



FOUNDATION FOR DEMOCRACY  
AND SUSTAINABLE DEVELOPMENT

## **Taking the longer view: UK governance options for a finite planet**

**“Where are you making for? It takes  
So many thousand years to wake  
But will you wake for pity’s sake?”**

*A Sleep of Prisoners, Christopher Fry (1907-2005)*

**“Wo aber Gefahr ist, wächst / Das Rettende auch”  
 (“Where there is danger, that which will save us also grows”)**

*Johann Christian Friedrich Hölderlin (1770 – 1843)*

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## About the author, acknowledgements, funders and attribution

### About the author

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The Foundation for Democracy and Sustainable Development (FDSD: [www.fdsd.org](http://www.fdsd.org)) is a small charity launched in September 2009. Our work is dedicated to developing ideas and innovative practices so that democratic decision-making can work better for sustainable development. This report forms part of our work to explore institutional innovations for future generations.

WWF-UK is one of the world's leading independent environmental organisations, with established experience in the management and conservation of natural ecosystems world wide. WWF-UK's Legal Unit implements a programme of wide-ranging and strategic activities aimed at achieving targeted but fundamental improvements to the consideration of environmental law within the legal systems of England and Wales, the UK, Europe and the UNECE.

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## Executive Summary

This report was commissioned as part of an ongoing endeavour to explore the inspiration that the UK could take from the role of the Hungarian Parliamentary Commissioner for Future Generations in protecting the constitutional right of his compatriots to live in a healthy environment. It sets out ten UK governance options as a catalyst for further discussion and development.

***The future matters.*** Yet concern is growing about the seriousness of environmental and social conditions, in the UK and abroad. In the words of the new UK coalition government, “we can no longer afford the costs to our economy and quality of life which arise from a degraded natural environment”.<sup>1</sup>

Recent official acceptance of the inadequacies of General Domestic Product as a measure of well-being, and political awareness of the crucial period of early childhood for emotional and cognitive development, are hopeful signs. But withdrawal of government funding from the Sustainable Development Commission in England, and the uncertain future facing long-established institutions such as Natural England, the Countryside Council for Wales and the Environment Agency, point the other way.

Now is the time to work out how the UK’s systems of democratic decision-making can help achieve environmental justice and sustainable development, for present and future generations. How do we achieve long-term thinking in the face of short-term crises, election cycles, and a malaise in representative democracy, exemplified by voter apathy and lack of trust in politicians? And how do we systematically acknowledge unrepresented interests?

***Looking first at the broad UK legal and policy landscape*** relevant to the longer view, the report finds a mixture of positive and negative features. Positive features include legislation to protect against climate change that aims to respect environmental limits, an internationally acclaimed sustainable development strategy, implied and some express recognition of future generations in domestic and international legislation and, in allied areas, recognition of the importance of well-being and institutional support for children’s rights, human rights and equality. On the other hand, there has been a lack of systematic and institutionalised legislative embedding of sustainable development, which means that there is no unifying duty across government to achieve sustainable development; and the absence of express constitutional rights to a healthy environment or for future generations.

***The report reviews how other countries have taken the longer view,*** setting out an overview of rights and duties relevant to protecting the environment and future which are contained in constitutions; and of institutional innovations conceived by Parliaments in other countries. The review shows that a variety of constitutional rights to live in a healthy environment, and associated duties, responsibilities and issues, have been guaranteed or provided for in most countries around the world. It also shows that the Parliaments of Canada, Hungary, Israel and New Zealand have passed laws providing for Commissioners

who are independent of the executive and who have varying powers relevant to protection of the environment and future generations; and a Committee for the Future has been established by and within the Finnish Parliament.

Of these Commissioners, only the elected Hungarian Parliamentary Commissioner for Future Generations is obliged to investigate petitions from members of the public, though the Canadian Commissioner examines and monitors responses from ministers to petitions received by them, and the New Zealand Commissioner invites the public to suggest investigations. Indeed, a unique legislative foundation for advocacy in favour of the environment, sustainability and future generations has been given to the Hungarian Parliamentary Commissioner, combining in particular: investigation of complaints from members of the public; participation in the law-making process and in Hungary's position in EU negotiations; intervention to prevent activities which are violating or which could violate the right to a healthy environment guaranteed in the constitution; and strategic research. The closest structural involvement with the law-making process has been provided for in the law establishing the Speaker-appointed Knesset Commissioner for Future Generations within the Israeli Parliament, though the Hungarian and New Zealand Commissioners have important functions here as well. Visionary and forum roles appear to be the hallmarks of Finland's Committee for the Future.

The right to a healthy environment guaranteed by the Hungarian constitution is central to the Parliamentary Commissioner's functions in that country. In Canada, Israel and New Zealand, the absence of any such constitutional right (or associated State duty), evidently did not prevent the establishment of the institution. In Finland, the right to a healthy environment is referred to as one of two *foci* of a weak constitutional duty on public authorities, but appears to be unconnected to the work of the Committee for the Future.

It can be reasonably concluded that the existence, or otherwise, of a right to a healthy environment, or of a duty on the State to achieve the right, is not a prerequisite to the establishment of an institution independent of the executive to protect the environment and future generations. Equally, and bearing in mind also the general supremacy of Parliament under the constitution of the United Kingdom, the existence of such a right or otherwise in the UK would not be a bar to the creation of a similar institution here.

***Drawing on this review, and on features of the broad law and policy landscape, ten governance options are set out*** that could be implemented in the UK in order to contribute to improving environmental and social conditions, with an emphasis on the future and with the intention of catalysing further discussion and development. Nine of them would involve constitutional or other legal change, and the tenth is an executive option. The options are not intended to be recommendations, and their political feasibility is not addressed, although some of their more obvious advantages and disadvantages are noted. And although some would clearly not be compatible with others, they are not all mutually exclusive.

- 1. A new parliamentary chamber**, whose members would be given the specific task of “protecting the future” and who could become members by an innovative procedure, for example by lot.
- 2. A ‘future’ parliamentary committee or a parliamentary panel**, with the specific remit of “protecting the future” and of having most public bills referred to it as a part of the law-making process, possibly as part of a reformed House of Lords.
- 3. A new, or extended already-existing, Select Committee**, with only occasional participation in the law-making processes
- 4. The guaranteeing of constitutional rights** relating to the environment and future generations by passing a bill in the UK Parliament analogous to the Human Rights Act.
- 5. A Parliamentary Commissioner for Future Generations**, established by an Act of Parliament with statutory powers and duties, independent of the executive and who would act as a public champion of future generations.
- 6. Statutory duties relating to sustainable development** which would provide, for the first time, a statutory framework for systematically and institutionally embedding sustainable development across government and the public sector, as its central organising principle.
- 7. Statutory duties relating specifically to future generations**, so that ministers, for example, might be obliged to consider how their decisions could impact on future generations and to demonstrate if they were favouring present over future generations (and vice versa).
- 8. An Environmental Limits Act**, applying across many fields such as water, sea, air, land, soil, biodiversity, and sustainable consumption, inspired by the precedent of the Climate Change Act. 2008.
- 9. An annual statutorily-established Congress for the Future convened by Parliament**, to help build broad agreement and provide direction on long-term questions.
- 10. An Office for Future Generations**, established by the executive within government with functions to include the improvement of long term performance and policy innovation.

## **Background**

In February 2010, the Foundation for Democracy and Sustainable Development (FSDS), the United Kingdom Environmental Law Association and the Government Legal Service Environment Group and convened a meeting hosted by the Ministry of Justice, at which the Hungarian Parliamentary Commissioner for Future Generations spoke inspirationally about his role and work to protect his compatriots' constitutionally-guaranteed right to live in a healthy environment.

Following his visit, FSDS organised an NGO meeting in April 2010 to discuss what inspiration the UK could take from his role. The meeting recognised that the establishment of some form of 'Parliamentary Commissioner' for the environment and/or future generations might, or might not, be appropriate for the UK.

The NGO meeting also considered whether the absence of a written constitution in the UK may make it difficult to replicate such a model in the UK. At the same time, some participants recognised that existing rights and responsibilities arising from international, EU and domestic legislation may mean that there is no need for a formal constitutional 'right to a clean and healthy environment' as a precondition for institutional innovation in the interests of sustainable development and future generations.

In a related initiative, a group of UK NGOs and individuals wrote to the new Prime Minister and Deputy Prime Minister in June, urging the new coalition government to "future proof" UK democratic processes, thus tackling short-termism in the UK's governance.

In September 2010 FSDS and WWF-UK commissioned the research that forms the basis of this report.

## I. Introduction

We take the long view in so many ways. We get educated. We have children. We build. We buy houses. We talk about “making a living”, a continuing, dynamic, creative process. We contribute to pension schemes. We imagine retirement. We hope for good health. We devise and take out insurance policies. We make wills. We value museums, libraries, gardens, beaches, and open and wild spaces. We fear death and want to continue living. Even our fairy stories take the long view: “and they lived happily ever after”. And laws and policies are aimed at supporting these kinds of ends, or should be, even if the means are passionately contested.

This characterisation omits much of equal, and arguably of more, importance. It doesn't account for individual and collective differences, struggles, inequalities and histories, or for the adverse effects of the exercise of political, financial and military power. Many laws, policies and practices are negligent, destructive and oppressive. And where is the recognition of the wider, awesome planet and all its life? But it also contains a truth: the future matters.

Yet at the same time there is growing concern about the seriousness of environmental and social conditions, across a wide spectrum (see Box 1). Last month, the International Energy Agency projected for the first time that global crude oil production has peaked.<sup>2</sup> Societies have collapsed in the past, and we face the problems they faced, plus a few more.<sup>3</sup> There are environmental limits to continued economic growth: ‘be you ever so high, Nature is above you’, as Lord Denning might have said.<sup>4</sup> Inequalities adversely affect social and community relations, physical and mental health and well-being, and sustainability.<sup>5</sup> In the words of the new UK coalition government: *“we can no longer afford the costs to our economy and quality of life which arise from a degraded natural environment”*.<sup>6</sup>

But waking up is hard. Recent official acceptance of the inadequacies of GDP as a measure of well-being<sup>7</sup>, and political awareness of the crucial period of early childhood for emotional and cognitive development,<sup>8</sup> are hopeful signs, but withdrawal of government funding from the Sustainable Development Commission after March 2011 in England, and the uncertain future facing long-established institutions such as Natural England, the Countryside Council for Wales and the Environment Agency, point the other way.

Governments come and go. The UK is not a unitary State and, in the words of the Brundtland Commission, “we act as we do because we can get away with it: future generations do not vote; they have no political or financial power; they cannot challenge our decisions”.<sup>9</sup> Rather, now is the time to put conscious effort into working out how the UK's systems of democratic decision-making can help achieve environmental justice and sustainable development, for present and future generations.<sup>10</sup> Taking a longer view and considering our governance is as necessary as ever.

### **Box 1 – The State we are in**

- The UK's global footprint is almost double the world average. If everyone consumed natural resources at the same rate as the UK, we would need 2.75 planets to support the global population. We produce 335 million tonnes of waste per year, and it's increasing. A third of the food we buy goes to waste.
- We are on track to meet Kyoto targets. But a decrease in CO<sub>2</sub> emissions is a significant increase once trade and travel emissions are considered. Energy consumption has been gradually decreasing since 2000, but is still higher than 1990, with transport use continuing to increase. We are not on track to meet national and EU renewable energy targets.
- The UK is not on target to halt biodiversity loss by 2010. many priority habitats are still declining and many species are still under threat. 97% of flower-rich meadow has been lost since 1930. 84% of lowland heathland has been lost since 1800. There are 10 million fewer house sparrows than 25 years ago. 80% of global fish stocks are either fully or over exploited. 50% of UK fishstocks were classed as unsustainable in 2008, with target and by-catch species less than 10% of expected abundance.
- Air pollution still reduces life expectancy by an average of six months, with social costs estimated at £8 to 17 billion per year. Compliance with nitrogen dioxide levels in urban areas is challenging.
- Life expectancy has increased in all areas of the UK, but the pace of change has been slower in poorer areas. Mental health and child well-being have become particular challenges. The UK has the highest rate of childhood obesity in the EU. Low levels of weekly exercise mean obesity is expected to rise significantly, across both low-and high-income groups.
- Some progress has been made on reducing income inequalities, but the gap between the richest and poorest tenths is increasing. The UK is not on track to meet its child poverty target. While employment levels had previously remained high, the economic downturn has caused increases in unemployment.
- It is now widely accepted that individuals, community groups and environmental NGOs cannot challenge the decisions of public bodies because legal action in the UK is "prohibitively expensive". An urgent reform of the current costs rules is needed for environmental cases - which provide citizens with costs certainty and recognise that such scrutiny is necessary and important in the public interest.

*Sources: Sustainable Development Commission, 2009;<sup>11</sup> DEFRA;<sup>12</sup> WWF-UK;<sup>13</sup> Working Group on Access to Environmental Justice<sup>14</sup>*

But there are big challenges. How do we achieve long-term thinking in the face of short-term crises, election cycles, and a malaise in representative democracy, exemplified by voter apathy and lack of trust in politicians? And how do we systematically acknowledge unrepresented interests, such as those without voting rights, including nature itself, children and future generations, and those without an effective voice, including the most marginalised?<sup>23</sup>

In the light of some these challenges, and as a catalyst for further discussion and development, this report therefore:

- considers how future governance thinking might be informed by some of the features of what have been, at least until now, core aspects of UK law and policy relevant to the longer view (in section II), and by constitutional and institutional approaches in other countries (in section III); and
- draws on these features and approaches to set out a range of governance options that could be implemented in the UK in order to help take the longer view (in section IV).

## **II. The UK and the longer view**

Inspiring and committed long-term perspectives have long been a part of the history and activities of many voluntary organisations and individuals in the UK. They have been, and continue to be, the foundation for the UK approach to the long view. They are necessary and indispensable. Examples of these are included in Appendix 1, including the Scotland's Futures Forum, one of the best examples of wider society in conjunction with legislators considering the future in the UK thus far.

A large body of law and policy has also grown over many decades. The UK has played a major role in the development of international environmental law and policy since the 1970s, which coincided with our joining the European Economic Community. It was with the World Commission on Environment and Development's report in April 1987 that the term 'sustainable development', and its definition of meeting the needs of present generations without compromising the ability of future generations to meet their own needs,<sup>24</sup> were momentarily coined; and the need for integration of environmental, social and economic policy became widely recognised. The language of rights and responsibilities has been a part of environmental and sustainable development policy from the start,<sup>25</sup> as have concerns about environmental, social and economic justice.

A mixture of positive and negative features emerge from a survey of the broad UK legal and policy landscape relevant to the longer view. Positive features include legislation to protect against climate change that aims to respect environmental limits, an internationally acclaimed sustainable development strategy, implied and some express recognition of future generations through domestic and international legislation (and, in allied areas, recognition of the importance of well-being<sup>26</sup> and institutional support for children's rights,<sup>27</sup> human rights and equality<sup>28</sup>). But there is also a lack of systematic and institutionalised legislative embedding of sustainable development, which means there is no unifying duty across government to achieve it; and the absence of express constitutional rights to a healthy environment or for future generations. These are discussed more below.

## 1. The UK has legislated to establish present and future environmental limits to protect against climate change

### ***Box 2: The Climate Change Act 2008 in a nutshell***

- The Climate Change Act places on the executive the duty to ensure that “the net UK carbon account” in 2050 will be at least 80% lower than “the 1990 baseline” for carbon dioxide and other greenhouse gases.
- To aid fulfilment of this duty, amounts of that account must be fixed every five years (‘carbon budgets’) from 2008; the executive must ensure that those amounts are not exceeded; and the annual amount in 2020 must be at least 26% lower than the 1990 baseline.
- Carbon budgets must be set by an order of the Secretary of State in a statutory instrument, and he or she must take into account the advice of the Committee on Climate Change and any representations from other national authorities.
- In appointing the Committee, the national authorities must consider the desirability of it having experience in or knowledge of business competitiveness; climate change policy, especially its social impacts; climate science, and other branches of environmental science; differences in circumstances between England, Wales, Scotland and Northern Ireland and the capacity of national authorities to take action in relation to climate change; economic analysis and forecasting; emissions trading; energy production and supply; financial investment; and technology development and diffusion.
- The Secretary of State must prepare proposals and policies to enable carbon budgets to be met, with a view to meeting the 2050 target, and the “proposals and policies, taken as a whole, must be such as to contribute to sustainable development”.
- It is the legal duty of the Committee to advise the Secretary of State on whether the 2050 percentage reduction should be amended, and on the level of the carbon budget for each five-year period. If the order sets the carbon budget at a level different from that recommended by the Committee, the Secretary of State must set out the reasons for that.
- The Committee must make an annual report to Parliament (and the devolved legislatures) on progress made towards meeting the five-yearly budgets and the 2050 target; on further progress needed; and on whether they are likely to be met. The Secretary of State must respond to that report.
- The Secretary of State has power to issue guidance and directions to the Committee, and the Committee must take into account that guidance and comply with those directions.
- There are also duties relating to adaptation, including the duty on the executive to lay before Parliament programmes setting out objectives, proposals, policies and time-scales addressing the risks for the UK of the current and predicted impact of climate change. The “objectives, proposals and policies must be such as to contribute to sustainable development”.

In the UK’s unique Climate Change Act,<sup>29</sup> summarised in *Box 2* above, the Westminster Parliament has provided a system for establishing legally-binding, staged, amendable,

present and future environmental limits, closely linked to the advice of a broadly-based committee charged with advising on those limits and monitoring their achievement.<sup>30</sup> This was followed by the Climate Change (Scotland) Act 2009, passed by the Scottish Parliament.<sup>31</sup> These Acts stand alone in their approach to environmental limits – in their approach to reality, in the deepest sense, one might say. Whilst concerns exist about the details of these laws, their structure and features are potentially replicable to other areas where environmental limits apply, such as water, sea, air, land, soil and biodiversity, and including sustainable consumption.

**2. The UK's sustainable development strategy has been internationally acclaimed, but the legal approach has not been embedded systematically or institutionally, so that there is no unifying or framing statutory duty across government to achieve sustainable development.** Outside the field of children's rights, the job of protecting future generations legally, and with some justification, has been left mainly to the construct of sustainable development. And in this sphere, climate change aside, the UK has fared better from a policy than from a legal perspective. The UK's 2005 Sustainable Development Strategy<sup>32</sup> has won international plaudits, much progress has been made in developing sustainable development indicators, which include social justice issues, and there has been increasing policy awareness of the need for accounting for environmental and social issues. But the lack of legislative underpinning for sustainable development has been criticised,<sup>33</sup> and is evidenced by how easily present mechanisms can be unravelled. This can be contrasted, for example, with the Federal Swiss Constitution, which includes sustainable development and long-term preservation of natural resources as national aims.<sup>34</sup>

A lack of legislative underpinning for the Strategy must be seen in the light of a legal approach whereby Parliament has never sought to legislate in respect of sustainable development institutionally or systematically. The Sustainable Development Commission was a creature of the executive, with no statutory powers or obligations; and a review of the legal functions of ministers and public bodies in relation to sustainable development reveals a miscellany of fragmented, vague and generally weak provisions, with no precedence given to environmental limits.

For example, not one of the 175 references<sup>35</sup> to sustainable development in the UK Statute Law Database gives a minister or public body the general or principal purpose, or the duty, to achieve or to secure sustainable development. Even furthering sustainable development is only recognised, legally, in respect of international development assistance.<sup>36</sup>

Rather, the usual statutory approach, on a bill-by-bill basis, has been to give ministers and public bodies a duty to exercise their other functions so as to contribute to the achievement of sustainable development, or with the objective of making a contribution to the achievement of sustainable development, or in the way they consider is best calculated to contribute to sustainable development.<sup>37</sup>

Not only are these weak formulations, which place sustainable development at a level below the core purpose of the body, they have not been accompanied by any statutory definitions

or indicators, despite much policy work having been done in this respect. The combined effect is one of vagueness, making it very difficult to demonstrate whether the duty is being implemented.

One provision stands out as slightly different, and that is the obligation on Welsh Ministers to make a scheme setting out how they propose, in the exercise of their functions, to promote sustainable development.<sup>38</sup> It would seem arguable that the existence of this duty has contributed to the Welsh Assembly Government stating on its website:

*“We have made sustainable development our central organising principle.”<sup>39</sup>*

Full marks to the Welsh Assembly Government. At the same time though, it would be sad to think that this might be the best we have to offer legally in the UK: it is not even a duty to promote sustainable development; rather, it is a duty to write down in a document how ministers propose, in exercising *other* duties and powers, to promote sustainable development.

### 3. Future generations are recognised in domestic and international legislation

The large body of environmental laws that has built up over the last four decades is testimony to the importance of the future and an implied recognition of the interests of future generations – notwithstanding that their objectives, principles and obligations might not be being achieved or implemented.

More specifically, the UK has accepted international legal obligations for over half a century in treaties where the interests of future generations, especially through the principle of inter-generational equity, have been recognised.<sup>40</sup> Examples of these, covering treaties’ preambles and principles, the objective of one treaty and a clear legal obligation in another, are provided in *Table 1* below.

**Table 1 - Future generations and international agreements binding on the UK**

Treaty	Text
UN Charter, 1945 Preamble, opening lines	<i>“WE THE PEOPLES OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war...”</i>
International Convention for the Regulation of Whaling, 1946 Preamble, opening lines	<i>“Recognizing the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks”</i>
UNESCO World Heritage Convention, 1972 Article 4 (obligation)	<i>“Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources...”</i>
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1975 Preamble, opening lines	<i>“Recognizing that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come”</i>
UN Framework Convention on Climate Change, 1992 Article 3.1 (principle)	<i>“In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:</i>

	<i>1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.”</i>
UN Convention on Biological Diversity, 1992 Preamble	<i>“Determined to conserve and sustainably use biological diversity for the benefit of present and future generations.”</i>
UNECE Convention on the Protection and Use of Transboundary, 1992 Watercourses and International Lakes, Article 2.5(c) (principle)	<i>“In taking the measures referred to in paragraphs 1 and 2 of this article, the Parties shall be guided by the following principles: ... (c) water resources shall be managed so that the needs of the present generation are met without compromising the ability of future generations to meet their own needs.”</i>
UNECE Aarhus Convention on Access to Information, Public participation in Decision-making and Access to Justice in Environmental Matters, 1998 Preamble, and Article 1 (objective)	<i>“Recognizing also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations... Article 1 - OBJECTIVE In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.”</i>
Charter of Fundamental Rights of the European Union Preamble	<i>“Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.”</i>

Preambular references to inter-generational equity in other international agreements have also been identified.<sup>41</sup>

A search of the UK Statute Law database reveals that eight primary and secondary domestic legislative instruments expressly refer to “future generations”, in a variety of contexts, covering the definition of institutional purpose; the exercise of licensing functions<sup>42</sup>, and executive duties; the educational curriculum;<sup>43</sup> and the granting of constitutional rights or the imposing of constitutional obligations.<sup>44</sup> Those relating to Natural England and the marine environment are focused on here.

#### *(a) Natural England*

The inclusion of future generations within Natural England’s general purpose was, chronologically, the first express reference to future generations within UK legislation, in 2006. The Natural Environment and Rural Communities Act 2006, section 2 provides as follows:<sup>45</sup>

##### *“2 General purpose*

*(1) Natural England's general purpose is to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development.*

*(2) Natural England's general purpose includes—*

- (a) promoting nature conservation and protecting biodiversity,*
- (b) conserving and enhancing the landscape,*
- (c) securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment,*
- (d) promoting access to the countryside and open spaces and encouraging open-air recreation, and*
- (e) contributing in other ways to social and economic well-being through management of the natural environment.”*

It is difficult to envisage how future generations could have been legally better protected (insofar as Natural England’s functions are concerned) than by placing them, alongside present generations, at the core of the body’s (strongly-formulated) general purpose. It can also be noted from section 2 that:

- benefits to future generations are placed in the context of contributing to sustainable development – in other words, their benefit is not a ‘stand alone’ concept, but neither is it only something to which Natural England must contribute;
- the purpose combines present and future generations – in other words, the beneficiaries of the purpose are both present and future generations, without distinction or precedence to either;
- the natural environment is legally recognised as contributing to social and economic well-being, presumably of both present and future generations.

*(b) The Marine Strategy Directive*

The 2008 EU Marine Strategy Directive<sup>46</sup> imposes duties on ministers in relation to future generations, transposed by The Marine Strategy Regulations 2010.<sup>47</sup>

Under Regulation 4, the Secretary of State, devolved policy authorities and each Northern Ireland body must exercise relevant functions so as to secure compliance with the requirements of the Directive, including the requirement in Article 1 to take the necessary measures to achieve or maintain good environmental status of marine waters within the marine strategy area by 31st December 2020; with the Secretary of State (for example), under Regulation 11, having to determine the characteristics of good environmental status for the marine waters in the marine strategy area by 15<sup>th</sup> July 2012. A relevant function is defined as a function under any one of 39 listed enactments, including for example the Prevention of Oil Pollution Act 1971, the Pollution Prevention and Control Act 1999, the Planning Act 2008, the Marine and Coastal Access Act 2009 and the Conservation of Natural Habitats and Species Regulations 2010.

A key element of the definition of ‘good environmental status’ is “safeguarding the potential for uses and activities by current and future generations”;<sup>48</sup> and under Article 1.3 of the Directive marine strategies must:

*“apply an ecosystem-based approach to the management of human activities, ensuring that the collective pressure of such activities is kept within levels compatible with the achievement of good environmental status and that the capacity of marine ecosystems to respond to human-induced changes is not compromised, while enabling the sustainable use of marine goods and services by present and future generations”.*<sup>49</sup>

The duties on ministers which flow from this Directive in relation to future generations – again, alongside duties to present generations, without distinction or precedence – are clear; relatively robust in comparison to duties formulated as ‘contributing to sustainable development’; and the most developed express duty in relation to future generations in UK law.

These examples of Natural England and the Marine Strategy Directive show that future generations already have interests capable of legislative recognition and protection.

#### **4. Absence of express constitutional rights**

Broadly, environmental rights can be categorised into three groups: procedural rights, such as access to information, public participation and access to justice; derivative rights, such as rights to life, property, privacy and dignity, where protection of a person’s life and environment is derived from of a long-established ‘traditional’ human right; and substantive rights, where a legal instrument guarantees an express environmental right that is capable of interpretation by the courts in its own terms for the purposes of protecting that person’s life and environment.

In the UK, procedural rights are provided, *inter alia*, by domestic legislation that in principle should reflect and transpose the requirements of the Aarhus Convention and EU legislation – though, for example, the prohibitive expense of access to the courts clearly conflicts with the Convention’s requirements in this regard. Through the Human Rights Act, and the European Convention on Human Rights, derivative rights also arise. The Council of Europe’s Parliamentary Assembly recommended in September 2009 that the Committee of Ministers “draw up an additional protocol to the European Convention on Human Rights, recognising the right to a healthy and viable environment.”<sup>50</sup> Despite a vigorous NGO campaign,<sup>51</sup> the Committee of Ministers rejected the recommendation on 16<sup>th</sup> June 2010.<sup>52</sup>

There is no internationally binding legal agreement which the UK has ratified which guarantees the right to live in a healthy environment, be it for present or for future generations.

Though as will have been seen, the UK recognizes the existence of such a right in the Aarhus Convention, and played an active part in the drafting of that provision. There was concern, however, particularly in the Foreign and Commonwealth Office, that this recognition could be construed as a guarantee of the right, and so the UK made the following declaration on signature and ratification of the Convention:

*"The United Kingdom understands the references in article 1 and the seventh preambular paragraph of this Convention to the 'right' of every person 'to live in an environment adequate to his or her health and well-being' to express an aspiration which motivated the negotiation of this Convention and which is shared fully by the United Kingdom. The legal rights which each Party undertakes to guarantee under article 1 are limited to the rights of access to information, public participation in decision-making and access to justice in environmental matters in accordance with the provisions of this Convention."<sup>53</sup>*

This ambiguity in the UK's position – recognising but not guaranteeing for UK citizens the right to live in a healthy environment – could be rectified by an Act of the UK Parliament. The powers of its devolved counterparts in this regard also merit consideration.

### **III. Other countries and the longer view**

This section sets out overviews of rights and duties relevant to protecting the environment and future which are contained in other countries' constitutions; and (with Appendix 2) of institutional innovations conceived by Parliaments in other countries.

#### **1. Constitutional rights and duties<sup>54</sup>**

About 120 constitutions around the world contain provisions on environmental rights and State protection duties. Five of their characteristics in relation to substantive rights, with mostly European examples, are drawn out below, followed by a focus on future generations.

##### *(a) Fundamental orientation*

Until recently, no constitution recognised the ultimately paramount importance of the natural world, both in its own right and for human survival, as well as for the quality of human existence.

In 2008, the new Ecuadorian constitution did so, by granting rights to nature. The key provisions are highlighted below.<sup>55</sup> It has recently been reported that a group of individuals and organisations have filed a case in Ecuador based on these provisions against BP in connection with the leaking of oil into the Gulf of Mexico after an explosion on the Deep Horizon rig in April 2010.<sup>56</sup>

**Table 1 – The Ecuadorian Constitution of 2008**

Article	Text
<b>Article 10</b> Title II, Chapter 1 (Principles of the application of rights)	<i>“Individuals, communities, peoples, nationalities and collectivities are entitled to exercise rights and shall enjoy all rights guaranteed in the Constitution and in international legal instruments. Nature shall be entitled to exercise those rights accorded to it by the Constitution.”</i>
<b>Article 14</b> Title II, Chapter 2 (Rights of bien vivir), Section 2 (Healthy environment)	<i>“The population shall have the right to live in a healthy and ecologically balanced environment, which guarantees sustainability and bien vivir, sumac kawsay. Environmental protection, conservation of ecosystems, biodiversity and the integrity of the countries genetic heritage, prevention of damage to the environment and the recuperation of degraded natural areas shall be declared to be in the public interest.”</i>
<b>Article 71<sup>57</sup></b> Title II, Chapter 7 (Rights of Nature)	<i>“Nature or Pacha Mama, from which life reproduces and enfolds itself, has the right to the integral respect for its existence and the maintenance and regeneration of its vital cycles, structures, functions and evolutionary processes. Every person, community, people or nationality can require that public authorities comply with nature rights. For the application and interpretation of these rights, the principles established in the Constitution shall be observed, as follows. The State shall provide incentives to natural and legal persons, and to collectivities, so that they might protect nature, and shall promote respect for all elements which form an ecosystem.”</i>

*(b) Formulation of the right*

Some constitutions establish or acknowledge, in some way, the substantive (anthropocentric) right to live in a healthy environment. They vary in how the right is formulated, particularly in their use of adjectives (e.g., “safe”, “sound” “favourable”, “balanced” environment etc.) and on whether future generations and sustainability are expressly included.

Where rights (as opposed to duties) are guaranteed in a constitution they will, as a rule of thumb, and perhaps invariably, provide a cause of action, enabling those alleging violation of a right to go to court to enforce it.

At least eight European countries have this right contained in the operative provisions of their constitutions – Belgium, Czech Republic, Hungary, Norway, Portugal, Slovenia, Slovakia and Spain – and France includes it in the preamble to the Environment Charter included in its Constitution.

**Table 2 - Environmental rights in European States' constitutions**

<b>European State</b>	<b>Constitutional right</b>
<b>Belgium</b> The 1994 Constitution, Title II, Article 23(4)	<i>"everyone has the right to lead a life worthy of human dignity"; this right expressly includes "the right to the protection of a sound environment."</i>
<b>Czech Republic</b> The 1992 Constitution, as amended, Chapter 4, Article 35(1)	<i>"everybody has the right to a favourable environment."</i>
<b>Hungary</b> The amended 1949 Constitution, Chapter I, Article 18	<i>"Republic of Hungary recognises and implements everyone's right to a healthy environment." The Constitution also declares that "everyone living within the territories of the Republic of Hungary has the right to the highest possible level of physical and mental health"</i>
<b>France</b> The amended 1958 Constitution, Environment Charter, Preamble.	All French citizens have the right to live in a <i>"balanced environment, favourable to human health."</i>
<b>Norway</b> The amended 1814 Constitution, Section E, Article 110b	<i>"Every person has a right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained."</i>
<b>Portugal</b> The 1976 Constitution, as amended, Part I, Title III, Chapter II, Article 66(1)	<i>"all have a right to a healthy and ecologically balanced human environment."</i>
<b>Slovakia</b> The 1992 Constitution, as amended, Chapter 2, Section VI, Article 44(1)	<i>"every person has the right to a favourable environment."</i>
<b>Slovenia</b> The 1991 Constitution, as amended, Section III, Article 72	<i>"all persons shall have the right to a healthy living environment." Section III, Article 72.</i>
<b>Spain</b> The 1978 Constitution, Title I, Chapter III, Article 45(1)	<i>"everyone has the right to enjoy an environment suitable for the development of the person."</i>

The UK has also granted constitutional rights to a healthy environment to the people of the Virgin Islands and of Pitcairn, along with the right to have the environment protected for the benefit of present and future generations.<sup>58</sup>

**Table 3 – Environmental rights in British overseas territories’ constitutions**

Territory	Constitutional right
<b>Virgin Islands</b> <sup>59</sup>	<p><i>“29. Every person has the right to an environment that is generally not harmful to his or her health or well-being and to have the environment protected, for the benefit of present and future generations, through such laws as may be enacted by the Legislature including laws to—</i></p> <p><i>(a) prevent pollution and ecological degradation;</i></p> <p><i>(b) promote conservation; and</i></p> <p><i>(c) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”</i></p>
<b>Pitcairn</b> <sup>60</sup>	<p><i>19. Everyone has the right to an environment that is generally not harmful to his or her health or well-being and to have the environment protected, for the benefit of present and future generations, through such laws as may be made under this Constitution including laws to—</i></p> <p><i>(a) prevent pollution and ecological degradation;</i></p> <p><i>(b) promote conservation; and</i></p> <p><i>(c) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.</i></p>

*(c) Extent of the provisions*

Sometimes, the provisions extend, for example, to include a right to compensation for environmental damage; to an obligation to restore the environment; to protection of “natural resources” etc.; to apply the precautionary, the polluter pays and the prevention principles, and to procedural rights (to information, participation and access to justice).

*(d) The State’s (directional) duty or goal*

Some constitutions contain both rights, and a State duty, in relation to the environment, which may or may not be enforceable – they are not necessarily mutually exclusive. Finland and the Philippine Constitutions expressly link the duty to the right.<sup>61</sup> Some only include such a duty or goal.

Nine European countries have some kind of constitutional environmental duty on the State - Finland, Germany, Hungary, Netherlands, Poland, Portugal, Slovakia, Slovenia and Spain – as well as Andorra. I would expect that most of them would not, in themselves, provide a cause of action.

**Table 4 - Environmental duties in European States' constitutions**

European State	Constitutional provision
<b>Finland</b> The amended 1999 Constitution, Chapter II, Section 20	<i>"The public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment".</i>
<b>Germany</b> The amended 1949 Constitution, Chapter I, Article 20a	<i>"the State protects . . . with responsibility to future generations the natural foundations of life and animals."</i>
<b>Hungary</b> The amended 1949 Constitution, Chapter XII, Article 70/D	The Constitution directs the State to implement the right to a healthy environment <i>"through the protection of the . . . natural environment."</i>
<b>Netherlands</b> The amended 1983 Constitution, Chapter I, Article 21	<i>"it shall be the concern of the authorities to keep the country habitable and to protect and improve the environment."</i>
<b>Poland</b> The 1997 Constitution, Chapter II, Article 74(1) and (2)	The Constitution makes it the duty of public authorities to protect the environment, and directs the authorities to <i>"pursue policies ensuring the ecological safety of current and future generations."</i>
<b>Portugal</b> The 1976 Constitution, as amended, Article 9(e)	The Constitution makes it a fundamental responsibility of the State to <i>"protect and enhance the cultural heritage of the Portuguese people, to protect nature and environment, conserve natural resources and to ensure the proper development of the national territory."</i>
<b>Slovakia</b> The 1992 Constitution, as amended Chapter 2, Section VI, Article 44(4)	The Constitution directs the State to <i>"provide for an efficient utilization of natural resources, a balanced ecology, an effective protection of the environment."</i>
<b>Slovenia</b> The 1991 Constitution, as amended, Section III, Article 72	The Constitution, as amended...makes it the duty of the State to <i>"ensure a healthy living environment."</i>
<b>Spain</b> The 1978 Constitution, Title I, Chapter III, Article 45(2)	The Constitution directs the public authorities to <i>"concern themselves with the rational use of all natural resources for the purpose of protecting and improving the quality of life and protecting and restoring the environment."</i>

The UK has also imposed a (rather weak) governmental duty in the constitution of the Cayman Islands, as follows<sup>62</sup>:

*"18. — (1) Government shall, in all its decisions, have due regard to the need to foster and protect an environment that is not harmful to the health or well-being of present and future generations, while promoting justifiable economic and social development. (2) To this end government should adopt reasonable legislative and other measures to protect the heritage and wildlife and the land and sea biodiversity of the Cayman Islands that—*

- (a) limit pollution and ecological degradation;*
- (b) promote conservation and biodiversity; and*
- (c) secure ecologically sustainable development and use of natural resources."*

*(e) Responsibilities*

Some constitutions place a responsibility to protect the environment on citizens, residents, persons or “everybody”, as well as the State – usually, it seems, but not always, alongside a right (reciprocal responsibility).

*(f) Constitutions and future generations*

19 constitutions around the world refer to future generations expressly.

Only one is expressed as a clear right (though whether it is legally enforceable as we would understand it is another matter), and that is the Constitution of Iran:

*“the preservation of the environment, in which the present as well as the future generations have a right to flourishing social existence, is regarded as a public duty in the Islamic Republic.”<sup>63</sup>*

The South African Constitution uniquely guarantees the right to “have the environment protected, for the benefit of present and future generations” through legislation. This gives the right therefore to those currently alive, and also, it seems, treats present and future generations equally. It is very closely mirrored in the constitutions of the Virgin Islands and of Pitcairn (see above).

Article 33 of the 2009 Bolivian Constitution guarantees “[p]eople...the right to a healthy, protected and balanced environment”, and in the following sentence provides that “[t]he exercise of such right should allow individuals and communities of present and future generations, as well as other living beings, to develop regularly and in perpetuity”. It also emphasises the importance of enforcement, by providing that “[a]ny person, individually or on behalf of a community, has the power to take legal actions in defence of the right to the environment, without precluding the obligation of the public institutions to act ex officio against environmental damage”.

This approach can be compared with the Constitution of Argentina, which seems to be faithful to the Brundtland Commission’s definition of sustainable development, and to acknowledge the potential conflict that will often be inherent in valuing the present over the future, or vice versa. It provides that:

*“all residents enjoy the right to a healthy, balanced environment which is fit for human development and by which productive activities satisfy current necessities without compromising those of future generations.”<sup>64</sup>*

The majority of references to future generations in constitutions, however – including those of three European States - are in connection with State duties or goals (which tend not to be enforceable). For the sake of easy reference, the Table 4 below contains these references.

**Table 5 – References to future generations in European States’ constitutions**

<b>European State</b>	<b>Constitutional reference</b>
<b>Germany</b> The amended 1949 Constitution, Chapter I, Article 20a	<i>“the State protects . . . with responsibility to future generations the natural foundations of life and animals.”</i>
<b>Norway</b> The amended 1814 Constitution, Section E, Article 110b	<i>“Every person has a right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources should be managed on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well.”</i>
<b>Poland</b> The 1997 Constitution, Chapter II, Article 74(1) and (2)	The Constitution makes it the duty of public authorities to protect the environment, and directs the authorities to <i>“pursue policies ensuring the ecological safety of current and future generations.”</i>

## 2. Institutional innovations by overseas Parliaments

The Parliaments<sup>65</sup> of Canada, Finland, Hungary, Israel and New Zealand have all acted to create new institutions independent of the executive with a future orientation, of various types, functions and significance. In this section, six aspects of these institutions are drawn out, preceded by a brief summary of each institution which is set out below (and more fully in Appendix 2).

**Canada:** The Canadian Parliament legislated in 1995 to provide for a Commissioner of the Environment and Sustainable Development to be appointed by and reporting to the Auditor General for the purpose of reporting, monitoring, examining and inquiring into progress by federal government bodies towards sustainable development; to help process petitions “about an environmental matter in the context of sustainable development” from Canadian citizens to which Ministers must respond within an extendable period of 120 days; to examine and monitor those responses; and, since 2007, to report at least biannually on Canada’s progress in meeting its Kyoto reduction obligations. The “needs of future generations”, as a component of sustainable development, are expressly included within the Commissioner’s remit. 301 petitions have been filed since 1995, and an independent report in 2008 found that the Commissioner and AG had had “a positive impact on the federal government’s management of environmental and sustainable development issues”; had “served an important educational role”; and had “developed a strong domestic and international reputation as a centre of excellence in environmental auditing.” There is no substantive right to a healthy environment contained in the Canadian Charter of Rights and Freedoms.

**Finland:** A standing Parliamentary Committee (“the TVK”) was set up in 1993 with a visionary, rather than a legislative or budgetary, role. Its main task is, apparently, to provide a report (during the second year of each government) to the Finnish Parliament in response to ‘future statements’ from the Prime Minister’s office on its legislative programme. Once

adopted, the report becomes the Parliament's basis for appraising forthcoming decision and legislation (perhaps in conjunction with reports from other committees). In addition, it reports on wide-ranging issues, and undertakes specific technology assessments. The Committee's work is carried out in the context of a relatively weak and seemingly unassociated constitutional State duty in relation to the right to a healthy environment.

**Hungary:** Since 2008, the Parliamentary Commissioner for Future Generations has been one of four ombudsmen elected by the unicameral Hungarian Parliament. He is charged with protecting the constitutionally-guaranteed fundamental right to a healthy environment, and receives petitions from those concerned that that right has been, or is in danger of being, violated. He must investigate proper petitions and make recommendations to the relevant public body, and he can investigate violations on his own initiative. He has duties aimed at improving law enforcement, legislation, and implementation of international treaties, and can ask the Constitutional Court to intervene, as well the duty to participate in formulating Hungary's position at the EU level. He has powers aimed at controlling the activities of individuals and companies that actually and potentially harm the environment; at moving the competent regulatory authorities to use their own powers to restrain environmentally-damaging activities; and at suspending the decisions of administrative bodies which permit activities that harm the environment. In performing his functions, he has significant powers to obtain information, to enter property and to publicise his proceedings. The Commissioner has said that he also carries out strategic development and research, covering the duty of representing the interests of future generations. By the end of last year, he had completed 97 investigations as a result of over 400 petitions received, which mostly relate to local spatial plans, noise and air pollution; and had participated in scores of legislative consultations and proposals.

**Israel:** A Parliamentary Commissioner for Future Generations was established by law in 2001 within the unicameral Knesset and appointed by the Speaker for a renewable five year term. No Commissioner has been in place since 2006, though the law remains in effect. The Commissioner's powers are focused on supporting the Knesset in its consideration of proposed laws of particular relevance for future generations. Working across education, health and environment from 2001-2006, the Commissioner appears to have gained real influence across a wide policy spectrum.

**New Zealand:** A Parliamentary Commissioner for the Environment with wide-ranging powers was established by statute in 1986, appointed by and reporting to Parliament (not Ministers). She has wide powers of review, investigation and advice across public bodies, and also to obtain information and to be heard in legal proceedings, and can report on draft legislation if requested. In carrying out her functions, the list of matters to which she is to have regard does not include economic issues or the needs of future generations. Citizens do not have the right to petition her, but they can and do ask her to investigate matters, though these requests are declining. A high satisfaction rate amongst MPs is reported.

It is also worth noting that during the re-writing of the constitution of *Switzerland* during the 1990s, a small group of people proposed creating a third chamber, alongside the executive and legislature, “for preparing for the future”. The idea was rejected, but led to the establishment of the Swiss Future Council Foundation. It seems that the Foundation then focused on the cantonal level, and the constitution of the canton of Waadt has apparently prescribed an institution charged with supporting the canton prepare for the future as a “prospective organ”.<sup>66</sup>

The following aspects of these different institutions are worth noting in overview:

- the longest-established institution, New Zealand’s Parliamentary Commissioner for the Environment, probably has the scrutiny role that is nearest to that of the Environmental Audit Committee in the UK, with a similar role also undertaken by the civil servant appointed by the Auditor General of Canada to be the Commissioner of the Environment and Sustainable Development;
- only the elected Hungarian Parliamentary Commissioner for Future Generations is obliged to investigate petitions from members of the public, though the Canadian Commissioner examines and monitors responses from ministers to petitions received by them, and the New Zealand Commissioner invites the public to suggest investigations;
- a unique legislative foundation for advocacy in favour of the environment, sustainability and future generations has been given to the Hungarian Commissioner, combining in particular: investigation of complaints from members of the public; participation in the law-making process and in Hungary’s position in EU negotiations; intervention to prevent activities which are violating or which could violate the right to a healthy environment guaranteed in the constitution; and strategic research;
- the closest structural involvement with the law-making process has been provided for in the law establishing the Speaker-appointed Knesset Commissioner for Future Generations within the Israeli Parliament, though the Hungarian and New Zealand Commissioners have important functions here as well;
- visionary and forum roles appear to be the hallmarks of Finland’s Committee for the Future, which appears not to have a scrutiny role, not to receive or to investigate petitions, and not to intervene to prevent environmentally-damaging activities;
- the right to a healthy environment guaranteed in the Hungarian constitution is central to the Commissioner’s functions in that country. In Canada, Israel and New Zealand, the absence of any such constitutional right (or associated State duty), evidently did not prevent the establishment of the institution. In Finland, the right to a healthy environment is referred to as one of two foci of a weak constitutional duty on public authorities, but appears to be unconnected to the work of the Committee

for the Future. It can be reasonably concluded therefore that the existence, or otherwise, of a right to a healthy environment, or of a duty on the State to achieve the right, is not a prerequisite to the establishment of an institution independent of the executive to protect the environment and future generations. Equally, and bearing in mind as well the general supremacy of Parliament in our own constitution, their existence or otherwise in the UK would not be a bar to the creation of a similar institution here.

#### **IV. Governance options**

This section sets out nine constitutional and legal options, and one executive option, that could be implemented in the UK in order to contribute to improving environmental and social conditions, with an emphasis on the future and with the intention of catalysing further discussion and development. The options are not intended to be recommendations, and their political feasibility is not addressed, although some of their more obvious advantages and disadvantages are noted. And although some would clearly not be compatible with others, they are not all mutually exclusive.

The ten options are listed here, followed by a brief elaboration of each.

1. A new parliamentary chamber
2. A 'future' parliamentary committee or a parliamentary panel with compulsory participation in primary and secondary law-making processes
3. A new, or extended already-existing, Select Committee with possible participation in law-making processes
4. Constitutional rights
5. A Parliamentary Commissioner
6. Statutory duties relating to sustainable development
7. Statutory duties relating specifically to future generations
8. An Environmental Limits Act
9. An annual statutorily-established Congress for the Future convened by Parliament
10. An Office for Future Generations

**1. A new parliamentary chamber**

In line with the unsuccessful attempts in Switzerland during the 1990s, ensuring that the interests of future generations are structurally recognised in Parliament by the creation of a third House would be an option. An alternative might be to provide this recognition within a reformed House of Lords, though this raises separate questions, and so is discussed under option 2 below.

In this way, members of the new chamber would be given the specific task of (in some way) “protecting the future” during the passing of legislation. They could be specially designated, such as ‘members for the future’, ‘guardians of the future’ or ‘guardians of the basic needs of future generations’. They could, by being a part of the law-making process, be given the power, in effect, to ‘veto’ proposed legislation.

The procedure by which individuals could become members of such a chamber could also be innovative, for example, they could be chosen by lot.<sup>67</sup>

There appears to be no constitutional or legal reason why such a proposal could not be enacted, although an amendment of the Parliament Act 1911 and of standing orders would be necessary.<sup>68</sup> The reasoning that leads to this conclusion is set out more fully in Appendix 3 (Constitutional law discussion).

**Option 1: A new parliamentary chamber**

Some advantages	Some disadvantages
<ul style="list-style-type: none"> <li>• places the future at the heart of the UK’s democracy</li> <li>• centred on specifically-designated people</li> <li>• increases the chances of ‘future-proof’ laws</li> <li>• inspiring</li> </ul>	<ul style="list-style-type: none"> <li>• requires a long campaign, facing much opposition, on unfamiliar and esoteric ‘constitutional reform’ territory</li> <li>• could not strike down administrative decisions of ministers or public authorities</li> </ul>

## **2. A ‘future’ parliamentary committee or a parliamentary panel with compulsory participation in primary and secondary law-making processes**

A Committee of either the House of Commons or the House of Lords, or a joint Committee of both Houses could be created with the specific remit of “protecting the future” and of having most public bills referred to it as a part of the law-making process. An alternative, along the lines of option 1 above, would be for the some of the members of either House, or of a reformed House of Lords, to be designated as ‘members for the future’ (etc.). As this would be centred on specifically-designated people, it would operate less like a Committee, but more like a panel of members within the chamber. There is no body within either chamber which, at present, participates in the law-making process and which is not a Committee. The key difference between the two variations of this option, and option 1, is that the Committee or panel would be operating under the authority of the relevant House, and so its remit and powers would need to be fitted in to the procedures and powers of that House as a whole.

Again, I can find no constitutional or legal reason why either variation could not be enacted, though it would require amendment of standing orders and, probably, an Act of Parliament.

A new Committee might be regarded as fitting more easily within either House’s current procedures, as in both Houses, after the first and second reading of most public bills the proposed legislation is sent to a Committee. However, bills can almost always be committed instead or subsequently to a committee of the whole House, and so if some “sub-group” of the House was to be given specific powers to protect the future, then this option would require careful consideration of how its powers related to the (higher) authority of the whole House. In particular, it would seem that the powers of such a Committee or panel would not be able to extend to representing the response of the whole House, unless the House so decided. On the other hand, this might not be considered necessary: a legislative Committee of the House of Lords is not able to put an end to a bill, but “[i]f the committee considers that it should not proceed it reports the bill accordingly, without amendment”, in which case a motion has to be agreed to the bill being re-committed to the whole House, and “[a] report recommending that the bill should not proceed is normally acquiesced in by the House; but the bill may proceed...”.<sup>69</sup>

It is also worth noting that Committees of either House already have powers relating to secondary law-making by the executive, such as statutory instruments and ministerial orders.<sup>70</sup> A ‘future’ Committee or panel could also be given similar powers in relation to secondary law-making by the executive in areas that particularly affected future generations, for example by applying a “super-affirmative resolution procedure”.<sup>71</sup>

### **Option 2: A 'future' parliamentary committee or panel**

#### **Some advantages**

- places the future systematically within the law-making process
- could work within familiar parliamentary procedures
- increases the chances of 'future-proof' laws

#### **Some disadvantages**

- hives off 'the future', not central
- needs too much fine-tuning to avoid being little more than tinkering, especially if a committee
- relies too much on non-transparent negotiated standing orders

### **3. A new, or extended current, parliamentary committee with possible participation in law-making processes**

It would be possible for either House to form a new Select Committee for the Future (or with some such name); or for both Houses to create a new joint Committee; or for either House to extend the remit of a current Select Committee; or for an existing Select Committee of either House to create a sub-Committee – and, in any such case, to allow it to operate as a Select Committee in the usual way, sometimes considering bills of its own motion, but also perhaps having bills committed to it as a part of the law-making process (which is more likely in the House of Lords).

This option differs significantly from option 2 above in that the Committee would be a traditional Select Committee, with its members nominated by MPs or peers, and carrying out its usual scrutiny-type role. It would not have any enhanced, future-relevant features, such as the method for becoming a member, or a guaranteed place in the law-making process.

Of the current thirteen sessional committees in the House of Lords, the Economic Affairs Committee, the European Union Committee, the Human Rights Committee and the Science and Technology Committee appear most relevant to this report's 'substantive' aspects. The remits ("orders of reference") of the three current House of Lords committees that appear particularly relevant to the 'procedural' aspects of this report are as follows:

- **Constitution Committee:** "to examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution";<sup>72</sup>
- **Procedure Committee:** "to consider any proposals for alterations in the procedure of the House that may arise from time to time, and whether the standing orders require to be amended";<sup>73</sup>
- **Liaison Committee:** "to advise the House on the resources required for select committee work and to allocate resources between select committees; to review the select committee work of the House; to consider requests for *ad hoc* committees and report to the House with recommendations; to ensure effective coordination between the two Houses; and to consider the availability of Lords to serve on committees".<sup>74</sup>

In the House of Commons, the current Select Committee with the most relevant remit that could in theory be extended would be the Environmental Audit Committee (EAC). According to its website, its remit is “to consider the extent to which the policies and programmes of government departments and non-departmental public bodies contribute to environmental protection and sustainable development, and to audit their performance against sustainable development and environmental protection targets”.<sup>75</sup> Under Standing Order 152A the Environmental Audit Committee is able to appoint a sub-committee.<sup>76</sup>

**Environmental Audit Committee (NB: existing approach)**

Some advantages	Some disadvantages
<ul style="list-style-type: none"> <li>• cross-departmental</li> <li>• familiar with the issues</li> <li>• embedded in Parliament</li> </ul>	<ul style="list-style-type: none"> <li>• focus is on scrutinizing past, not delineating future, government performance (‘looks back, not forward’)</li> <li>• not established by law with statutory powers and duties</li> <li>• law-making participation not guaranteed</li> <li>• traditional intra-Parliament membership, favouring ‘business as usual’</li> <li>• fluctuating membership limits integration of institutional expertise</li> <li>• inadequate resources</li> </ul>

**4. Constitutional rights**

This option would involve the passing of a bill in the UK Parliament to create express constitutional rights, analogous to the Human Rights Act. This would be done via a bill in the ordinary way, possibly creating an ‘Environmental Bill of Rights’, or as part of a general Bill of Rights or written constitution.

Many questions would need to be considered if this option was to be pursued, such as:

- How should the right be formulated? As a right to live in a healthy environment, or in some other qualified kind of environment?
- Should it be enforceable by any individual, or by any affected individual, or by any organisation or body?
- Should it extend to include other types of provisions in relation to the environment, such as a duty on the State to protect it, responsibilities on present generations to

protect it, application of the precautionary and other principles, duties to restore the environment, and duties in respect of sustainability?

- Should the right include the rights of future generations or the “unborn”,<sup>77</sup> or would recognition of their interests suffice? Should these be stand-alone rights, or rights given to people presently alive on behalf of future generations? Or perhaps should there be responsibilities of present people towards future generations, and/or on the State?
- How should future generations of all kinds of life be covered?
- Should Nature be granted rights, and/or should there be responsibilities of present people towards Nature? How should any such rights and/or responsibilities be enforced?

#### **Option 4: Constitutional rights**

##### **Some advantages**

- systematic and over-arching, thereby framing future legislation and controlling government
- increases the chances of ‘future-proof’ laws
- elements could be slotted in to any ‘usual’ bill
- inspiring

##### **Some disadvantages**

- requires a long campaign, facing much opposition
- one option with many possibilities, requiring a long process amongst supporters to resolve inevitable differences
- conceptually contentious for some

#### **5. A Parliamentary Commissioner for Future Generations**

Whilst options for constitutional participation in the law-making process would foresee direct involvement in the law-making process as law-makers, this option would involve the creation of a new institution. In theory, it could involve extending the functions of an existing institution, but there is no obvious candidate from amongst existing institutions. By ‘institution’ is meant a body established by the legislature with statutory powers and duties, independent of the executive but not structurally part of the legislature. This would give the institution democratic legitimacy, and would not include bodies established by the executive, such as the Sustainable Development Commission.

The Westminster Parliament – as well as the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly, within their powers – could legislate for an institution broadly similar to the Parliamentary Commissioners in Hungary, New Zealand and elsewhere. One suggestion along these lines has already been made.<sup>78</sup>

A Parliamentary Commissioner would be a public champion of future generations, not unlike the role of the Children’s Commissioners and the Equality and Human Rights Commission. His or her powers and duties would include, for example:

- to investigate petitions from members of the public where adverse environmental or social effects could result from the decisions of government departments and other public bodies – this could be extended to, or limited to, such effects on future generations – and to make corresponding recommendations to the department or body as he or she considered could be justified in the light of the investigation, with obligations on the recipients to respond within a specific time limit, including a very short time in urgent situations;
- to comment on proposed legislation from the point of view of environmental and social effects for present and/or future generations. The Commissioner’s opinion on proposed legislation could also be given a more formal role - for example, he or she could be required to produce some kind of statement, not dissimilar to the ‘statement of compatibility’ required under s.19 of the Human Rights Act 1998 from the Minister in charge of a Bill before the second reading, or at least the Minister in charge of the Bill could be required to make a statement to the effect that s/he has received and considered the Commissioner’s opinion on a particular Bill and the Commissioner has stated that he or she does not consider the provisions of the Bill, for example, to adversely affect future generations;
- to carry out research into areas of concern, alone or in conjunction with other public bodies, with a view to recommending new laws, policies or practices;
- to have access to information in performing his duties, from public and private bodies, and to be able to go to court if needs be;
- to consider the UK’s implementation of and compliance with its international legal obligations, and to ask a court to rule on the matter (subject to the rules about enforcing international law in domestic UK courts).

**Option 5: A Parliamentary Commissioner for Future Generations**

<b>Some advantages</b>	<b>Some disadvantages</b>
<ul style="list-style-type: none"> <li>• an institution independent of the executive</li> <li>• statutory functions</li> <li>• gives future generations greater visibility in the political process</li> <li>• helps remedy cases of environmental injustice</li> <li>• forward thinking research role</li> </ul>	<ul style="list-style-type: none"> <li>• doesn’t integrate the future into the executive</li> <li>• risks not being close enough to the law-making process</li> <li>• can be marginalised, ignored or fobbed off</li> </ul>

**6. Statutory duties relating to sustainable development**

This option would involve the passing of a bill in the UK Parliament to provide, for the first time, a statutory framework for systematically and institutionally embedding sustainable development across government and the public sector, as its central organising principle.

The bill could include a wide variety of provisions, for example:

- a duty on all ministers and public bodies to ensure sustainable development, defined in such a way so as to include environmental, social and economic justice, addressing of inequalities, and, possibly, well-being;
- a duty to draw up a UK sustainable development strategy, in a participative manner, which all ministers and public bodies would need to follow;
- a duty to draw up and adopt sustainable development indicators and to assess policy proposals through a sustainability impact assessment;
- a procedure, process or mechanism for helping resolve disputes between the interests of present and of future generations;
- a new institution, independent of the executive, to act as the champion of sustainable development and to monitor performance of the government and public sector.

One commentator has distinguished between three kinds of legislative model:

- a procedural model, along the lines of the Welsh Assembly Government’s duty, focusing on production, use and review of the sustainable development strategy, and tools such as indicators and action plans;
- a framework model that would explicitly establish the national sustainable development strategy as the framework for the implementation of sustainable development in the UK, ideally setting out the sustainable development strategy as the primary reference point for all decision making across an administration; and
- a model, establishing sustainable development as the central organising principle of government.<sup>79</sup>

**Option 6: Statutory Duties relating to sustainable development**

Some advantages	Some disadvantages
<ul style="list-style-type: none"> <li>• systematic, institutional and democratic</li> <li>• embeds sustainable development across government, no longer struggling to get out of the environment ghetto</li> <li>• familiar campaigning territory</li> </ul>	<ul style="list-style-type: none"> <li>• requires a cultural shift if the Act was to be really effective</li> <li>• will be watered down during the law-making process</li> </ul>

## 7. Statutory duties relating specifically to future generations

This option would be different from option 6 in that rather than the interests of future generations being dealt with as a part of sustainable development duties, those interests would be specifically addressed in a new Act of Parliament. This option could, of course, be combined with option 6 (and other statutory options).

The kind of duties that could be devised here include, for example, a duty on ministers and public bodies to consider how their decisions could impact on future generations, to demonstrate if they were favouring present over future generations (and vice versa), and not to take decisions that could have significant effects on the ability of future generations to provide for their own needs.

One mechanism that could be introduced here would be a comparative inter-generational analysis (IGA), which would be undertaken before adopting a policy or proposal that would be likely adversely to affect future generations. It would be a procedural mechanism to help decision-makers understand the comparative implications of their proposed initiatives on both present and future generations. An IGA should not be confused with an Impact Assessment, or seen as another sectoral impact assessment, and would expressly recognise that the intergenerational interests of present and of future generations might conflict.

An analogous, though weak, example of how the first element of these duties might be formulated can be seen in section 1(1) of the Equality Act 2010, which provides that:

*“An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage”.*

### Option 7: Statutory duties relating to future generations

#### Some advantages

- specific focus on future generations
- doesn't duck potential conflicts with present generations
- familiar campaigning territory

#### Some disadvantages

- too narrow, and takes focus away from sustainable development
- lack of clarity, at present, on IGAs
- risk of box-ticking

## 8. An Environmental Limits Act

Living within environmental limits (ELs) is a widely-recognised principle of sustainable development. It implies “setting a maximum level of damage to a natural resource system that we are prepared to tolerate or accept”, is an approach that arguably “requires the development of deliberative forms of decision making”<sup>80</sup>, and is useful across most fields<sup>81</sup> - such as water, sea, air, land, soil and biodiversity, and including sustainable consumption. Publication of a major report on the issue from the Parliamentary Office of Science and Technology is expected in December 2010.<sup>82</sup>

The Climate Change Act illustrates how environmental limits (in that case, atmospheric carbon) can be established in a legally binding form – other features include an expert committee, duties to report and to reason against the committee’s recommendations, and stepped duties.

This approach could be widened, to apply to all relevant areas of environmental concern, or on a case-by-case basis – and in a deliberative and democratic manner which allows value judgments to be made, and transparently, in the light of scientific knowledge, rather than being based *only* on expert views or ministerial decision. Close participation of a Parliamentary Commissioner would be appropriate here.

One way in which this could be done would be to enact an Environmental Limits Act.

If some environmental limits were nearer to being capable of taking legal form than others, then the Act could be a framework Act, which would set out the basic principles of the approach, and the range of situations in which it could be applied, and then particular sectors, could be slotted in depending on the how far they had been developed.

This ‘slotting in’ would probably have to be done by statutory instrument,<sup>83</sup> and this would give significant power to the executive. Countervailing trigger roles could be given, for example, to a Parliamentary Committee or Commissioner, and the super-affirmative resolution procedure could be applied here as well.

An Environmental Limits Act could also include, for example, provisions establishing a right to live in a healthy environment, and imposing statutory duties on public authorities with regard to the long view and future generations.

### **Option 8: An Environmental Limits Act**

#### **Some advantages**

- accepts nature's limits
- clearly-shaped reform
- potentially wide sectoral application, yet flexible
- critical to achieving sustainable development
- legislative precedent
- can consider values in a participative way, alongside science, in determining limits
- could be combined with other governance options, such as rights, duties and a Parliamentary Commissioner
- familiar campaigning territory

#### **Some disadvantages**

- missing the opportunity for deeper and wider change, and so not ultimately effective
- governments usually water down proposed environmental laws during passage of bills, bowing to industry lobbying and short-term considerations
- precise scope of application still to be determined
- may be more suitable for numerical limits
- needs careful definitions, dove-tailing with current standards, and EU consistency

### **9. An annual statutorily-established Congress for the Future convened by Parliament**

One idea, included in the Sustainable Development Commission's 'Breakthroughs for the twenty first century' publication last year,<sup>84</sup> is for a statutorily-established annual Congress for the Future convened by Parliament. In the words of Lindsey Colbourne, then SDC Commissioner for Engagement & Communications:

*"This is a breakthrough idea for improving the governance of the UK. Its intention is to create a special Congress, convened by Parliament every year, to help build broad agreement and provide direction on long-term questions. One or more issues in need of public debate will be put before each Congress, either by the Government of the day or by MPs in response to public petition. Randomly-selected citizens and stakeholders will then engage with the issues in an informed, deliberative process, supported by a secretariat to monitor progress...."*

According to the SDC:

*"The Congress for the Future will require proper funding and excellent communications. First of all, though, it needs people to demonstrate commitment to the idea, and work to develop models for getting it off the ground. To give it authority, its key procedures should be set by statute and its independence assured. The recruitment of participants and expert stakeholders could either be done on a random basis or citizen-jury style. Either way, it must be designed to prevent control by either political parties or the civil service".*

This option has been included here, as a stand-alone option in its own right, rather than within or as a variant of the constitutional or institutional options outlined above, as it would not appear that the Congress is envisaged as having any actual powers, other than those associated with convening and supporting it - for example, in the law-making process. Equally, however, there would seem to be no reason why it should not have powers. For

example, at the very least, the outcome of the Congress might have to be responded to by Ministers.

**Option 9: A Congress for the Future**

Some advantages	Some disadvantages
<ul style="list-style-type: none"> <li>• broad, visionary, deliberative and participatory</li> <li>• helps build public understanding of the issues and basis for action</li> <li>• provides a forum for new ideas and thinking</li> <li>• independent of the executive and civil service</li> <li>• an innovative excursion into a barren landscape</li> <li>• inspiring</li> </ul>	<ul style="list-style-type: none"> <li>• easily ignored by the government</li> <li>• no real powers</li> <li>• a weak alternative to new constitutional innovations</li> <li>• too little, too late</li> </ul>

**10. An Office for Future Generations**

Following withdrawal of funding from the Sustainable Development Commission, it has been suggested that an office within government could be created, through executive action, with responsibility for helping the government to take the longer view – an Office for Future Generations.

The Office would report to, or be part of, the centre of government, strengthening the role of the Cabinet Office and Treasury to improve long term performance and policy innovation; put in place, and report on performance to government against better measures of progress; and drive departmental efficiency.

This option would enable government to continue to receive advice on core sustainable development issues, once the Commission no longer exists. It would, essentially, be a pared down version of the Commission, seeking to continue its work and expertise in reduced circumstances.

This option would also appear to be in line with the announcement of the Welsh Minister for Environment, Sustainability and Housing, Jane Davidson, in November 2010, of a new Sustainable Futures Commissioner to continue the work of the Commission and Cynnal Cymru in Wales, and to provide a secretariat for the Climate Change Commission in Wales.<sup>85</sup>

### **Option 10: An Office for Future Generations**

#### **Some advantages**

- ensures government gets 'future-relevant' advice
- maintains SDC expertise

#### **Some disadvantages**

- not established by Parliament
- no statutory powers
- only as good as the ministers appointing it

## **V. Concluding remarks**

There are no constitutional or legal barriers to the governance options set out in this report. But none of them, except option 10, would become operational without the initiation and consent of elected, appointed or born legislators within the UK Parliament. Additional options would be possible through action of the elected members of its devolved counterparts in Scotland, Wales and Northern Ireland, or through local authority action within current powers. These 'filters', however, need not operate as constraints on the already-noted voluntary initiatives, and others yet to come. It is in these inspiring and indispensable endeavours, and citizen pressure on our elected representatives, where hope for action initially lies in the face of the seriousness of our current predicament.

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## **Endnotes**

<sup>1</sup> Natural Environment White Paper Team, DEFRA, 'An invitation to shape the Nature of England', Discussion Document Summary, available here (accessed on 1/12/10):

<http://www.defra.gov.uk/environment/natural/documents/newp-discussion-summary-260710.pdf>

<sup>2</sup> See the graph on page 7 of the World Energy Outlook, Key Graphs (OECD/IEA, 2010), entitled 'World oil production by type in the New Policies Scenario', which shows crude oil production from 2010-2035 plateauing, on the assumptions that production from currently producing fields declines, and is made up from fields yet to be developed and yet to be found. The New Policies Scenario anticipates future actions by governments to meet the commitments they have made to tackle climate change and growing energy insecurity. See here (accessed on 5/12/10): <http://www.worldenergyoutlook.org/>

<sup>3</sup> In his book, 'Collapse: How Societies Choose to Fail or Survive' (Penguin, 2005), Jared Diamond identified eight types of environmental damage arising out of unsustainable practices that led to past society collapse: deforestation and habitat destruction, soil problems, water management problems, overhunting, overfishing, effects of introduced species on native species, human population growth, and increased per capita impact of people – all of which prevail now, to which we must add climate change, toxic chemical accumulation, energy shortages and reaching the photosynthetic ceiling.

<sup>4</sup> See Tim Jackson's book, 'Prosperity without Growth: Economics for a Finite Planet' (Earthscan, 2009).

<sup>5</sup> See Richard Wilkinson's and Kate Pickett's book, 'The Spirit Level: Why Equality is Better for Everyone' (Allen Lane, 2009).

<sup>6</sup> Natural Environment White Paper Team, DEFRA, 'An invitation to shape the Nature of England', Discussion Document Summary, available here (accessed on 1/12/10):

<http://www.defra.gov.uk/environment/natural/documents/newp-discussion-summary-260710.pdf>

<sup>7</sup> Plan to measure happiness 'not woolly' - Cameron, 25/11/10 (accessed on 3/12/10):

<http://www.bbc.co.uk/news/uk-11833241>

<sup>8</sup> Poverty report urges focus on under-fives, 3/12/10 (accessed on 3/12/10):

<http://www.bbc.co.uk/news/uk-politics-11903735>

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<sup>9</sup> Our Common Future: Report of the World Commission on Environment and Development (the Brundtland Commission), Chapter I.2, paragraph 25, available here (accessed on 5/12/10): <http://www.un-documents.net/ocf-ov.htm#I.2>

<sup>10</sup> This observation was made by a group of twelve UK leaders in the fields of environmental justice, community development, democracy and sustainable development, in a paper entitled *Democracy, Environmental Justice and Sustainable Development: Issues and approaches for civil society in the UK: an emerging agenda*, published in December 2009, and available here (accessed on 1/12/10): <http://www.fdsd.org/wordpress/wp-content/uploads/democracy-environmental-justice-and-sustainable-development.pdf>

<sup>11</sup> 'Where we are now: A review of progress on sustainable development', July 2009, available here (accessed on 18/11/10): [http://www.sd-commission.org.uk/publications/downloads/where\\_we\\_are\\_now.pdf](http://www.sd-commission.org.uk/publications/downloads/where_we_are_now.pdf)

<sup>12</sup> An invitation to shape the Nature of England, July 2010, available here (accessed on 5/12/10): <http://www.defra.gov.uk/environment/natural/documents/newp-discussion-260710.pdf>

<sup>13</sup> 2010 Living Planet Report, available from here (accessed on 5/12/10):

[http://wwf.panda.org/about\\_our\\_earth/all\\_publications/living\\_planet\\_report/2010\\_lpr/](http://wwf.panda.org/about_our_earth/all_publications/living_planet_report/2010_lpr/)

<sup>14</sup> Ensuring access to environmental justice in England and Wales, Update report, August 2010, The Working Group on Access to Environmental Justice, available here (accessed on 8/12/10):

[http://scotland.wwf.org.uk/wwf\\_articles.cfm?unewsid=4228](http://scotland.wwf.org.uk/wwf_articles.cfm?unewsid=4228)

<sup>23</sup> These challenges, and others, were identified in the paper referenced in end note 9.

<sup>24</sup> "Humanity has the ability to make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs", Our Common Future: Report of the World Commission on Environment and Development (the Brundtland Commission), Chapter I.3, paragraph 27, available here (accessed on 5/12/10): <http://www.un-documents.net/ocf-ov.htm#I.3>

<sup>25</sup> For example: "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations...", Stockholm Declaration of the UN Conference on the Human Environment, 1972, available here (accessed on 5/12/10):

<http://www.unep.org/Documents/Multilingual/Default.asp?documentid=97&articleid=1503>. "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations", Rio Declaration on Environment and Development, 1992, Principle 3, available here (accessed on 5/12/10): <http://www.un-documents.net/rio-dec.htm>

<sup>26</sup> For example, under section 4 of the Local Government Act 2000 every local authority in England and Wales must prepare a community strategy for promoting or improving the economic, social and environmental well-being of their area and contributing to the achievement of sustainable development in the United Kingdom. Local authorities also have obligations relating to promoting the „sustainability of local communities“ under the Sustainable Communities Act 2007, where „sustainability“ is defined by reference to „the economic, social or environmental well-being of the authority's area, or part of its area“.

<sup>27</sup> The UK now has four Children's Commissioners, who can, to varying degrees, act as champions of the rights and interests of children, backed by the UN Convention on the Rights of the Child. The aims and functions of the Commissioners in Scotland, Wales and Northern Ireland expressly refer to promoting and safeguarding the rights of children, whereas the function of the Commissioner in England is expressed as promoting awareness of the views and interests of children. See Children Act 2004, s.2(1) (England); Commissioner for Children and Young People (Scotland) Act 2003, s.4(1); Care Standards Act 2000, s.72A (Wales); and The Commissioner for Children and Young People (Northern Ireland) Order 2003 (2003 No. 439 (N.I. 11)), Art.6(1).

<sup>28</sup> The Commission for Equality and Human Rights was established by the Equality Act 2006 to promote and monitor human rights, and to protect, enforce and promote equality.

<sup>29</sup> The Act is available here (accessed on 29/10/10): <http://www.legislation.gov.uk/ukpga/2008/27/contents>

<sup>30</sup> The Act, and the advice of the Committee on Climate Change in December 2009 on capping aviation emissions by 2050, were important reasons for the High Court's rejection of the previous government's submission that it did not have to review its 2003 White Paper proposal to build a third runway at Heathrow airport (*London Borough of Hillingdon & Ors, R (on the application of) v Secretary of State for Transport & Anor* [2010] EWHC 626 (Admin) (26 March 2010). The judgment is here (accessed on 8/12/10):

<http://www.bailii.org/ew/cases/EWHC/Admin/2010/626.html>

<sup>31</sup> The Act is available here (accessed on 3/12/10): <http://www.legislation.gov.uk/asp/2009/12/contents>

<sup>32</sup> The strategy is available here (accessed on 6/12/10):

[http://www.defra.gov.uk/sustainable/government/publications/uk-strategy/documents/SecFut\\_complete.pdf](http://www.defra.gov.uk/sustainable/government/publications/uk-strategy/documents/SecFut_complete.pdf)

<sup>33</sup> See, for example, Governance Structures for National Sustainable Development Strategies: Study of Good Practice Examples, Darren Swanson and László Pintér, International Institute for Sustainable Development

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(IISD), Prepared for: The Organization for Economic Co-operation and Development (OECD), October 1st, 2006, available here (accessed on 5/12/10): [http://www.iisd.org/pdf/2006/measure\\_gov\\_structures.pdf](http://www.iisd.org/pdf/2006/measure_gov_structures.pdf). This study identified the “legislative embeddedness” of the strategy to be one of the criteria for effectiveness.

<sup>34</sup> “1. The Swiss Confederation shall protect the liberty and rights of the people and safeguard the independence and security of the country. 2. It shall promote the common welfare, sustainable development, internal cohesion and cultural diversity of the country. 3. It shall ensure the greatest possible equality of opportunity among its citizens. 4. It shall be committed to the long term preservation of natural resources and to a just and peaceful international order”. (Article 2, Aims); and “The Confederation and the Cantons shall endeavour to achieve a balanced and sustainable relationship between nature and its capacity to renew itself and the demands placed on it by the population.” (Article 73, Sustainable development). An unofficial version of the constitution is available here (accessed on 5/12/10): <http://www.admin.ch/ch/e/rs/1/101.en.pdf>

<sup>35</sup> This is the number of references produced by the UK Statute Law Database when undertaking a text search for “sustainable development” in all UK legislation on 17<sup>th</sup> November 2010. The same search in respect of all legislation applicable to different parts of the UK produced the following results: Great Britain, 155, England and Wales, 129; England, 118; Wales, 129; Scotland, 133, and Northern Ireland, 123.

<sup>36</sup> In section 1 of the International Development Act 2002, “furthering sustainable development in one or more countries outside the United Kingdom” is a part of the definition of the “development assistance” which the Secretary of State is empowered under that section to provide, if satisfied that it is likely to contribute to poverty reduction. In this context, sustainable development is defined as including “any development that is, in the opinion of the Secretary of State, prudent having regard to the likelihood of its generating lasting benefits for the population of the country or countries in relation to which it is provided”. The Act is available here (accessed on 17/11/10): <http://www.legislation.gov.uk/ukpga/2002/1>

<sup>37</sup> For example: **Marine Management Organisation**: “It is the duty of the MMO to secure that the MMO functions are so exercised that the carrying on of activities by persons in the MMO's area is managed, regulated or controlled – (a) with the objective of making a contribution to the achievement of sustainable development (see...), (b) taking account of all relevant facts and matters (see...), and (c) in a manner which is consistent and co-ordinated (see...)”, Marine and Coastal Access Act 2009, section 2(1); **OFGEM**: “(1)The principal objective of the Secretary of State and [OFGEM]...in carrying out their respective functions under this Part is to protect the interests of existing and future consumers in relation to gas conveyed through pipes, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas so conveyed. (2)The Secretary of State and [OFGEM] shall carry out those functions in the manner which he or it considers is best calculated to further the principal objective, having regard to - (a) the need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met; and (b) the need to secure that licence holders are able to finance the activities which are the subject of obligations imposed by or under this Part or the Utilities Act 2000; and (c) the need to contribute to the achievement of sustainable development”, Gas Act 1986, s. 4AA, as amended by the Energy Act 2008, s.83. The **Greater London Authority** has a particularly shocking ‘get out’: (1) The [Greater London] Authority shall have power to do anything which it considers will further any one or more of its principal purposes. (2) Any reference in this Act to the principal purposes of the Authority is a reference to the purposes of - (a) promoting economic development and wealth creation in Greater London; (b) promoting social development in Greater London; and (c) promoting the improvement of the environment in Greater London...(5) Where the Authority exercises the power conferred by subsection (1) above, it shall do so in the way which it considers best calculated - (a) to promote improvements in the health of persons in Greater London, and (b) to contribute towards the achievement of sustainable development in the United Kingdom, except to the extent that the Authority considers that any action that would need to be taken by virtue of paragraph (a) or (b) above is not reasonably practicable in all the circumstances of the case.

<sup>38</sup> Government of Wales Act 2006, section 79. The Act is available here (accessed on 3/12/10): <http://www.legislation.gov.uk/ukpga/2006/32/contents>. This section re-enacted section 121 of the Government of Wales Act 1998, when the same duty was initially imposed on the National Assembly for Wales.

<sup>39</sup> <http://wales.gov.uk/topics/sustainabledevelopment/?lang=en> (accessed on 3/12/10). How this translates to reality on the ground is, of course, another matter. The Assembly’s most recent progress report in this regard can be accessed from this page (accessed on 6/12/10): <http://www.sd-commission.org.uk/news.php/380/wales/one-wales-one-planet-one-year-on>

<sup>40</sup> The principle of inter-generational equity has been defined by Professor Weiss in her book entitled ‘In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity’ (Hotei, 1989), as the idea that “each generation has an obligation to future generations to pass on the natural and

cultural resources of the planet in no worse condition than received and to provide reasonable access to the legacy for the present generation” (pp37-38). Lawyers have stated that although intergenerational equity has an established and widely recognised place as a principle within international environmental law, there remain difficulties in establishing the principle as a binding legal obligation or legal right (see Cook and Taylor, below).

<sup>41</sup> Namely in: the 1968 African Convention on the Conservation of Nature and National Resources; the 1977 Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques; the 1979 Bonn Convention on the Conservation of Migratory Species of Wild Animals; the 1979 Berne Convention on the Conservation of European Wildlife and Natural Habitats; the 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources; the 1992 Paris Convention for the Protection of the Marine Environment of the North-East Atlantic; the 1992 Convention on the Transboundary Effects of Industrial Accidents; and the 1994 Convention to Combat Desertification (see Kate Cook and Rachel Taylor’s chapter entitled The Rights of Future Generations in International Law in ‘Do We Owe Them a Future? Opportunities of a representation for future generations in Europe’, edited by Benedek Javor and Judit Racz (2006), page 157, footnote 2).

<sup>42</sup> In England and Wales, licences to burn vegetation such as heather and bracken on non-railway land outside the burning season, or in a manner otherwise generally prohibited, may only be granted if the licensing authority (Natural England or Welsh Ministers) is satisfied that the proposed burning is “necessary or expedient for (i) the conservation, enhancement or management of the natural environment for the benefit of present and future generations; or (ii) the safety of any person.” Although these might be considered relatively minor provisions, they show that the interests of future generations are capable of being legally recognised when a public body is exercising a statutory licensing function. The relevant regulations (Regulation 7 in both cases) are available here (accessed on 3/12/10): The Heather and Grass etc. Burning (England) Regulations 2007 (No. 2003) - <http://www.legislation.gov.uk/uksi/2007/2003/contents/made>; The Heather and Grass etc. Burning (Wales) Regulations 2008 (No. 1081) (W.115) - [http://www.opsi.gov.uk/legislation/wales/wsi2008/wsi\\_20081081\\_en\\_1](http://www.opsi.gov.uk/legislation/wales/wsi2008/wsi_20081081_en_1)

<sup>43</sup> Exploring “how we can exercise environmental stewardship and help promote a better quality of life for present and future generations” is one of the ‘minimum content’ opportunities that key stage 3 pupils in Northern Ireland are to have when studying geography, according to The Education (Curriculum Minimum Content) Order (Northern Ireland) 2007 (No. 46), available here (accessed on 3/12/10): <http://www.legislation.gov.uk/nisr/2007/46/contents/made>

<sup>44</sup> Text relating to the constitutions of Pitcairn, the Virgin Islands and the Cayman Islands is included in section III.

<sup>45</sup> Natural Environment and Rural Communities Act 2006, section 2, available here: <http://www.legislation.gov.uk/ukpga/2006/16/introduction>

<sup>46</sup> Directive 2008/56/EC of the European Parliament and of the Council of 17th June 2008 establishing a framework for Community action in the field of marine environmental policy, available here (accessed on 3/12/10): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:164:0019:0040:EN:PDF>

<sup>47</sup> The Marine Strategy Regulations 2010 (No. 1627) are available here (accessed on 3/12/10): <http://www.legislation.gov.uk/uksi/2010/1627/introduction/made>.

<sup>48</sup> The full definition reads: ‘good environmental status’ means the environmental status of marine waters where these provide ecologically diverse and dynamic oceans and seas which are clean, healthy and productive within their intrinsic conditions, and the use of the marine environment is at a level that is sustainable, thus safeguarding the potential for uses and activities by current and future generations, i.e.: (a) the structure, functions and processes of the constituent marine ecosystems, together with the associated physiographic, geographic, geological and climatic factors, allow those ecosystems to function fully and to maintain their resilience to human-induced environmental change. Marine species and habitats are protected, human-induced decline of biodiversity is prevented and diverse biological components function in balance; (b) hydro-morphological, physical and chemical properties of the ecosystems, including those properties which result from human activities in the area concerned, support the ecosystems as described above. Anthropogenic inputs of substances and energy, including noise, into the marine environment do not cause pollution effects; good environmental status shall be determined at the level of the marine region or subregion as referred to in Article 4, on the basis of the qualitative descriptors in Annex 1. Adaptive management on the basis of the ecosystem approach shall be applied with the aim of attaining good environmental status”.

<sup>49</sup> The latter part of this provision – “while enabling the sustainable use of marine goods and services by present and future generations” – has not been transposed in the Marine Strategy Regulations 2010.

<sup>50</sup> Recommendation 1885, available here (accessed on 6/12/10):

[http://www.coe.int/t/e/human\\_rights/cddh/3\\_committees/04.%20development%20of%20human%20rights%20%28dh-dev%29/02.%20agendas%20and%20working%20documents/2010/erec1885.pdf](http://www.coe.int/t/e/human_rights/cddh/3_committees/04.%20development%20of%20human%20rights%20%28dh-dev%29/02.%20agendas%20and%20working%20documents/2010/erec1885.pdf)

<sup>51</sup> For example, see the letter from Stand Up for Your Rights in March 2010 to the Swiss Minister, Chair of the Committee of Ministers, in the run up to the vote (accessed on 6/12/10):

<http://www.righttoenvironment.org/ip/uploads/downloads/To%20Swiss%20Minister%20of%20Foreign%20Affairs%20on%20Right%20to%20Environment%20SUFYR.pdf>

<sup>52</sup> The Decision of the Committee of Ministers on 16th June 2010, rejecting the Assembly's recommendation (dated 18 June), paragraphs 7 - 11, plus Appendix 1 immediately following paragraph 11, containing the comments of the Steering Committee for Human Rights and recommending pursuing studies at the intergovernmental level within the framework of the Committee of Experts for the Development of Human Rights, is available here (accessed on 6/12/10):

<https://wcd.coe.int/ViewDoc.jsp?Ref=CM/AS%282010%29Rec1883-1885&Ver=final&Language=lanEnglish&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

<sup>53</sup> The declaration is available here (accessed on 6/12/10): <http://www.unece.org/env/pp/ctreaty.htm>

<sup>54</sup> This summary relies heavily on the 2007 Environmental Rights Report, published by Earthjustice, and which is available here (accessed on 17/11/10):

<http://www.earthjustice.org/sites/default/files/library/references/2007-environmental-rights-report.pdf>. It would be reasonable to assume that some of the provisions cited in that report are no longer in effect. Where I am aware that this is the case (e.g., for Ecuador and Bolivia), I have referred instead to the most up-to-date provisions, but I have not sought to do so systematically. This summary should therefore be regarded as illustrative of different countries' approaches for the purposes of informing constitutional options for the UK in section 4 of this report, rather than an authoritative statement of the current constitutional position in any particular country.

<sup>55</sup> There are also, for example, rights to water and food. I am grateful to Carine Nadal at the Gaia Foundation for providing me with an unofficial English translation of much of the text of the Constitution, which I use here. The original text, in Spanish, is available from these websites (accessed on 18/11/10):

[http://www.derechoecuador.com/index.php?option=com\\_content&task=view&id=4742&Itemid](http://www.derechoecuador.com/index.php?option=com_content&task=view&id=4742&Itemid), and <http://pdpa.georgetown.edu/Constitutions/Ecuador/ecuador08.html>.

<sup>56</sup> BP Sued in Ecuadorian Court for Violating Rights of Nature -

[http://www.democracynow.org/2010/11/29/headlines/bp\\_sued\\_in\\_ecuadorian\\_court\\_for\\_violating\\_rights\\_of\\_nature](http://www.democracynow.org/2010/11/29/headlines/bp_sued_in_ecuadorian_court_for_violating_rights_of_nature) (accessed on 6/12/10).

<sup>57</sup> The remaining Articles in this Chapter provide that Nature is given a "right to restoration" (Art. 72), the State shall apply precautionary and restraining measures on activities which can lead to species extinction, ecosystem destruction and permanent alterations of natural cycles (Art. 73), introduction of organisms and organic and inorganic material which can definitively alter the national genetic heritage is prohibited (Art 73) and individuals, communities, people and nationalities shall have the right to benefit from the environment and the natural riches which permit buen vivir (Art 74). Environmental services shall not be subject to appropriation; their products, borrowing, use and exploitation shall be regulated by the State (Art 74).

<sup>58</sup> The Virgin Islands and Pitcairn (defined as Pitcairn, Henderson, Ducie and Oeno Islands) are "British overseas territories" under the British Overseas Territories Act 2002 and the British Nationality Act 1981. The formulations follow very closely Article 24 of the South African Constitution: available here (accessed on 17/11/10): <http://www.constitutionalcourt.org.za/site/constitution/english-web/ch2.html>. Of the four islands constituting Pitcairn, Wikipedia states that only Pitcairn Island is inhabited and is the smallest democracy in the world (estimated population in 2008: 50). See here: [http://en.wikipedia.org/wiki/Pitcairn\\_Islands](http://en.wikipedia.org/wiki/Pitcairn_Islands)

<sup>59</sup> The Virgin Islands Constitution Order 2007 (No. 1678), section 29, available here (accessed on 7/10/10):

<http://www.legislation.gov.uk/uksi/2007/1678/contents/made>

<sup>60</sup> The Pitcairn Constitution Order 2010 (No. 244), Schedule 2, section 19, available here (accessed on 7/10/10):

<http://www.legislation.gov.uk/uksi/2010/244/contents/made>

<sup>61</sup> The 1987 Constitution of the Philippines (in sections 16 and 15 of Article II) provides that "The State shall protect and advance the right of people to a balanced and healthful ecology in accordance with the rhythm and harmony of nature"; and that "The State shall protect and promote the right to health of the people and instill health consciousness among them". The Supreme Court of the Philippines has held that children represented by their parents, and asserting that they 'represent their generation as well as generations yet unborn', had a cause of action to challenge the grant of timber licences, on the basis of these provisions. See *Oposa v.*

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*Factoran*, G.R. No. 101083, 224 SCRA 792 (July 30, 1993), 33 I.L.M. 173 (1994). The judgment is available here (accessed on 8/12/10): <http://www.elaw.org/node/1343>

<sup>62</sup> The Cayman Islands Constitution Order 2009 (No. 1379), Schedule 2, section 18, available here: (accessed on 7/10/10): <http://www.legislation.gov.uk/uksi/2009/1379/contents/made>. Like the Virgin Islands and Pitcairn, the Cayman Islands is a British overseas territory.

<sup>63</sup> The amended 1979 Constitution of Iran, Chapter IV, Article 50.

<sup>64</sup> 1994 Constitution of Argentina, Part I, Chapter 2, Article 41.

<sup>65</sup> Similar institutions that have been created at a sub-national level (and which have not been reviewed for the purposes of this report) include the Environment Commissioner of Ontario (accessed on 7/12/10):

<http://eco.on.ca/eng/>; and the Office of the Commissioner for Sustainability and the Environment covering the Australian Capital Territory (accessed on 29/11/10): <http://www.environmentcommissioner.act.gov.au/home>

<sup>66</sup> This paragraph is based on Robert Untereger's chapter, entitled 'Future Councils – an institutional tool to make long-term politics possible, in 'Do We Owe Them a Future? Opportunities of a representation for future generations in Europe', edited by Benedek Javor and Judit Racz (2006). He also states (on page 139) that "Members of the constitutional assemblies of Zurich and of Basel introduced the idea of a future council but their propositions did not find majority support. In the canton of Graubünden, a parliamentary commission for strategic tasks was established in 2004. Liechtenstein has had a future office as part of the presidential department since 2004. The Austrian County of Vorarlberg also set up an office for future questions as part of the presidential department several years ago."

<sup>67</sup> This kind of idea has been proposed and elaborated on by Dr Rupert Read in his written evidence to the Environmental Audit Committee's current inquiry into 'Embedding sustainable development across government', available here (accessed on 19/11/10):

<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmenvaud/writev/esd/esd12.htm>

<sup>68</sup> It has also been suggested that the powers of such a body could include striking down laws once they have been made, and also administrative decisions. The striking down of administrative decisions, and of laws, is a matter for the courts. To give this power to a different body would involve a radically new constitutional configuration, with ramifications beyond the remit of this report. There is no reason, however, why such a body could not propose and initiate repeal or amendment of any such law, or of any law under which a problematic administrative decision was made.

<sup>69</sup> Erskine May's *Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (23rd edn, 2004), p. 559.

<sup>70</sup> For example, recommendations by a Committee of either House have legal effects within the procedure for making draft Legislative Reform Orders by ministers under the Legislative and Regulatory Reform Act (LRA) 2006; and ministers must respond to recommendations by a Committee under s. 9 of the Planning Act 2008 in relation to national policy statements.

<sup>71</sup> Under LRA 2006, s. 18 a Minister must consider recommendations from a Committee of either House charged with reporting on a draft order made within 60 days of the draft order having been laid before Parliament. If the Minister still wishes to make the order as set out in the draft, he or she must lay before Parliament a statement setting out the existence and details of representations made. If a Committee then recommends that no further proceedings be taken in relation to the draft order, then the order cannot proceed, unless the recommendation is, in the same session, rejected by a resolution of the House.

<sup>72</sup> <http://www.parliament.uk/business/committees/committees-a-z/lords-select/constitution-committee/>

<sup>73</sup> <http://www.parliament.uk/business/committees/committees-a-z/lords-select/procedure-committee/>

<sup>74</sup> <http://www.parliament.uk/business/committees/committees-a-z/lords-select/liason-committee/>

<sup>75</sup> <http://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/role/>

<sup>76</sup> Standing Orders of the House of Commons, Public Business, 2010 (New Parliament), available here (accessed on 19/11/10): <http://www.publications.parliament.uk/pa/cm200910/cmstords/539/539.pdf>. It is doubtful whether a sub-Committee of a wider Select Committee would have the width of remit to be equal to the task, unless perhaps as a candidate forum for initial intra-parliamentary consideration.

<sup>77</sup> See, generally, *Environmental Justice and the Rights of Unborn and Future Generations*, by Laura Westra (Earthscan, 2008).

<sup>78</sup> See Caroline Lucas calls for environment [rights] commission:

<http://liberalconspiracy.org/2010/09/17/caroline-lucas-calls-for-environmental-commission/>

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<sup>79</sup> Ross, A., It's Time to Get Serious—Why Legislation Is Needed to Make Sustainable Development a Reality in the UK, *Sustainability* 2010, 2, 1101-1127; doi:10.3390/su2041101, available here (accessed on 6/12/10): <http://www.mdpi.com/2071-1050/2/4/1101/pdf>

<sup>80</sup> See the Defra-funded study, 'Defining and Identifying Environmental Limits for Sustainable Development: A Scoping Study' (2006), available here (accessed on 1/12/10): [http://www.nottingham.ac.uk/cem/pdf/NR0102\\_FTR\\_Final.pdf](http://www.nottingham.ac.uk/cem/pdf/NR0102_FTR_Final.pdf). Other important findings of this study were that: "future work in the area of ELs should focus on both scientific issues related to the structure and dynamics of natural resource systems, and the institutional frameworks in which judgements about the consequences of exceeding ELs are made"; that "there is a broad consensus in the scientific literature that the goals of sustainable development will not be achieved unless we are better able to identify and define what ELs are"; and that EL thinking (e.g.) on critical loads and on toxic substances in soil was "fairly well developed", though "much less well advanced in areas such as recreation and access". The study also found that "across all of the science areas considered, once the advantages of the different ways of characterizing the system response was resolved, the need to apply that knowledge took us into realms where questions of value had to be resolved".

<sup>81</sup> See recent research for the Scottish and Northern Ireland environment agencies: The Use of Environmental Limits in Regulating Environmental Systems - How Could the Concept be Applied by Environmental Agencies? Final Report, Project UKCC14, January 2010, available here (accessed on 1/12/10): [http://www.sniffer.org.uk/Webcontrol/Secure/ClientSpecific/ResourceManagement/UploadedFiles/UKCC14\\_Final\\_Project%20Report\\_\(electronic\).pdf](http://www.sniffer.org.uk/Webcontrol/Secure/ClientSpecific/ResourceManagement/UploadedFiles/UKCC14_Final_Project%20Report_(electronic).pdf) ]

<sup>82</sup> See the second item of POST's current work here (accessed on 1/12/10): <http://www.parliament.uk/mps-lords-and-offices/offices/bicameral/post/current/environment/>. The absence of environmental limits being even mentioned in Defra's consultation on the Natural England White Paper, however, perhaps points to less acceptance of the notion by the current coalition government.

<sup>83</sup> A possible alternative, if there was sufficient clarity on the fundamental features, might be to enact an Environmental Limits Clauses Act, similar to those in the 19<sup>th</sup> century which facilitated railway construction and compulsory purchase of land for development. This Act would set out the basic 'in principle' model provisions that would apply to establishing environmental limits in general, and then, via another Act, the provisions of the first Act could be applied in a particular sector unless the second Act provided otherwise. The origins of the need for this kind of legislation, however, were quite different.

<sup>84</sup> Available here (accessed on 2/12/10): [http://www.sd-commission.org.uk/publications/downloads/SDC\\_Breakthroughs.pdf](http://www.sd-commission.org.uk/publications/downloads/SDC_Breakthroughs.pdf)

<sup>85</sup> See her speech here (accessed on 6/12/10): <http://www.sustainwales.com/home/downloads/newarrangements/JD%20speech.pdf>