



Transforming the world  
to sustainability

---

## ENVIRONMENT BILL SERIES: Environmental Principles

**Martin Baxter**

IEMA Director of Policy & External Affairs

**Eloise Scotford**

Professor of Environmental Law at University College  
London





Transforming the world  
to sustainability

## ENVIRONMENT BILL SERIES:

Office for Environmental Protection

...a new 'green watchdog'

Thursday 26<sup>th</sup> November

12:30 – 13:30

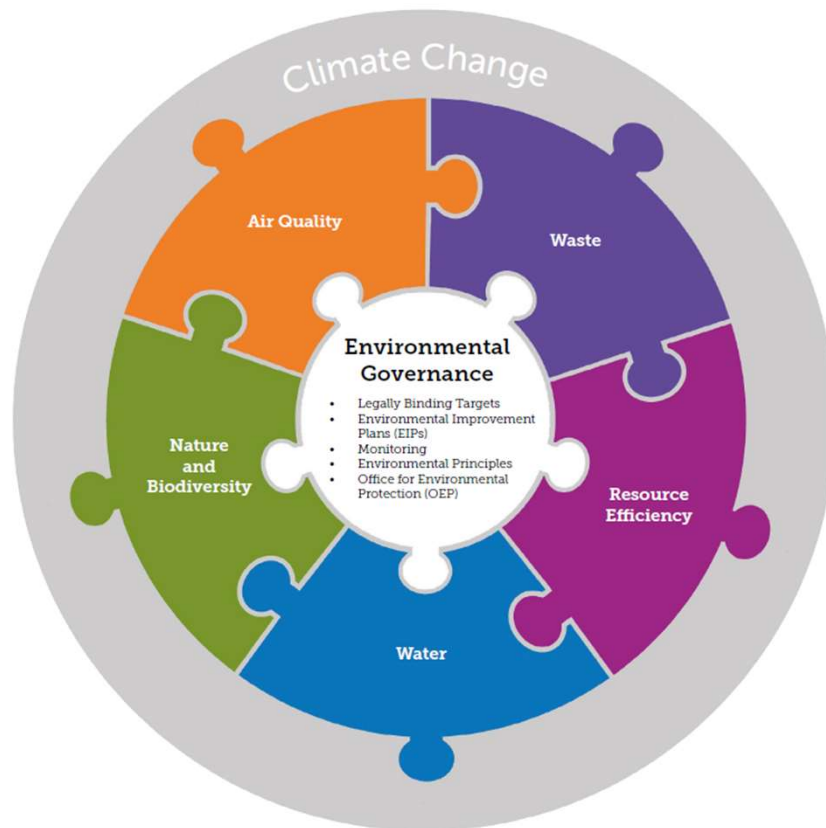
Question Time

Wednesday 9<sup>th</sup> December

12:30 – 13:30



# Environment Bill



# Thanks....any questions?


Martin Baxter  
IEMA Director of Policy & External Affairs

[m.baxter@iema.net](mailto:m.baxter@iema.net)

 [@mbaxteriema](https://twitter.com/mbaxteriema)

[iema.net](http://iema.net)



A photograph of a grand, classical building with a large portico supported by many tall, white columns. A large, ribbed dome is visible on the left side of the building. The sky is clear and blue. The building is the main subject of the background image.

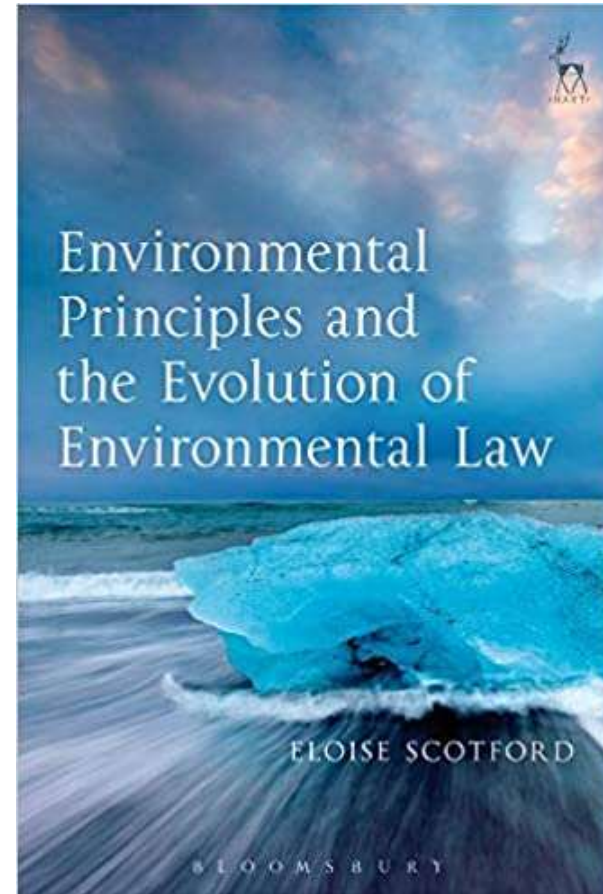
# Environmental Principles and the Environment Bill

**Eloise Scotford**  
Professor of Environmental Law

[www.ucl.ac.uk](http://www.ucl.ac.uk)

# Principles, principles, everywhere

- Prevention
- Precautionary principle
- Polluter pays principle
- Principle of intergenerational equity/intragenerational equity
- Principle of conservation of biological diversity
- Principle of resilience
- Non-regression principle
- Sustainable development (principle?)



# Environmental principles as legal ideas

- Global trend = *legal entrenchment* of environmental protection goals for the long-term in the creation and implementation of environmental policy
  - Driven by nature of environmental problems: collective, crossing policy boundaries, temporal dimension
- Various approaches: dependent on legal cultures and stage of legal development, usually driven by legislative development
  - ✓ Holistic
  - ✓ Foundational
  - ✓ Symbolic
- Evolution of legal development over time

## Some examples: TFEU, arts 191 and 11

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.

### *Article 11*

(ex Article 6 TEC)

Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.



# Protection of the Environment Administration Act 1991 (NSW)

(2) For the purposes of subsection (1) (a), ecologically sustainable development requires the effective integration of social, economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

(a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and

(ii) an assessment of the risk-weighted consequences of various options,

(b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,

(c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,

(d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:

(i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,



# Road to the Environment Bill

## TFEU

Environmental principles embedded in EU legislation, environmental regimes, CJEU case law

Environmental principles informing all UK environmental law deriving from EU law (most but not all UK environmental law)



UK political debate: environmental principles should underpin post-Brexit UK environmental regulation and policymaking

Concern about diminution of environmental rights and standards

Ensuring public bodies continue to apply environmental principles



## European Union (Withdrawal) Act 2018 – section 16

SoS must publish a list of environmental principles

SS must publish a policy on the interpretation and application of those principles 'in connection with the making and development of' Ministerial policy + duty to have regard to policy

# The Environment (Principles and Governance) Bill 2018

- Defined set of environmental principles
  - TFEU principles (including integration principle, more limited precautionary principle), 'principle of sustainable development', Aarhus rights
- Ministerial duties
  - ✓ prepare a policy statement on these environmental principles
  - ✓ 'must have regard to the policy statement on environmental principles when making, developing or revising policies *dealt with by the statement*'
  - X 'no significant environmental benefit' exception
  - X exception for disproportionate action
  - X limits to application (eg armed forces, spending, allocation of resources within government, any other matter specified in regulations)

# The Environment Bill 2019-21

- Amended list of principles
  - Aarhus rights and sustainable development removed, integration principle limited
- Policy statement (PS) structure retained
  - SoS discretion in preparing statement: 'executive environmental law' (Fisher)
- A new objective
  - SoS must be satisfied that PS, when in effect, will 'contribute to' the **improvement of environmental protection *and* sustainable development** – level of ambition?
- Stronger duty: Ministers must, when making policy, have *due* regard to PS
- Links to rest of Bill
  - ✓ Policy statement to inform Ministerial action under Bill eg target setting
  - X But no holistic underpinning of environmental law
- Committee/Lords amendments?

# The Scottish comparison

- UK Withdrawal from the European Union (Continuity) (Scotland) Bill 2020
- Differences
  - ✓ Principles explicitly derived from EU law
  - X No integration principle
  - ✓ Duty on ministers to take into account environmental principles directly (no policy statement)
  - ✓ 'have regard to' duty
  - ✓ Duty extends to public authorities in 'making plans and programmes' ➤ green thread of Scottish policymaking
- Opens space for divergent interpretations of principles between UK 'reserved' principles and Scottish 'devolved' principles

# Pre vs post-Brexit environmental principles in English law

- Retained EU law
  - Interpreted by reference to environmental principles (legal interpretive function), driven by a ‘high level of protection’ objective
- New policymaking, targets and regimes under Environment Bill
  - Legal influence of environmental principles muted by policy statement structure, carve outs, and ‘have regard’ form of duty
  - Shift: environmental principles informing **policymaking not law**
- Two speed role for environmental principles: law (EU) vs policy (English)
  - Challenges for courts and administration eg interpreting and implementing nature conservation obligations