



**UKELA BTF meeting, 1.30 pm, 14 February 2019, Shoosmiths, London
MINUTES OF MEETING**

Attending:

Begonia Filgueira (Co-chair) (BF)
Angus Evers (Co-chair) (AE)
Kirsty Schneeberger (UKELA Chair Elect) (KS)
Richard Macrory QC (Former Chair BTF) (RM)
Andrew Bryce (Former Chair BTF) (ABry)
Nina Pindham (UKELA Trustee) (NP)
Robert Lee (University of Birmingham) (BL)
Patrick Duffy (Planning & SusDev WP) (PDU)
Emma Tattersdill (Land Contamination WP) (ET)
Stephen Sykes (Former UKELA Chair)
Alison Boyd (Operations Director) (AB)
Adam Smith (BTF support) (AS)

On the Phone:

Paul Stookes (WP & Brexit Advisor) (PS)
Peter Harvey (Waste WP Representative) (PH)
Eloise Scoford (Representative for academia) (ES)
Karen Blair (Trustee) (KB)
Penny Latorre (Trustee) (PL)
Jill Crawford (Environmental Litigation WP) (JC)

Action Points Arising from the Meeting

1. **AE** to circulate the survey / mini-consultation on standards setting to the BTF (deadline Friday 22 February 2019).
2. **BF/AE** to approach Edward Lockhart-Mummery of the Broadway Initiative to arrange a more formal meeting with him on behalf of UKELA.
3. **All Members** to contribute to spreadsheet of external engagement (attached).
4. **BF** to circulate weekly list of Statutory Instruments implementing technical amendments to the BTF (on a confidential basis).
5. **BF/AE** to keep under review whether to recommend a public comment on the complexity of the technical amendments and the impact on environmental law.
6. **BF/AE** to consider who should attend the DEFRA/OEP stakeholders meetings based on what is due to be discussed.
7. **BF/PS/AB** so consider seminar on part two of the Environment Bill once it is published and after the Annual Conference in the summer.
8. **AB** to introduce KB to Dr Viviane Gravey, Queens University, Belfast
9. **BF/ET** to check on agricultural law expert to brief BTF.
10. **PS** to get an update from BEIS on where we are with EURATOM.
11. **AB/PS** to pull together newsletter on BTF activities and impact for UKELA members.
12. **All Members** to think about the future of the BTF for discussion at the next meeting.

1. Apologies

Anne Johnstone, Peter Dixon, Frank McManus, Stephen Tromans QC, Sir Francis Jacobs, Colin Reid, Caroline Fielder, Jeff Roberts, Richard Wald, Phil Hunter, Christian Jowett, Richard Barlow, Stephen Hockman QC, Andrew Wiseman, Victoria Jenkins, Bridget Marshall, Paul Davies

2. Minutes of last meeting and matters arising

1. AE confirmed we responded to call for evidence on the Environment Bill.
2. BF confirmed that a letter had been written to The Environment Secretary, Michael Gove, on the issue of collating the amendments to primary legislation in preparation for Brexit. A response in the form of a thank you. RM said we now have it on the record that it has been done and that is important.
3. AE said that the Broadway Initiative is discussing standard setting at their upcoming event: at 9.00 am on 25 February 2019 at the QE Hall, Westminster. AE is attending in a private capacity and will feed back. ES is also attending. RM said there appears to be a lot of conversation between DEFRA and IEMA at the moment on this issue. AE said that he had just this morning been sent a survey or a mini-consultation from DEFRA which we may or may not respond to. AE will circulate to the BTF.
4. On the mechanism for coordinating with the groups in devolved administrations, BF said we would be hearing from them later in the meeting.
5. PS circulated the Broadway Initiative paper to the BTF.
6. BF/AE confirmed they had met with Edward Lockhart-Mummery (ELM) at the DEFRA stakeholders meeting. BF said that a more formal meeting with him would be helpful.

RM said the Broadway Initiative had gathered together a useful set of people and ELM is always receptive to legal guidance as he is not a lawyer. UKELA could have a watching member on the Broadway Initiative board and maintain independence. RM said Broadway are looking at things from a policy perspective and UKELA are looking from a more procedural perspective.

AE said he was invited to the Broadway Initiative event in an informal capacity and it is IEMA leading on it. ELM wanted a lawyer on each table for the breakout sessions. ES is going in a personal capacity. NP is checking on her availability to see if she can attend.

RM said that any initial meeting with ELM should be to update him on what UKELA is doing. UKELA could keep its independence but could still run a joint event or similar.

ABry said that depending on what happens with part two of the Environment Bill it may be better to have any meeting with ELM after that.

3. UKELA influencing government - EFRA/EAC inquiry, House of Lords' Energy and Environment Committee, DEFRA SI's Scrutinising Group and DEFRA OEP Stakeholders meetings.

ERFA/EAC Inquiry

BF highlighted the fact that there is now a spreadsheet with a record of all external meetings and all contacts the BTF makes with government and other organisations and asked all BTF members to contribute

ABry said UKELA are now on a panel for the EFRA committee. PH clarified that ABry is attending for UKELA and RM is attending in a personal capacity.

AB asked if they are looking at having one or two people from UKELA? PH confirmed just one person from UKELA (ABry) at the 27 February evidence session. The Office for Environmental Protection (OEP) and enforcement are expected to be the focus.

RM said that his view was that DEFRA officials would welcome some of the comments we have made on the future enforcement regime as it would allow them to go further. Part of the point of the EFRA inquiry is to give Michael Gove a stronger hand to push for more.

ES is appearing before the Environmental Audit Committee (EAC) and is expecting to be briefed on her session the week before but at the moment, it could cover everything on the draft bill.

RM said that initially EFRA and EAC were going to hold joint hearings but they were now separate and he expects they will produce separate reports on the Environment Bill.

House of Lords Committee

RM reported he had attended a roundtable discussion with the Committee and other organisations including WWF and ClientEarth. He said it was an interesting discussion. The committee will take evidence from Michael Gove at some point.

BF attended on behalf of UKELA. She said the Lords were very interested on the question of OEP independence. She said everyone was making the same points: how it would be financed, who appoints the members, what do they mean by environmental law and natural capital etc. BF said IEMA and ClientEarth talked about having an overall objective of protecting the environment. BF said she could see how that would be translated into a duty.

ES said that the argument over an overall objective is gaining strength. She said she thought it was about equivalence and the purpose of this bill is to bring over as much as possible from Article 191 TFEU.

RM said that the Broadway Initiative is putting forward a suggestion that there should be a general duty to protect the environment, as exists with, for example, health and safety law. They have this in Dutch legislation. RM said this was an interesting thing for UKELA to think about.

BF said that she thought a "duty" wasn't mentioned at HL, it was the idea of an overall objective.

RM added that for the OEP to be wholly funded by DEFRA is not a good thing and he thought everyone on the committee got that point.

DEFRA SI scrutinising Group

BF explained that under the Withdrawal Bill there are a lot of Statutory Instruments going through at the moment to amend primary and secondary legislation.

She said DEFRA have created a series of groups to scrutinise this. AE and BF are part of this and there is a call every couple of weeks for comments on these technical amendments.

BF noted she would circulate SI amendments, on a confidential basis, to the Working Parties and other members of the BTF.

Technical comments only were being sought.

BF explained that the process is then that a sifting committee in Parliament will check that the amendment is a negative resolution and not an affirmative and if it is affirmative then it has to go for debate in Parliament.

RL said there had only been about 15 SIs so far.

RM said that it would be useful for the wider BTF to be able to see the SIs so that if someone notices something that looks odd then that can be fed to BF.

ES said that she was concerned that some things that look technical may not be technical in practise. She said it might be an idea to take a sample and get Working Parties to have a look at some of them.

BF confirmed that she already sends the list of SIs to the conveners of the working parties and they have all been invited to join the data room where the text appears.

BF said from this week onwards she would send the list to the whole BTF.

ES said that she thought at some point there will be scope for UKELA to make a comment on this issue and what it will do to statute book and how complex it will make environmental law. She said she was looking at some of the waste SIs and they are very, very difficult to understand.

It was agreed to keep this under review.

DEFRA OEP Stakeholders meetings

BF said that she and PH went to the last stakeholders meeting about how the OEP should operate. BF said Rebecca Bailey from DEFRA was very happy with the session and felt comfortable that people were accepting of the work DEFRA were doing.

The next meeting is on Tuesday 27 February 2019.

BF said she thought it was a very open and useful meeting. BF felt we were having some influence. The Broadway Initiative, the Environment Agency, Natural England, the Climate Chance Committee, Client Earth, Greener UK and others were all there.

AE said the discussion was all about cost and whether the OEP should have separate IT systems? Should there be a separate communications team?

Meeting on target setting

AE went to roundtable meeting with Michael Gove. It was a mix of DEFRA and outside organisations.

DEFRA are proposing setting targets in SIs to preserve the status quo as much as possible. There was a sense that if targets are set in policy documents they can be amended too easily and subject to political whims. Targets would be harder to change in SIs but too hard in primary legislation.

AE said Mr Gove made comment about the independence of OEP. He referred to it as an emanation of Parliament rather than something paid for by DEFRA.

RM said there is an argument that if it is funded by government and also has an enforcement power against government then that is unconstitutional.

AE said he had been given a survey by way of follow up to the meeting and he will put the questions into a word document and circulate. Deadline next Friday 22 February 2019.

ES said she thought that the Broadway Initiative was keen for standards setting to be included in the second part of the Environment Bill.

BF said that we should consider an event around the idea of a standards baseline.

4. BTF sub-group - Env Bill Part I and II response preparation

AE updated that UKELA has submitted a response on Part One of the Environment Bill, the principles and OEP. It is expected that Part Two will be published sometime over the summer, although no date is yet known.

AE said there was a question on whether we produce anything else on the bill. He said the view seems to be that it is not worth doing anything else in terms of a wider report since our EFRA committee evidence was succinct but pretty comprehensive.

AE said we can probably put the sub-group into hibernation for now but it would be good to have input from the wider group when we get to part two. We will want expertise from the working parties and not just the BTF.

BF and AE thanked PH and PS for all their work on the response to the Bill so far.

RM said he thought putting the sub-group into hibernation was a sensible move. He said that one lesson from the last four months is that when you write a submission you have to delegate to one person for first draft.

RM said there was a wider question of when the BTF should be wound up and issues embedded back into UKELA.

AE and BF said this had been discussed within UKELA (see AOB below)

BF said there will be a time, probably towards the end of the year when we see where we are. She said we do see the BTF as having its own timeframe and coming to an end; and UKELA will absorb Brexit work again through the working parties.

BF noted that this would be for Council to decide on the BTF's recommendation.

PS said the makeup of the Brexit taskforce at the moment includes 11 out of the 12 conveners of the working parties. The only gap was water as there was no convector in post at present (although a candidate is in mind). It was agreed that BF/AE would contact all the prospective Water convector and NCWP conveners about representation on the BTF.

PS said Northern Ireland and Scotland will need consideration as well. BF said there is a Scottish Brexit sub-group that is headed by Anne Johnstone.

5. Northern Ireland update

KB said there is an issue in NI because of the lack of members in NI. UKELA is not particularly active here. AB and KB have a meeting with the convector of the NIWP to discuss activity in the DA next week (21 February).

It was agreed that AB would let KB have contact details for Dr Viviane Gravey (who spoke at the Environment Bill conference) and who may be interested in helping to take forward NI activity. It was also noted that Professor Mary Dobbs in NI may have an interest in becoming involved. AB will take forward with KB.

6. Scottish update – sub-group

PS updated on the Scottish Government Brexit consultation on their own environment bill. At some point there will need to be the equivalent of responding to the environment bill in Scotland.

BF and AE will contact Phil Hunter about this.

7. Wales update

RL said the Welsh position is different on governance and principles. A consultation paper on governance and principles is awaiting ministerial approval then there will be a three-month consultation with stakeholder meetings.

On governance, RL attended a stakeholder meeting last summer to discuss governance issues post-Brexit and actually the strong position in that meeting was that the OEP would be better as a UK-wide body rather than fragmented across different nations. RL thought politicians were broadly supportive but it has not happened.

On principles, RL said there are a lot of principles already around in Wales in the Environment Act and so the notion of handing things over to a Secretary of State who would then make principles that apply to Wales doesn't make a lot of sense

RL said there is already an elaborate audit process in Wales. You might find that model that comes out in Wales for this is different.

There has already been a three-week consultation on food law that closed on 7 February. It looked at changes to agri-food and the level of SIs needed. It's estimated that there will be about 50 Welsh SIs.

There are already some on the Assembly website if you search regulations made under the Withdrawal Act. These are technical amendments to Welsh legislation.

RL said there was a ministerial statement on 22 January 2019 on the implications for Wales of no deal Brexit. There wasn't a great deal and mostly focussed on agri-food industry which would be "devastated" in no deal Brexit.

8. Other Brexit related env law and policy – update

Reach

AE said that the European Chemicals Agency is going to open a portal in March for UK entities to re-register. In event of no deal any registrations will be invalid. The issue will be whether the Health and Safety Executive recognise re-registration in UK under retained EU law.

BF said the EU certainly won't recognise re-registration at the moment and that is why so many organisations are opening up offices in EU.

Waste management

ABry updated that the Government had released a note saying rules on green waste will stay the same post-Brexit. In relation to other issues we will be a third country and people should be aware of customs rules. There is a debate around whether tariffs will or will not apply.

RM asked if, on agriculture and fisheries, UKELA has working parties looking at these areas?

ABry said nature conservation have looked at it but don't have the resources.

RM said might be worth someone who has an interest and can get up to speed on it and brief us.

BF suggested Simon Tilling from Burges Salmon and ET said she would ask around her agricultural team.

Contaminated Land

BF said this was not really affected us as the UK had gone its own way already.

RL said this was not the case with Wales and nuclear.

BF said the UK has signed bilateral deals with the main trading nations – US, Australia, Canada, Japan – and there is an existing agreement that they want to extend. There is no deal with EURATOM as that is part of the Brexit negotiations. The EU will fall back on international standards which are lower than EURATOM standards.

BF said one big issue was the shortage of inspectors. It takes five years to train up someone and 18 months to train someone in the sector already to be an inspector. The UK is worried about numbers of inspectors if there is no deal.

RM said it might be sensible to ask PS, since that was the first report we published, to review and update that to see where we are.

ABry asked if we been to the BEIS forums. He went to the first one.

PS said he would contact BEIS for an update.

9. UKELA Conference (for noting): RM: Brexit and the International Future

RM speaking at the conference on Brexit with the exact topic tbc.

It was agreed that an event on Part Two of the Environment Bill should be considered when we know timing, but that it would be after the Annual Conference.

10. AOB

AB and PS will draft a members' newsletter on recent BTF activity.

On the future of the taskforce it was agreed that this would be discussed at the next meeting with a plan to make a recommendation to Council at the appropriate time.

11. Date and place of next meeting

Agreed to be Tuesday 30 April 2019 at Shoosmiths, London (AE happy to host).

MEETING ENDED - 15:35