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ENVIRONMENTAL ACCOUNTABILITY AFTER BREXIT

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Environmental Accountability of Government after Brexit

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Executive Summary

With environmental governance profoundly shaped by EU legislation and policy for four decades, Brexit will have a significant impact on the UK environment. Even the very softest of Brexits will mean losing some environmental standards and exposing gaps in domestic governance. How then should the government be held to account for its environmental obligations post-Brexit – politically and legally?

This article argues that relying exclusively on existing domestic mechanisms of accountability will not be sufficient. EU law routinely imposes a framework of planning and reporting obligations on Member States, makes a significant contribution to legal accountability in the UK courts, and has proven processes in place to set and develop environmental standards. Domestic mechanisms of judicial review and parliamentary scrutiny are not adequate in comparison.

We need a new independent, expert and adequately resourced body to replace the EU's role in scrutinising and enforcing government performance in environmental matters. It needs to be able to report publicly, and to parliaments and assemblies, on government's statutory obligations to plan and report on environmental compliance; to compel ministerial responses; to undertake investigations in response to complaints or of its own motion; to demand remedial action; and to bring judicial review actions against government where appropriate.

Developing a set of criteria against which environmental standards can be judged after Brexit should be another priority. The development of environmental standards should be subject to broad inclusion of a diverse range of interests, from industry to environmental groups, should take into account the latest scientific evidence and international and EU standards, and should be measures against established environmental principles such as the precautionary principle.

With accountability at the heart of democratic government, it is paramount that our future environmental governance framework shall be considered and properly consulted on, and that it shall adequately address government accountability.

I. Introduction

Exactly what leaving the European Union (EU) will mean for the UK environment is hard to predict; but it will be significant. The protection of the UK environment has been profoundly shaped by EU legislation and policy for four decades. In addition to setting quality standards for our air, water and nature conservation, the EU has provided a dense and extensive governance and legal framework that enhances government accountability for its environmental obligations. It seems to have become relatively uncontroversial, in principle, to acknowledge the continued significance of this governance framework as we prepare for Brexit. It is however important to maintain a clear distinction between *government* accountability and broader *corporate* accountability, and between *political* and *legal* accountability. Nor should we over-emphasise the glamourous end of the accountability story, the enforceability mechanisms provided by the European Commission plus the Court of Justice of the EU, and the fines awarded against Member States for breach of EU (environmental) law. This is important, but unlikely to be fully replicable, and in any event only the visible tip of the iceberg. The accountability of government goes beyond these big enforcement moments. More mundane governance frameworks are equally important.

II. Accountability in the context of Brexit

Accountability is a pillar of any democratic system, but it is not a straightforward concept. It is a rich and complicated idea, involving multiple, dynamic and always imperfect relationships.[1] At its simplest, it involves a relationship in which one party can require another to provide an account of their conduct. That account is subject to scrutiny, against established standards. The possibility of sanctions, of political or legal 'consequences', is often, but not always, considered to be a necessary element of accountability.[2] The party being required to account, for current purposes, is the government, and the agencies and bodies that deliver and advise on government policy. The accountability of corporations is important, but a different question.

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* I have discussed these issues with many people, and I am especially grateful to Liz Fisher (see https://www.brexitenvironment.co.uk/2016/11/28/environmental-governance-after-the-eu-the-need-to-ensure-accountability/) and the Greener UK Coalition (http://greeneruk.org/). Whilst I cannot claim that the ideas here are uniquely mine, I speak only for myself in this paper.

[1] E.g. J Black, 'Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes' (2008) 2 *Regulation & Governance* 137

[2] E.g. M Bovens, 'Analysing and Assessing Accountability: A Conceptual Framework' (2007) 13 European Law Journal 447

Identifying the party that holds government to account is more complicated. A number of parties may demand accountability, including parliaments, environmental NGOs, businesses, citizens, and any of a range of institutions that might be established for the purposes of accountability. The heavy demands that accountability makes of the various parties doing the holding to account should not be overlooked. Providing support for those accountability relationships is an important role for law, and for the governance frameworks it creates.

Brexit is of course a moving target, and there is an enormous range of possible institutional arrangements for our future relationship with the EU. A 'hard' Brexit - no membership of the internal market, and no role for the Court of Justice; and so (presumably) a very limited EU role in UK environmental protection[3] – is still apparently on the cards. But so is a 'bold and ambitious free trade agreement that allows the freest possible trade in goods and services with the EU',[4] presumably implying the application of at least some EU environmental standards and their governance frameworks. After the 2017 general elections, continued access to the internal market, with associated environmental obligations, looked more likely than it had before. But as of October 2017, 'no deal' is back in the headlines. For current purposes, we do not need to reconcile different aspirations for the EU/UK relationship. Even the very softest of Brexits would mean losing some environmental standards and environmental governance mechanisms, meaning that the issues raised here need to be addressed.

This paper first outlines the ways in which leaving the European Union will expose gaps in domestic environmental governance and the accountability of government. The approach of the government to these issues was initially disappointing, relying on existing domestic mechanisms of accountability. Michael Gove, the relatively new Secretary of State for Environment, Food and Rural Affairs does seem to appreciate now the need to go further, which is to be welcomed.[5] But progress is not to be taken for granted, and so the following section explores the limitations of those purely domestic mechanisms of accountability currently in place. The final section outlines some of the characteristics of a future environmental governance regime, focused on ensuring government accountability. In each of these three sections, I focus on four key areas (with no suggestion that this exhausts the environmental governance issues raised by Brexit):

[3] Although even in these circumstances, trading with the EU will require compliance with some environmental standards.
[4] Government Response to House of Lords European Union Select Committee, *Brexit: Environment and Climate Change*, 12th Report of Session 2016–17 HL Paper 109, 16 April 2017.
[5] See the evidence of the Secretary of State to the Environmental Audit Committee, 1 November 2017.

1. the role of planning and reporting in environmental governance;
2. the need for adequately independent, expert and well-resourced scrutiny of government performance;
3. the role of the court; and
4. the future development of environmental standards.

Many of the issues explored here apply beyond environmental protection. But environmental protection is a special case, if not unique. In the absence of economic interests in the environment, individuals (including businesses) have no focused incentives to monitor and ensure government compliance with environmental rules, by contrast with rules that affect trade across borders. Even relative to other areas of social regulation, a difficulty identifying individual interests in environmental goods can mean that special arrangements are necessary.

III. Environmental accountability in EU Member States

The day to day, banal routines of environmental governance determine what hard-fought environmental standards mean in practice. EU law routinely imposes a framework of planning and reporting obligations on Member States. Member States must plan for implementation of their environmental obligations; they must report on their performance, explaining failures to comply, as well as the lawful use of derogations and exceptions to the primary compliance obligation; and they must explain how compliance will be maintained or achieved in the future. The plans and reports are public documents, and sent to the European Commission. These responsibilities pervade EU environmental law.

To take one example, the requirement to produce River Basin Management plans under the Water Framework Directive requires government (at the sub-national, or transnational, river basin level) to provide information including:

- a summary of the measures put in place to achieve 'good water status' and 'no-deterioration';
- an explanation of any failure to meet those objectives, or any risk of failure;
- an explanation of the extra monitoring and remedial obligations that apply when basic aims are not met;
- an explanation of the use of alternatives or exceptions to the norms of good water status or no-deterioration.[6]

[6] Directive 2000/60/EC establishing a framework for Community action in the field of water policy [2000] OJ L 327/1.

Environmental obligations are often cast into the future, and in any event, are rarely met once and for all. Environmental obligations are ongoing, and require sustained attention over many years. Requirements to make plans for compliance bring those obligations into the here and now, and make them real both to government officials, and to outsiders. The open publication of plans provides an important opportunity for external input for improved outcomes. They also prevent accountability being cast into the future; it is not necessary to wait for the outcome obligation to be breached. Planning takes place alongside reporting on past compliance. This renders the breach of legislation, and even risk of breach, transparent; lawful derogations and exceptions must also be explicitly acknowledged and explained.

The seriousness with which government bodies take planning and reporting obligations may sometimes fall short. But providing an account, articulating a story about an institution and its behaviour, can be powerful.[7] These obligations underpin our understanding of whether government is doing what it said it would do, a crucial element of our democratic system. In turn, they enhance the opportunities for mechanisms of political and legal accountability to be called into action. Government's account of its conduct can be scrutinised by a range of political actors, including the Westminster Parliament and the devolved Parliament and Assemblies, NGOs, businesses, the media, and with varying levels of formality. Political sanctions might be formal or informal, via parliament or the media, via environmental groups, and are ultimately in the hands of an electorate.

There may also be scrutiny by the courts. EU law makes a very significant contribution to legal accountability in the UK. The EU has long relied on the capacity of private parties and domestic courts to ensure the implementation of law. Even unimplemented EU environmental law can, subject to conditions, be relied on in national courts (direct effect); domestic law must in any event be interpreted consistently with EU law whenever possible;[8] and remedies sufficient to provide adequate and effective legal protection must be provided in domestic systems.[9] EU law played a crucial role in the famous *ClientEarth* air quality litigation. The case has a complicated procedural and substantive history, but essentially, the Supreme Court, as well as granting a declaration that government was in breach of the limit values for pollutants in the EU Air Quality Directive,[10] also issued 'a mandatory order requiring the Secretary of State to

[7] Black, above n. 1.
[8] Case C-106/89 *Marleasing* [1990] ECR I-4135.
[9] E.g. Case C-404/13 *R (on the application of ClientEarth) v Secretary of State for the Environment, Food and Rural Affairs* [2015] 1 CMLR 55.
[10] Directive 2008/50 on ambient air quality and cleaner air for Europe [2008] OJ L 152/1.

prepare new air quality plans'.[11] In subsequent litigation, the High Court made it clear that whilst Government enjoyed discretion around the development of the plan, that discretion was constrained by the obligation in the legislation to bring areas into compliance 'as soon as possible'.[12] This might sound fairly straightforward. But importantly, the *EU* law obligation on national courts to take 'any necessary measure' to ensure compliance with EU law[13] was decisive in the imposition of meaningful remedies.

So, the EU has a major impact on judicial review in the UK. In addition, the European Commission is the 'watchdog' of the treaties, with powers to take Member States to the European Court of Justice for violations of EU law, and the Court of Justice can impose significant fines in certain cases. This enforcement is probably unique to the EU system, and is an extraordinary way of attempting to ensure some equality in implementation among twenty-eight closely bound economies. There is little doubt that the availability of fines has influenced the UK government.[14]

So far, we have focused on governance and accountability at the implementation stage, assuming the adequacy of the standards being applied. An additional question is how and by whom the headline environmental standards (e.g. 'good water quality') are filled out with detail, developed and interpreted. The EU has elaborate, sometimes highly collaborative (although rarely adequately open) processes and fora for the setting of detailed environmental standards.[15] The Seville process for developing 'best available techniques' under the Industrial Emissions Directive, and the Common Implementation Strategy under the Water Framework Directive are perhaps best known.[16] Rather than (or in addition to) open consultation, a restricted number of participants, drawn from the public, private and NGO sector, negotiate norms. The environmental principles (e.g. the precautionary principle, the rectification at source principle) are supposed to guide and shape the development of EU environmental law and policy, legitimising and incentivising high environmental standards.

[11] *R (on the application of ClientEarth) v Secretary of State for the Environment, Food and Rural Affairs* [2015] UKSC 28.
[12] *ClientEarth* v *Department for Environment, Food and Rural Affairs* [2016] EWHC 2740 (Admin).
[13] E.g. above n 9.
[14] House of Lords Select Committee, above n 4, p 24.
[15] E.g. M Lee, *EU Environmental Law, Governance and Decision-Making* (Hart Publishing, 2014).
[16] Water Framework Directive, above n 6; Dir 2010/75/EU of 24 December 2010 on industrial emissions (integrated pollution prevention and control) [2010] OJ L334/17.

IV. Domestic mechanisms of accountability

Government has not always taken seriously the significance of EU environmental accountability mechanisms. The Government response to the House of Lords EU Select Committee report on Brexit and the environment takes for granted the adequacy of existing mechanisms of judicial review and parliamentary scrutiny,[17] an assumption repeated in the papers accompanying the European Union (Withdrawal) Bill.[18]

The new Secretary of State for Environment, Food and Rural Affairs has only recently acknowledged that significant thought must be given to governance, and to the accountability of government bodies. This however is crucial, and guarantees are needed. Existing mechanisms of judicial review and parliamentary scrutiny are not adequate.

Judicial review is a limited mechanism of accountability. First, it is dependent on the priorities of civil society, and civil society's willingness and capacity to take action. Second, judicial review is costly and risky, and access to justice is clearly not a government priority at the moment.[19] Third, the English courts do not generally involve themselves in 'merits' review, meaning that rather than examining the correctness of a decision, they look solely to its *legality*. This generally means assessing procedural legality, although occasionally, a public body may be found to have acted beyond the limits of its legal powers, or an egregiously unreasonable decision may be overturned.[20] When hearing a challenge to implementation brought by the Commission, the Court of Justice looks to the application of the law. Importantly, as mentioned above, under EU law, *domestic* courts must ensure compliance with the law, often in substance as well as procedure. Fourth, the English courts are sometimes highly deferential to government, allowing wide discretion on questions of economic or political sensitivity. In the first *ClientEarth* air quality decision, for example, the High Court was concerned by the 'serious political and economic questions' that finding against the government would raise.[21] EU law,

[17] House of Lords Select Committee, *Brexit: Environment and Climate Change*, 12th Report of Session 2016–17 HL Paper 109. Government Response 16 April 2017.
[18] Letter from Dr Therese Coffey MP, above n 4; Department for Exiting the EU, *The Repeal Bill: Fact Sheet 8: Environmental Protections*, https://www.gov.uk/government/publications/information-about-the-repeal-bill, in 'Frequently Asked Questions'
[19] M Nesbitt et al, *Ensuring Compliance with Environmental Obligations through a Future UK-EU Relationship* (Institute for European Environmental Policy, 2017).
[20] Simplifying, a decision may be overturned as unreasonable when it is so unreasonable that no reasonable public authority could have reached it
[21] *R (on the application of ClientEarth) v Secretary of State for the Environment, Food and Rural Affairs* [2011] EWHC 3623 (Admin).

by contrast, has consistently rejected any attempt to rely on practical, political or economic difficulties to excuse a breach (unless provided for in the legislation).[22] We see this EU approach reflected in the second High Court decision in the same case: Government was giving 'disproportionate weight to considerations of cost, political sensitivity and administrative difficulties',[23] when the legal obligation was to provide a particular outcome. Fifth, remedies are discretionary in domestic judicial review. As, again, we might see from *ClientEarth*, domestic courts must ensure compliance with EU law, and must provide adequate and effective remedies.

Nor is political accountability adequate. A political forum for accountability, with formal or informal sanctions, is of course crucial. Parliaments make various arrangements, such as Select Committees at Westminster, for holding the executive to account. Political accountability is ultimately found in democratic accountability to an electorate, but although vital, this may be a blunt tool in environmental matters. And it must be borne in mind that political accountability is distinct from legal oversight. Moreover, as suggested above, it makes significant demands of the party doing the holding to account. Whether parliament or civil society currently have the resources and expertise to provide consistent scrutiny and debate is open to question.

The EU (Withdrawal) Bill, as initially drafted, provides little comfort in terms of environmental governance and accountability. The Bill provides for the repeal of the European Communities Act 1972, and creates a new category of 'retained EU law', which allows for the body of existing EU law to survive in UK law after we leave the EU. The Bill creates a number of categories of retained EU law, including 'EU-derived domestic legislation' and 'direct EU legislation'. The main category of EU-derived domestic legislation will be secondary legislation that was passed under the European Communities Act 1972 (and so needs to be 'saved' on repeal of that Act), but the definition extends to statutory instruments passed under other legislation, and indeed to primary legislation. Direct EU legislation is legislation which has effect before exit day,[24] without having been transposed into domestic law. The most important category of direct EU legislation is contained in EU Regulations. Court of Justice decisions that have been handed down before exit day are included in the category of 'retained case law'. They can be overturned only by the Supreme Court.

[22] E.g. Case C-56/90 *Commission v UK (bathing waters)* [1993] ECR I-4109.
[23] Above n. 12.
[24] 'Exit day' is to be defined by ministers, and so is not necessarily the day on which the UK ceases to be a member of the EU

In many (but not all) cases, obligations to plan for and publicly report on implementation will be 'retained EU law', either because they have been transposed into secondary legislation, like river basin or air quality management plans, or because they are contained in an EU Regulation. If reporting obligations contained in a directive have not been transposed, they may fall away.[25] The Bill allows for secondary legislation to deal with 'any failure of retained EU law to operate effectively', or 'any other deficiency in retained EU law'.[26] Deficiencies explicitly include the conferral of functions on EU 'entities', and reciprocal arrangements between the UK and the EU or its Member States. It seems clear that any obligation to report to the Commission (which is independent, expert, resourced for scrutiny) will be considered a 'deficiency',[27] and shall fall away. That should not imply that the public planning and reporting can also be removed.

'Deficiency' is not further defined in the Bill, which simply provides an illustrative (rather than exhaustive) list of possible deficiencies. Equally importantly, most of our environmental law is contained in secondary legislation, based on EU law. In the absence of amendment to the Withdrawal Bill, we might assume that this secondary legislation can, after Brexit, be amended by delegated legislation in the normal way. But these rules have not been passed by delegated legislation because they contain mere 'technical' detail. The law is contained in secondary rather than primary legislation because the law and its amendment is subject to expert and democratic scrutiny during the law-making process at EU level.[28] So there is worrying potential for all sorts of quiet changes to environmental standards, subject only to the weak parliamentary (and other) scrutiny allowed to statutory instruments,[29] and judicial review of vires after the event.

V. Environmental Governance and Accountability after Brexit

The world will be different after Brexit. The EU is certainly very far from a perfect environmental actor, and so improvement is to be hoped for. But it is plausible to fear that the environment

[25] But on Clause 7, see M Lee, 'The European Union (Withdrawal) Bill, environmental accountability and governance' (2017) *UKELA journal*
[26] Clause 7.
[27] Or to 'have due regard to' a Commission opinion, as under Conservation of Habitats and Species Regulations 2010, SI 2010/490.
[28] See ClientEarth, *Report: The Withdrawal Bill: Destination and Journey* (2017).
[29] Unless enhanced scrutiny is introduced during the passage of the Withdrawal Bill through Parliament, see e.g. House of Lords Select Committee on the Constitution, *European Union (Withdrawal) Bill: Interim Report* 3rd report of Session 2017-19, HL Paper 19; Hansard Society, *Taking Back Control for Brexit and Beyond: Delegated Legislation, Parliamentary Scrutiny and the European Union (withdrawal) Bill* (2017).

will be a victim of Brexit. There is much to be fought for: very high substantive environmental standards; but also a powerful environmental governance framework, ensuring the constant and continued accountability of government for the environmental obligations it has undertaken. This section suggests responses to the four sets of issues outlined above. Although I shall not explore it here, we should also be conscious that Brexit is exposing the extreme sensitivity of the UK's devolution settlement.[30] Any focus on environmental law must not be allowed to discount the enormous constitutional significance of allocating environmental powers.

Planning and reporting

Post-Brexit environmental governance must ensure that the relevant government bodies articulate publicly, in a defined time frame, how they intend to meet their legal obligations in relation to environmental protection. A follow up obligation to report on progress should include reporting on failure to comply, and on any *lawful* use of legal derogations, exceptions or 'alternative' standards, coupled with explanations of how compliance will be maintained or achieved. These plans and reports must be publicly available, so that anyone can scrutinise and respond. Publicity alone would cast a very heavy burden on civil society. NGOs and a few individuals would need to find the additional resources to scrutinise in detail every area of environmental law, as well as raising the necessary hue and cry (politically) and considering the costs and risks of legal action.

Independent scrutiny

If no one properly scrutinises these reports, they become red tape, in a self-fulfilling prophesy. Post-Brexit environmental governance requires a clearly identified public body, with adequate independence, expertise and resources, to scrutinise government. Government agencies such as Natural England or the Environment Agency are able to provide expert advice to government. But they form part of government for current purposes, subject to mandatory guidance from government as well as looking to government for funding. The point is to hold the executive to account: central government, local government and government bodies and agencies - so those very bodies and agencies cannot do the job. Parliaments and assemblies, along with their committees, might play an important role. If so, they will need a formal body for the provision of expertise, and significant resources. And whilst parliaments may be able to provide a route to political accountability, they do not avoid the need to think about legal mechanisms.

[30] Colin Reid, 'Brexit: Who's in Charge Here?' *UKELA Newsletter* September 2017.

The Secretary of State has acknowledged that a new public body may be necessary.[31] What we call it matters, given the very different expectations that naming will raise. But its characteristics are the crucial issue, whether we call it an ombudsman, a committee, a commission, a council. The new environmental body must be adequately independent, expert and resourced to hold government to account. These three criteria are tightly connected. The tension between accountability (to government) and independence (from government) is a perennial challenge with respect to longer standing bodies, such as the Environment Agency and Natural England; it will continue to be so here. The imperfect, but more or less adequate, independence and resourcing of the European Commission with respect to scrutiny and enforcement, is a result at least in part of the mutual interest of the 28 Member States in supervising each other, and so accordingly in empowering the Commission. The suggestion has been floated on different occasions that a UK wide body, 'supervising' environmental government across the UK, and funded by the four executives, would begin (imperfectly) to replicate that diffusion of authority and resourcing. A common (again imperfect) way of enhancing the independence of ombuds-type bodies is to make them responsible to parliament rather than government. That is also a possibility here. It is clear that whatever creative approach is designed, the continued independence, expertise and resourcing of the new environmental body will itself demand constant external scrutiny.

The powers of the new environmental body are another tricky but important issue. Its primary responsibility is to scrutinise the executive. Our new environmental body should certainly be able to report, publicly, and to parliaments and assemblies, in response to the plans and reports received from the executive. Relevant ministers should be required to respond publicly to the reports of the new environmental body. The new body should also be able to undertake investigations on its own initiative, so that it can take a strategic approach to governance. This implies that the new body would be able to address defined categories of complaints from individuals and NGOs (as the European Commission currently can), ideally without charge or formality. Beyond reporting, we might expect this body to have the power to demand remedial action, from fresh plans and reports, to compensatory measures. It should probably be empowered to bring ordinary judicial review actions against government when appropriate. Whether it is realistic to expect direct replication of the EU arrangements for fines against central government, is open to question. Any system of government accountability needs a body that can scrutinise and speak with a loud voice; whilst remedial powers are important, no single power is decisive.

[31] Above n. 5.

The role of the courts

That brings us to the courts. Some of the environmental limitations of judicial review raised above are not *conceptually* difficult. It is not easy to propose a simple institutional response to these challenges, although a fresh start with a powerful new Environmental Court is one conceivable solution. Without going so far, dependence on the individual priorities of environmental groups could be ameliorated by the creation of our new environmental body, which would have strategic oversight of the issues. The 1998 Aarhus *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* requires access to justice in environmental matters to be 'fair, equitable, timely and not prohibitively expensive'.[32] The various steps that have been taken over the years to comply with this obligation should be maintained or reinstated, and further developed, notwithstanding the loss of *enforceable* EU rights to access to justice in respect of EU environmental law.

Merits review, and deference to economic and political judgments, are challenging issues, and views reasonably differ. But our new environmental body provides a (non-judicial) route for airing substantive merits issues, including reviewing the approach to balancing different objectives. Similarly, incorporating a non-judicial body, whose primary role is to scrutinise government, into our governance regime, could be helpful in revisiting the level of deference to the economic and political judgments. That is of course not to understate the importance of courts enforcing clearly stated outcome obligations such as those found in air quality law.

It is plausible that an ambitious set of far reaching remedies will be developed in *domestic* environmental law, following *ClientEarth*. Whilst statutory arrangements would be possible, in a common law system, these remedial approaches are also able to develop slowly through careful litigation. Recent case law suggests that the Supreme Court is unlikely however to move away from discretionary remedies in environmental judicial review.[33]

Standards and policy development

And finally, the approach to developing environmental standards and environmental policy after Brexit should be part of any ambitious environmental governance framework. Rather than proposing an institution to take this forward, it should be possible to create a set of standards against which future government action can be held to account. As a provisional initial step,

[32] Article 9.
[33] *R (on the application of Champion) v North Norfolk District Council* [2015] UKSC 52.

we might include five criteria for developing environmental law and policy. First, the development of environmental standards should be subject to broad inclusion of a diverse range of interests, especially industry and environmental groups. Which interests took part in decision making, and how,[34] should be transparent. Second, environmental standards should take account of the latest scientific evidence. Third, standard setting should have regard to international (and EU) standards. Fourth, ambition should be reinforced by measuring standards against established environmental principles, such as the precautionary principle, a high level of protection, and non-deterioration (the latter not currently found in the EU Treaties). The EU has demonstrated that at least some of these principles are justiciable, and capable of shaping interpretation and policy making. And finally, each of these criteria should be subject to reporting by the public authority taking the decisions, which should explain how they were incorporated into the decision-making process.

Accountability is messy, and the outline proposed here may be deceptively tidy. It is also probably impossible to find a perfect solution. These possible responses to loss of government accountability are imperfect, some are contentious, and more far reaching approaches (including fines, and an environmental court with merits review powers and extensive remedial obligations) are available. Importantly, *any* response will require constant attention to ensure that the institutional arrangements put in place after Brexit continue to contribute to accountability.

VI. Conclusion

Government accountability is at the heart of democratic government. Accountability imposes a heavy burden on those doing the holding to account. An important role for law, and the governance frameworks it puts in place, is to enable accountability. Assurances from government that our future environmental governance framework shall be considered and properly consulted on, and that it shall adequately address government accountability, would be very welcome.

[34] This may well go beyond consultation, as in the EU, above n. 15.

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