

**Welcome to Landmark Chambers’
‘Current Issues in Environmental Law: Climate
Change and the Environment Bill – Part 1’
webinar**

The recording may be accessed [here](#).

Your speakers today are...



David Elvin QC (Chair)
Landmark Chambers

Topic: The Environment Bill (2020) – environmental principles and transparency of environmental protection



Tim Buley QC
Landmark Chambers

Topic: The office for Environmental Protection: The proposed new enforcement body under the Environment Bill 2019-21



Professor Liz Fisher
Professor of Environmental Law at the University of Oxford

Topic: Climate change following the Plan B case



Climate Change Following the Plan B Case



Professor Liz Fisher
(Professor of Environmental Law at the University of Oxford)

Climate Change as a 'Hot' Situation

- Changing and uncertain environmental conditions
- Polycentricity
- Scientific Assessment
- Socio-political conflict



The Legally Disruptive Nature of Climate Change

Three ways courts adjudicating on climate change

1. justiciability and jurisdiction
2. evolving of legal doctrine
3. interpreting and applying climate change regimes

Cases - <http://climatecasechart.com>

Inevitability of climate change adjudication

- dispute resolution
- expository justice

Justiciability and Jurisdiction: An Example

Juliana v United States 947 F.3d 1159 (9th Cir, 2020)

- constitutional right to a climate system capable of sustaining human life

Majority

- Recognition of the seriousness of climate change
- Standing and causation for summary judgment established
- BUT injuries not redressable by an Article III Court.



Evolving Doctrine: An Example

Gloucester Resources Limited v. Minister for Planning [2019] NSWLEC 7

- merits review of the assessment of an open cut coal mine (not just climate change) under NSW environmental law

Preston CJ

- Scope 3 emissions
- No offsetting
- Carbon leakage and market substitution
- Carbon budgets under the Paris Agreement

Interpreting Legislative Obligations: An Example

Plan B Earth v Secretary of State for Transport [2020] EWCA Civ 214

- Airport National Policy Statement under the Planning Act 2008
- **Section 5(8)**: ‘The reasons must (in particular) include an explanation of how the policy set out in the statement takes account of **Government policy** relating to the **mitigation of, and adaptation to, climate change**’.
- **Section 10**: (2) The Secretary of State must, in exercising those functions [under, do so with the objective of contributing to the achievement of sustainable development.
- (3) For the purposes of subsection (2) the Secretary of State **must (in particular) have regard to the desirability of**— (a) **mitigating, and adapting to, climate change**.....

Conclusion: Climate Change Following *Plan B Earth*

- A new **legal** business as usual
- Planning Act 2008 – s 5(8) and s 10 as ‘dynamic’ legislative obligations
- The need foster legal expertise in light of climate change

Further Reading

- Elizabeth Fisher, Eloise Scotford and Emily Barritt, 'The Legally Disruptive Nature of Climate Change ' (2017) 80 Modern Law Review 173
- Joanna Bell and Elizabeth Fisher, 'The “Heathrow” Case: Legislation, Polycentricity and the Standard of Review' (2020) 83 Modern Law Review (in press)

The office for Environmental Protection: The proposed new enforcement body under the Environment Bill 2019-21



Tim Buley QC

BACKGROUND

- BREXIT is critical to the establishment of the Office for Environmental Protection and the Environment Bill 2019-2021 (“the Bill”)
- HMG “A Green Future: Our 25 Year Plan to Improve the Environment” (“the 25 Year Plan”) acknowledges concerns over loss of role of European Commission, CJEU and European Environment Agency, and commits to “setting up a new body to hold Government to account” as well as environmental principles to underpin policy making
- Two previous iterations of bill, *draft* Environment (Principles and Governance) Bill (“the Draft Bill”), December 2018, and short-lived Environment Bill 2019. Current proposals closely for OEP closely resemble model in 2018 Bill but do contain some changes
- Note wide-ranging report on the 2018 Draft Bill by the Environmental Audit Committee: Scrutiny of the Draft (Environmental (Principles and Governance) Bill, 18th Report of Session 2017-19

THE OEP

- OEP established by Chapter 2 of the Bill.
- Clause 21 establishes the OEP as a body corporate, with further provision in Schedule 1
- Clause 22 provides that the “principal objective of the OEP” is “to contribute to”:
 - “environmental protection”, and
 - “the improvement of the natural environment”
- The OEP must act “objectively”, “impartially”, “proportionately” and “transparently”. It must set out a strategy to achieve its aims, and avoid overlap with the Committee on Climate Change
- Two main sets of functions:
 - “Scrutiny and advice functions” (clauses 25-27)
 - “Enforcement Functions” (clauses 28-38)

THE OEP IS NOT THE ENVIRONMENT AGENCY

- The OEP is not a “regulator” and its role is quite different from the Environment Agency (which will continue to exist separately)
- Note different purposes of Environment Agency, who “principle aim” is to promote “sustainable development” in accordance with guidance given by Sec of State (section 4 Environment Act 1995).
- Different functions:
 - Environment Agency *regulates* private activity with respect to the environment by granting licences, and takes direct responsibility for certain programmes and plans
 - OEP’s role is to oversee conduct by public authorities, including but not limited to the Environment Agency itself.

THE OEP IS NOT THE EU COMMISSION

- The OEP is an national body, whose focus is on the compliance with (necessarily *domestic*) environmental law by *sub-national* bodies
- The EU Commission is a *supra-national* body, whose focus is on compliance with EU and other environmental standards by UK government and UK as a whole
- NB conclusions of Environmental Audit Committee still valid (see also para 118 of report):

Under the accountability framework set out in the Bill, local authorities or arm's-length bodies, who may have limited control over their budgets, could be held to account for failings outside their control. The whole of Government should be accountable for the achievement of environmental standards and targets, rather than individual public authorities, unless the OEP deems that a specific body is at fault. This would ensure collective accountability and cross-Government working to resolve environmental failures.

...

Another departure from the Commission's approach is that the Bill makes individual public authorities responsible, rather than the Government as a whole. Professor Scotford said, since environmental problems are often collective with multiple causes and multiple agencies needed to remedy breaches, it was "strange" to make individual public authorities accountable.

OEP'S SCRUTINY AND ADVICE FUNCTIONS

- Under clauses 25-27, the OEP has three “scrutiny and advice” functions:
 - Monitoring and reporting on environmental improvement plans and targets (clause 25)
 - Monitoring and reporting on environmental law (clause 26)
 - Advising on changes to environmental law, *where requested by Minister* (clause 27)
- Reports under clauses 25-26 must be laid before Parliament, and “advice” under clause 27 may be laid before Parliament if the OEP thinks fit

OEP'S ENFORCEMENT FUNCTIONS (1): OVERVIEW

- Clauses 28-38 makes provision about functions of the OEP “in relation to failures by public authorities to comply with environmental law” (clause 28(1))
- Broadly two sets of functions and powers given to OEP to enforce against “failure of public authorities to comply with environmental law:
 - Investigation followed by environmental review (clauses 29-35)
 - Judicial review by OEP itself

OEP'S ENFORCEMENT FUNCTIONS (2): Failure to comply with environmental law

- “Failure to comply with environment law” means (clause 28(2)):
 - “unlawfully failing to take proper account of environmental law when exercising its functions” or
 - “unlawfully exercising, or failing to exercise, any functions it has under environmental law”
- Appears to be envisaged as a “*Wednesbury*” test, whether public body has acted within its powers in a public law sense. Strongly supported by e.g. Gov response to Environmental Audit Committee:

*It is our assessment, however, that it is not necessary or appropriate in this context to go beyond the *Wednesbury* test in relation to the review of discretionary decisions as the Committee has recommended*

OEP'S ENFORCEMENT FUNCTIONS (3): Public authority

- “Public authority” who the OEP can investigate and oversee includes any:
 - person carrying out any function of a public nature that is not a devolved function, a parliamentary function or a function of any of the following persons –*
 - (a) *the OEP;*
 - (b) *a court or tribunal;*
 - (c) *either House of Parliament;*
 - (d) *a devolved legislature;*
 - (e) *the Scottish Ministers, the Welsh Ministers, a Northern Ireland department or a Minister within the meaning of the Northern Ireland Act 1998.*
- So focus is on individual actions by individual public bodies, not on conduct of government as a whole

OEP'S ENFORCEMENT FUNCTIONS (4): Investigations and complaints

- Under clause 29, anyone may complain to the OEP of a failure by a public authority to comply with environmental law.
- Under clause 30, the OEP may investigate a failure to comply with environmental law on the making of a complaint or of its own motion, provided that it thinks the failure may be “serious”.
- Duties to keep complainants informed (clause 32), to require information (clause 33)
- Unclear whether OEP has a fact-finding role beyond that of administrative court.

OEP'S ENFORCEMENT FUNCTIONS (5): Investigation Remedies

- Clause 33 provides for “decision notices”, where the OEP is satisfied “on the balance of probabilities” that there has been a “serious” failure to comply with environmental law
- Decision notice should (clause 33(2)):
 - Describe the failure and
 - Set out “the steps the OEP considers the authority should take in relation to the failure (which may include steps designed to remedy, mitigate or prevent reoccurrence ...”)
- Two critical points:
 - Decision notice not *binding* on public authority, either as to breach or remedy;
 - Remedy cannot include taking steps which authority has no power to take (so cannot undo decision in respect of which it is *functus officio*)

OEP'S ENFORCEMENT FUNCTIONS (6): Environmental review under clause 35

- Where OEP has given decision notice under clause 33, it may apply to the Upper Tribunal for environmental review (NB no need for authority to have refused to comply with remedy)
- Target / Subject matter Subject matter of environmental review is “a review of”:
 - “alleged conduct ... described in the decision notice” as failure to comply with environmental law; or
 - Similar conduct occurring after the notice was given.
- **NOT** failure to accept remedy / steps in decision notice
- UT will:
 - Apply ordinary judicial review principles to consider whether alleged unlawful act is unlawful, and
 - If so, grant ordinary judicial review remedies, subject (clause 35(8)) to considering hardship / prejudice to third parties. Hardship prejudice may not be hard to show

OEP'S ENFORCEMENT FUNCTIONS (7): Mismatch of Investigation and Environmental Review

- **SCOPE**

- OEP will investigate failure to comply with environmental law. Query scope of investigation and report, whether limited to judicial review principles, but in practice and intent seems to be wider than bare judicial review
- Upper Tribunal confined to ordinary judicial review

- **REMEDIES**

- OEP cannot recommend or require authority to undo acts in respect of which it is *functus officio*, but can make wide-ranging recommendations for the future
- UT can quash decisions which are *functus officio*, but cannot make recommendations

OEP'S ENFORCEMENT FUNCTIONS (8): JUDICIAL REVIEW UNDER CLAUSE 36

- Separately, under clause 36 OEP now clearly empowered to bring its own claim for judicial review, in respect of a “serious” failure to comply with environmental law.
- Should only do so where OEP thinks it is “necessary ... to prevent, or mitigate, serious damage to the natural environment or human health”
- Proceeds as ordinary claim for judicial review in all respects, with OEP as claimant, save that the court cannot refuse relief on basis that outcome would be “highly likely” to be the same (sections 31(2A), (3C) and (3D) of Senior Courts Act 1981)
- Court can grant ordinary relief (quashing etc), but in addition, where claim succeeds, defendant public authority must within 2 months publish a statement that sets out the steps it intends to make in light of the finding. Unlike investigation / environmental review, no direct role for OEP / court in that statement or onward review

OEP'S ENFORCEMENT FUNCTIONS (9): CONCLUSIONS

- Overall scheme of OEP's enforcement functions still seems badly thought through:
 - Mismatch between scope and remedies of OEP investigation and UT environmental review noted above.
 - Fundamental problem here is that environmental review does not provide means of *enforcing* OEP's recommendations and conclusions at investigation stage.
 - Ironically, if OEP dissatisfied with response to recommendations, it looks like it should bring *judicial review* rather than environmental review under clause 35
 - Unclear relationship between investigation / environmental review on one hand and judicial review under clause 36 on the other
 - Lots of scope for unpredictable responses by court in interpreting this legislation, because it appears poorly designed.

The Environment Bill (2020) – environmental principles and transparency of environmental protection



David Elvin QC (Chair)

Timeline (1)

- Draft Environment (Principles and Governance) Bill 19.12.18, to comply with s.16 of the European Union (Withdrawal) Act 2018 followed by consultation
- Full Environment Bill first published before 2019 General Election
- See also
 - Environmental Principles and Governance after the United Kingdom leaves the European Union Consultation (May 2018)
 - Summary of responses and government response (19.12.18)
 - Scrutiny of the Draft Environment (Principles and Governance) Bill (Environmental Audit Committee) 25.4.19 (HC 1951) (**Eighteenth Report** of Session 2017–19)
 - Pre-legislative scrutiny of the Draft Environment (Principles and Governance) Bill (Environmental, Food and Rural Affairs Committee) 30.4.19 (HC 1893) (**Fourteenth Report** of Session 2017–19)
- NB the scrutiny reports summarise the representations received and the concerns expressed, some of which remain applicable to the present Bill provisions (including the environmental principles)

Timeline (2)

- Latest version of the Bill introduced in HoC on 20.1.20 (a comparison version is available at <https://publications.parliament.uk/pa/bills/cbill/58-01/0009/Enviro%20Compare.pdf>)
- See also
 - Explanatory Notes to the Bill
<https://publications.parliament.uk/pa/bills/cbill/58-01/0009/en/20009en.pdf>
 - Environment Bill Policy Statement 30.1.20
<https://www.gov.uk/government/publications/environment-bill-2020/30-january-2020-environment-bill-2020-policy-statement>
 - Environmental Governance Factsheet (parts 1 and 2) 10.3.20
<https://www.gov.uk/government/publications/environment-bill-2020/10-march-2020-environmental-governance-factsheet-parts-1-and-2>

Art 191 TFEU

“1. Union policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. ...

3. In preparing its policy on the environment, the Union shall take account of:

- available scientific and technical data,
- environmental conditions in the various regions of the Union,
- the potential benefits and costs of action or lack of action,
- the economic and social development of the Union as a whole and the balanced development of its regions. ...”

Purpose (1)

- Part of regulatory changes needed to replace EU environmental law on withdrawal from the EU (Expl. Notes)
 - “The Bill sets out the measures needed to ensure that there is no environmental governance gap on withdrawal from the EU. The Bill will require the setting of long-term, legally binding and joined-up targets tailored to England, embed consideration of environmental principles in future policy making and establish the independent Office for Environmental Protection.” (§17)
 - “The Bill legislates for environmental principles to protect the environment from damage by making environmental considerations central to the policy development process across government. The principles work together to legally oblige policy-makers to consider choosing policy options which cause the least environmental harm. The Statement on Environmental Principles will set out how the principles should be interpreted and applied by policy makers.” (§19)

Purpose (2)

- Under the earlier Withdrawal Agreement the principle of “non-regression” was applied by the draft Protocol i.e. that environmental controls post-Brexit would be at least as rigorous as those applicable in the EU, but this was removed from the final Withdrawal Agreement and Protocol. The 2018 Consultation Paper must therefore be read in the light of its production prior to the final WA.
- There nonetheless remains an apparently firm commitment to a high level of environmental protection. See the Explanatory Notes and the January 2020 policy statement which includes –
 - “The Environment Bill will help deliver the government’s manifesto commitment to delivering the most ambitious environmental programme of any country on earth. It is part of the wider government response to the clear and scientific case, and growing public demand, for a step-change in environmental protection and recovery.”

Bill provisions

- Chapter I of the Bill – clauses 16-18
 - See Explanatory Notes §§172-196

The provisions remain substantially similar to the draft provisions in 2018
- Also ss. 19-20 (added in 2020) on
 - statements by ministers about bills containing new environmental law and
 - reports to Parliament on “significant” international protection legislation (added to the 2020 version of the bill)
- See Explanatory Notes §§197-210

What are environmental principles? (1)

- EPs are defined by s. 16(5) –
 - (a) the principle that environmental protection should be integrated into the making of policies,
 - (b) the principle of preventative action to avert environmental damage,
 - (c) the precautionary principle, so far as relating to the environment,
 - (d) the principle that environmental damage should as a priority be rectified at source, and
 - (e) the polluter pays principle.
- These are not further defined by reference to EU law or in the policy guidance but are explained further at §178 of the Expl. Notes which announces
 - “*The meaning of the individual environmental principles is as follows*” -

What are environmental principles? (2)

- *The principle that environmental protection must be integrated into the making of policy: environmental protection must be embedded in the making of policies.*
- *The principle of preventative action to avert environmental damage: preventive action should be taken to avert environmental damage.*
- *The precautionary principle so far as relating to the environment: where there are threats of serious irreversible environmental damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. This applies to issues regarding the natural environment and includes where human changes to the natural environment impacts upon human health, such as air quality.*
- *The principle that environmental damage should as a priority be rectified at source: environmental damage should as a priority be rectified by targeting its original cause and taking preventive action at source.*
- *The ‘polluter pays’ principle: the costs of pollution control and remediation should be borne by those who cause pollution rather than the community at large. (§178)*

What are environmental principles? (3)

- These principles have played an important role in EU environmental law and their application permeates a great deal of case law. E.g. see the critical role the precautionary principle has played in the application of art. 6(3) of the Habitats Directive by the CJEU (see e.g. **Waddenzee** (C-127/02) [2005] 2 C.M.L.R. 31) or the specific reference to key principles in art. 191(3) TFEU
- 2018 Consultation Paper –
 - “4. *Environmental principles are a specific set of principles which have been used to guide and shape modern environmental law. They are reflected in international instruments such as Agenda 21, a non-binding action plan of the United Nations with regard to sustainable development, and the Convention on Biological Diversity. Environmental principles are also set out in the EU Treaties as the basis for EU environmental law.*”

What are environmental principles? (4)

- 2018 Consultation Paper –
 - “5. *Whilst these principles are central to government policy, at a national level we do not currently set them down in one place, or define their role in policy-making or delivery. So, as we leave the EU, we will create a new statutory statement of the environmental principles which will guide us, drawing on the current international and EU environmental principles. It will remain government’s responsibility to set policy within the framework of these principles.*”
- The Bill leaves open the extent to which Ministers could depart from the EU concepts and what the reference points would be for the application of the EPs given the lack of specific direction in the Bill
- Reference to creating a “*new system which is tailored specifically to a UK context*” in the January 2020 policy statement does not guarantee consistency or even equivalence with the EU principles other than in general statements of intent.

What are environmental principles? (5)

- The **Environmental Governance Factsheet** (10.3.20) Parts 1 & 2 does not add any greater clarity but makes general statements about embedding of the principles “*into domestic law*” (which seems to have a very specific meaning here i.e. into law for policy making), “*innovative solutions*” which will allow the meeting of “*wider government objectives while supporting our environmental ambitions*”. The EPs will not be overriding or even necessarily carry presumptive weight when applied proportionately to “*wider objectives*”
- Some control to the extent that the SoS will have to consult on, then lay the draft policy statement before Parliament and will have to “produce a response” if a resolution is passed in Parliament, or a Committee makes recommendations, in respect of the draft (cl. 17(4)) but then must lay the final statement before Parliament which takes effect when it is laid (cl. 17(6)).
- The extent to which Parliament has control over the statement appears political only. No requirement for an affirmative resolution. Follows the model for NPSs in s. 9 of the Planning Act 2008.

What is the role of environmental principles?

- The Bill, as with its predecessors, focuses solely on the making of Government policy – cl. 16(1), (2), (3), 18(1)
- The role of EPs is confined to policy making, in the light of the published policy statement
- Even then, it is left to ministers to formulate the policy statement that explains “**how** the environmental principles **should be interpreted** and **proportionately applied** by Ministers of the Crown when making policy” – this appears to leave a wide discretion to Ministers as to how they propose to interpret and apply the EPs in making policy
- There is no hard and fast definition of the the EPs e.g. by reference to EU law
- Even then, the cl. 18(1) duty is only to “have due regard” to the statement

Does the Bill and EPs achieve equivalence? (1)

- However, even in the current Bill:
 - there is still no equivalent provision to art 191(2) TFEU requiring policy to have the objective of a “high level of protection” of the environment though Government argues that it is seeking to achieve equivalent or better protections than currently applied by the EU;
 - a government policy statement on EPs, which only directly effects policy formulation by Ministers, does not have the same legal effect as enshrining principles in constitutional documents such as the TFEU. The policy document will not bind all public authorities or regulators, can be varied by the Secretary of State when politically convenient, and does not provide interpretative guidance to the courts

Does the Bill and EPs achieve equivalence? (2)

- The provisions on EPs are limited in that they
 - apply only to the formulation of the policy statement under s. 17 and to due regard being had to that statement in formulating other policy
 - Have no direct application to regulators, operators, developers or other parties
 - no direct application of the EPs as a matter of law to processes other than the formulation of policy
 - are not directly guidance to the Court for general interpretation of environmental law, though presumably, through the prism of the Withdrawal Act, the Courts may still be applying CJEU jurisprudence to the legal provisions of environmental law
- The provisions do not accept the pre-legislative scrutiny recommendations in EAC 18th Report §§23-25; 32-33; EFRAC 14th Report §§24-26; 34-36

Does the Bill and EPs achieve equivalence? (3)

- While the interim preservation of EU law and principles through the provisions of the Withdrawal Act will preserve the application of EU EPs at least to some extent and in the short term, this is subject to change introduced into future legislation and the ability to depart from CJEU decisions
- The key cl. 18(1) duty on Ministers is to “have due regard” to the policy statement on EPs when making policy, which is far removed from any duty to give primacy to the EPs in any specific case and leaves open a potentially wide gap between the formulation of policy and the actual application of the EPs in specific cases. The Expl. Notes say (§190) –
 - *“This means that, when making policy, Ministers of the Crown **must have the correct level of regard** to the content of the environmental principles policy statement.”*
- Described by the 14th Report at §34 as “too weak a duty ... risks a possible regression on current standards of environmental protection”

Does the Bill and EPs achieve equivalence? (4)

- Cl. 18(2) – Ministers are not required
 - “to do anything (or refrain from doing anything) if doing it (or refraining from doing it) —
 - (a) would have no significant environmental benefit, or
 - (b) would be in any other way disproportionate to the environmental benefit.”
- The Expl Notes (§192) suggests “significant” means “*not negligible*” and that “disproportionate” means

”situations in which action would not be reflective of the benefit or costs, environmental or otherwise. ... For example, there is no need for a Minister to change a policy in light of the principles policy statement if the cost of this change would be very high and the benefit to the environment would be very low. Equally, if the potential environmental benefit is high, then it is proportionate to take a more significant action based on the policy statement.”
- Is the OEP power in cl. 26 to monitor implementation and to report on “any matter” concerned with environmental law sufficient? Its advisory role under cl. 27 is by request.

Government Response 19.12.18

- Government's response to the criticism of its approach on 19.12.18 paper sidesteps the point that the EPs are embodied in the EU law they are to replace:

“We want the principles to underpin the policy and law-making process, incorporating the consideration of these principles alongside other matters. ...

The government does not currently consider it appropriate to extend application of the policy statement beyond central government. While we recognise the points made by respondents with regards to this issue, central government has primary responsibility for developing the majority of high-level and strategic environmental policies and legislation. Central government also sets the strategy and approach for policies developed by other public bodies. For example, the National Policy Planning Framework sets out a clear framework for all planning authorities' local development plans. Therefore the application of the policy statement to ministers should ensure that the principles are also embedded in the strategic frameworks set for other public bodies.”
- The Government's position has not moved on this.

Transparency (1)

- Under cl. 19 where a Minister in charge of a Bill “is of the view that the Bill as introduced ... contains provision which, if enacted, would be environmental law” is required not only to state as such but also make either –
 - a statement under cl. 19(3) to the effect that in the Minister’s view the Bill will not have the effect of reducing the level of environmental protection provided for by any existing environmental law and in doing so
 - may in particular take into account the possibility that a Bill, by making provision that is different from existing environmental law (whether or not in force), might provide for the same or a greater level of environmental protection
 - includes any protection which could be provided for under powers *conferred* by the existing environmental law
- or

Transparency (2)

- a statement under c l. 19(4) to the effect that—
 - the Minister is unable to make a statement under subsection (3), but
 - the Government nevertheless wishes the House to proceed with the Bill
- The Expl. Notes suggest an example of the use of (4) is “*where an existing UK environmental protection is no longer justified by new scientific evidence*”
- The Expl. Notes also state at §197 (and see §366) that
 - “*The requirement does not apply to the wider planning regime, other than explicit environmental legislation such as Environmental Impact Assessments and Strategic Environmental Assessments*”
 - This is questionable notwithstanding cl. 43 definition of “environmental law” (“*mainly concerned with environmental protection*”). Its consistency with the Aarhus Convention is open to doubt.
- See also cl. 20 duty to report on international environmental protection legislation.

Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the Q&A section which can be found along the top or bottom of your screen.

Thank you for listening

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London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

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