

UKELA Brexit Task Force meeting minutes
Monday 14 June 2017 at 1.30pm

39 Essex Chambers, London

Task Force members

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

UKELA Staff

Linda	Farrow
Rosie	Oliver
Alison	Boyd
Joe	Newbiggin

1 Introductions and Brexit Task Force Chairs' welcome

Apologies noted.

Discussion about impact of general election. June conference postponed. Noted that there is a new Secretary of State for the Environment and that chairpersons for select committees have not yet been announced.

2 Minutes of meeting on 13 March

Noted. Nothing arising.

3. NCWP draft motion for UKELA AGM

Discussion about Nature Conservation Working Party (NCWP) proposal for a resolution at UKELA's AGM. Feeling from NCWP that UKELA should take a higher profile and stronger stance on the protection of nature and the maintenance of all environmental law. NCWP has suggested that UKELA needs to enter the debate to dispel misinformation and explain the benefits of the current regime. Co-chairs have expressed sympathy with this point and something for BTF to think about.

Co-chairs noted the challenge posed, but must also consider UKELA and BTF's remit and resources in considering the BTF's approach. Noted that the BTF work on pinchpoints will allow the BTF to scrutinise the GRB when released. Sensitive to the fact that UKELA's authority comes from the fact that it is pro-environment but otherwise politically unattached, therefore balance is essential both for impact and resources.

Suggestion of an open letter to the Secretary of State or the Cabinet Office raising points, or a fact sheet from UKELA, disseminated widely, dispelling myths about Nature Conservation law. UKELA Chair on-board. NCWP group to consider before UKELA AGM.

Climate Change Working group to monitor whether similar action needed in their area.

4. UKELA Brexit Strategy

Co-chairs introduced the strategy paper. A decision taken after the General Election was called to postpone UKELA's Brexit conference until October was agreed by senior members and patrons. Five Brexit issues reports are being worked on, all are being edited to reflect recent developments. General message is that rolling over the black letter of the law leaves many things unaddressed. Strategy approved.

Summary of forthcoming launch event for reports at E3G. Approved. In relation to engagement with parliamentarians, these should include those outside Westminster. Press

lists to be expanded to include more contacts from the DAs. Small teams of BTF members from each nation to look at individual reports/circulation lists.

Suggestion that the strategy could be placed on the website. Accepted in principle, but should wait until after launch for final decision

3. Reports: update on progress, and discussion of drafts

In general, reports will need to address possible differences in position between DAs. Input to be sought from BTF members in DAs to draft paragraphs in relation to their jurisdictions.

a. International environmental law and Brexit

Report had been distributed in draft to the BTF prior to the meeting. Noted that the report contained more substantive comments and recommendations at a level of detail not seen elsewhere. Lots of interest in this report which has come out of meetings.

Question raised in relation to relevance to devolved administration. Summary of the work being undertaken to research the implementation in Scotland. Suggestion that the Annex to the report is titled “.... (England)” accepted.

b. Environmental cooperation bodies within Europe

Survey had been distributed to the BTF prior to the meeting to rate bodies which members consider highest priority. Task Force noted that between the event launch and the launch of this report the Government’s own priorities may come out

c. Enforcement of environmental law post-Brexit

Report had been distributed in draft to the BTF prior to the meeting. The content of this report has been discussed in meetings with key figures. UKELA position on environmental court noted.

Conclusions of the paper are not intended to advocate for a single solution, but rather to set out the benefits and risks of each. Noted the difference between suggesting options and suggestion a single solution.

d. Setting Environmental Standards after Brexit

Not circulated before the meeting for time reasons. Input from BTF members offered and authors note that this is appreciated.

e. Implications for nuclear environmental law of leaving Euratom

Short but full of good points and likely to be the best paper out there on the topic. Lack of contact with the Government on this noted and will be revisited.

4. Great Repeal Bill and related legislation (Richard Macrory with Rosie Oliver)

- **Approach to scrutinising and responding**
- **Responses on environmental topic areas; working party input**

There will be lots of secondary legislation after the GRB and UKELA needs to consider how to prepare for this and how to respond. Noted that timing for SIs and further Bills to accompany the GRB is not yet clear.

Early work has been done on the 'pinch points' analyses in each environmental topic area, which are at varying levels of completion. These should be a framework to assess GRB and secondary legislation. UKELA may also need to consider preparing position papers looking at big issues, to publish after GRB.

Noted that other organisations are working on agriculture, fisheries and air quality: important topics not yet addressed through UKELA's mapping exercise. Suggestion to compile list of contacts who can help on these topics, and gather a cluster of the information that already exists.

Government will set the procedure for work on detailed roll-over issues through the consultation on draft SIs. Consideration of short paper on the SI process, after the GRB is produced. This may tie into further work in relation to powers, both so-called H8 powers and the use of other new regulation-making powers.

Noted that Committees in both Houses are likely to have greater influence in the context of a minority government, and this will be an important avenue for UKELA influence.

Relationship with other researchers, including in the House of Commons library noted.

5. Issues for devolved administrations

BTF to coordinate with representatives from each DA for key contacts for comment and circulation.

- **Northern Ireland: Brexit workshop in Belfast on 23 May (Karen Blair with Rosie Oliver and Andrew Bryce)**

This meeting came out of last BTF. Paper not yet produced. Although great concern about the border and energy, noted that many of the environmental problems are generally similar to England.

Good contacts made through the meeting, including of academics at Queens University Belfast. Currently considering whether to hold another follow-up meeting.

- **Wales: Wales working party paper [draft attached] (Haydn Davies/Victoria Jenkins)**

Draft paper addresses distinct Brexit-related issues for Wales, connected to Welsh legislation and principles for environmental law, such as wellbeing. Issue of which powers are reserved/devolved after Brexit likely to be contentious. Draft paper to be refreshed at a later date and published as the sixth BTF report, depending on how events unfold.

- **Scotland (Anne Johnstone)**

UKELA representatives attended the University of Strathclyde roundtable discussion. Noted also that BTF members involved in ESRC project with Scottish stakeholders.

The election has made the political situation more interesting in relation to the devolution settlement, particularly in relation to fisheries. Noted that policy divergence and future trade agreements are particular risks for Scottish environmental law. Researching and scrutinising the impact of a future trade deal on environmental law within the DAs (as distinct from that of the wider UK) may be a key area for UKELA involvement.

6. Contact with government, regulators and other organisations (Andrew Bryce)

Noted the difficulties of arranging meetings during official and unofficial purdah periods but the importance of maintaining lines of communication for consultations. Noted forthcoming meetings with Defra and possibility of DBEIS meeting.

Contact persons in relevant regulators also noted.

Future involvement with parallel organisations, such as IEMA, and the possibility of joint events considered.

Task Force co-chair reported back on the discussions at the ENDS one day conference.

7. October Brexit conference (Rosie Oliver) (draft outline attached)

This is now scheduled for October, still at 39 Essex Chambers. Date fixed for Friday 13 October. Target audience not political, but instead UKELA members and people of interest.

Important to get students to attend too. Charge to be kept nominal. There will be the possibility of joining remotely, courtesy of ESRC funding through Bob Lee.

Marketing to commence 6 weeks before the event, although it will be announced at press launch event. Key attractions: Supreme Court judge talking and chairing; top lawyers from Defra talking; Tom Burke presenting on connecting the legal and political positions.

8. UKELA website: Brexit area and Brexit blog (Joe Newbigin)

Discussion of previous blog posts. Approval of content already up. Noted that members of BTF encouraged to write posts.

9. Desk space for BTF staff (currently at UCL)

Discussion about possibility of desk space after UCL Laws return to original building. RM to discuss further, but may need somewhere else to house BTF staff – possibly another university

10. AOB

Discussion of conference with Wildlife and Countryside Link on 21 July at the Law Society. Scope has widened beyond just nature conservations. Andrew Bryce to get involved in the organisation of this, because it has wider cross-cutting Brexit themes.

Justine Thornton and RM asked to give a talk on the role of environmental principles. This was well received and possible article in JPEL on this.

11. Next meeting

27 September

1.30-4.30

Possibly at Browne Jacobson