Principles

In addition to the principles mentioned in the Act and the Consultation, there are other principles that are also important and play a significant role in policy. Some important examples of these extra principles include the following.

Anticipation

This principle is already at work in many aspects of policy and regulation, for example in the testing of new chemicals before they can be marketed and in important procedures such as Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA). In the context of pollution, Anticipation relates, and logically comes prior, to Prevention and Rectification at Source. EIA and SEA have considerable significance in the context of developments, plans and programmes.

There is evidence, for example, that SEA has fostered greater understanding of plans and sustainability issues and improved transparency in plan-making. It has also provided an arena for public and interest group participation and for assessment of policy measures that might otherwise have escaped scrutiny. For example, the Directive has facilitated challenge when assessments have failed adequately to consider ‘reasonable alternatives’.

Anticipation clearly connects with the next principle, in that the latter requires the former.

¹³Cowell, C. and Owens, S. (2016). ‘Land use planning’, in Burns, C., Jordan, A. and Gravey, V. et al., *The EU Referendum and the UK Environment: An Expert Review: How has EU membership affected the UK and what might change in the event of a vote to Remain or Leave?*, 57-67. The UK in a Changing Europe, <http://ukandeu.ac.uk/research-papers/eu-referendum-and-uk-environment-expert-review/>.

¹⁴ Maurici, J. and Moules, R. (2014) ‘The influence of the Aarhus Convention on EU Environmental Law: Part 2’. *Journal of Planning and Environment Law* 2, 181-202.

¹⁵ Walker, G., Simmons, P., Irwin, A., and Wynne, B. (1999) ‘Risk communication, public participation and the Seveso II Directive’. *Journal of Hazardous Materials* 65(1-2), 179-190.

Avoidance of serious and/or irreversible harm to environmental systems

This principle forms a basis for much modern environmental policy, as a matter of prudent self-interest, responsible stewardship and, some would argue, moral obligation. It is a position that was promoted by the former Royal Commission on Environmental Pollution (RCEP) throughout its lifetime (1970–2011). Regulation of hazardous substances would be a case in point, as would climate change policy. In application, this principle often reinforces the importance of applying the Precautionary Principle

Ensuring a high level of environmental protection

The Academy agrees with the Environmental Audit Committee that the legislation should “establish a principle in UK law that policy and public bodies will seek to ensure a **high level of environmental protection**”¹⁶ and a **presumption that environmental protection will not be reduced**, but rather enhanced in line with repeated assurances from the Secretary of State.

Duty of care

This is the Principle that all those who produce or keep, transport, or dispose of wastes have a ‘duty of care’ to ensure that their wastes are subsequently managed and disposed of without harm to the environment. By contrast with the other principles, the duty of care is a principle that the state imposes on particular private actors. As a principle, it can be regarded as a manifestation of the state’s duty to ensure that waste is managed soundly. This principle is already embedded in primary legislation in the UK and should remain so.

Question 2. Do you agree with these proposals for a statutory policy statement on environmental principles (this applies to both Options 1 and 2)?

- *We support the proposals.*

The Academy agrees that there should be a statutory policy statement on principles so that they have both a political and legal setting. However, the proposed explanation of how specified environmental principles should be interpreted and applied should not be too constraining because the application of principles requires contextual judgement.

Question 3. Should the Environmental Principles and Governance Bill list the environmental principles that the statement must cover (Option 1), or should the principles only be set out in the policy statement (Option 2)?

- *The principles should be listed in the Bill (Option 1).*

The Academy is in favour of key principles being included in the *Environmental Protection and Governance* (EPG) Bill itself. One concern expressed in the Consultation Document is that principles encoded in primary legislation will be difficult to change. However, principles themselves should not often require modification in the light of other developments. In the case of the Precautionary Principle, for example, new scientific evidence might inform whether and to what extent the principle should be applied in a particular case (as recently in

¹⁶ House of Commons Environmental Audit Committee (2018), *The Government’s 25 Year Plan for the Environment: Eighth Report of Session 2017–19* (HC 803). London: The Stationary Office. P3.

the decision to restrict neonicotinoids to indoor use), and economic or technological developments might affect the assessment of benefits and risks — but the principle itself would not need to change.

Part 2: Accountability for the environment

Effective environmental accountability

- *The proposed new body will be vital in ensuring that we leave the environment in a better state than the one in which the current government found it, and that any governance mechanisms missing as a result of leaving the EU are replaced or enhanced.*
- *It is critical the body should be able to act unequivocally as a ‘voice for the environment’.*
- *The body should be demonstrably independent from government.*
- *The body will be unable to discharge its important functions unless it has sufficient authority, powers and resources.*

In what follows we draw in part upon the experience of the former Royal Commission on Environmental Pollution (RCEP, 1970–2011), a body that was also envisaged as a ‘watchdog’ when first established. The RCEP advised successive governments on environmental matters for more than forty years (laying reports before Parliament); and was widely regarded as influential in the UK and beyond¹⁷. While differing in constitution and remit from the proposed new body, there are commonalities from which we can learn.

The Consultation Document says very little about the structure and resourcing of the new body. Nevertheless, the Academy believes that the following attributes will be crucial. The body should:

- **Be an unequivocal voice for the environment.** It must have the capabilities to speak for environmental concerns and champion them within government. These objectives should not be compromised by building tradeoffs with other policy priorities into its internal deliberations (Q5 below). The body should feel free to produce radical recommendations on the protection and enhancement of the environment (as the RCEP often did to considerable effect).
- **Be independent, and be seen to be independent, from government.** The new body needs to be able to hold government to account even when its interventions are unwelcome. It must therefore be as independent as possible within the constraint that most or all of its funding will come from government. Its funding mechanism should be designed so as not to compromise its autonomy. It should have a cross-departmental remit and should be accountable to Parliament.
- **Have sufficient powers** to enable it to hold government, and other organisations responsible for environmental protection, to account. While strong statements and persuasive recommendations can have effect in themselves, they are not always sufficient and will not adequately replace EU mechanisms. The availability of other enforcement measures, including legal proceedings and fines, will be necessary in relation to some of the body’s powers (Q9 below).

¹⁷ Owens, S. (2015) *Knowledge, Policy, and Expertise: The UK Royal Commission on Environmental Pollution 1970–2011*. Oxford: Oxford University Press.

- **Be authoritative.** The body must be seen to have the necessary expertise to make it a trusted authority on environmental matters. The Consultation document specifically mentions legal, technical, scientific and economic capabilities (para 142). These are vital but not enough. To facilitate critical engagement with complex environmental issues, it is essential that the body includes a wider range of expertise across the social sciences and humanities. There is ample evidence that, in advisory and related functions, a breadth of expertise and perspective contributes substantially to the robustness of a body's interventions.
- **Be proactive, not purely reactive, in relation to environmental affairs.** The body should be able to undertake investigations of its own choosing and comment on the wider framing of problems and policies. The RCEP experience demonstrates that such functions are often at least as important as those that are more specific and circumscribed.
- **Be set up with an expectation of sufficient continuity and stability** to establish itself in its role and have the intended impact.

Responses to questions in Part 2 of the Consultation Document

Question 4. Do you think there will be any environmental governance mechanisms missing as a result of leaving the EU?

Brexit will leave significant gaps in accountability unless appropriate provisions are made.

At present EU environmental law imposes wide-ranging reporting obligations on Member States to report to the Commission on progress with implementation and to help the Commission work out how the legislation could be improved and what to prioritise in terms of launching infringement proceedings against Member States. Though Member States do not always report as well as they should, the obligation should be replicated in an equivalent way within the UK. There could be separate reporting in different environmental domains, and in relation to the interactions between domains. These reporting obligations could also include an obligation to report on respect for international environmental law obligations, not just in treaties but crucially also general principles of international law and customary international law.

Beyond reporting, scrutiny and enforcement, other missing mechanisms include:

- Capacity to look at the bigger picture in the longer term (across the range of environmental issues), including the 'joined-up-ness' of government policies;
- Capacity to *challenge the dominant framing* of problems and policy solutions;
- Capacity to recognise and articulate emergent *principles* and broader concepts in environmental policy.

The European Commission has played an important role in fulfilling these functions, for example in the long-term strategic thinking of its environmental action plans and programmes.

“The Commission has been very good at offering long-term strategic thinking through these environmental action plans and programmes. Finally—this is often forgotten—the Commission also gets involved in a lot of policy evaluation. Policy evaluation is important to keep legislation updated, to keep it nimble and to keep it fresh. I have a great deal of concern about all of this legislation, 40 years’ worth of legislation, that has been adopted. Who is going to keep that updated? Who is going to evaluate it? I can imagine, in the shift toward a post-Brexit mindset, that this gets forgotten and the legislation, in effect, is allowed to wither or—to use your phrase—zombify”.

Professor Andrew Jordan, oral evidence to the Environmental Audit Committee (2018)¹⁸

In order to create ‘a more cohesive and holistic governance framework’, there will be a need for careful consideration of how the new body and its functions fit with existing arrangements and mechanisms. In this context, it is important to recognise that not all overlap is undesirable. On the contrary, in advisory and scrutiny functions, experience suggests that reinforcement from several different authoritative bodies can be extremely effective. This was the case, for example, when the analysis and recommendations of the RCEP and Parliamentary Select Committees pointed in the same direction, as with policies on hazardous waste and dangerous discharges to water in the 1980s.

Question 5. Do you agree with the proposed objectives for the establishment of the new environmental body?

The Academy is in broad agreement with the proposed objectives but is concerned about one proposal in particular, which, in our view, would inhibit the ability of the new body to provide a voice for the environment.

In paragraph 79 of the Consultation, it is proposed that the body should “[o]perate in a clear, proportionate and transparent way in the public interest, recognising that it is necessary to balance environmental protection against other priorities”.

It is the ‘balancing’ aspect of this proposal that concerns us. While the new body should, of course, be aware of actual and potential conflicts in the formulation and implementation of environmental policies and regulations, trade-offs with other policy priorities should not be internalised within the body itself—these are matters for wider (and transparent) political choices. **The role of the new body should be to put the environmental case clearly and robustly**, and to ensure that policies are developed and adopted in line with the principles mentioned in the proposed Bill and Policy Statement.

Question 6. Should the new body have functions to scrutinise and advise the government in relation to extant environmental law?

See answer to Question 7.

¹⁸ House of Commons Environmental Audit Committee (2018), *The Government’s 25 Year Plan for the Environment: Eighth Report of Session 2017–19* (HC 803). London: The Stationary Office. p25. Jordan, A. 20 May 2018, Q37.

Question 7. Should the body be able to scrutinise, advise and report on the delivery of key environmental policies, such as the 25 Year Environment Plan?

The new body should be able to scrutinise, advise and report on extant environmental law, and indeed on *any* policy statement or regulatory action that has implications for the state of the environment. It should have a review role (with other bodies, such as the NCC) in relation to progress with the 25 Year Plan, though a review process every year might be too onerous. **There is a strong case, too, for engaging the new body in regular oversight of the ‘state of the environment’**, perhaps in reviewing the assessments of other bodies with more specific responsibilities in this respect (again, an annual requirement might be onerous). **It is crucial that such review/overview functions do not become mechanistic, tick box exercises, consuming resources for little benefit.** Further, they must be sufficiently well staffed and resourced so as not to detract from the new body’s other functions. Accountability through these processes would be strengthened if the reviews/overviews were laid before Parliament, with scope for input from NGOs.

In addition, to be fully effective the new body should have more proactive functions, including, for example: undertaking investigations of its own choosing; wider reflection on the framing of environmental problems and policies; and proposal of new policy directions when it judges that existing policy is insufficient to achieve the necessary protection and enhancement of the environment.

Question 8. Should the new body have a remit and powers to respond to and investigate complaints from members of the public about the alleged failure of government to implement environmental law?

The body should have the remit and powers to engage with public complaints in these ways, particularly as other mechanisms through which members of the public can take action are complex, cumbersome, not environmentally-focused, and/or expensive. However, the body must have adequate enforcement powers to render the process meaningful and effective. The new body should have discretion on what it investigates, and clarity would be needed to avoid (unproductive) overlap with other bodies.

“Democratic legitimacy requires that there be a wide range of interests and opinions represented in the process of decision making”.

Professor Albert Weale FBA (2002)¹⁹

Question 9. Do you think any other mechanisms should be included in the framework for the new body to enforce government delivery of environmental law beyond advisory notices?

The body needs to have strong enforcement powers in order to fulfil its crucial functions of providing a voice for the environment and holding the government to account. The prospect of legal proceedings, required remedies and fines (if the latter could be made meaningful in a

¹⁹ Weale, A. ‘Conclusion: Democratic Values and Risk Regulation’ in Weale, A. (ed) *Risk, Democratic Citizenship and Public Policy* (2002) pp123-140. Oxford: Oxford University Press for the British Academy. p128.

national context, for example by ring-fencing) provides a powerful incentive for compliance. In the absence of ultimate enforcement powers, governments (and indeed parliaments) may find inconvenient interventions relatively easy to sideline or ignore.

“The European Commission is able to bring Member States before the CJEU for violation of EU law, and the CJEU can impose significant fines in certain cases. There is little doubt that the availability of fines has influenced the UK government”.

Professor Maria Lee (2018) ²⁰

Question 10. The new body will hold national government directly to account. Should any other authorities be directly or indirectly in the scope of the new body?

Yes. The remit of the body should cover at least all national-level government institutions including government departments and NDPBs. The new body should act with discretion where there is no effective scrutiny alternative for local government.

Question 14. Do you have any other comments or wish to provide any further information relating to the issues addressed in this Consultation Document?

A number of further factors should be considered:

- **Geographic application** of the new environmental body is challenging. It is desirable to work across the UK, taking account of the different government and legal systems in the Scotland, Wales and Northern Ireland. But as these diverge, the task for any one body inevitably becomes more complex. This was a significant difficulty for RCEP in its final decade.
- **Overall environmental governance.** The new body must have some say in derogations in the past and in the future.
- **The principles advanced in the legislation should be justiciable** before the UK courts and influential in relation to both delegated legislation and statutes.

²⁰ Lee, M. (2018), ‘Brexit and environmental protection in the United Kingdom: governance, accountability and law making’. *Journal of Energy and Natural Resources Law* 36(3), 351-359, p357.