



UKELA Brexit Task Force meeting minutes
Monday 13 March 2017 at 1.30pm

King's College, London

Task Force members

Sir Francis Jacobs (apologies)	Patron
Richard Macrory QC	Co-Chair/Patron
Andrew Bryce	Co-Chair/Private Practice
Stephen Sykes	UKELA Chair
Anne Johnstone (apologies)	Trustee/Chair-elect
Richard Wald	Trustee/Barrister
Karen Blair	Trustee/NI
Bridget Marshall	Trustee/Public sector
Kenneth Ross (apologies)	Trustee/Scotland
Haydn Davies (apologies)	Trustee/Wales
Penny Latorre	Trustee/WP Co-Ordinator
Stephen Hockman QC	ClimateChangeEnergyWP
Andrew Wiseman	ContamLandWP
Jill Crawford	EnvLitWP
Richard Barlow	NatureConsWP
Francis McManus (apologies)	NoiseWP
Peter Dixon (apologies)	Planning/SusDevWP
Patrick Duffy	Planning/SusDevWP
Angus Evers	WasteWP
Peter Harvey	WasteWP
Nina Pindham (apologies)	WaterWP
Stephen Tromans QC (apologies)	Barrister
Paul Bowden	Private Practice
Paul Davies	Private Practice
Begonia Filgueira (apologies)	Private Practice
Colin Reid (apologies)	Academic/Scotland
Bob Lee	Academic
Eloise Scotford (apologies)	Academic
Sarah Thomas	Environment Agency observer
UKELA Staff Support	
Linda Farrow	Executive Director
Rosie Oliver	Working Party Adviser
Joe Newbiggin	Research Assistant

1 Introductions and Brexit Task Force Chairs' welcome

Apologies were noted and all members of the Task Force were welcomed to the meeting.

2 Research Programme Update

Rosie Oliver introduces Joe Newbiggin as Research Assistant to the Brexit Task Force.

Rosie Oliver outlined work on Brexit to date. Working with working parties to identify 'pinch-points' which need consideration. Documents have been circulated to the convenors of working parties for input on identifying pinch-points, together with an example showing strategic mapping of water.

Update from working parties.

- Nature and Conservation (Richard Barlow). Putting in lots of time and effort. Will point Rosie Oliver and Joe Newbiggin in the right direction and they will assist.
- Waste (Angus Evers). Already done comprehensive review on waste and Brexit. Andrew Bryce was at recent meeting and will coordinate with Rosie Oliver.
- Planning and Sustainable Development (Patrick Duffy). Initial table circulated. General feeling is that EIA and SEA self-contained and not as much reliance on EU Directives and there may be in other areas. Query how much properly implemented, particularly the new regulations. Richard Macrory notes that going forward evidence will be needed to show that regulations are making a positive effect. Stephen Hockman emphasises we should retain the process as well as the regime; we need to continue to learn from our friends on the continent, particularly regarding development with transboundary effects; and that international treaties demonstrate that the GRB is only part of the framework for environmental protection to continue.
- Climate Change and Energy (Stephen Hockman). Nothing produced recently as many documents released earlier in the academic year, but suggestion to put a few points down in the strategic mapping table.
- Environmental litigation. No update as yet.
- Noise. Rosie Oliver to follow up.

Update on other areas not covered by working parties:

- Industrial Emissions Directive. Joe Newbiggin and Rosie Oliver looking into this and will circulate something soon. Keen to get members with expertise to give a steer. Stephen Sykes offers to assist. Discussion about mooted proposals for a new Clean Air Act (Richard Macrory and Stephen Hockman).
- REACH. This was covered by members of the Task Force. Note went to the House of Lords Committee.
- Euratom [Covered by Paul Bowden in separate presentation].
- Fisheries. Paul Oliver has a watching brief. Outside our main area of focus in many ways, particularly the trade implications. Similar to agriculture: keeping watch.
- Enforcement. Huge issue. Jill Crawford from Environmental Litigation WP has pulled together ideas on alternative enforcement mechanisms. Now working up an issues paper making use of that material, setting out possible problem with enforcement and the accountability gap on Brexit. May also contain analysis of how those gaps

could be filled – Task Force to consider taking a position on this. Richard Macrory notes that this will be considered when the House of Lords debate the Brexit: Environment and Climate Change report on 23 March. Noted that there is not enough time for the Task Force to provide a paper to the House of Lords on enforcement, unless done in a personal capacity.

- International environmental law [Covered by Joe Newbigin in separate presentation].

Devolved Administrations.

- Northern Ireland workshop being planned by Rosie Oliver with Karen Blair. Discussion about come combination of the co-Chairs, Rosie Oliver and/or Joe Newbigin attending.
- Wales. Wales Working Party putting together a paper on the implications of the new Welsh regulatory frameworks. Information on strategic mapping being sought. Victoria Jenkins is the contact.
- Scotland: Ian Cowan contracted until 7 April. Have been adding Scotland-specific information to the mapping documents. Reminder to the WP Convenors to circulate topic papers to them for comments and specific devolved administration points.
- Linda Farrow notes that a number of unsuccessful candidates for the Research Assistant post have offered to help on issues of devolved administrations.

3 Research Project: Paul Bowen presentation on Euratom

Paul introduces paper by himself and Stephen Tromans QC.

Outlines three main questions arising from the paper:

- a) Is Euratom an appropriate subject for this group?
- b) If it is, do the Task Force want to go into questions about withdrawal from Euratom?
- c) To the extent that is it appropriate for UKELA to get involved, do we get involved in the entire subject of nuclear energy, or only those elements which are salient to the environment?

Other points:

- Emphasis on the ‘three S’s’: safety, security and safeguards. If the Task Force looks at those elements of Euratom that relate to the environment we are looking at ‘safety’.
- Would be good to talk to someone in HMG to ensure that matters of concern to UKELA are being addressed and to offer assistance.
- Potential implications for the Espoo Convention (and Kiev Protocol) as these projects are near the top of the annex.
- If we are not in Euratom can the UK’s obligations be delivered in a coherent manner? Upcoming 3 yearly reviews in which there will be some really hard questions soon.
- Noted that the people dealing with Euratom in Europe are a different group of people than those based in Brussels.

Discussion:

- Security and safeguards are being looked at, but not so much the safety dimension.
- Who else is looking at this? Mainly only individual commentators and the nuclear industries association (with whom Stephen Tromans is involved).
- Noted that if the Task Force can make a difference in a field in which no-one else is contributing, has the relevant expertise and capacity, then it should get involved. This may just involve framing the questions for policymakers. Noted that there is no resource constraint on this within UKELA.
- Suggestion that the paper is developed more and taken to government departments to show what we have identified. Suggested that meetings are set up with, *inter alia*, BEIS and DEFRA.
- Questions raised about scope of UKELA's involvement. Terrorism and finance - no. Environmental Impact, waste, spent fuel, transport (but not port control) - yes.
- UK's ability to continue to operate effectively without connection to the EU institutions, i.e. scientific developments being shared by committees queried. Bob Lee suggests scientific involvement from Birmingham.
- Questions raised about possible associate membership of Euratom.
- Conclusion that this will progress with a smaller group meeting. Andrew Bryce and Bob Lee offer to help.

4 Research Project: Joe Newbigin presentation on international environmental law

Joe introduces the annex on international environmental law which was circulated. This tries to thoroughly map the UK's international environmental obligations; determines whether the UK or the EU or both were competent for each agreement; looks at how these have been implemented in the UK through EU and domestic statutory instruments; and then looks at the enforceability of the international obligations.

- Noted that this was a quick exercise and that the list needs to be concentrated to highlight the most salient provisions.
- Request for Task Force members to provide comments regarding any errors or inaccuracies they have spotted in areas in which they specialise by Monday 30th March.
- Noted that there are areas in which international treaty obligations have been implemented through policy rather than statutory instrument and that, if possible, these will be highlighted.

The annex will accompany a brief report outlining emerging issues. The report will not be comprehensive but will highlight the issues which have come out of the research and pose questions for further consideration.

- Noted that this would be a useful resource both during and after roll-over, to illustrate the point below which the UK's international obligations are not being properly implemented.
- Noted that there is nothing currently available like this, either publically available or internally. Point raised by Bridget Marshall that value added will come from the analysis rather than merely the collated information on environmental treaties, although this will be a good reference document.

- Bob Lee raises the points that there may be question of the unintentional discharge of duties through statutory instrument. Also asks to consider which treaty principles may be considered part of customary international law, and if they are how far the writ would run.

5 Influencing: Parliamentary inquiries

- Andrew Bryce notes that the REACH submissions have already been mentioned. Richard Macrory notes that it has been disseminated in policy circles and feedback has generally been that it was useful.
- General discussion about the different committees dealing with separate environmental topics and how this is allocated.

6 Contact with government, regulators and other organisations

- Richard Macrory notes the House of Lords report on Brexit and the environment, which was general in scope. No other committee hearings immediately coming up which require Task Force input.
- Conversations with contacts in key government departments outlined. This has involved the co-Chairs explaining what the Task Force is doing. Even though our contacts are unable to say much in response we are confident that they are aware of our work and what we are doing.

7 Planned Event: Great Repeal Bill and the Environment

Rosie Oliver introduces the event.

- Dates currently being considered are 13 or 14 June, but waiting for steer from government in order that this is shortly after (and not before) the Great Repeal Bill is published. 39 Essex Chambers have kindly offered to host. Format being considered is 2.30pm to 6.30pm: three sessions with two breaks. Rough outline of the three sessions:
 - a) Regulatory regimes;
 - b) Enforcement, enforcing environmental law after Brexit; and
 - c) Plugging the gaps, where EU law ceases to apply (possibly including Euratom and international work).

Discussion.

- Noted that this is a showcase of the Task Force's work for members because Brexit will not feature highly at conference. It is agreed that the focus will be informative for the members and will seek their feedback on the Task Force's foci, rather than seeking to make a profit.
- Financial support discussed. Suggestion from Bob Lee that funding could be used to fund transport from Scotland and Northern Ireland get support. Karen Blair notes that it may be an issue for target recipients to coordinate this with internal procurement processes and be able to sign up before all tickets taken. Andrew Wiseman asks about 39 Essex Chamber's video conferencing ability and the ability to

webcast to rented locations in each of the devolved administrations. This gets general agreement as a good use of funding.

8 Publicity

General discussion about publicity strategy. Current approach has been on two main paths: first the international work and work on the pinchpoints from the Working Parties; and second collating the information we get and putting it on the website (i.e. REACH submissions).

Questions have been raised about whether UKELA should be proactively publicising its Brexit work, 'getting out there' and making a bigger issue of the roll-over and the importance of this being done effectively. This opportunity to discuss publicity was largely appreciated.

- May be time that BTF increased its profile a little.
- UKELA have unique value to add in key areas where we can give novel and helpful comment.
- BTF needs to be careful about how, why and if work with government is publicised if relationships of trust and confidence are to be fostered.
- Principle issue is whether we are doing enough for our members.

Discussion about the BTF's internal publicity

- Focus on updating the membership about what the BTF is doing, particularly behind the scenes.
- Good to emphasise to members the information which is currently on the website and is being updated.
- In *e/law* there is now going to be a dedicated Brexit page, with updates coming from the Task Force chairs and staff with each edition
- Supplemented by an email update with an interactive PDF of less than two pages.
- Co-chairs to provide updates to Working Party meetings, as was recently well received by the Waste WP.

Discussion about the BTF's external relations.

- Suggestion that the BTF gets out more in specialist journals and the ENDS report.
- Best to publicise work when there is something to 'hang it on', such as a submission to Parliament or the forthcoming International Report.
- Identify any activities from the BTF which could be turned into a press release.
- Where external talks are given by BTF members these should be highlighted.
- The Brexit section of the website to be reviewed, which staff were reviewing.

9 AOB

Andrew Bryce notes that it would be useful to see how our resources have been used. Such as with REACH, where we should look line-by-line where we have made an impact

Stephen Sykes raises the point that UKELA have fantastic patrons and that it may be timely to recruit someone with specific EU environmental law expertise.

- Nigel Haigh and Ludwick Kramer are suggested.
- It is suggested that this might be politically sensitive.
- Concluded that this would a job for the next Chairperson of UKELA.

Noted that we have not had any meetings with DEXEU but that it is nearly impossible to get a meeting with them, unless they want to speak to you.