

A scenic photograph of a coastline featuring prominent white cliffs. The cliffs are covered in patches of green grass and shrubs. A path runs along the top of the cliff, and a few people can be seen walking on it. The sea is a deep blue, and the sky is a clear, pale blue. The overall scene is bright and sunny.

A world-leading environmental watchdog

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ClientEarth, Greener UK and Brexit

- Coalition of 13 major eNGOs responding to Brexit
- Key priorities:
 - ✓ No loss of environmental law as a result of Brexit
 - ✓ Influencing and amending the EUWB
 - ✓ Governance gap, principles
 - ✓ Trade and EU negotiations
 - ✓ Common frameworks
 - ✓ Agriculture, fisheries, energy

The 'governance gap'

- Loss of EU oversight institutions
- Initial UK government response very negative – JR, Parliament and agencies will suffice
- November 2017, Gove announces consultation on “*new, world-leading body to give the environment a voice and hold the powerful to account*”
- Opposition from within UK cabinet (HMT, DfT, BEIS)
- Scottish Government consultation expected in June

A new world-leading environmental watchdog

Improving compliance with environmental law by public authorities

1. Access to (deliberative) justice
2. Merits review (initially in a non-judicial setting)

1. Access to Justice

- Must replace and improve on European Commission complaints process
- Processes: free, accessible and transparent
- Support: relevant, expert and useful
- Outreach: active, visible and approachable

1. Deliberative Justice

- Continual engagement: working with people not just to identify problems, but also to develop solutions
- Iterative processes that value different forms of knowledge
- Hungarian Ombudsman for Future Generations; Colombian, South African Courts

2. An Ingress of Merits Review

- Formal Investigations of public authorities in (potential) breach of environmental law
- Aim is to find solutions, not punish failures via
 - Action plans (agreed)
 - Formal notices (issued)
- Watchdog will consider the merits of decisions (with specialist expertise) and identify steps to be taken
- BUT, legal recourse will still be necessary when action plans/formal notices not being adhered to

2. Specific Mandatory Injunctions

- Actions plans/formal notices should be enforceable before the courts
- Courts empowered to require compliance with plans/notices
- World-leading?
 - US structural injunctions, Indian Constitutional Court, Colombia, Pakistan

A Human Right to a Healthy Environment

- New Environment Act campaign
- Meet and exceed Aarhus, EU Charter, IHRL
- A new ‘environmental constitution’?
- *“The proportionality test may go further than the traditional grounds of review inasmuch as it may require attention to be directed to the relative weight accorded to interests and considerations” (Daly [2001] UKHL 26, [27])*

Next steps

- ClientEarth publications
- Response(s) to consultation(s)
- Environment Bill – introduced Q4(?) this year

