



UKELA Brexit Task Force meeting minutes
Wednesday 17 January 2018 at 1.30pm
39 Essex Chambers

Task Force members

Karen	Blair (apologies)
Andrew	Bryce
Jill	Crawford
Paul	Davies
Haydn	Davies (apologies)
Peter	Dixon (apologies)
Patrick	Duffy (apologies)
Angus	Evers
Begonia	Filgueira (apologies)
Peter	Harvey
Stephen	Hockman (apologies)
Philip	Hunter
Sir Francis	Jacobs (apologies)
Anne	Johnstone
Wyn	Jones
Christian	Jowett (apologies)
Penny	Latorre
Bob	Lee (apologies)
Richard	Macrory
Bridget	Marshall
Francis	McManus (apologies)
Nina	Pindham
Colin	Reid
Eloise	Scotford
Stephen	Sykes
Sarah	Thomas
Stephen	Tromans
Richard	Wald (apologies)
Andrew	Wiseman (apologies)

UKELA Staff

Rosie	Oliver
Joe	Newbiggin
Linda	Farrow

**Minutes to UKELA Brexit Task Force meeting
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Alison

Boyd

o Introduction and Brexit Task Force Chair's Welcome

1 Minutes of meeting on 27 September

Minutes were noted. No comments

2 UKELA chair introductory comments

Discussed staffing situation. AJ notes that LF is departing as Executive Director of UKELA at the end of February. RO is also leaving in February, and the funding for JN's role has ended – both are moving on to new ventures. Discussed what is happening more generally with the restructuring of UKELA staffing. AB (Alison) is taking on the role of Operations Director, supported by Elly-Mae Gadsby as senior administrator. There will be more support and a replacement for Rosie.

Also noted that RM is stepping down as co-chair of the BTF in February. ABr (Andrew) will be standing down as co-chair at 2018 UKELA Conference. Both will remain on the BTF, but not as chairs. Replacements will need to be found. Noted that anyone who want to put themselves forward for those positions. Ideally new co-chairs from within the Task Force, but would also take suggestions for external appointments.

The next UKELA board meeting is 21 March, so confirmation would happen at that meeting. Suggestion that a job description and an indication of time commitment would be good. Noted that the scope of what the co-chairs do will change from current work, because at present emphasis has been on producing reports. BTF have been successful over the past year in setting the agenda, but the next stage is different, and UKELA's response needs to change.

3 Update on activities since last meeting

• UKELA Brexit conference

RO gave a summary of the 13 October conference at 39 Essex Chambers. Thanks to 39 Essex noted.

Agreed that this went well and had good feedback from the broad spectrum of people who attended. Noted that it was extremely popular, and there was a waiting list of those who wanted to come.

It was well received that Lord Carnwath was there for the whole day and having Defra lawyers there too added credibility to the event. Wide range of views represented.

Suggested that UKELA do another event – either in London or in devolved administrations. Coming back to future events further down the agenda.

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- **Reports**

- **Wales, Brexit and Environmental Law**

Noted that this was launched October 2017. Well received.

- **Co-operation Bodies**

Nearly ready to go. This will be launched within the next 21 days. Report went out with the papers and no written feedback received, however any final comments before publication would be welcome.

- **Standard-setting**

Final draft has been approved. Noted that this is also nearly ready to go (pending formatting, etc.) Query about the order of publication. Noted that a gap would provide some separation between the reports, but staff time is increasingly limited.

- **Work in progress**

Report on 'corrective amendments'. This is a sequel to the Henry VIII report, looking at secondary legislation rather than primary legislation and the changes necessary to the statute book. Noted that this project came out of feedback from the second E3G meeting, where press and eNGOs suggested UKELA would be well-placed to do this. Recognised also that feedback from Scottish Government Roundtable highlighted potential concern from devolved administrations.

Thanks to Lexis Nexis noted for their time in researching corrective amendments in the field of waste and producer responsibility. Staff look forward to receiving their notes next week, which will set out where amendments are needed and/or advisable and a summary of those changes that are needed. What will be required is to circulate this and provide a covering report. Once received staff will see what stage it is at and see what follow-on work is necessary.

Noted that this would be a good template for Defra to show how the list of necessary amendments could be published. Not doubted that this is being done internally, but that they should be encouraged to publish this information. If further UKELA work is needed to identify corrective amendments in other areas then further work should be outsourced to the WPs.

Noted that the consultation for the new environmental enforcement body is coming out next month.

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- **Evidence to Parliamentary Committees**

- **ExEU Select Committee**

ABr gave a summary. Three very different witnesses (UKELA, Chem Trust and Which?), questions were broad. Particular interest from the Chair in UKELA's mooted ideas of an enforcement body. Noted that this was good opportunity for UKELA to influence the discussion on this.

- **EAC inquiry on F-Gases and international law issues**

JN noted that this session came about because EAC contacted BTF to discuss international issues. Context of f-gases was just first opportunity to do so. Clerk said that committee found it useful. Got good responses from Coffey the next day, where she gave incrementally more detail on international issues raised in UKELA's report.

RM noted that in addition to the written and oral evidence on international issues he also moved into personal comment on the penalties regime and RESA.

RO noted that the EAC have been in contact since, asking UKELA what issues they should look at and whether they would want to give evidence.

- **HL EU Energy and Environment Sub-committee inquiry into impact of Brexit on UK's trade in waste**

Thanks recorded to Hilary Stone for representing UKELA at this committee. Good for UKELA to be represented, especially on the China ban. Noted that EAC are doing a single session into the China ban and that the BTF should consider responding to this

- **Scottish Government Finance and Constitution committee session on legislative consent memorandum for the European Union (Withdrawal) Bill (UK Parliament Legislation)**

CR reports that this was a good session, particularly vis-à-vis legislative consent memorandum. Colin notes that he was there in various capacities, one of which was UKELA. He will also be giving evidence next week to the Environment, Climate Change and Land Reform Committee at Holyrood as part of their consideration of common frameworks.

- **Contact with government, regulators, NGOs, Commission and MPs and roundtable events**

UKELA Staff note a number of meetings recently:

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- Response from Coffey at the EAC F-gas inquiry on issues raised in the international report
- Various engagements with the Scottish Government through AJ and BM. Noted the engagement with Dr Annalisa Savaresi relating to international law in Scotland
- Peter Dixon attended the Green Party conference in a personal capacity and that a follow up invitation would be passed on.
- JN and ABr met with Matthew Pennycook MP
- RM, JN and RO met with Sibylle Grohs and other members of DG Environment's Brexit team. Noted in particular the recognition Commission has of the value of UKELA's reports and the emphasis they put on the international law work and the enforcement work as important in the event of a 'no deal' scenario. Noted also that it was important that the meeting was independent of both the Commission's meeting with Defra and eNGOs.
- All met with IEMA to discuss NZ enforcement model for the environment. Noted that IEMA appreciate our work and UKELA's work opens the door for deeper engagement
- Multiple engagement with Institute for Government in the context of CJEU research and common frameworks for devolved administrations. Again, quality of UKELA's work opens the door for deeper engagement
- Dialogue open between JN and the House of Commons Library
- Invitation from the Bar Council's EU Law Committee noted
- Meeting with GUK noted, as well as engagement with Environment Pillar, Repeal Bill Alliance

ST provided an update on the impact of UKELA's nuclear paper. BEIS are now on to this issue, noting Greg Clarke's written statement. Noted also that the standing committee has been commissioned to do more work, focusing on gaps. Not sure if this will be published publically, because it is with ministers in Westminster and DAs at the moment. Noted that there has been no further contact between Government lawyers and UKELA staff on nuclear issues.

RM and CR noted that they met Mr Gove this morning and covered Brexit, Devolution, Principles and Enforcement body. Noted that the SOS is engaged with the nuance and detail of these issues. Recognised that UKELA have diverse positions on principles within the membership and that this should be reflected. ES adds that a 2013/2014 UKELA does have a public position on principles. This can be relied upon, or it can be updated.

Reminder that Waste WP have a joint event coming up on Wednesday 7 March 2018 with ESA and CIWM on the circular economy. ABr doing a session of what UKELA are doing on Brexit and focus on enforcement.

4 Publications and public profile

UKELA had a flurry of mentions in November, noting in particular the BBC and FT. Away from the mainstream press UKELA's reports were extensively referenced in the House of Commons Library paper *Brexit and the environment*.

The reports have featured very prominently in the ENDS Report hard copy – more so than the digital coverage may suggest. Lots of enquiries (from ENDS and elsewhere) for comment on policy developments, all of which are being passed over so as not to respond on the hoof.

Queries anticipated after the next round of publications, but not for much more than a week. Anticipated that this will not be an issue for JN/RO handover, but will be covered in handover document.

Noted that JN and RM have published an occasional paper on Brexit and International Environmental Law for BIICL's *Brexit: The International Legal Implications* series, noting that both work for UKELA. Invitation to write for IEMA's magazine *Transform* noted: to do if there is capacity.

Suggestion that there is a briefing for membership on the BTF's achievements. Accepted that this will be part of the role of a summary compendium note JN is drafting before he leaves. Suggested that this be circulated to members as a note separate from *elaw*.

5 Nature of UKELA's Brexit Activity after 6 February: resources, roles, intensity

UKELA's new administrative framework was noted, as well as the changes to the co-chairs. Nominations for new co-chairs would be welcomed.

Recognised that Brexit-related work will slow, given that reports were of a strategic nature and these issues have been picked up by stakeholders. Withdrawal Bill has finished its progress through House of Commons and trade talks are starting.

BTF has to decide how to carry its work forward. Phase 1 is over, as is the availability of 6 staff days per week. Lots have been achieved, but moving into phase 2 the nature of UKELA's input is changing just as the task at hand is changing.

Agreed that BTF should remain as conduit to the WPs on Brexit issues, however it may have a different format. The issues which UKELA are called on to address may be general in nature, in which case they should be dealt by UKELA Council, or through the WPs. WP involvement is strong in some areas and less consistent in others. It may be that certain topics may need to be picked up by BTF members. Emphasis going forward is likely to be on the review of delegated legislation.

Suggested that are issues of trade and whether we have an interim agreement with the EU. UKELA not ideally placed to talk about trade and Brexit.

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Immediate task will be Government consultation on the proposed new environmental body (probably in March 2018). Noted that UKELA's enforcement report was key to this proposal. UKELA need to comment both on the issues the body should address, as well as options for how it will work. BTF needs to have the mechanisms in place to get involved with this: no need to be reactive: we know this is coming and can capitalise on the expertise we have and be ready to go.

Suggestion for subcommittee of BTF to deal with this consultation, with convenors from each WP to decide who from their WP to nominate representative, and representatives from each DA involved too. Andrew will remain engaged with this as chair of BTF.

Chair agrees that more generally the focus for UKELA will have to be on helping the WPs to deliver, nevertheless UKELA shall retain the BTF forum. This helps UKELA respond to Brexit issues without saying that this represents the entirety of UKELA membership. BTF may need to assist the WPs with forthcoming engagement on Brexit issues. Trustees are behind continuing BTF's work

Third party engagement raised. JN and RO are contact points at present, but going forward we won't have the capacity to deal with this in the same way. We will continue these relationships, but UKELA's central admin will be needed to relay and coordinate with the WPs and the BTF. Suggested that because JN and RO will keep getting emails, can we have a BTF email address.

Queried who will do the blog going forward. Two questions (a) content production and (b) oversight. It would be great if BTF members could contribute thought pieces and opinion pieces, which RO's replacement could co-ordinate. Invitation for BTF members to produce Guest blogs, as well as cross-posting.

Noted that there will probably be a phase 3 further down the pipeline and UKELA may get really busy in 2019. If UKELA rise to the challenge again it was suggested that fundraising would need to be undertaken. Noted that this fundraising cannot happen too early, as we don't know what we will be working on. This may involve environmental provisions relating to the trade deal, but that's a long way off at present. Chair to take this back to Council to talk about building up a war chest. Good to have options prepared, such as the CrowdJustice platform which is ready to be rolled out at short notice.

In terms of scheduling it is noted that the DAs wanted a timetable from Government about when things are happening. Don't know if they'll get this, but if they do and we can get a copy might help guide forward planning.

Noted that a particularly useful part of JN's work has been producing updates for the BTF. Time consuming therefore difficult to continue without replacing JN, therefore suggested it would be useful if someone from the BTF would do this every couple of months.

6 Next round of topics for BTF research to focus on

Noted that in addition to *Standard Setting* and *Co-operation Bodies* reports there are two more papers being worked up:

a) Scotland, Brexit and Environmental Law

Scottish Gov have expressed a strong appetite for this paper. Suggested that Scottish members of the BTF lead on this. CR and PH are put forward. Noted that staff will put time into helping where directed.

b) Scottish Annex to the International Report (update paper)

Noted that this will be a very short paper, providing context for the International (Scotland) Annex which UKELA contracted out for. Noted that two Scottish academics (Dr Annalisa Savaresi and Dr Antonio Cardesa-Salzmann) are open to working with UKELA on this paper.

General points noted: these reports are unlikely to need printing, they can probably be distributed in soft copy only. If hard copies are produced then all necessary contact are on the Dropbox for distribution.

- **Trade and environmental law**

Query whether to do a further report on trade and environmental law. Relationship with the EU may be based more on convergence based of existing law, rather than new rules like with Canada. There are some WTO bits on general principles, but we will need to see which way the wind blows. ST noted that he has previously done work on issues with Canadian issues.

Lots of members have a vague idea about this, but a general paper mapping key issues would be useful. Suggested that UKELA could discuss the role of environmental principles in trade deals more generally, and then tailor this depending on how the cookie crumbles Query whether this is meant to be an influencing paper, or just an aide memoire? Noted that it should be fairly basic and aimed at people/businesses who are uncertain. Needs to have an environmental focus, not just the disruption of JIT production by border queues. There will be points to be made with health and hygiene

Noted that there has been interest from Government contacts about whether UKELA have any thoughts to share on this.

In terms of resources to this, noted that UKELA had a seminar on this at the beginning of the Brexit process in December 2016. Johanne Scott (Florence), is a potential, but may be overstretched. Christoff Bondi (Cooley) was very good and expressed an interest to do something with UKELA. If asking Bondi we will need a contact on the BTF for him to liaise with.

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John Milner from the American Bar Association sent an invite to AJ to talk at their conference in Orlando. If Anne goes she might be able to combine this appearance with an attempt to see if any US lawyers wanted to give input on a trade paper too.

- **Working parties**

2018 conference committee are looking for more WP input on topics of relevance, one of which is talking about what is happening in their sphere in Brexit. This is happening in the background – so WPs will know what the major Brexit points are.

Noted that some WPs may need assistance from the BTF to help with the Brexit-related parts. Noted that it works well having more than one chair working on an issue.

Suggested that there the BTF may need a presentation at the next meeting, setting out the strengths and gaps in WP coverage. Penny to lead on this as trustee responsible for WPs.

During this period of change, when UKELA is restructuring, the WPs will be at the core of this.

- **25 Year plan**

Queried whether it would be worth setting out who can respond to the 25 year plan. Suggested that this is probably something for UKELA Council, rather than BTF. Consultation (if it had existed) would have been a good time to engage, but it hasn't, although there are likely to be sub-consultations on specific issues. Noted that UKELA focus should be on law not policy.

7 Future events?

Good to know what involvement ABr, RM or other BTF members are needed for at UKELA conference 2018. LF and PL to flesh this out during the next conference call

March seminar on Waste at Clyde and Co. Tickets selling fast.

London meeting seminars – standard setting report could form the basis of a seminar at some point. There could be lots of stakeholders with different views on the topic. Could be the subject of an evening meeting on it?

AB noted that there is capacity to add some Brexit related events if necessary.

JN and RM giving a seminar on UKELA's work for UCL LLB students as a way of saying thanks for the use of their space for the past year.

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8 Next Meeting

25 April 2018, after lunch

9 AOB

Noted that Wyn Jones produced an informative paper mooted the JNCC as a possible means for creating a cross-jurisdictional body of sorts. Helps explain why it might not be an ideal model to work to as an environmental enforcement body: structure and relationship JNCC has with devolved governments inappropriate for the role

Suggested that this could be a good paper to get out, but may need to be edited for the audience. Might also be useful to look at how 4 national enforcement bodies might be able to co-ordinate between themselves, based on lessons learned from the JNCC? Noted that there may be constitutional elements in that the JNCC does not do anything at the moment unless it has the agreement of the agencies, therefore less of a body and more organisations working together. Nevertheless, it does have some importance for reporting to international treaty obligations. ABr to follow up with Wyn. Once this is done RO (or RO replacement) to contact *elaw* editors.

Vicki Elcoate approached UKELA looking for a speaker at the Green party conference. Working for a Green MEP – focus would be Brexit, Fracking and Energy Law. Confirmation that UKELA members can go, but not with UKELA hat on.

LF and ABr record personal thanks to all the people on the BTF for the leverage and influence they have achieved. Thanks particularly to RO, JN and co-chairs.

Meeting closes