

Institution: University College London		
Unit of Assessment: UoA 18 – Law		
Title of case study: Driving generational transformation of UK environmental law		
Period when the underpinning research was undertaken: 2003–2019		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by HEI:
Maria Lee Richard Macrory Eloise Scotford	Professor Professor Professor	2007–ongoing 1999–September 2017 September 2017–ongoing
Period when the claimed impact occurred: 2017–2020		
Is this case study continued from a case study submitted in 2014? No		
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>Multiple members of UCL’s Centre for Law and Environment (CLE) shaped generational transformation in UK environmental law through direct engagement with NGOs, Parliament and government. In particular, research by CLE scholars:</p> <ul style="list-style-type: none"> (i) Demonstrated the need for legislation to address impending gaps in UK environmental law and governance post-Brexit, convincing government to commit to sector-specific legislation in the EU Withdrawal Act 2018 and shaping the draft Bill that followed; (ii) Strengthened the important role played by environmental principles in ensuring a high standard of environmental protection in the UK for the post-Brexit era; (iii) Successfully made the case for, and influenced design of, a brand-new regulatory body for England – the Office for Environmental Protection – and led preparations for an interim regulatory body during the Brexit transition; and (iv) Directly informed ambitious new policy on air quality law, leading to new legislative proposals on air quality governance in England. <p>This work has helped safeguard and develop the UK’s environmental law for the future, to the benefit of nature itself (respecting its intrinsic value), and human health and wellbeing.</p>		
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>Researchers in UCL’s Centre for Law and Environment have been at the forefront of systematic study of UK environmental law for over two decades, shedding particular light on the complex, far-reaching influence of EU law on environmental protection in Britain. As Brexit approached, this breadth and depth of expertise allowed Centre researchers to analyse the gaps that the loss of the EU environmental law framework would create in UK environmental law—as well as opportunities for innovation.</p> <p>Accountability and enforcement: A body of work by Lee (including <i>EU Environmental Law, Governance and Decision-Making</i> (2nd ed, Hart 2014)) showed how EU law and institutional arrangements have come to underpin legitimate and accountable decision-making in environmental matters. Research by Macrory (R1) developed criteria for good environmental enforcement and optimal sanctioning mechanisms. Building on this scholarship, Lee (R2) and Macrory (R3) highlighted the risk for environmental law, and environmental protection, of the loss of the EU’s governance and enforcement architecture, including the European Commission’s ability to bring Member States before the Court of Justice of the European Union (with large fines for non-compliance), and EU law supporting domestic judicial review and national NGOs. Lee’s research (R2) broadened the governance focus to the loss of EU accountability measures, such as Member State planning and reporting obligations and associated review and reflection on ways of improving environmental protection.</p>		

Role of environmental principles: Comparative research by **Scotford (R4)** on environmental principles (e.g. the precautionary and ‘polluter pays’ principles), showed how EU ‘constitutionalisation’ of these principles (in the Treaty on the Functioning of the European Union) had deeply entrenched an ambitious vision for environmental law and policy in EU law, and thus previously in UK law. Brexit raised major questions about how to retain these environmental principles within a British political culture that is reluctant to embed policy goals in legislative form. **Macrory** and Thornton (QC, now High Court Judge) (**R5**) suggested that the most promising approach would be to set out principles in policy documents, and then link these to decision-making through legislation. After the government released a draft Environment (Principles and Governance) Bill (Dec 2018), purporting to ‘retain’ EU environmental principles in English law, **Lee** and **Scotford** showed (**R6**) that there were significant weaknesses in what the Bill purported to do in relation to principles.

Opportunities to improve air quality: An overhaul of environmental legislation also offered opportunities extending beyond replacing EU law mechanisms. **Scotford’s** analysis of air quality law (**R7**) highlighted limitations of pre-Brexit UK law, which should be addressed, particularly reliance on local authorities to address air pollution problems often beyond their competence and control. Scotford argued that future English air quality law needed a more ambitious governance architecture allocating responsibility and coordinating administrative effort across the full reach of government, rather than concentrated in local authorities alone.

3. References to the research (indicative maximum of six references)

R1. Richard Macrory, *Regulation, Enforcement and Governance in Environmental Law* (2nd ed., Hart 2014), chapters 1, 2, 3, 6, 7, 27. (Research published as chs 2, 6 funded by DEFRA grant to Macrory, *Modernising Environmental Justice*, GBP60,000, 2003).

R2. Maria Lee, ‘Brexit and Environmental Protection in the United Kingdom: Governance, Accountability and Law-making’ (2018) 36 *Journal of Energy & Natural Resources Law* 351.

R3. Richard Macrory, ‘Environmental Law in the United Kingdom post Brexit’ (2019) 19 *ERA Forum* 643 (published online Sep 2018, reflecting research prior to Sep 2017 retirement).

R4. Eloise Scotford, ‘Environmental Principles Across Jurisdictions: Legal Connectors and Catalysts’ in Emma Lees and Jorge Viñuales (eds), *Oxford Handbook of Comparative Environmental Law* (OUP 2019).

R5. Richard Macrory and Justine Thornton, ‘Environmental Principles: Will They Have a Legal Role After Brexit?’ (2017) 9 *Journal of Planning & Environment Law* 907.

R6. Maria Lee and Eloise Scotford, ‘Environmental Principles After Brexit: The Draft Environment (Principles and Governance) Bill’ (SSRN working paper posted 30 Jan 2019).

R7. Eloise Scotford, ‘[Air Quality Law for the Future: Fixing the Fundamentals](#)’, Brexit & Environment blog (14 Feb 2019). (Research funded by BA/Leverhulme Small Grant SG152891 to Scotford, *Investigating Compliance with Air Quality Standards: Administering ‘Diffuse Implementation’*, GBP8359.67, 2017–19).

4. Details of the impact (indicative maximum 750 words)

UCL CLE research demonstrated that a simple ‘roll-over’ of EU legislation on Brexit would have meant the loss of key governance and enforcement mechanisms, from frameworks for planning, monitoring and reporting, to the threat of European Commission action against the UK in the CJEU (the Commission having brought 12–20 environmental infringements against the UK annually 2015–19). Loss of these mechanisms posed a major risk to UK environmental law and protection post-Brexit, particularly in areas where EU enforcement action had been critical to progress (e.g. air quality, wastewater infrastructure, and environmental impact assessment processes). UCL CLE scholars had significant impact in addressing this risk:

- through individual and direct advice to government and evidence to Parliament; and
- as primary legal academic voices strengthening campaigns of NGOs shaping political debate (**Lee** as member of Brexit Scenarios Group, **Greener UK** (a coalition of 12 of

the UK's most prominent environmental NGOs, combined public membership >8m); Macrory and Scotford as chair and member, respectively, of UK Environmental Law Association (**UKELA**) Brexit Task Force (**BTF**)).

(i) Demonstrating need for legislation addressing environmental 'governance gap'

In October 2016, Lee and Macrory gave oral evidence before the House of Lords EU Committee investigating Brexit's implications for environmental law. While initial focus was on the 'roll-over' of EU environmental law into UK law, Lee and Macrory raised wider questions of the loss of EU governance mechanisms (such as planning, monitoring and reporting), and the need for enforcement arrangements to replace the European Commission (**R2, R3**). They were cited extensively in the Committee's report, underpinning a recommendation to establish a new national independent body to fulfil this role (**S1**).

Lee and Macrory maintained pressure for an independent body and improved post-Brexit environmental governance, both in their individual academic capacities and through work within highly influential NGOs. Two leading members of the Greener UK alliance have stated that Lee was a '*consistent and influential voice*' empowering the Greener UK Brexit Scenarios Group, which was a '*core intellectual driver of the coalition's analysis, advocacy and lobbying*', to engage with governance issues. Her work (**R2**) informed inter alia a Greener UK policymakers brief on *The Governance Gap: Why Brexit would Weaken Environmental Protections* (Aug 2017) which, along with other lobbying activities shaped by Lee, '*played an important role in influencing parliamentarians ... on governance*' (**S2**).

The central role of Greener UK (informed by Lee) in pressing for new legislation on governance and principles is evident in an account given in Parliament by Zac Goldsmith MP (as he then was) of '*discussions between Government Members, the Secretary of State, the Secretary of State's advisers and the Greener UK representatives [which] were meaningful... [and] led to a broad agreement on a solution*', namely '*creating a strong, independent body with teeth that can hold the Government and their successor Governments to account on the environment, [and] a policy statement ... that will set out ... those key environmental principles.*' (**S3**).

Within government, a July 2017 UKELA report on *Enforceability and Political Accountability post Brexit (UKELA Report)*, for which Macrory and his work (**R3**) were largely responsible, was an '*important point of reference*' as '*the Government shifted its stance [on what was required] to compensate for the loss of EU governance structures*', and a '*driving force*' in setting up the Government's work on a new Bill, according to a lead DEFRA official at the time (**S4**). In May 2018, DEFRA released a consultation paper committing to publishing a new draft Environmental Principles and Governance Bill on these issues in autumn 2018, with the UKELA report cited as the authority for the proposition that, while Brexit would entail loss of EU frameworks in many areas, there was a '*special case to act on the environment*' (**S5**).

Following Lords amendments, s 16 of the European Union (Withdrawal) Act 2018 (**EUWA**) introduced the only sector-specific commitment in the EUWA on legal issues caused by Brexit. It required a new Bill to be introduced within 6 months, establishing a body for enforcing environmental law; and publication of a policy statement on nominated environmental principles to which Ministers must have regard in setting policy (the latter according with Macrory and Thornton's suggestion on retaining environmental principles (**R5**)).

The Government then published a draft Environment (Principles and Governance) Bill 2018 (England) (**draft E(PG) Bill**) which followed the EUWA requirements but also constructed a notion of government accountability for environmental protection going beyond formal enforcement, to include requirements for monitoring and reporting. As members of the Greener UK alliance have stated, Lee's work (**R2, S1**) had a '*real impact*' on these governance aspects of the Bill (**S2**).

(ii) Strengthening role of environmental principles in post-Brexit legislation

UCL researchers played prominent roles in scrutiny of the draft E(PG) Bill, leading to notable changes in the succeeding, and more comprehensive, UK/English Environment Bill 2019–20 (**Environment Bill**), particularly on environmental principles. (At 31 Dec 2020, the

Environment Bill was due for report stage and third reading in 2021, having been delayed by the disrupted Parliamentary timetable. The Bill has been carried over to the 2021 Autumn Parliamentary session, when Royal Assent is expected).

Drawing on **R2**, **R5**, and **R6**, Lee, Macrory and Scotford gave oral evidence to the Commons Environment, Food and Rural Affairs (**EFRA**) Committee and to the Environmental Audit Committee (**EAC**) on treatment of principles in the draft E(PG) Bill 2018. The Committees' reports picked up their criticisms of, inter alia: the weakness of the requirement that Ministers 'have regard to' a policy statement on principles; wide exceptions to this requirement; and relegation to the status of principles of what were legal rights under the Aarhus Convention. On each of these points, there were committee recommendations, and the Bill was amended (**S6**). The lead DEFRA official recalls that work of UCL CLE researchers, including **R6**, was helpful in developing the legislative approach on principles and '*especially important in influencing [colleagues] to remove some of the principles which they had [drawn] in from the Aarhus Convention*' (and which, Professor Scotford explained, '*might effectively be downgraded*' by this drafting) (**S4**).

As concerns remained about the comprehensiveness of the Bill as it evolved, Scotford led a group of UK academics and practitioners in a public letter in the *Telegraph* (30 Oct 2019), challenging government claims that non-regression had been secured. This elicited a response from the Minister that the Government had no intention of weakening environmental protection (**S7**).

In Scotland, Scotford's oral evidence to Holyrood's Environment, Climate Change and Land Reform Committee on the Scottish Continuity Bill (Aug 2020), drawing on **R4** and **R6**, was the main academic input on environmental principles, and informed Committee recommendations that led to two key amendments in the final Act (passed all Bill stages Dec 2020): requiring Ministers and public bodies to have 'due' regard to environmental principles, and inserting the 'integration principle' as a 'guiding principle on the environment' (**S8**).

(iii) Influencing design of Office for Environmental Protection and interim body

Lee and Macrory influenced the design of the new enforcement body, especially between publication of the draft E(PG) Bill (Dec 2018) and the subsequent Environment Bill (Oct 2019). In January 2019, Lee published a detailed analysis of the proposed Office for Environmental Protection (OEP) (**S9**), shared with NGOs and government and parliamentary staff. Lee and Macrory gave oral evidence to the EFRA Committee in Jan–Feb 2019, including detailed discussion of the proposed OEP; Macrory was invited to give supplementary evidence to the EFRA Committee on recommendations to improve the powers of the OEP.

Evidence from Lee and Macrory was heavily cited in the EFRA committee report and linked EAC report. Proposals made by them (and members of groups of which they were part), drawing on specific suggestions in **R2**, **R3** and **S9**, appeared in the new version of the Environment Bill (published Oct 2019) and in a formal HM Treasury spending commitment, enhancing the body's effectiveness. These amendments included: power of the OEP to intervene in environmental judicial reviews; power to seek to involve central government in enforcement action against other bodies; power for the OEP to undertake investigations without prior complaint; five-year ring-fenced budget for OEP; and duty on the Secretary of State to respect the OEP's independence (**S6**). Greener UK confirms Lee's involvement in meetings with DEFRA officials on some of these topics '*at a time when critical options were under consideration*' (**S2**), and a lead DEFRA official describes Macrory's role as '*a key source of insight on possible "bespoke" arrangements for ... enforcement*' (**S4**).

The OEP's existence was confirmed by Dec 2020, when DEFRA undertook to ensure pre-appointment scrutiny of the OEP Chair. Drawing on a body of work in **R1**, Macrory '*very significantly helped*' DEFRA officials bring the OEP to life. He was appointed in 2019 to lead a transitional Interim Environment Governance Secretariat (**IEGS**), pending the OEP's establishment. In this role (2019–20), he trained DEFRA civil servants in environmental law and complaints handling, '*established the core basic principles for a public complaint system and developed vital foundations for the IEGS' formal public launch*' (on 1 Jan 2021) (**S4**).

(iv) Directly informing new legislative proposals on air quality governance in England

The damaging effects of air pollution have made air quality a key public concern, particularly with the coronial finding that the death of 9-year-old Ella Kissi-Debrah was connected to unlawful levels of air pollution. Scotford's research **(R7)** developed concrete recommendations, including imposing air quality obligations on public bodies beyond local authorities, and improving coordination between these bodies. Scotford presented her recommendations to central and local government stakeholders (Dec 2018); the All-Party Parliamentary Group on Air Pollution (Mar 2019); and at a key private meeting with DEFRA officials (April 2019). Considerations raised by Scotford's research '*directly led*' to amendments in the Environment Bill, Sch 11, according to DEFRA's senior Air Quality Lead for Environment Act amendments **(S10)**. By fostering more dispersed and better coordinated legal responsibility for air quality, these amendments improve prospects of controlling air pollution and protecting human health.

Overall, the Director of Legal Services, Environment Agency (England) testifies that '*government policy deliberations [on post-Brexit environmental law] have been directly influenced by the research*' of Lee, Macrory and Scotford, this being '*repeatedly evident in public and private meetings ... with policy officers and special advisers*', and bringing '*an analytical rigour ... which collectively became a persuasive force that NGOs alone had neither the capacity, nor capability, nor independent standing to assert*' **(S11)**. UCL CLE researchers intervened with lasting effect on the architecture and core aspects of post-Brexit environmental law, laying foundations for a generational transformation in Britain's environmental protection.

5. Sources to corroborate the impact (indicative maximum of 10 references)

S1. House of Lords Select Committee on the EU, [Brexit: Environment and Climate Change](#), 14 Feb 2017, e.g. paras 20, 22–23, 40, 45, 48, 52–3, 55, 59, 66–67, 72–4, 79.

S2. Testimonial of chair of Greener UK working group on governance issues, and of Senior Parliamentary Affairs Associate at Green Alliance, 25 Jan 2021.

S3. House of Commons Hansard, 15 Nov 2017, vol 631, col 517.

S4. Testimonial of then DEFRA lead on policy for the Office for Environmental Protection, now lead on Interim Environmental Governance Secretariat, 9 Feb 2021.

S5. DEFRA, [Environmental Principles and Governance after the United Kingdom leaves the European Union: Consultation on environmental principles and accountability for the environment](#) (May 2018), p. 19.

S6. Details of relevant sections of: House of Commons EFRA Committee report, [Pre-Legislative Scrutiny of the Draft Environment \(Principles and Governance\) Bill](#), 23 April 2019 (**EFRA**); House of Commons Environmental Audit Committee report, [Scrutiny of the Draft Environment \(Principles and Governance\) Bill](#), 24 April 2019 (**EAC**); [Environment Bill 2019-20](#), 27 Nov 2020.

S7. Letter and response in *Telegraph*, 30 Oct 2019, p. 19; 5 Nov 2019, p. 19.

S8. Details of relevant sections of: Environment, Climate Change and Land Reform Committee, [Stage 1 Report on the UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Bill](#) SP Paper 812 (22 Sep 2020); [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Bill](#), as passed 22 Dec 2020.

S9. Maria Lee, '[The New Office for Environmental Protection: Scrutinising and Enforcing Environmental Law after Brexit](#)', posted on SSRN 18 Jan 2019.

S10. Testimonial of former Senior Air Quality Lead for Environment Act amendments, 15 Jan 2021.

S11. Testimonial of Director of Legal Services, Environment Agency (England), 29 Jan 2021.