



e-law

Better law for the environment

May/June 2019 | Issue 112



Welcome to the July/August edition of *elaw*, our conference edition. The focus of this edition is wild law.

The country's wild spaces, and the wildlife and habitat that they contain, are something that need to be protected, both to preserve biodiversity and so that their beauty can be enjoyed by all. The government's 25 year plan includes chapters on recovering nature and enhancing the beauty of landscapes and

connecting people with the environment to improve health and wellbeing. The policies within the plan are a step in the right direction, but there is of course more work to be done.

We are grateful to John Hunt for his piece: [Nature neglected](#), which gives John's personal view of what has happened to the natural environment in the UK over the past 50 years and reviews the development and impacts of modern farming and forestry and the measures taken to protect important sites.

Thanks also to Gregory Gordon, barrister at Guildhall Chambers, for his thought-provoking article: [The law on hunting is not fit for purpose – it's time for a radical rewrite](#). The piece succinctly outlines the current legal framework for hunting offences, explains the challenges in mounting successful prosecutions, explores moral and welfare questions in prosecutions for hunting offences, and makes a radical suggestion for strengthening the law in this area.

This edition also includes [reports from the seven plenary sessions](#) that took place at this year's annual conference in Sheffield, which was an outstanding success. For these, we are very grateful to our student members and our student advisors, Beatrice Petrescu and Sophie Tremlin, who I am sure you will agree have produced excellent summaries of the sessions that took place.

The conference also included an education session, dealing with/addressing legislative and case law developments since the last annual conference, the ever-popular working party sessions covering a broad range of topics, and a series of speakers' corners, where members spoke passionately about issues of concern to them as individuals. The social programme included yoga, UKELAfest and a gala dinner with speaker Natalie Bennett of the Green party in the magnificent surroundings of the Cutlers' Hall. An enjoyable weekend all round!

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The conference also saw us welcome new UKELA trustees and our new Chair, [Kirsty Schneeberger](#) and I would like to take this opportunity to take this opportunity to extend my congratulations: I very much look forward to working with you all. I would also like to thank the outgoing trustees and especially our outgoing Chair, Anne Johnstone for all her hard work and dedication.

Best wishes,

Sophie Wilkinson

Sophie Wilkinson
UKELA e-law Editor

E-law editorial team

Sophie Wilkinson, Editor – Sophie is an environmental law specialist at LexisPSL with 13 years' experience, including 11 years' experience in private practice. She moved to LexisNexis from Shoosmiths LLP where she was a Senior Associate. Prior to this Sophie trained at Browne Jacobson LLP and spent 6 years at Eversheds LLP.

Cecily Kingston is a trainee solicitor at R&R Urquhart solicitors based in northern Scotland.

Sefki Bayram studied law at the University of Leicester (LLB) and the University of Nottingham (LLM). He is pursuing a career at the Bar in Public and Environmental Law and will begin the BPTC in September 2019.

Words from the Chair



Welcome to this edition of e-law and my first as UKELA's Chair. Following in the footsteps of Anne Johnstone – and many other superb UKELA Chairs before her – is rather daunting, after all UKELA has a long history and tradition of strong and inspiring leadership; but I am excited about the

prospect of working with, and for, you all.

Faced with the important role of thanking Anne formally at this year's conference in Sheffield, I solicited your help by asking many of you to describe Anne in one word – and after the initial protests of that being an impossible task (not enough words!) – unsurprisingly there followed a cascade of praise of the highest order. To paraphrase your remarks, on behalf of our Patrons, Executive, Council, staff and if I might be so bold – the membership – I want to thank Anne for being such an incredibly dedicated, committed, hard-working, super-woman Chair of UKELA these two years and it has been a pleasure and a privilege to serve under her as Vice Chair during that time.

Joining UKELA Council eight years ago, Anne quickly got to rolling up her sleeves and getting involved in all kinds of projects, in particular 'green housekeeping' for conferences as well as being on many conference committees. Being based in Scotland Anne has been a strong voice on Scottish matters as well as understanding deeply the importance of engaging with the wider regions and devolved administrations. Her time on the e-law board has helped ensure the best of material being delivered to your inboxes and I am sure you will agree, her Chair's editorials have all been a wonderfully expressed addition to each newsletter. Since becoming a Vice Chair in 2015 Anne's dedication to UKELA continued to shine and despite having perhaps the furthest way to travel to Executive and Council meetings, since that appointment her attendance record has been impeccable! Quite a fabulous achievement and motivator!

Thank you Anne for not only being a brilliant and inspirational figure-head to us all, but also steering the UKELA ship through some rather uncertain political times these last couple of years. You will be missed of course, but I take solace in knowing you won't be far away and am delighted you are already looking at new UKELA opportunities to stay involved in.

On a personal note, I want to thank you Anne for being such a supportive and inspirational mentor to me these last few years. I wouldn't have even considered stepping up to the role of Chair if it weren't for your encouragement and wise words. Thanks also

for the offer of being on the other end of the phone whenever I need – I might very well be taking you up on that offer!

Since we are on Council news I thought I would take a moment to welcome to Council our new and returning trustees following the recent election. It is a real pleasure to see that your Council continues to grow from strength to strength, and I am personally delighted to have such a strong team to work with.

Nick Whitaker has been re-elected as Honorary Treasurer and I am sure you will all agree we are very fortunate that Nick will continue to give his time and expertise to keep us financially secure and in such strong financial health. Those of you at this year's AGM will recall we are in a very strong financial position thanks in no small part to the series of successful events and last two conferences as well as careful financial management from Nick and Alison across the organisation.

We also welcome back after only a short spell Ben Stansfield of Gowling WLG. Whilst we had been missing him in Council meetings, he was never far away and thanks to his chairing of the conference committee and working with the team, the 2019 Sheffield conference was a stupendous success – something you can read more about in this e-law edition. With the recent publication of the [IPCC report on land-use and climate change](#), it seems that conference was right on trend with our food being vegetarian and vegan.

We also welcome back to Council Jamie Whittle of R&R Urquhart – based in the north of Scotland (a simply stunningly beautiful part of the world). Jamie will bring his Scottish perspective to Council as well as his wide ranging experience in environmental and wild law.

Now for our new members of Council.

Lucy Bruce Jones joins us from Norton Rose Fulbright. Lucy's practice includes working on environmental engineering, providing environmental advice on corporate and property transactions, renewable energy projects, PFI projects and regulatory compliance issues; and we are delighted she will be on the e-law editorial board.

Estelle Dehon of Cornerstone. Many of you who were at conference this year will recall Estelle's brilliant speakers' corner intervention on 'All of Conference going Vegan forever wouldn't make a dent in the fight against Climate Change'. Estelle's practice covers environment and planning law, with particular expertise in climate change; and she was named one of The Planner's Women of Influence in 2018 and 2019.

Estelle is joining the e-law editorial board and the London meetings group.

Emma Lui is a Policy Advisor at the Office for Nuclear Regulation and an Advisory Board member to Public Interest Environmental Law (PIEL) UK. Taking on the mantle of student engagement and young UKELA she has already been working with the UKELA student representatives on some fantastic ideas for their enhanced participation.

I now want to take a moment to thank those trustees who have completed their terms on Council. Without their involvement and support UKELA would not have achieved all it has over the last few years, and so want to say a big thank you to them all:

Stephen Sykes, former Chair and long-standing and deeply committed member of UKELA for his constant and unwavering dedication to this organisation and its mission. I am personally exceptionally indebted to Stephen for all the support he has shown me during my time on Council and for taking me on as Vice Chair during his tenure. Being able to work alongside Stephen and learn from his leadership was a privilege and I am deeply grateful to him for his offer of continued support.

Georgie Messent of Pinsent Masons for her time and expertise, especially for her work on the conference organising committee these last two years. Pinsent Masons is an invaluable supportive firm of UKELA and Georgie's leadership has strengthened this relationship wonderfully. Long may this continue!

Heather Hamilton who has this year joined the Defra government legal department after over four years at ClientEarth as their fisheries lawyer. Heather's responsibilities included working on membership development as well as young UKELA, ensuring a diverse range and breadth of topics for the young UKELA events and helping to arrange the very successful careers event.

Richard Wald of Thirty Nine Essex Chamber for his hard work and involvement, in particular with keeping up the strong relationship between UKELA and Thirty Nine; and of course being the great leader of the intrepid Recyclists. Richard was in the very first peloton that cycled to the conference in Norwich in 2011 and kept the tradition going strong all these years. I hope to join the cycling to Plymouth next year!

Fiona Darroch of 1 Essex Court Chambers who has served on Council for eight years. We are grateful to Fiona for bringing her unique perspectives and insights to Council discussions, especially bringing to bear her experience of working with the public sector thanks to her role as a Chair of the Protimos NGO.

Once again a big thank you to those departing us; and a very warm welcome to those of you joining!

That being all the news with regard to Council, a moment to reflect on the exceptional staff team that really do keep this show on the road: Alison, Elly-Mae, Paul, and Lizzie – we are all eternally grateful for your hard work and commitment to ensuring UKELA runs so effectively and delivers the services for members as expertly as it does. This month Lizzie is sadly stepping down from her role to pursue further studies – we will miss her but wish her well on her future endeavours.

A final thought before you delve into the pages of this wild law edition of e-law. I am extremely delighted and honoured to be taking on the role of your Chair. Some of you may recall that it was in 2010 that I was a recipient of the student bursary prize for the project I was involved in about intergenerational equity and protecting the rights of future generations. That year conference was held in Exeter and it could not have been a better introduction to the UKELA family and not just because of that spectacular harvest moon that rose in the sky during the gala dinner.

It was the best introduction to what UKELA is all about. With your warm welcomes, and by generously taking the time to get to know me, you instilled in me the sense that UKELA was something I wanted to be a part of, not just for that year as a bursary winner, but for my entire career. And now, some nine years later, it is wonderful to reflect on how instrumental UKELA has been to my own career progression and personal development. What a wonderful thing to reflect back on these years and realise that I have been 'growing up' surrounded by all your wisdom and unreserved support.

This is what makes UKELA so special and so much more than simply a professional association: the connections that are made and the support that is given is like being part of a family. A family of brilliant eco-warriors who are putting their time and energy into using the law to protect and enhance our environment, not just for today, but for the future. And I am honoured to be part of it. I sincerely hope you are too.

So now, without further ado, I hope you enjoy this edition of e-law!



Kirsty Schneeberger
UKELA Chair

UKELA news

Tom Huggon awarded honorary membership of UKELA

The UKELA trustees are delighted to announce that Tom Huggon has been awarded honorary membership of UKELA for his outstanding contributions and achievements within the environmental law sector.

Tom grew up and trained to become a solicitor in Burnley, before joining Browne Jacobson & Roose (now known as Browne Jacobson) in Nottingham in approximately 1969/70. Shortly after joining Browne Jacobson, he became a partner of the firm. In 1996, Tom stepped away from the partnership to become a consultant and has remained a consultant to the firm ever since.

In 1973 Tom was a founder member of the forerunner to UKELA – the Solicitors' Ecology Group (SEG) – later the Lawyers' Ecology Group. Tom still has the papers relating to the formation of the SEG!

In practice at (what soon became) Browne Jacobson, Tom dealt with a wide range of environmental law matters. His achievements include:

- In 1987 conducting one of the early prosecutions under section 28 of the Wildlife & Countryside Act 1981 on behalf of the Nature Conservancy Council (and plenty more thereafter).
- Acting for a group of residents and their insurers following the flooding of their dwellings at Rufford Park, Nottinghamshire.
- Acting for the insurers of Derbyshire County Council in relation to claims arising from the Loscoe Tip explosion (caused by methane gas migrating from a recently capped landfill site).
- Advising and assisting English Nature in relation to two judicial reviews in the early 1990s.
- Representing a wide range of amenity societies and Parish Councils in defending proposals for development of the Greater Nottingham green belt.

Two fellow members of UKELA deserve special mention, Jack Garner, Emeritus Professor of the University of Nottingham, and barrister Graham Machin, both of whom have been stalwarts of UKELA and very great environmental campaigners and colleagues of Tom. After Jack lost his sight, both Tom



and Graham used to guide Jack to UKELA events and learnt much from him. Graham was often instructed by Tom on his most awkward of environmental law cases and they worked exceptionally well together.

Within UKELA Tom was chair of the nature conservation working party and has long been closely associated with the group, where he remains an active member. For many years Tom has made a vital and characteristically animated contribution to the wildlife law course run by Wyn Jones. Tom has also provided unstinting support to UKELA's East Midlands regional group.

Beyond UKELA, Tom is Deputy Lieutenant of Nottinghamshire; Open and Green Spaces Champion of Nottingham City Council, a trustee of Nottingham Civic Society, former Chair and Vice President of Nottinghamshire Wildlife Trust and Chair of Green's Windmill Trust as a result of which he is a specialist on George Green – the mathematician. Tom has now decided to retire from active involvement in the activities of UKELA and its nature conservation working party.

It is therefore appropriate to recognise the immense contribution which Tom has made not only to UKELA but also to the development and practice of environmental law generally. The trustees are delighted to award him honorary membership.

With special thanks to Richard Barlow for providing the background on Tom's illustrious career.

Pictured: Chair Kirsty Schneeberger MBE presenting Tom with his award at the Annual Conference in Sheffield in June 2019.

Calling all academic members!

Dr Victoria Jenkins, Associate Professor at the Hillary Rodham School of Law at the University of Swansea is running a short survey regarding the teaching of law in science.

This is the starting point for a project by one of her colleagues from Biological Sciences and is based on the premise that knowledge about legislation, especially environmental legislation, is increasingly important for scientists. The project aims to find out if and how law is taught in sciences.

The questionnaire can be accessed [here](#).

News from the devolved administrations

Wales

News

Following on from the event on Environmental Principles and Governance in Wales post-Brexit on 16 October 2018, the Wales working party held a seminar on the Welsh government's consultation on the Environmental Principles and Governance in Wales post-Brexit on 14 May 2019. Attendees included practitioners, academics, members of NGOs and students. Following an introductory talk by William Wilson, delegates considered various questions on environmental principles and the new environmental body. The subsequent plenary session was then used as the basis for UKELA's Wales working party response to the consultation, which was drafted by Dr Victoria Jenkins. This document was also used as the basis for written evidence submitted to the Committee on Climate Change, the Environment and Rural Affairs of the National Assembly for Wales; and presented to this Committee by Victoria on the 12 June 2019.

UKELA's Wales working party ongoing events programme continues to be busy. On 20 June 2019 an event on Environmental Impact Assessment was held, with speakers Chris Forster Brown of environmental consultancy ADAS, and Ben Standing and Tim Edds of law firm Browne Jacobson. Hosted by Blake Morgan, the event was well attended.

A further event took place on 23 July 2019 at the Royal Welsh Show, Builth Wells hosted by Wildlife Trusts Wales. Dr Ludivine Petetin (Lecturer in Law, Cardiff University) spoke on agricultural law and environmental protection.

Keep up to date with the Wales Working Party

The Wales Working Party convenors have set up their own Twitter page; follow them [@UKELAWalesCymru](https://twitter.com/UKELAWalesCymru) and keep up to date with their news and events.

Scotland

On 24 June 2019, the Scottish government announced that an extra £11 million will be invested into peatland restoration on top of the £3 million already invested this year. Peatland is an iconic part of Scotland's landscape, particularly in the Highlands. This extra investment has been made in light of the climate emergency declared by the Scottish government earlier this year, and in recognition of how valuable peatland is in terms of providing a natural carbon sink, a habitat for plants and wildlife, and a means of improving water quality and mitigating flood risk. Much of Scotland's peatland has been damaged in the past, and its restoration is not only vital in order to realise the environmental benefits peatland offers, but also to lock in the carbon already stored within the peatland. The restoration project will be carried out by Peatland Action, a group led by Scottish Natural Heritage, who will be working with Scottish land managers and partners to restore peatland.

On 5 February this year, the Scottish government also published the report '[Scotland's Forestry Strategy 2019-2029](#)' following the introduction of the [Forestry and Land Management \(Scotland\) Act 2018](#). The strategy introduces new measures and objectives to enhance Scottish forestry and woodland in recognition of the environmental benefits they offer, but also other benefits including an economic contribution of £1 billion and provision for approximately 25,000 jobs. The report recognises the importance of regenerating and sustainably managing trees as a natural resource for flood alleviation and mitigation, as well as improving the physical and visual amenity of urban landscapes.

These are positive steps forward for Scotland that are central to achieving the ambitious climate agenda set in response to the climate emergency. The established link between rewilding and its ability to naturally mitigate the impacts felt by climate change is fast becoming part of a wider discussion and factored into decision-making by the Scottish government.

Regional news

Would you like to help shape the development of environmental law in your local area?

We are looking for members to support our regional groups in the North East, North West, East Midlands, West Midlands and Eastern regions, in particular. AGMs have been set up throughout September, with the exception of the South West, and we encourage you to come along to find out how you can help – see the dates below:

**UKELA North East Regional Group AGM:
12 September 2019 (TBC)**

**UKELA North West Regional Group AGM:
17 September 2019**

UKELA East Regional Group AGM: 18 September 2019

**UKELA East Midlands Regional Group AGM:
24 September 2019**

**UKELA West Midlands Regional Group AGM:
provisional date tabled as 10th October 2019**

You will be part of a team that is helping to give something back and help shape the profession for years to come. By joining you will be supporting new entrants and more established members to have access to updated information, new opportunities, and the opportunity for debate.

Read on for more information about why we have regional groups and what sort of commitment might be involved.

What is the purpose of the UKELA regional groups?

- 1 To provide an interesting and relevant programme of activity for UKELA members within a more localised region (vs. all events / activity being focused on London).
- 2 To act as a vehicle to engage locally with UKELA members to add value to membership by providing a platform for:
 - Continual Professional Development (CPD).
 - Opportunities to network with your peers and other relevant groups within the environmental sector (including legal profession, regulators, consultants, planners and clients).
 - Debate and discussion of forthcoming changes in the law or existing issues faced by the sector.

- Supporting the student body, as well as newly qualified members to progress their careers in environmental law by engaging with more established members of the profession.

What kind of commitment are we asking for?

- 1 To establish a committee of between four to six people, including a Chair/convenor or a dual role of two co-convenors supported by the remaining selected members.
- 2 To hold these positions for at least two years supported by the UKELA Board of Directors / Trustees, and specifically supported by the Operations Director (Alison Boyd) and Regional Group Coordinator (Warren Percival).
- 3 That the regional group committee is made up of enthusiastic individuals ready to create a functional committee.
- 4 For the committee to meet two to four times in the year to confirm arrangements and ideas for regional group events.
- 5 To hold a General Meeting at least every two years, ideally every year (usually tacked onto a planned event).
- 6 To hold at least two good quality regional events per year.

We very much look forward to meeting you at the forthcoming AGMs and securing your commitment to help us in our aims to enhance our outreach to regional members.

If you would like to attend please directly contact the relevant [convenor](#). Further details will be sent out via member mailings.

Working party news

Wildlife law bursary award 2019

Applications are invited to be submitted to Wyn Jones, former convener of the nature conservation working party, by **Monday 16th September 2019** briefly setting out the proposed research project (suggest no more than a page of A4). The project must address a legal issue or issues affecting nature conservation in the UK or within the UK's overseas territories.

Applications will be considered by the chair and convenors of the working party together with at least 2 of the wildlife law course tutors. The award will be made by the 25th October 2019.

The successful candidate will produce a paper and be required to give a presentation on the project and the conclusions reached at a meeting of the nature conservation working party, either at the UKELA annual conference or in September 2020. The paper will be published in the UKELA journal *elaw*.

For further information please contact Wyn Jones, nature conservation working party, on mail@wynjones23.plus.com

Students news

Annual conference

This year's annual conference was an outright success and, from a student's perspective, an educational and distinctive way to spend a summer weekend. Students came from all over the UK, some for their very first conference, to attend a wide range of plenaries and engage with others on debates regarding environmental law matters. Special mention goes to Rina Cindrak, a student member of UKELA who delivered a powerful case during the public health and environmental law working party debate. Student engagement with UKELA working parties is a trend we would like to see more of in the future, as it fosters interaction between our student and senior members and promotes debates between a variety of perspectives, irrespective of the level of expertise. The gala dinner at the Cutler's Hall was a great way to end the jam-packed weekend, serving as an opportunity for the students to socialise and network with more senior members of UKELA. Our after-dinner speaker, Natalie Bennett, of the Green party, delivered an inspiring talk about the important work and future challenges that face environmental lawyers in a world defined by uncertainty, providing a sense of purpose and context for our student members pursuing careers in this field.

Annual careers evening

This year the annual careers evening will be held on Monday 18 November 2019 at 6.30pm, and we are delighted to be hosted once again by the Francis Taylor Building in London. Our annual careers evening is open to students and anyone else interested in a career in environmental law. A variety of professionals working within a range of fields from private practice to government agencies will be on hand for informal conversations and careers advice, to help you make the most of your CV. Further details will be posted to the events calendar and student network section on the UKELA website. Bookings will open later in the year, so be sure to save the date in your diaries as this event is not one to miss!

Student vocational bursary scheme 2019



UKELA is delighted to announce that the 2019 recipient of the student vocational bursary Scheme is Miguel Saldivia. Miguel is an environmental lawyer and expert in energy law and development of renewable energy projects. He holds an LLM in Environmental Law (University College London), an LLB (University of Chile) and a BA in Communication (University of Chile). Currently, Miguel is a PhD candidate at the University of Cambridge. His PhD research is focused on regulations for energy transition in developing countries.

As part of his work experience, Miguel worked as attorney in the environmental law department at Santiago de Chile based law firm, Carey. He has assisted with research within the Environmental Law Centre, Solar Energy Centre and Geothermal Energy Centre, all based in University of Chile, where he is also lecturer in right to information and teaching assistant of environmental law. Miguel has published academic papers addressing topics including water rights and national parks, legal barriers to entry of geothermal energy in Chile and Environmental Impact Assessment of solar energy projects.

We look forward to reading his report on his internship with the Department of Sustainable Development Mechanisms based at the Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC) located in Bonn, Germany. Good luck, Miguel!

Student publication opportunity

Interested in co-authoring a hot topic article with an environmental professional? UKELA provides an opportunity for students to publish their work in e-law, our members' journal which is circulated to over 1400 practitioners. Students are invited to email a short abstract of up to 500 words to [Sophie Tremplin](#) or [Beatrice Petrescu](#), our student advisers. If selected, the Editorial Board will endeavour to pair students with a supervising practitioner in that field. Articles can be on the e-law issue theme or on any topic related to environmental law. The theme of the next issue is nature conservation and biodiversity, expected to be published in early October this year.

UKELA events

UKELA North East regional group AGM: 12 September 2019 (TBC)

Organised by UKELA NE regional group.

UKELA North West regional group AGM: 17 September 2019

Organised by UKELA NW regional group.

UKELA East regional group AGM: 18 September 2019

Organised by UKELA East regional group.

London meeting: natural capital: 23 September 2019

Organised by London meeting team.

Join us at Herbert Smith Freehills in London for an early evening seminar looking at Natural Capital.

[Bookings](#) are now open.

UKELA East Midlands regional group AGM: 24 September 2019

Organised by UKELA EM regional group.

UKELA West Midlands regional group AGM: provisional date tabled as 10th October 2019

Organised by UKELA WM regional group.

Wildlife law course: 13 November 2019 – 15 November 2019

Organised by nature conservation working party.

We have once again organised an introductory course on wildlife law. Whilst it is expected that the UK will have left the EU by November, the EU derived legislation will substantially remain the same, albeit by means of the new replacement regulations. For more details and to book your place please see the [event page](#) on the website.

Non-UKELA events

RWM – Recycling & Waste Management expo: 11 – 12 September 2019

Organised by RWM.

RWM is the UK's leading trade show for recycling and waste management, providing the biggest platform for the latest innovations shaping the sustainability sector. RWM, in partnership with CIWM, is the only UK event of this scale and brings the entire industry together in one location. To put it into figures: 500 exhibitors, 350 seminars and 50 free-to-attend theatres across the exhibits. Please see the website for more details and to [book](#) your place.

Brownfield Briefing Awards 2019: 19 September 2019

Organised by Environment Analyst.

This will be the 15th year for the Brownfield Briefing Awards, which will once again recognise all that is best practice in the remediation sector by UK-based companies. The awards gala dinner provides the brownfield community with a chance to celebrate excellence, undertake some relaxed networking with peers, enjoy some quality entertainment and have a great night out! Please see the [website](#) for more details and to book your place

UKELA diary dates

Annual Scottish conference: 10 October 2019

Organised by UKELA Scotland.

We will once again be at the Apex Hotel in Edinburgh for our annual Scottish conference. Keep the date free in your diary and look out for more [details](#) coming soon.

Going Underground: 13 November 2019

Organised by the planning and sustainable development working party, British Geological Society and Squire Patton Boggs.

The planning and sustainable development working party along with the British Geological Survey and Squire Patton Boggs will be providing an event exploring the storage of energy in underground strata. More details are on the [website](#); bookings open soon.

Annual Garner lecture: 14 November 2019

Organised by Garner team.

We are delighted to let you know that our speaker for 2019 will be Baroness Brown of Cambridge. Sitting on the cross benches, Baroness Brown is Vice Chair of the Committee on Climate Change and Chair of the Carbon Trust. Keep your diary free – details are on the [website](#) – full details to follow later in the year.

Annual careers evening: 18 November 2019

Organised by UKELA.

Our annual careers evening and social is open to students and anyone else interested in a career in environmental law; once again kindly hosted by Francis Taylor Building in London. A variety of professionals will be on hand for informal chats and careers advice – helping you make the most of your CV, including private practice solicitors, barristers, the Environment Agency, DEFRA, environmental consultants and NGOs. More [details](#) to follow.

The human habitat: using the law to balance health, wellbeing and nature protection: 21 November 2019

Organised by the public health and environmental law working party and the nature conservation working party.

The public health and environmental law working party and the nature conservation working party are organising a joint half day seminar on Thursday 21 November from 13:00 to 17:30 to explore the state of nature in the UK, the link between biodiversity and health and legal tools to accommodate the needs of humans and wildlife. The venue has yet to be confirmed, but will be in London. Save the date! [Bookings](#) opening soon.

London meeting: UK environmental law – where are we now?: 27 November 2019

Organised by London meeting team.

Join us for a look at the current picture across environmental law.

Chaired by our Patron, Lord Justice Lindblom, we are delighted to welcome distinguished speakers, Professor Eloise Scotford of UCL and Stephen Tromans QC of 39 Essex Chambers. Kindly hosted by Herbert Smith Freehills. [Bookings](#) opening soon.

The e-law 60 second interview



Shehana Gomez

I was born in Sri Lanka. As I was growing up, my family moved back and forth to the UK a couple of times before settling in England when I was 15. I am sure that has coloured my view of the world. I have returned to Sri Lanka and worked twice for periods of about three months each.

My legal career began in immigration and refugee law, and I qualified as a solicitor in 2003. I then moved into local government, specialising in social care law, mainly children's social care which could be pretty stressful!

What is your current role?

I work part-time as a tutor at the Open University, teaching on two undergraduate law modules (not environmental law).

I also have a few voluntary roles. I was co-convenor of the wild law special interest group at UKELA until about six months ago. There are no longer any convenors, but I am still an active participant.

I recently became a fellow of the Schumacher Institute in Bristol. It's a think tank that looks at issues around sustainability from a systems-thinking point of view.

I am hoping to start a PhD in October in wild law, or earth law, which is another term for it.

How did you get into environmental law?

I didn't want to do child or family law for the rest of my life, so I made the decision to move into environmental law a few years ago. I completed a part-time LLM in Environmental Law and Sustainable Development at the University of the West of England. I finished a couple of years ago, but I don't actually work as an environmental lawyer.

What are the main challenges in your work?

In terms of wild law and giving rights to nature, finding a larger audience and having it taken seriously.

What environmental issue keeps you awake at night?

The climate crisis and the threat of ecosystem collapse. Framing it as an environmental issue suggests that it is somehow separate from us, but of course it affects the future of humanity.

What's the biggest single thing that would make a difference to environmental protection and well-being?

I think the willingness to think outside the box and consider radical solutions, and to see things in a more holistic, global sense. For example, considering radical changes to our economic system. Law and governance would play an important part in this.

What's your UKELA working party of choice and why?

I have to say the wild law special interest group!

What's the biggest benefit to you of UKELA membership?

Without doubt, the opportunity to meet like-minded people. The wild law weekends have been a lot of fun.

Conference report

Plenary 1: Who is responsible for the environment – individuals or regulators?

Megan Armstrong and Chloe Anthony, UKELA student members

Chair: Right Hon Sir Keith Lindblom, *UKELA Patron*

Speakers:

- Nick Dunlop, *Secretary General of the Climate Parliament*
- Terry A'Hearn, *CEO of the Scottish Environment Protection Agency (SEPA)*
- Eloise Scotford, *UCL Professor*

The opening plenary session of the UKELA annual conference saw the three speakers tackle the pressing and ever-divisive topic of environmental responsibility. Session chair, Right Hon Sir Keith Lindblom, UKELA Patron, opened by expanding the topic question 'who is responsible for the environment – individuals or regulators?' to include individuals, governments and lawyers.

Nick Dunlop, Secretary General of the Climate Parliament, was first to speak. He began by using his country of birth, Australia, as a prime example of the clash between climate change and politics, illustrated by the current Australian Prime Minister holding up a piece of coal in Parliament to demonstrate a devotion to fossil fuels. Nick located responsibility for the environment with governments, suggesting there are many positive solutions to environmental issues, all within our current capabilities, and governments should act now in support of them. Examples of existing solutions were community solar energy schemes and development of long transmission lines for wind power. Nick compared the costs of solar and nuclear power and suggested solar energy was a great business opportunity. He alluded to the complex relationship between the individual and governments in relation to environmental responsibility and called for increased pressure from citizens to force governments to act. And this is where lawyers come in. Referring to the work of ClientEarth, Nick pointed to the importance of the impact of lawyers in courts and in Parliament.

Next to speak was Terry A'Hearn, CEO of SEPA. He

began by introducing the work SEPA does and its 'radical change programme' designed to unlock the innovation needed to achieve 'one planet prosperity'. Terry set out three stark choices that we have left: shut down two thirds of the economy; carry on as we are and hit an eventual wall; or entirely re-evaluate how we live and what kind of society we encourage. His message was strong – a focus on compliance is not enough, regulators must go beyond monitoring to supporting innovation. Terry spoke of the positive results of SEPA's sustainable growth agreements: these are voluntary agreements between SEPA and organisations on practical actions to achieve beneficial environmental outcomes. If we are to take climate change seriously and truly make efforts to overcome environmental problems, these partnerships must happen more quickly and at a bigger scale.

Our final speaker was Professor Eloise Scotford from UCL on the theme of responsibility in UK air quality governance. Eloise began by exploring air quality as an environmental issue, suggesting air pollution is a collective problem due to its multiple sources and impacts. In the UK, planning policy is critical, and a 'twin-track' regime under the EU Air Quality Directive (AQD) and the 1995 Environment Act is operated. Responsibility for air quality differs under these regimes and the location of responsibility is complex legally: while the Secretary of State for the Environment has responsibility for meeting the requirements of the AQD, responsibility for ensuring compliance with the AQD has been delegated to local authorities. Eloise described how this creates governance challenges, in particular in relation to the limited powers and capacity of local authorities to carry out this function and because action is required at both a local and national level. Further, agencies such as Highways England and the Civil Aviation Authority currently have no legal responsibility to ensure compliance with air quality targets. The presentation concluded with the question as to who should be responsible for air quality in the UK and the recommendation that a shared responsibility or collective governance approach would be more effective, including national government, agencies and local government, indeed everyone with some control over the sources or impacts of air pollution.

All in all, the question of responsibility for the environment is complex, requiring joined up thinking and collaboration. The legal profession is well-placed to address complex situations and locate responsibility now and in the future. Legal responsibility for environmental protection and harm becomes evermore relevant in times of environmental crises.

Plenary 2: Environmental Responsibilities (and Liabilities) for Business

John Condon, UKELA student member

Chair: Rose Grogan, 39 Essex Chambers

Speakers:

- Peter Kellett, *Director of Legal Services, Environment Agency*
- Claire Gregory, *Legal Director, Pinsent Masons*
- Stephen Gagg, *Managing Consultant, Ramboll UK Ltd*

The second plenary session of the conference addressed how environmental matters can impact business. The audience was treated to an excellent mix of speakers, with each speaker providing a different and fascinating perspective on this topic.

The Chair, Rose Grogan, kicked off the session by introducing Peter Kellett, the Director of Legal Services at the Environment Agency (EA). Peter provided a regulator's insight into securing high levels of business compliance with environmental law. Although there are many pressing environmental challenges in the world today, Peter struck an upbeat note by highlighting some of the successes of well-designed regulation, including how the Montreal Protocol helped to reverse the hole in the ozone layer and how a range of domestic regulations was instrumental in cleaning up the River Thames. Moving from successes to failures, Peter drew on the 2008 financial crisis to remind us of the consequences of ineffective regulation. The crisis offered a cautionary lesson on what happens when regulation is not dynamic enough to keep up with a fast-moving sector and when regulators underestimate the destructive power of market forces, which can have impacts on a global scale. Turning to what works, Peter advised that there is no consensus on the most effective regulatory strategy; often there are complex factors in play, which means that a mixture of the carrot and stick approaches is necessary. In the context of the EA's work between 2013 and 2018, Peter provided some interesting statistics on what has been effective: 60% of permit enforcement notices were complied with, while only one-third of waste removal notices were complied with; almost all appeals against EA's permit decisions were unsuccessful; over 95% of EA's prosecutions were successful; and injunctions do not appear to be an effective remedy, especially taking into account the associated legal costs.

Peter wrapped up his thought-provoking talk by pointing to three lessons for better regulation. First, be positive! Risk-based regulation can work, especially when it is aligned with market forces and incentives. Second, guard against regulatory or political capture. In order to be effective, regulators must be independent, agile, and have the capacity to impose meaningful sanctions. Finally, transparency delivers improvements. Regulators should publish information and engage with people, companies and those whose interests align to create the right culture of compliance.

Transparency also featured prominently in Claire Gregory's talk on recent developments in environmental reporting. She reminded us that there has been a significant increase in company environmental reporting across the globe, both on a mandatory and voluntary basis. Addressing the mandatory reporting requirements in the UK, Claire focussed on the environmental permitting regime (EPR), the Companies Acts 2006, and accounting standards. She emphasised the importance of effective monitoring in ensuring that a company does not fall foul of its EPR obligations. Although the failure to report is not formally an aggravating factor in the sentencing guidelines for breaches of Regulation 38(2) EPR, Claire noted that prosecutors have nonetheless begun to argue that the failure to report should be taken into account during sentencing. Accordingly, the failure effectively to monitor and report may increase fines imposed for breaches. In the limited time available, Claire then gave an admirably clear and concise whistle-stop tour of the mandatory reporting requirements under the Companies Act 2006 and the recent developments in streamlined energy and carbon reporting (SECR) brought about by the Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018, which entered into force on 1 April 2019. Of particular interest is the fact that the regulations introduce new requirements for large unquoted companies and LLPs to disclose their annual energy uses, greenhouse gas emissions, and related information. Finally, Claire touched on some of the areas of concern with SECR, perhaps the most prominent being the lack of an approved methodology for the reporting of emissions, which may hinder the overall transparency of the regime.

The final speaker of this session, environmental consultant Stephen Gagg, provided a business perspective on why it makes financial sense to take environmental responsibilities seriously. Stephen highlighted that there was an ever-growing list of environmental considerations that businesses need to be aware of, including climate change, flood risks, and reputational concerns relating to topical issues such as plastics (aptly dubbed the 'Attenborough effect'). These new considerations create challenges, but also opportunities for those businesses that are nimble

enough to transition to greener practices by putting in place more robust management controls and preparing for future regulation. Stephen then guided us through an example of how a property management company can take a proactive approach to appraising and mitigating flood risk, before concluding with an entertaining series of the 'good, the bad, and the ugly' when it comes to business measures to protect against environmental hazards.

This thoroughly engaging plenary session had something for everybody involved in the environmental field, including lawyers, regulators and business people. It was interesting to see some key themes emerging from across the presentations, which will have provided the audience with much to reflect upon going forward. Of particular interest was the ever-increasing importance of transparency in fostering engagement between different stakeholders and ultimately enhancing compliance. Finally, it was interesting to learn about the environmental successes to be found when regulatory and business objectives can be aligned.

Plenary 3: Public Health

Sophie Tremlin, UKELA Student Advisor

Chair: Dr Veneta Cooney, *UKELA Trustee*

Speakers:

- Dr Andrew Lee, *University of Sheffield, Reader in Global Public Health*
- Dr Lorraine Maltby, *University of Sheffield, Professor of Environmental Biology*

The third plenary session of the weekend was Public Health, delivered by a pair of highly-respected academics from our host, Sheffield University. This was a fantastically engaging panel and successfully prevented the mugginess of the hottest day of the year causing attention to drift.

The plenary was chaired by Dr Cooney, UKELA trustee and convener of the public health and environmental law working party. She delved straight into the gravity of this topic, outlining how the often-far-reaching socio-economic consequences of environmental degradation should be sufficient to justify acting expeditiously to address environmental harm.

Dr Cooney introduced Dr Maltby, Professor of Environmental Biology at the University of Sheffield. Dr Maltby commenced by noting how this was her first time addressing a group of environmental lawyers, emphasising the multidisciplinary nature of this plenary, and indeed the conference as a whole. The first main

point Dr Maltby raised was the multiple benefits nature brings to us. She highlighted the often reported indirect benefits of regular human contact with green spaces, including faster recovery from surgery, improved cognitive functioning and lower crime rates. She emphasised that mental wellbeing is as dependent on a healthy environment as physical wellbeing.

Dr Maltby informed us of some stark statistics from the recent Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) summary for policymakers report: humanity has caused ecosystems to decline by 47% of their estimated natural baselines, 25% of species are threatened with extinction, and marine plastic pollution has increased tenfold since 1980. Another thought-provoking statistic Dr Maltby later outlined is that the global land allocated for raising livestock is equivalent to the area of the Americas. According to Dr Maltby, this is again a consequence of indirect drivers; how our society and cultural values are changing, our increased use of technology and our modern governance systems. This led to Dr Maltby's second concern: that we need more active management of our land use.

Thirdly, a more transparent approach to the management of landscape optimisation was called for. Dr Maltby used Regulation (EC) No 1107/2009, which related to the placing on the market of plant protection products, to exemplify this, which outlines how 'pesticides should have no unacceptable effect on the environment'. Ultimately, this seems impossible. What is an unacceptable effect? The trade-off and management are key to our inherently multifunctional agricultural landscapes. Ultimately, Dr Maltby encouraged a more holistic approach to our interconnected system, integrating social, economic and ecological thinking into a single network that we can manage effectively for people and for wildlife.

The second speaker, Dr Lee, followed with a lively talk on the environment and public health from a more medical perspective. He began by outlining how (rather paradoxically) health care is only one small part of the main determinants of our health. We also rely on our water, housing, working conditions, education, soil, politics, and social cohesion.

One modern health hazard Dr Lee was particularly concerned with was the impact of urbanisation, highlighted by the fact that within the next decade, more than half of the world's population will live in cities. This is problematic because urban populations generate a consumptive behaviour. We will see an increase in modern wastes, food insecurity from economic degradation and poverty and water insecurity, as evidenced by the disappearance of the Aral Sea.

Another public health concern resulting from environmental degradation that Dr Lee mentioned was air pollution. Dr Lee used some statistics to hit us with the emergency of this problem; there are 7 million global premature deaths each year associated with air pollution and Public Health England estimate there to be 28-30,000 deaths per year in UK. Dr Lee observed that, worryingly, no one seems particularly concerned about this, perhaps stemming from the invisible nature of modern-day pollutants.

Along with Dr Maltby, Dr Lee encouraged a change in our thinking in order to protect both the world's human health and natural resources. We need to start thinking as one planet and our economic growth needs to be within sustainable boundaries, with less 'moral offsetting' (that we are all guilty of to some extent). Dr Lee left us by labelling the situation of planetary health 'A Global Public Health Emergency', or even worse, a 'Rising Tide Disaster'.

Thankfully, the audience's questions encouraged a more optimistic end to this plenary. One delegate questioned whether the actions of the UK will result in any global change. Dr Maltby reinforced the need to change our consumptive behaviour, whilst Dr Lee encouraged us to think of Britain as a global leader, capable of being a frontrunner in hindering environmental degradation and public ill health. Amongst the melancholy, there was a ray of hope.

Plenary 5: Regeneration, Remediation and Revolution

Bethan Pollington and Guy Downing, UKELA student members

Chair: Lucy Thomas, *Head of Science, RSK*

Speakers:

- Peter Henry, *Harworth Group*
- Anne Johnstone, *Malcolm Hollis, UKELA Chair*
- Ben de Waal, *TFI Group*

In analysing the cause, significance and potential of vacant and derelict lands, this plenary session provided an overview of the social and environmental issues, as well as regenerative efforts from the viewpoint of the developer, the regulator and legal experts.

The first speaker Peter Henry opened the session by introducing the property development work of the Harworth Group. Their work specialises primarily in the regeneration of former coalfield sites and other

brownfield lands into new residential developments and employment areas, including the regeneration of sites such as the former Prince of Wales Colliery site which has been developed as a residential site.

Peter discussed how remediation and regeneration are almost indistinguishable in these circumstances and there appears to be little to gain from making a distinction. The remediation of the land is important but there is a great benefit for that land to be developed in a way that benefits those around it and the environment. This is no easy task and there are a wide range of bodies that must be liaised with when undertaking such work, ranging from the Environment Agency to parish and city councils.

Peter expanded by discussing the Waverley site development, which is one of historical interest as before regeneration it was the Orgreave Coking Works, which was the site of the Battle of Orgreave. This was one of the most violent clashes in British industrial history, with the Independent Police Complaints Commission finding evidence of excessive violence by police officers and an apparent cover-up of perjury by senior officers. This site has since been regenerated into Yorkshire's largest brownfield mixed-use development with over 500 homes already built and the Advanced Manufacturing Park that houses such organizations as Boeing, Rolls Royce and a University of Sheffield research centre.

When considering the role of regulatory bodies, Peter felt that they could and should do more to promote more forward-thinking environmentally friendly development of land, especially since infrastructure plays such a pivotal role in moving towards a reduced carbon emitting society and is arguably currently lacking. This is what Peter sees as a revolution. Regulation needs to promote the inclusion of renewable energy sources, electric charging points and other initiatives into the development of brownfield land so that the land is not only remediated but also part of the future solution.

Our second speaker was Anne Johnstone, who works to reduce Scotland's long term derelict and vacant land as a member of the Scottish Vacant and Derelict Land (SVDL) Task Force. Members of the Task Force range from those in regulatory agencies, private companies and third sector organisations, underpinned by a research program headed up by Dr. Mark Robertson. The aim, as Anne stated, is to 'engage with financial experts to design new financial instruments to unlock regeneration, achieving specific social & environmental outcomes that matter to local communities'.

A recent survey conducted by the SVDL found there to be 3,731 derelict and urban vacant sites covering 11,649 hectares of land (a size comparable to nearly twice the area of Dundee). This has decreased since

2016 due to residential use, however, since the drastic increase between 2005 and 2009 following the financial crash, the scope of unutilised land is significant. Anne explained that of these 3,731 sites only 261 are over 2 hectares in urban areas and registered for any longer than 5 years. It is, however, the 60% of sites that are less than 2 hectares which are a concern for regeneration, their small size making them difficult to deal with economically as well as having a disproportionate impact on poorer communities.

Anne explained that the hidden harm these sites cause is on multiple levels; whether it be social, related to public health, barriers to investment, or principally environmental, derelict land affects the reputation of the local area. These harms were identified by a Planning Authorities survey, which also diagnosed some of the principal barriers to land regeneration. Their small size (as previously mentioned) is a contributing issue, however, factors such as ownership (most sites being private), regulatory hurdles, and fundamentally the financial viability of the land all create major barriers.

The main question raised was how to pull in investors; why is it that although evidence shows green space having a positive impact on life expectancy, this land is being seen as a problem rather than an opportunity? Anne pointed out that although members of the public may be able to apply for grants to use the land, a lack of awareness of this and a fear of financial failure, as third speaker De Waal also emphasised, may be hindering investment.

Anne highlighted that it is a cultural change that is required: revolution comes from the mentality shifting towards ensuring these sites will be utilized for their environmental, industrial and social benefits.

The third speaker, Ben de Waal, explored an incentive for land use in the form of the Land Remediation Relief (LLR), a tax relief aimed to incentivize the remediation of contaminated land and derelict sites.

Introduced in 2001, and modified in 2009, the relief is a post-tax benefit and hence can generously impact a company's cash flow. The LLR affects companies paying corporation tax, regardless of their profit margin, extending even to offshore traders. Ben explained however that over the last 3 years, the Fiscal Incentives Group has been lobbying unsuccessfully to the Home Builders Federation (HBF) and Environmental Interest Commission (EIC) to modify the relief for small sites of fewer than 25 units to be further enhanced to 200%, the kind of site which make up the majority of derelict land mentioned prior by Johnstone. This has not been welcomed due to the perceived uncertainty of the UK's relationship with the EU.

The impact of LLR affects investors and developers in different ways. For example, to a developer, the relief is currently the only corporation tax incentive available, and claims are to be made within four years of the land sale. To investors, the relief is very valuable in that the full 150% of qualifying remediation costs may be offset against taxable profits, and hence claimed within 2 years from the incurred expenditure. The incentive is that capital expenditure, which is normally a 'tax nothing' to investors until the sale of land, under the relief is treated as a tax reduction, and further multiplied by 150%.

In making a tax relief claim there are many necessary considerations Ben identified for those interested in buying land, recognising the scope of what the relief provides, and emphasizing furthermore the importance of addressing any links to previous polluters, and creating a complete disconnection from them.

The LLR can provide significant financial assistance to investors and developers. It currently plays a key role in incentivising investment and with continual lobbying from groups such as The Fiscal Incentives Group, we will see the regeneration of many more derelict land sites.

Although the title of this session may seem ambiguous and complex at first, what one can appreciate from the topics discussed by the speakers is that this is an important environmental issue requiring more attention. This session shone new light on the potential of regenerative efforts currently in place, and how each stage benefits the next to revolutionise the way we reuse land. To recognise and reduce the harm currently being caused by these sites, awareness must be raised and revolution incentivised.

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Plenary 6: Green Innovation

George Close, UKELA Student Member

Chair: Chris Badger, *Six Pump Court*

Speakers:

- Alastair Marke, *Director General, Blockchain & Climate Institute*
- Mark Nichols, *CEO, Xeros Technology Group*
- Nicola Ham Edmonds, *Head of Legal, ITM Power plc*

The plenary session opened with chair, Chris Badger, highlighting the government's reliance on businesses to come up with the necessary innovation to meet climate targets. There are no better people to speak about this topic than, than the trio of speakers Chris introduced, all of whom work at the forefront of green innovation.

The first session was held by Alastair Marke, Director General of the Blockchain and Climate Institute (BCI). BCI is a volunteer led, not-for-profit think tank that aims to raise awareness among the international climate change policy community of the tremendous potential of blockchain technology to enhance climate actions.

Alastair reflected on the success and importance of the Paris Agreement, but he was quick to point out that the agreement was the easiest part of the journey. It is the implementation of the agreement that is the next difficult step.

Currently there is a huge emissions gap between the baseline and current policy trajectory. How are we going to verify that all countries meet their promises? How are we going to pay the hundreds of billions of dollars that poorer nations will need to address the threat of climate change? Part of this puzzle, according to Alastair, could be solved by unlocking the tremendous potential of blockchain technologies.

In order for Alastair to explain to us how, he first needed to give the delegates a quick 'Blockchain 101'. Indeed, when he asked whether anyone would consider themselves a blockchain expert, the full congregation kept their hands firmly by their sides...

It transpires that the mystical world of blockchain is perhaps not all that mystical. It operates as a distributed ledger of all transactions across a peer-to-peer network. Data is stored in fixed structures called 'blocks', each with its own unique identifier known as a hash. When a new block is formed, its hash will contain the hash of the previous block, thus creating a chain. For a fuller explanation, I recommend watching

one of the YouTube videos embedded in Alastair's presentation.

Alastair went on to explain that one of the ways in which law firms could utilise blockchain technology is by using smart contracts, agreements that are encoded in a computer program and are automatically executed upon certain criteria being met. Advantages of smart contracts include improved quality, reduced contract execution costs and increased speed. Importantly, smart contracts can be stored on the blockchain.

Where blockchain and climate change intersect there are, Alastair argued, clear benefits to using this technology to help tackle the emissions deficit. Given the rise of energy innovation in the UK, the 'lowest hanging fruit' for British stakeholders is peer-to-peer renewable energy trading. Further, blockchain offers enhanced climate finance flows, more effective regulatory enforcement for environmental data transparency, better tracking and reporting of greenhouse gas emissions reduction and avoidance of double counting.

Alastair illustrated the critical regulatory services blockchain offers by using blockchain AI supporting the EU Emissions Trading System (EU ETS) to demonstrate. To summarise, the inherent principles of blockchain enable it to provide very secure services that could be used, for example, to create a trusted, tamper-proof repository of carbon data. Alastair's excellent slide notes cover these services in more detail.

The second session was held by Mark Nichols, CEO of Xeros Technology Group. Mark opened the session by briefly pondering whether microfibres are now one of our major food groups, given how many are ingested. Globally around 340 million tonnes of plastic are produced each year. The UK has been a world leader in banning microbeads and has now put forward legislation to ban single use plastics. But the reality is that this is just the tip of the iceberg.

In England, we produce 34 tonnes of ocean pollution a year from plastic straws, stirrers and cotton buds. This compares to 1,310 tonnes of microplastic pollution from domestic laundry. This is perhaps not as surprising as one would think. 60% of our clothing has plastic in it and with every domestic wash we put ½ gram of microfibres into the wastewater. That is the equivalent to 15 shopping bags worth of fibres going into the sea each year for every man, woman and child on the planet.

Xeros have decided to tackle this problem by pioneering the world's first microparticle filtration system for domestic washing machines. Their core purpose is to radically improve the sustainability of water intensive processes in industry and the home.

One of their products, XFiltra, promises to reduce microfibre output from laundry by 99%. It is the world's first integrated pump and dewatering filtration system.

So, if the technology exists why haven't we seen it implemented already? Mark explained that the difficulty is getting the washing machine manufacturers to integrate it into their products, shying away from the extra cost of adding it into their machines. Without the same bottom up pressure that has surrounded single use plastics it seems that top down pressure is the only way to get the manufacturers to act.

The European Commission has now reviewed Commission Regulation (EU) No 1015/2010 on ecodesign requirements for household washing machines and concluded on the need to revise these requirements. Consequently, a draft Commission Regulation laying down ecodesign requirements for household washing machines and household washer-dryers had been prepared and approved by the Ecodesign Regulatory Committee on 10 January 2019. In the absence of objections by the European Parliament and the Council, it is planned to be adopted by the Commission and published during this summer.

Our third speaker, Nicola Ham Edmonds, narrowly avoided becoming an environmental lawyer herself after her training contract at Royal Mail. Alas, she couldn't resist the world of intellectual property and soon found herself venturing North to work for Bombardier, where rather confusingly she had a tube train parked outside her office window in the Peak District.

From Bombardier she moved to the Energy Technologies Institute LLP (ETI), a public-private partnership that was created to find long term solutions to achieve the 80% net reduction emissions target by 2050 (recently revised to net zero). In innovation terms, the ETI operated in the range of progressing ideas from applied research (Technology Readiness Level 3) to demonstration systems (Technology Readiness Level 7). This range is the so called 'valley of death' of innovation where great ideas go to die.

After ETI, Nicola moved to her latest position as Head of Legal at ITM Power, where her fast pace work in the energy arena is nearly as rapid as climate change itself. ITM is a high-tech company based in Sheffield that manufacturers integrated hydrogen systems, to deliver cleaner energy globally. As part of its innovation process, ITM has increased its core function by investing in specialist employees, including Nicola herself.

At its simplest, the ITM stack technology works by passing electricity and water through a series of stacks (layers of membranes). Electrolysis splits water into hydrogen and oxygen. It creates one excess ingredient of oxygen and hydrogen that can be used as an energy vector. Typically, we think of hydrogen technologies being applied to cars, but it also has uses in lorries, ferries, oil refineries and the gas network.

Whilst some hydrogen technologies will need a corresponding development in infrastructure, some are ready to be utilised. A collaborative project with Keele University has demonstrated that up to 20% hydrogen gas mix can be introduced to the gas network using the current infrastructure.

Individually, Alistair, Mark and Nicola showcased technologies that can tackle part of the problem. However, there is no single green innovation that will reverse climate change. As a society we need to embrace them collectively to solve the diverse range of issues that we are faced with. Governments need to act through regulation to help facilitate the rapid introduction of green technology.

Plenary 7: Brexit and the International Future

Beatrice Petrescu, UKELA Student Advisor

Chair: Karen Blair, *Cleaver Fulton Rankin*

Speakers:

- Evanna Fruithof, *Director of the Bar Council Brussels*
- Amy Edwards, *Holland and Knight, US, ABA SEER*
- Martin Baxter, *Executive Director of Policy of IEMA*
- Tom Burke, *UKELA Patron*

Brexit and the international future of environmental law was the final plenary session at this year's conference, and it showcased a variety of outlooks on developments in environmental policy and strategy in the EU, the US, the UK and the wider political realm. Our four distinguished speakers were able to introduce attendees to an array of interdisciplinary predictions regarding the future of environmental law in the United Kingdom and beyond.

The first speaker, Evanna Fruithof, represents the Bar Council of England and Wales in Brussels. Unable to attend the conference, a video of Evanna outlined three key points concerning environmental policy from her perspective in Brussels. The first point she made was about the historical impact of the United Kingdom on the European Union's environmental policy. Evanna stated that the EU recognises the UK's

contribution to its environmental policy development over the years, enumerating, among others, the UK's push for better regulation across the board and the UK's advocacy for higher ambitions in areas such as climate breakdown. The second point she made was about the EU's recent achievements in environmental policy, such as the EU-wide strategy brokering climate change agreement and creating the first ever Europe-wide strategy on plastics last year. Evanna stated that the EU has also started looking at ways in which it can require adherence from member-states to EU law and strategy, introducing the 'Environmental Implementation Review' (EIR) in April of this year to address the causes of implementation gaps and to try to find solutions. In her third and final point, Evanna discussed the impact of Brexit on the EU's environmental policy. In her own words, there is 'much to be optimistic about, despite Brexit', as the EU will remain a global leader in environmental policy and its efforts to combat climate breakdown will not be slowed down by Brexit. Nevertheless, the EU's policy objectives are ambitious mechanisms to pull EU member-states exclusively along with it, and the UK leaving might be a cause for concern for the domestic implementation of environmental policy.

The second speaker brought a fresh perspective from across the pond, discussing the present situation of environmental policy in the US. Amy Edwards works at Holland and Knight and she is the current chair of the America Bar Association Section of Environment, Energy and Resources (SEER). Amy started her presentation by outlining the impact of the November 2018 US mid-term election results, mentioning the shift in the balance of power from Republican majority as the Democratic party gained 41 seats. Among other developments, the Green New Deal was mentioned: the non-binding resolution introduced by Alexandria Ocasio-Cortez and Edward Markey, which seeks to mirror past large-scale mobilisations by the US government and address climate change while boosting economic activity. The environmental goals of the Green New Deal are ambitious, such as building a national energy-efficient 'smart' grid and decarbonising the nation's infrastructure. It is currently hard to pass this legislation as the Democratic party does not have control of the two houses, and President Trump has shaped the judiciary by appointing 112 federal court judges and two out of the nine U.S. Supreme Court Justices. Nevertheless, the Green New Deal has energised Democratic presidential candidates to use climate change as a central topic in presidential debates, a positive step in debunking the Trump administration's denial of man-made climate change.

The status of Trump's administration was the next point in the presentation, and Amy discussed how under the last administration, the US government had a very ambitious 'Clean Power Plan' which has been majorly

scaled back. Furthermore, the 'Affordable Clean Energy (ACE) rule' and the 'Federal Clean Car Standards' have been rolled back and the US has withdrawn from the Paris Agreement under the current administration. Amy went on to discuss how the energy sector has been affected, stating that developments in offshore and onshore drilling were so controversial that these efforts were not supported even by Republican members of the administration. Amy concluded this point with a witty remark, stating that 'America is first in everything – especially in pollution'. The final issue Amy raised was about the future of environmental policy in the US, and how the 2020 elections are driving the regulatory agenda – with Democratic candidates increasingly raising the climate change issue. Amy concluded her talk by presenting two SEER initiatives: a proposed update of the 2008 climate resolution and the world justice forum – legal tools to advance environmental justice, public health and to ultimately encourage environmental lawyers to do more to shape public policy.

Martin Baxter is the executive director of policy of IEMA, working in the UK and internationally to support the transition to a low carbon, resource efficient and sustainable economy. Martin's presentation covered environmental policy in the UK, looking at present legislation and mechanisms to tackle environmental issues. His view was that the starting premise ought to be that the present is not good enough, and businesses and clients need to take a high-level approach, translating to putting sustainability at the heart of their economic models. Martin's main points of discussion emphasised the importance of government policy and strategy, and he offered a short summary of the Environment Bill (Principles and Governance), scrutinising certain aspects of the draft paper published in December 2018: the independence and resourcing of the Office for Environmental Protection (OEP), its enforcement powers and scope in relation to climate change laws and the relationship between the draft Bill and different parts of the United Kingdom (e.g. the Wales Future Generation Act). Martin followed this up with a similar discussion on the Environment Bill policy paper, criticising it for unsatisfactorily binding the governance aspects together as particular principles are fragmented and there is an unreferenced relationship between targets and Environmental Improvement Plans (EIPs) (e.g. the 25 year environment plan) – which ought to be joined together. In effect, there is an absence of a spatial framework for local delivery and governance, and Martin emphasised how the draft Bill ought to translate into something that makes sense in local environment plans, so that environmental initiatives also deliver economic and social net gains. Martin concluded his talk by referencing how future trade agreements with member states and countries outside the EU will function after Brexit. He predicted

that the UK will accept trade agreements with Japan and countries in South America, given latest discussions on trade.

Our fourth and final speaker, Tom Burke, is a UKELA Patron and the Chairman of E3G, Third Generation Environmentalism, and a visiting professor at both Imperial and University College London. His presentation took a more informal approach and he stated that he would use no powerpoint, mention no law – and talk only politics. Tom focused on discussing how Brexit has impacted the UK, and a few memorable quotes can better illustrate his message:

What I can promise you: uncertainty, real uncertainty. From court rooms to the lecture rooms. This is sure in regard to the future of environmental law [...] the absolute imperative for British government is a drive to deliver economic performance and any environmental regulation that will stand in the way of this objective will be driven down.

Furthermore, he argued that the EU will be worse off without Britain's input and drive for pushing environmental legislation forward. Prospects for Britain's role in driving environmental standards up (with the exception of climate breakdown) are decreasing. As a concluding remark, he stated that 'simply put, a greatly diminished Britain in the world is a product of Brexit'.

The end of the four captivating presentations constituted a question time, where attendees could ask the distinguished panel any burning questions. The President of UKELA, Lord Carnwarth, asked Amy Evans where one can find in the American government a coherent and official explanation for why the US president announced removal from the Paris Agreement. Amy's response was that there is no coherent explanation, and that President Trump does not believe in the science of climate change, to the extent that he brings his own 'scientific' advisor in in order to debunk the seventeen other scientific advisors that provide evidence for man-made climate change. The next question was on the Green New Deal, asking the panel at large to comment on this as a legislative proposal. Amy's view was that it is aspirational in nature and in its current form it can only influence the presidential election. Tom Burke chipped in to state that more weight ought to be given to ideas in the Green New Deal than have been so far, as investing in green infrastructure is economically viable and efficient. He backed his claim by stating that City Bank figures show that it is cheaper to meet our needs with low carbon, arguing that it is indeed inexpensive to deal with climate change. The final question was searching for a more positive response, perhaps a somewhat hopeful way to end the plenary, asking whether anybody on the panel had anything positive to say about

environmental governance in the UK and USA. Tom Burke stated that his faith lies with the public, and that what keeps him going fundamentally is seeing how well people respond to crisis: 'if we're not touching the best in people, it's our fault not their fault'. He mentioned 'Extinction Rebellion' and Greta Thunberg as emblems of the power of the public in raising the profile of the severity of climate breakdown, stating that the environmental issues we are facing are 'not a problem with the public, but the politicians – and we need to change all of them'. Amy Evans added that there is little hope for future generations unless politicians start taking real action, making the work of environmental lawyers even more prominent in the current uncertain and dynamic political arena.

Environmental law headlines

A selection of recent environmental law news and updates prepared by the teams at [Lexis®PSL Environment](#) and [Practical Law Environment](#).

Government provides details of Environment (Principles and Governance) Bill

[Practical Law Environment](#).

On 16 July 2019, the Rt Hon Michael Gove MP gave a speech giving details of the forthcoming Environment (Principles and Governance) Bill (the Bill). On 23 July 2019, the government published a [summer policy statement](#) on the Bill, and published responses to six consultations on developments in environmental law to be included in the Bill.

The government indicates it will introduce the Bill as soon as possible in the second Parliamentary Session (likely to be October 2019).

Key points from the speech and summer policy statement include:

- The Office of Environmental Protection will be able to enforce climate change law and have stronger enforcement powers than originally proposed.
- On waste, a drink bottle deposit return scheme will accept plastic bottles of all sizes; new powers will set resource efficient standards for products; producers will be responsible for the full cost of disposing of packaging; the government's powers to set producer responsibility obligations will be extended to prevention and redistribution of waste; and recycling will be more consistent and simplified.
- On air quality, there will be a new legally-binding commitment to meet the levels of particulates recommended by the WHO; lead local authorities will monitor local air quality and draw up a local air quality plan; a new co-operation duty will bind all local bodies with powers to control emissions; local authorities will have new powers to reduce emissions from burning wood and coal and from machinery; and the government will have new powers to mandate recalls of vehicles and machinery, when they do not meet relevant legal emission standards.
- On nature protection, the Bill will mandate a 10% biodiversity net gain on developments, legislate for conservation covenants, introduce a new system of environmental spatial planning and a new framework of local nature recovery strategies; English public authorities will have a duty to enhance nature; and a new English Tree Strategy will seek to increase forest cover from 10% to 12% by 2060.
- On water management, the Bill will strengthen Ofwat's powers to update water companies'

licences and align the way in which water companies appeal Ofwat decisions to that for other utility regulators; new powers will direct water companies to work together on how they will meet current and future demand for water; and a new power will enable future updates to a list of substances hazardous to the aquatic environment.

The six government responses published are to consultations on:

- Mandating biodiversity net gain.
- Conservation covenants.
- Management of water in the environment.
- Extended packaging producer responsibility (EPR).
- Consistency in recycling collections in England.
- Introducing a deposit return scheme (DRS) for drinks containers (bottles and cans).

For more information, see [Legal update, Michael Gove speech on forthcoming Environment Bill](#) and [Practice note, Brexit: Environment \(Principles and Governance\) Bill](#).

UK becomes first G7 country to legislate for net zero emissions by 2050

[LexisPSL Environment](#)

The [Climate Change Act 2008 \(2050 Target Amendment\) Order 2019, SI 2019/1056](#) is in force from 27 June 2019 and legislates for net zero emissions by 2050.

The Order follows the 2018 Intergovernmental Panel on Climate Change report underlining the importance of limiting global warming to 1.5 degrees for the protection of ecosystems and human lives, protests from our young people and the Extinction Rebellion movement and the May 2019 Committee on Climate Change (CCC) report into the UK's contribution to stopping global warming which recommended a revised target to reduce the country's greenhouse gas emissions to net zero by 2050.

Following the CCC report Parliament passed a motion declaring a climate change emergency and the draft Climate Change Act 2008 (2050 Target Amendment) Order 2019 was laid in Parliament on 12 June 2019. The Order was made on 26 June 2019, and came into force the next day. It amends the 80% emissions reduction target against the 1990 baseline set out in the Climate Change Act 2008, s1, to 100% or net zero. This makes the UK the first G7 country to legislate for

net zero emissions and shows – whatever else arises from the Brexit debate – that the UK still wants to be a world leader on reducing carbon emissions.

25 year environment plan progress report

[LexisPSL Environment](#)

On 16 May 2019, the government published its first [progress report](#) of its 25-year environment plan.

When the [25 year environment plan](#) was published at the beginning of 2018, the government committed to regular reporting of progress against the metrics set out. The progress report covers progress in the period from January 2019, when the plan was published, to March 2019, and is the first such report. It is promised that reporting will be carried out on an annual basis. The progress report indicates that with few exceptions, the government is on track to achieve the objectives it set itself.

Forty priority actions are set out. The proposed immediate priorities for environmental planning reflect the necessities of post-Brexit planning, such as replacing the current EU farm subsidy system and setting the legal principles for decision making in environmental matters (the [European Union \(Withdrawal\) Act 2018](#) and proposed Environment Bill taken together are intended to provide the basic framework). Beyond those matters, the stated overarching environmental priorities for the 25 year environment plan are:

- Clean air.
- Minimising waste.
- Taking action on plastic pollution.
- Conserving wildlife and plant life.
- Protecting marine ecosystems.

A key commitment in the 25 year environment plan was to develop a comprehensive set of outcome indicators, intended to collectively describe environmental change as it relates to the ten goals in the plan. [The outcome indicator framework](#) was published in May 2019, alongside the progress report. The framework is made up of 66 indicators, organised in ten broad themes related to the goals in the 25 year environment plan. It sought to build upon existing international initiatives relating to environmental and biodiversity assessment and was developed by experts in a range of disciplines, from within and outside government. Its aim is to allow an assessment of change to be made, using (in most cases) a 2018 baseline.

For more information, see: [A greener future – 25 year environment plan progress report](#).

Government launches Green Finance Strategy

[Practical Law Environment](#).

On 2 July 2019, the Department for Business, Energy and Industrial Strategy (BEIS) published the government's Green Finance Strategy. The Strategy sets out a wide range of actions that the government will take, including:

- Setting out its expectation for all listed companies and large asset owners to disclose in line with the Financial Stability Board's (FSB) task force on climate-related financial disclosures (TCFD) recommendations by 2022.
- Developing TCFD guidance for pension schemes. The Pensions Regulator expects to consult on the guidance in late 2019 with a view to putting it on a statutory footing during 2020.
- Establishing a joint taskforce with UK regulators, which will examine the most effective way to approach disclosure, including exploring the appropriateness of mandatory reporting.
- Announcing a package of green finance measures for home energy efficiency. The government will consult later in 2019 on the merits of setting requirements for lenders to help households improve energy performance of the homes they lend to. The government will also continue to explore further opportunities for simplifying and improving the Green Deal framework to support the funding of energy efficiency measures. Finally, the government will update the register for Energy Performance Certificates (EPCs) to make national data on energy efficiency more accessible and relevant for lenders such as banks and mortgage providers.
- Consulting on the future trajectory of minimum energy efficiency standards in the non-domestic private rented sector in summer 2019.
- Determining the steps necessary for landlords and businesses to understand and potentially disclose operational energy use.
- Promoting the adoption and mainstreaming of green finance products and services, including through a Green Home Finance Fund that would provide £5 million of funding to the private sector to pilot products such as green mortgages.

Also on 2 July 2019, the government launched the new Green Finance Institute (GFI) to address market barriers to greater and more rapid deployment of green capital into priority sectors.

The government will publish an interim report by the end of 2020, including progress on the implementation of the TCFD recommendations. It will formally review progress against the objectives of the Strategy by 2022.

For more information, see [Legal update, Government launches Green Finance Strategy](#).

ECJ clarifies air quality sampling point requirements under Air Quality Directive

[Practical Law Environment](#).

On 26 June 2019, the Court of Justice (ECJ) gave a decision clarifying important questions of ambient air quality protection, in relation to air sampling points in the Brussels Capital Region (*Lies Craeynest v Brussels Hoofdstedelijk Gewest, Case C-723/17*). The court said that:

- Affected individuals can require their national courts to examine whether air sampling points are situated in accordance with the requirements in the Air Quality Directive 2008 (*Directive 2008/50/EC*), and enforce those requirements against the relevant national authority.
- The air quality measurements at a single sampling point are enough to identify whether a breach has occurred (which, in turn, could trigger the requirement for an air quality plan to be produced under Article 23 of the Air Quality Directive 2008). There was no need to consider the average measurements across all the air sampling points in a zone. Indeed, the court said that using the average measurement did not make it possible to determine the level of exposure to air pollutants of the population in general.

The challenge was brought by several inhabitants of Brussels and ClientEarth, who sought a declaration that Brussels was in breach of the requirement in the Air Quality Directive 2008 to locate air quality sampling points in such a way as to provide data on where the highest concentrations of air pollutants occur. They also sought an order requiring Brussels to establish sampling points at appropriate specific locations.

The Air Quality Directive 2008 requires member states to assess ambient air quality in all their zones and agglomerations and sets criteria for the location of air quality sampling points. Member states must ensure air quality plans are drawn up to achieve the limit values or target values of a pollutant set by the Directive if those values are breached in an area.

For more information, see [Legal update, Clarification of air quality sampling point requirements under Air Quality Directive \(ECJ\)](#).

Japanese knotweed—can failing to notice the plant amount to negligence? (Ryb v Conway Chartered Surveyors & Ors)

[LexisPSL Environment](#)

The case of *Ryb v Conway Chartered Surveyors & Ors [2019]* unreported establishes that a surveyor who fails to identify Japanese knotweed and advise of the risks associated with the plant when a reasonably competent surveyor would have done so, may be liable in negligence.

As in most surveyor's negligence claims, the basis for the measure of damages was the difference in value between the price paid and market value of the property. The defendant's expert contended that the likely purchaser would be a developer, who would have only sought to discount the price by the cost of the treatment works. However, the judge held that the hypothetical purchaser would have been a residential purchaser. The judge then looked at desirability of the property, extent of the infestation, likely use for the affected land, proximity to a built structure and risk of the plant spreading to neighbouring land.

The case illustrates the general point that surveyors—and arguably other professionals required to undertake continued professional development—should keep a careful record of what they have done to ensure that they are up-to-date with emerging areas relevant to their practice.

For more information, see: [Japanese knotweed – can failing to notice the plant amount to negligence? \(Ryb v Conway Chartered Sureyors & Ors\)](#).

European Commission issues guidelines on corporate climate-related information reporting

[LexisPSL Environment](#)

The European Commission has published new [guidelines on corporate climate-related information reporting](#), as part of its Sustainable Finance Action Plan. The guidelines aim to provide companies with practical recommendations on how to improve reporting of the impact that their activities are having on the climate, as well as the impact of climate change on their business.

The guidelines are part of the Commission's ongoing efforts to ensure that the financial sector can play a critical role in transitioning to a climate-neutral economy and in funding investments at the scale required. They integrate the [recommendations](#) of the Task Force on Climate-related Financial Disclosures (TCFD) established by the G20's Financial Stability Board.

The Commission has also welcomed the publication of three new reports by the Technical Expert Group on

sustainable finance, including key recommendations on the types of economic activities that can contribute to climate change mitigation or adaptation (taxonomy).

The three reports published by the Technical Expert Group are:

- A [classification system](#) – or taxonomy – for environmentally-sustainable economic activities.
- An [expert report on an EU Green Bond Standard](#) recommending clear and comparable criteria for issuing green bonds.
- An [expert report on EU climate benchmarks](#) and benchmarks' environmental and social governance (ESG) disclosures setting out the methodology and minimum technical requirements for indices that will enable investors to adopt a climate-conscious investment strategy, and address the risk of greenwashing.

For more information, see: [LNB News 18/06/2019 88](#).

Government finalises Smart Export Guarantee for small-scale low carbon generation

[Practical Law Environment](#).

On 9 June 2019, the Department for Business, Energy and Industrial Strategy (BEIS) set out the final scheme for the Smart Export Guarantee (SEG). The SEG will remunerate small-scale low-carbon generators for the electricity they export to the national grid, following closure of the feed-in tariffs (FITs) scheme to new entrants in March 2019.

The SEG will be introduced in Great Britain from 1 January 2020. It is expected that relevant suppliers will need to comply with SEG requirements by 31 December 2019. Key features of the SEG scheme include:

- SEG will be available to technologies up to a capacity of 5 megawatts, including solar photovoltaic, hydro, onshore wind and anaerobic digestion. It will also be available to micro-combined heat and power with an electrical capacity of 50 kilowatts or less.
- Licensed energy suppliers with more than 150,000 domestic customers will have to provide at least one export tariff (the trigger was originally suggested at 250,000 domestic customers). Suppliers will be able to choose what form of tariff they offer, and there will not be a specified minimum tariff rate, other than that a supplier must provide payment greater than zero at all times of export. This is to encourage innovation and enable development of the small-scale export market.
- Exported power must be metered with a meter capable of reporting exports on a half-hourly basis. Meters must be registered for settlement under the Balancing and Settlement Code.

The government will make new secondary legislation, the Smart Export Guarantee Order 2019, and modifications to the Conditions of the Electricity Supply Licence, using primary powers in the Energy Act 2008. Ofgem will issue guidance for suppliers and exporters of electricity.

For more information, see [Practice note, Smart Export Guarantee \(SEG\) scheme to support small-scale low-carbon generation](#).

Wild law

Nature neglected

John Hunt

At a Glance

- This article is a personal view of what has happened to the natural environment in the UK over the last 50 years and is intended to provide background for discussion about wild law.
- It reviews the development and impacts of modern farming and forestry and the measures taken to protect important sites.
- Some conservation achievements are described but these have to be set against the overall failure of UK and EU land use policies to conserve the natural ecosystems on which we all depend.

50 years ago, conservationists were becoming increasingly alarmed at the changes taking place in the countryside and the impacts these were having on wildlife and wildlife habitats. Agriculture was undergoing a revolution with a rapid intensification of farming practices while exotic conifer plantations were spreading like a rash across the hills. These changes were highlighted by the destruction of Sites of Special Scientific Interest (SSSI) – the crown jewels of nature conservation in the UK. Though formally designated, these sites had no legal protection and were rapidly being lost.

The UK joined the EEC in 1973 and the Common Agriculture Policy (CAP) has dictated farming policy ever since, providing high levels of financial support for farmers with the initial aims of increasing productivity and farming income. Spurred on by generous grants, subsidies and tax allowances, farmers took full advantage of new technology and the development of chemical based systems of farming. Traditional methods of mixed farming were largely abandoned for more specialist and intensive agriculture. Larger fields and improved drainage together with a huge increase in the use of pesticides and inorganic fertilisers helped to achieve much higher crop yields – but with the loss of habitats such as wetlands, flower rich meadows and hedgerows together with their associated wildlife. In the uplands, livestock payments linked to stock numbers predictably led to more sheep and widespread overgrazing.

To give one example of what happened around that time in England and Wales, Internal Drainage Boards embarked on massive schemes to drain the remaining substantial areas of wet grassland, all of which were of high conservation value and most designated as SSSIs. This was done at public expense but only benefitted the various farmers concerned who were able to switch from pasture to more profitable arable. Only a

small proportion of these important sites escaped this fate through purchase by conservation bodies. Now, years later, we wish we had kept those wetland areas to help contain flooding problems.

The 1981 Wildlife and Countryside Act arrived just in time. This important piece of legislation confirmed the protected status of many species and provided a degree of protection for SSSIs. Only minor amendments to the Act have been made since and it has acted as the foundation on which later legislation has been built.

For SSSIs the outcome was a bureaucratic system which limited the activities of land managers by requiring consents for a list of 'potentially damaging operations'. Landowning interests were extremely hostile to the imposition for the first time of restrictions on what they could do on their own land and it was to be many years before these feelings subsided.

The cost of administering SSSIs and the payment of compensation and management agreements has been enormous but SSSIs are better protected (some now also have EU designations) and the rate of loss has been much reduced. However, the system has been less successful at ensuring these sites receive the necessary positive management to maintain, let alone improve, their conservation interest. Nearly 40 years later many SSSIs are still not in a satisfactory condition and very few are in an optimum state. Numerous reports have pointed out the poor management of SSSIs and that many are too small and isolated to make a significant difference to the parlous state of much of our wildlife.

This emphasis on SSSIs left the remaining 90% of the countryside at the mercy of unrestrained farming and forestry. Farming intensification continued apace funded by a comprehensive array of grants and guaranteed price support until well into the 1990s. By then the EU was forced to make changes to the CAP because of ever rising cost and embarrassing food mountains. Payments were decoupled from production and compulsory set-aside was introduced, which subsidised farmers for not utilising a proportion of their farm. In due course set-aside came to an end but the subsidies continued. Direct subsidy payments now form the largest source of income for most farmers and provide over half of their profit.

Increasing concern at the environmental damage



caused by the CAP led to the introduction of optional agri-environment schemes whereby farmers are paid to carry out projects of conservation value. While welcome, these schemes have not been large enough or sufficiently long term to make any difference on a national scale. They are an additional source of income for farmers but do not address the real problems of intensive farming. They demonstrate the failure of policies with conflicting objectives.

The Forestry Commission (FC) has had a dominant influence on the development of forestry – both on its extensive landholdings which it purchased for planting and by controlling what happens on private land through forestry grants. It could have chosen to restore our depleted woodlands by planting native tree species of broadleaves and Scots Pine, but instead opted for faster growing introduced species of conifer such as Sitka Spruce. Techniques were developed for establishing conifers on poor upland soils and the private sector joined in, encouraged by tax concessions and planting grants. In just a few decades after the war, conifer plantations transformed the landscape character of large parts of the country, especially in Scotland. In some cases important conservation sites were damaged, the most notorious being the ‘Flow Country’ in north Scotland, a peatland area of international importance for its birds and plants, as well as a huge store of carbon.

What came to be known as ‘blanket forestry’ became increasingly unpopular because of its landscape impact and the moorland habitats and wildlife it displaced. It also caused downstream problems such as acidification of lakes and watercourses harming fish stocks, while it failed to provide the promised local employment.

The bonanza of tax-avoidance forestry came to an abrupt end when the tax rules were changed in 1988 and government forestry policy became more sympathetic to native woodland. Soon the FC was managing its own forest estate in ways which conservationists could applaud while new grants encouraged more native woodland planting. This was a very important and welcome turning point and helped to stimulate a popular movement to restore lost native woodland and establish community woodlands.

While the worst days of conifer forestry may be over, we are left with a legacy of extensive plantations which are of doubtful environmental value, but which now supply timber to a large downstream industry. Government still wants more conifers, partly to satisfy the commercial forestry sector and partly to help with climate change, though short-lived plantations are a poor way to store carbon.

The growth of public interest in wildlife has been

remarkable and has led to an increase in membership and resources of many voluntary conservation bodies. Perhaps their greatest achievement has been the acquisition of numerous nature reserves and some organisations, like the RSPB, have become major landowners. Ways of enhancing the wildlife interest of these reserves have been pioneered by, for example, manipulating water levels which can achieve spectacular results. Volunteers make a major contribution to these projects and they also provide much of the survey data on which knowledge of the changing status of our wildlife depends.

Recent years have seen some exciting initiatives where organisations have come together to manage adjoining land holdings for ecological restoration, or ‘rewilding’ as some describe it. One example is the Great Trossachs Forest where the Woodland Trust, RSPB and FC have embarked on long term restoration of native woodland over an area of 16,000 ha. A very few private owners of sporting estates in the Highlands have been motivated to reduce deer numbers with a view to long term restoration of habitats devastated by years of overgrazing. Such projects will become increasingly important demonstrations of what is possible and the many benefits that follow, one of which we already know will be more employment than conventional land uses. Conservationists have learnt the hard way how important it is to have the support of local communities, particularly in remote rural areas, if new projects such as these are to succeed.

There are of course other pressures on nature besides farming and forestry. Built development has eroded lowland wildlife habitats, though it is a sad fact that a new housing estate is now likely to support more wildlife than the farmland it replaces. The drive to combat climate change has brought subsidised wind farms, which kill birds and bats, as well as other doubtful schemes such as biomass and biofuel. It seems wrong to address one environmental problem by creating others. We badly need a coherent energy policy.

Recently there has been a long overdue recognition of the exceptional importance of the seas around the UK and the damage we have caused to the marine environment from fishing practices and pollution. The newly designated Marine Protected Areas are a good start, but they must live up to their name and not just be lines on maps. Outside the EU we can take back control of our seas and ensure the marine environment is managed more responsibly.

So where are we today? We are still paying farmers large amounts just to farm and in a grossly inequitable way with arable farms receiving far more than the hill farms which do need subsidy to survive. These payments have inflated the value of arable farmland

which investors buy merely to get the subsidy. Apart from the impact on wildlife, modern arable farming is not truly sustainable because of the damage to soils from erosion of topsoil and declining organic matter (humus), as well as the run-off of pesticides and fertilisers which pollute watercourses and estuaries. EU directives have helped reduce pollution from other sources but little has been done to tackle that caused by agriculture.

If the UK does leave the EU and thus the CAP it will be an opportunity to devise a system which rewards environmentally friendly farming and helps deliver social and other benefits which the public would be happy to pay for. Do we really need such high yields when more cereal crops go to feed animals than people and some is even used for bioenergy? Farming is a business and most farmers have little choice but to follow changing policies, but many would welcome a different approach.

By any objective measure, the last 50 years have not been good for nature in the UK. There have been some successes, but no year goes by without another scientific report showing further loss of biodiversity, a recent one showing the alarming decline in pollinating insects. Why has the strong public support for wildlife not been translated into effective government policies? Conservationists have clearly failed to convince politicians that nature conservation should be a priority. The rhetoric of our decision makers is a lot greener than it was, but they are still obsessed with economic growth and few regard nature seriously or think in a strategic long term way. So, it is not surprising that measures taken by the UK and EU to address conservation issues have been piecemeal and of limited success. We have had frequent and often conflicting changes to policies in ways which rarely integrate the different land uses or recognise the fundamental importance of nature conservation. The time is surely right for some holistic thinking on the lines of wild law.

John Hunt has worked for various nature conservation bodies since 1973, mainly in Scotland, with particular emphasis on the conservation management of land.

The law on hunting is not fit for purpose – it's time for a radical rewrite

Gregory Gordon, Criminal and animal welfare barrister at Guildhall Chambers, Bristol



At a glance

This article will:

- Outline the current legal framework for hunting offences.
- Explain the challenges in mounting successful prosecutions.
- Explore the moral and welfare questions in prosecuting hunting offences.
- Make a radical suggestion for strengthening the law.

The law is broken

The Hunting Act 2004 (the 2004 Act) was set up to fail. Tony Blair called it 'a masterly British compromise' by which hunting was 'banned in such a way that, provided certain steps are taken to avoid cruelty when the fox is killed, it isn't banned. So it's banned and not quite banned at the same time.'¹ Whatever the rights and wrongs of hunting, cynical legislative drafting has had real world consequences.

Section 1 of the 2004 Act (which covers England and Wales) is ostensibly unambiguous: 'A person commits an offence if he hunts a wild mammal with a dog, unless his hunting is exempt.' Section 1(1) of the Protection of Wild Mammals (Scotland) Act 2002 (the 2002 Act) appears similarly straightforward: 'A person who deliberately hunts a wild mammal with a dog commits an offence'. The statutory exemptions – which include allowing the use of dogs to flush an animal so that it can be shot; using dogs in connection with falconry; and, under the 2004 Act, hunting mammals for the purpose of 'research and observation' – make prosecuting offences under the Acts anything but. Although in Northern Ireland public support for fox hunting and deer hunting is low, at 18% and 4% respectively,² it remains legal.

The High Court in *DPP v Wright*³ considered the question of when an illegal hunt begins under the 2004 Act. The answer didn't please anti-hunting activists. Illegal hunting doesn't encompass the search for a mammal to hunt and kill; there is, ruled the court, no offence of 'going equipped for hunting', and an illegal hunt doesn't begin until a wild mammal is found and chased by the hounds. Though a huntsman may have every intention of killing a fox, and encourage the hounds to the best of their ability to do so, no offence is committed until the fox is found and pursued by the hounds. The 2002 Act doesn't suffer from this problem: section 10(1) states that "'to hunt' includes to search for or course'.

While the decision in *Wright*, and the various statutory exemptions can be prosecutorially problematic, it is the minimalist drafting of section 1 that has been exposed as the fundamental flaw in both Acts. Because no-one sought to define 'hunting', hunts suspected of lawbreaking have been free to claim that what they do is not real hunting, but something which just happens to look like hunting. Meanwhile the killing of wild mammals continues relatively unabated.

'Trail hunting' as a practice didn't exist before 2004. Instead of casting hounds to search for the scent of a wild mammal, hunts have claimed to be searching for an artificial scent which has been pre-laid earlier in the day. Hunts may designate a specific 'trail layer' for the day, who will ride on horseback or quadbike, carrying a rag dipped in aniseed or soaked in animal urine, and drag the scented rag through the fields, creating several different scent 'lines' for the hounds to find and follow. If the hounds miss the artificial scent, and instead hunt the scent of a wild mammal? Well, accidents will happen. Some hunts suffer as many as three accidents in a single day.⁴

Trail hunting was specifically designed and promoted by the Masters of Foxhounds Association to 'simulate traditional hunting as practised before the ban.'⁵ Whilst no doubt highly attractive for fox hunting's adherents to be able to carry on much as before, from an investigative perspective it makes the job of distinguishing the malignant from the benign extremely difficult, and the cynicism of anti-hunt activists runs deep. 'Sometimes they may actually do proper trail hunting,' I was told by Jordi Casamitjana, when he was the Campaigns and Enforcement Manager for the International Fund for Animal Welfare, 'we just happen to have never seen it.'⁶

Successful convictions have been obtained against hunters who claimed to have been trail hunting. Three members of the College Valley and North Northumberland hunt were convicted of unlawful hunting, contrary to the 2004 Act, despite claiming that they were following artificial, pre-laid trails of fox urine. In convicting three members of the Crawley and Horsham Hunt, the court found that a fake trail was laid 'for the benefit of the cameras.'⁷ When the huntsman and terrierman of Leicestershire's historic Fernie Hunt had their convictions for illegal hunting upheld on appeal, Leicester's Resident Judge, Michael Pert QC, found that both defendants had used the

'cover of trail hunting as a cynical subterfuge'.⁸

Such cases, however, are the exception. When illegal hunting is alleged, that the hunt may have been trail hunting remains difficult to disprove, as one prosecution from earlier this year demonstrates. When interviewed by the police the defendant, a huntsman, had given a brief prepared statement in which he claimed that he was hunting a pre-laid trail. Because illegal hunting is a summary offence in both England and Wales and in Scotland, there is no requirement to serve a defence statement, or to provide any notice of the specifics of the defence relied upon. In this case, that meant that the defendant was able to call as a witness the person who purported to be the trail layer on the day in question, and who in turn produced for the court a map detailing where the trails were said to be laid – all of this only after the prosecution had closed its case. In the world of hunting, ambush defences are very much alive.

Tim Bonner, CEO of the pro-hunting campaign organisation Countryside Alliance, couldn't be clearer in his endorsement of hunts which push the boundaries of the law. As Bonner has said, 'No one has any problem with people breaking the spirit of the law which came about because of the hatred of the Labour Party backbenchers. ... We will push it to the limits in every way that we can.'⁹ This view is perhaps unsurprising, given that Bonner views the Acts as 'an attack on a group of people and a way of life and purely a prejudicial political act.'¹⁰

Cruelty, welfare and the ethics of hunting

Pleas to tradition, a 'way of life', and rural economics were once deployed in defence of badger baiting and cock fighting; they were not enough to save those 'sports', and proved similarly ineffective in helping hunting's cause. In mainstream public opinion, animal cruelty ranks as a higher concern than tradition. Polls consistently place public support for anti-hunting legislation upwards of 80%,¹¹ and record a majority of the population being less likely to vote for political candidates and parties who support repeal of the Acts.¹²

But what if the public are misled? Can hunting really be cruel, if foxes don't feel fear?

*'Wild animals, apart from possibly the primates and cetaceans, almost certainly lack the complex brain and mental abilities necessary to perceive the human [concept] of fear.'*¹³

This claim, made by the pro-hunt campaign group Veterinary Association for Wildlife Management (previously 'Vets for Hunting'), might perhaps be considered scientifically regressive in the 21st century. We have known for some time that animals are not unfeeling automatons, reacting without emotion to

sensory stimuli. Nevertheless, this view of the natural world is the bedrock on which the pro-hunting lobby builds its defence of hunting, in the name of the 'wildlife management' doctrine.

The wildlife management doctrine takes the circle of life – hunter and hunted co-evolving in bloody harmony – and places humanity in the middle, its benevolent guiding hand outstretched to manage not only the survival, but the improvement of the wild species under its care. The doctrine's stated aim is to 'maintain healthy and balanced populations of wild animals at levels which can be sustained by their local environment, and which are acceptable to farmers, landowners and the overall balance of all other indigenous wildlife.'¹⁴

For deer, wildlife management means culling local populations to prevent excessive damage to farms, overgrazing of pasture and the transmission of disease, such as the TB outbreak which once ravaged the herd of red deer on the League Against Cruel Sports' wildlife reserve in Exmoor.¹⁵ The difficulty for hunters is that only three staghound packs operate in the UK, all of them in the South West, and hunting stags in Scotland is strictly the preserve of stalkers – it could be difficult for hunts to manage localised animal populations from the other end of the country. For foxes, wildlife management means maintaining a strong and stable population. Hunters, after all, need a ready stock of fit and healthy foxes to hunt.

The UK fox population does not appear to be stable, but in decline.¹⁶ Pro-hunting advocates have pointed to the recently recorded fall in numbers as proof that management is needed. Even before the Acts, Owen Paterson MP was warning that a ban 'would lead to the disappearance of the fox in many parts of the country',¹⁷ as pro-hunting farmers would turn to indiscriminate shooting of the foxes they once tolerated on their land. Anti-hunt campaigners point out that the population decline appears to have begun in 1995, long before the introduction of the Acts, and that having continued to hunt between 21-25,000 foxes annually¹⁸ is unlikely to have arrested the slide.

Many more foxes are killed on the roads annually (100,000), shot (80,000), or snared (30,000) than were hunted with hounds.¹⁹ Hunting advocates suggest that hunting, compared with the alternatives, is the 'natural' form of control. Hunting enthusiast Roger Scruton is not alone in arguing that 'Hunting with hounds is entirely natural to the four quarry species since it does not use any alien human technology for which the hunted animal has no natural defence.'²⁰

It is also suggested by hunting advocates that hunting, unlike shooting, is more likely to target only the old, diseased and weak specimens – the ones who cannot outrun or outfox the hounds. This quasi-

Darwinian view of hunting's place in the natural order, where only the most successful of the species survive, is encapsulated in the concept of the 'testing chase'. Those who escape the jaws of death pass the test.

The theory of hunting's 'natural' quality is challenged by its practice. For centuries, hunts have employed a veritable smorgasbord of ingenious devices to turn the tables against the fox, so that even the fittest may be caught by the hounds. Burrows and badgers' setts – natural bolt holes for a fleeing fox – are 'stopped' with earth to keep the fox above ground. To deal with the foxes who do escape down a hole, 'terriermen' are called who, through a combination of their terrier's teeth and the thrust of a spade, retrieve the fox for the waiting pack. Some foxes are provided with food outside artificial earths, made from buried drainpipes, to encourage them onto land which can be readily hunted. 'Bagmen' are foxes which have been caught, carried in a bag to the hunt meet and released with a short head start, sometimes with their paws cut to slow progress and leave a strong scent for the hounds to follow. Then there are the cubs. Roughly half of the foxes that were killed by hunts before the introduction of the Acts were cubs, newly emerging from the vixen's den, killed by the hunt's young hounds as a training exercise. This year, four members of the South Herefordshire Hunt were convicted of animal cruelty offences under the Animal Welfare Act 2006 for feeding fox cubs to the hunt's hounds.²¹ Little of these traditional hunting practices can be said to be natural.

While the notion that hunting mammals with hounds is 'entirely natural to the quarry species' might appear superficially plausible for prey animals such as deer, even that is not the case. Cambridge University's late Professor Patrick Bateson conducted a season-long analysis of the activities of the Devon and Somerset Staghounds and found that the deer had suffered the 'severe' effects of 'extreme exhaustion' long before the end of a hunt.²² Stag hunts can last many hours, a wholly unnatural situation for any deer, akin to 'forcing high jumpers to run a marathon', as Professor Bateson put it to me.²³ As for foxes, pack hunters tend to target prey larger than themselves – think lions taking down a wildebeest – and the vast collective expense of energy made by a pack of hunting hounds just isn't seen in the natural world for so meagre a nutritional reward as a fox.

In the legal world, meanwhile, investigators, lobbyists and lawyers expend no end of energy and expense chasing the meagre rewards to be found in prosecuting under these most flawed of Acts. More of that time, of late, has gone into agitating for change.

Strengthening the law

When David Cameron tabled amendments designed to relax the 2004 Act – amendments which were decried by animal welfare charities as a back-door repeal²⁴ – the Scottish National Party (SNP)'s threat to

vote them down scuppered Cameron's plans, forcing him to withdraw the tortuously named Hunting Act (Exempt Hunting) (Amendment) Order 2015 before the vote.²⁵ Hot on the heels of the SNP's Westminster success, the Scottish Parliament set up the 'Bonomy Review' of the 2002 Act,²⁶ intending that it should evaluate and offer measures to strengthen the Scottish law. Completed in 2016, the Bonomy Review found that 'there is a basis for suspecting' that illegal hunting still continues,²⁷ before proceeding to make a number of sensible suggestions for incremental change to the devolved Scottish legislation. Included among them was consideration of extending the time limit for prosecutions to be instigated beyond the current six-month cut off, but also non-statutory measures, such as a voluntary scheme for hunts to provide police, in advance, with details of the proposed hunting activities and the identities of relevant individuals. Proposals for a system of overt monitoring by a regulated body (as opposed to the ad-hoc covert monitoring currently conducted by employees of the League Against Cruel Sports) received 'cautious approval given ... the obvious possibility that [the] behaviour [of huntsmen] might be altered in response to the attendance of a monitor.'²⁸

So far, the Scottish government's response to the Bonomy Review has been insipid. A proposal to license hunts is apparently under consideration, as is the suggestion that the number of dogs which can lawfully be used to flush a mammal is reduced from 40 to two²⁹ (in England and Wales, the maximum number is already two). As of yet, however, no Bill has been tabled.

The Bonomy Review also considered the *mens rea* of the offence: whether an intention to hunt, as currently required, is justified or whether the burden could be reduced to mere recklessness. A bill tabled in June 2019 by Green MSP Alison Johnstone, designed to put pressure on the SNP to fulfil the promise of the Bonomy Review, proposes just that.³⁰ Another potential formulation of the *mens rea* considered in the Bonomy Review was that a person would be guilty of hunting if he or she 'knowingly causes or permits a dog to hunt a wild mammal,' to mirror similar burdens in the Wildlife and Countryside Act 1981, and elsewhere. This final suggestion – of criminalising the act of 'permitting' hounds to hunt a wild mammal – comes closest to genuine change. Recklessness would likely have little impact in cases where trail hunting is claimed, given the ease with which a huntsman can deny that the hounds were following the scent of a live animal until it was too late to call them back. But if hunting wild mammals is to be seriously addressed, a more radical proposal is required.

The Health and Safety at Work etc. Act 1974 creates general duties for employers to 'ensure, so far as is reasonably practical, the health, safety and welfare' of employees (section 2) and members of the public

(section 3), and creates an offence should any person to 'fail to discharge' such a duty (section 33). In practice, this means that any time a person is injured by a work activity, the duty has been breached. The burden then falls on the employer to prove that it was 'not reasonably practicable to do more than was in fact done' to discharge that duty (section 40). The rationale underlying what might be seen, in effect, as a reversal of the burden of proof, is that when a person makes the choice to conduct a potentially harmful activity for profit or pleasure, they ought first to take reasonable steps to ensure that no-one is harmed by that activity.

A revision to the Acts could use this as a framework: requiring huntsmen to ensure, so far as reasonably practical, that no mammal is hunted by dogs, and placing the burden on them to prove that they have done everything reasonably practicable to discharge that burden. Whether there is genuine political appetite for such change is unclear. North of the border, the SNP are stalling; in Westminster, although Labour back a 'recklessness' amendment,³¹ they have more significant electoral concerns to address, and Conservatives appear more likely to repeal the 2004 Act than strengthen it. But this suggestion has the potential to right a legislative wrong. After all, when a huntsman takes on a day's hunt for pleasure and a wage, ought they not first be able to demonstrate that they have taken all reasonably practicable steps to ensure that no wild mammal will be killed for their entertainment?

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