



e-law

Better law for the environment

October 2021 | Issue 126



Welcome to the October 2021 edition of e-law. The focus of this issue is climate change, net zero and the run up to COP26.

The world is waiting with baited breath for the outcomes from COP26 and whether meaningful progress can be made on achievement of the Paris Agreement goals, before it is too late. This topic never seems far away from the centre of the news, whether it

be reports of how we will reach net zero goals or what will happen if we don't. Of course, the UK is centre stage as host of this critical event. So this seems like a good time to take a look at this topic in more detail in the run up to the start of the event later this month.

Our first themed article, [COP26 – Global climate cooperation or green-technology competition?](#) by Maya Sainani, examines the relationship between big global economies, who are cooperating to reverse climate change but also competing in a 'green race' to gain advantage in the new energy market. Thanks Maya for this insightful piece.

Our second piece, [Have you COPped yet?](#) by Jenni Ramos of The Chancery Lane Project (TCLP) notes that net zero targets must flow through organisations and their entire value chain and sets out how lawyers can lead the way in drafting solutions that facilitate the rapid and widespread transition needed. TCLP has already published a collection of over 70 free contract clauses to help organisations align their legal agreements with their net zero targets. Well done TCLP – what a fantastic effort!

Finally, Richard Barlow and Becky Clissmann have very kindly written [Double jeopardy or win-win: tackling the biodiversity and climate crises together – Note of the Joint Climate Change & Energy and Nature Conservation Working Parties event on 13 September 2021](#). Many thanks to Richard and Becky for taking the time to make such an excellent record of what was discussed at this very interesting and topical event for the benefit of those who could not attend.

I know we will all be hoping for some positive progress as events unfold.

Best wishes

Sophie Wilkinson

Sophie Wilkinson
e-law Editor

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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.

Laura Hildt is an Associate Policy Officer for Biodiversity and EU Affairs at the

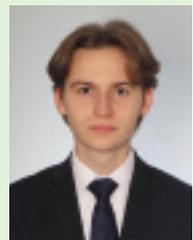


European Environmental Bureau in Brussels. She has a Law degree from the University of Cambridge and an LLM in Public International Law with a specialisation in environmental law from Utrecht University.

Violet O'Gorman previously worked as an editor at LexisNexis, and is currently undertaking the Post Graduate Diploma in Law (PGDL).



Mateusz Slowik is a final year law student, and a volunteer for UKELA's Nature Conservation Working Party. Mateusz will read Environmental Law and Policy at UCL in September.



Words from the Chair



In her article in this edition Jenni Ramos says “[e]very lawyer needs to be a climate lawyer”. But what does that mean? It certainly includes advising on climate risks (and opportunities) – and making use of The Chancery Lane Project’s Net Zero Toolkit. It is likely to have implications for how individual

lawyers run their own practices. But does it go further – to how we interpret and apply the law itself?

One of my favourite passages of environmental case law is from the dissenting judgment of the late, great Lord Justice Laws in [R \(Greenpeace\) v SSEFRA](#) [2002] 1 WLR 3304. The case concerned documentation on the import of Brazilian mahogany and alternative statutory interpretations: did an export permit have simply to comply with the *formalities* of the Convention on International Trade in Endangered Species (CITES), or was *substantive* compliance required – so that if the UK authorities knew that the export permit had been issued without it being shown that the wood had not been illegally logged, they should refuse its import.

Laws LJ favoured the latter interpretation. He founded this on the need for the law to reflect contemporary influences:

“In the century before last, the sanctity of contract, with all that said for trade across the British Empire and beyond, was a powerful engine of statutory construction. Now, the world is a more fragile place. Considerations of ecology and the protection of the environment are interests of high importance. The delicate balances of the natural order are continuously liable to be disturbed by human activity, which in particular threatens the survival of many flora and fauna. These concerns are today well known and well accepted. Within the proper limits of the court’s role, and in appropriate contexts, I think we should now be ready to give them special weight.”

That reasoning was not accepted by the majority of the Court. Nor should it be taken too far – it arose in the specific context of Regulations made to implement CITES. However, it does point to a more creative role – perhaps especially in the common law – for the courts in addressing well-established climate and environmental concerns.

Incidentally, over the break, I had a chance to read Sir John Laws’ posthumously published book, *The Constitutional Balance* (Hart, 2021). It is (sadly) an incomplete text in some ways, but articulates his ideas about the constitutional significance of judicial review

– rooted in a Kantian idea of the morality of law. This too is important and current stuff, given the latest reforms proposed in the Judicial Review and Courts Bill 2021.

Back to UKELA. We have a number of things planned to coincide with COP26 – including this edition of e-law. Make sure you check the events updates on the UKELA webpage. Also, look out for sectoral briefing notes on the legal and regulatory framework for a number of areas that UKELA will publish over the coming weeks – and do let the UKELA team know if you have ideas for any more. UKELA is also involved in a collaborative student project, led by the Environmental Law Foundation, researching action taken at local authority level across the UK where declarations of climate emergency have been made.

I am personally very excited about our Garner lecture this year – on 18 November 2021 – with Professor Sir Partha Dasgupta. This will be a great opportunity for UKELA members, and others, to consider the implications for law and regulation of his report, [The Economics of Biodiversity](#), published earlier this year. If you have not done so already, do have a look at the report – and [the Government’s response](#) to it. And more importantly, do sign up to what should be a memorable event.

Finally – as you will see below UKELA is recruiting for two legal research positions to support our Governance and Devolution Group and the Law and Your Environment website. The closing date for applications is 20 October 2021. Do please help us share these opportunities as widely as possible.

Best wishes,

Ned Westaway

Ned Westaway

UKELA news

UKELA membership

The trustees have agreed to freeze membership subscriptions for 2022. It is very much appreciated that you have supported us by maintaining your memberships and we do hope you continue to do so into 2022.

We will shortly be launching our autumn offer for new members. Sign up for 2022 and receive the remainder of 2021 free of charge. Please let your contacts and colleagues know about this fantastic offer. More details on our [website](#).

We are pleased to continue free membership for any students studying an environmental law element or module in 2022. Please contact the Membership Development Manager, [Elly-Mae Gadsby](#) for more information.

Please can you help us?

We have added an information panel to the 'About Me' page in your member account on our website for you to include a note on where you are based. You can choose from a drop down list of the English regions/Scotland/Wales/Northern Ireland/overseas. Please help us update this information to help us tailor messages specific to where you are based, such as information about local events. Don't worry, you will still hear about ALL our activities, but this extra information will help us give you more specific information too. To update, please log into your account, go to About Me, locate the panel 'Where are you based', choose from the drop down list and click save. Thank you for your help.

UKELA is recruiting!

We are excited to be recruiting for two new fixed-term roles within the UKELA team – Legal Researcher for UKELA's Governance and Devolution Group and Researcher for UKELA's Law and Your Environment website. Find out more about both these roles in [Adverts, jobs and tender opportunities](#) and on our [website](#). We look forward to hearing from you.

No5 Barristers' Chambers podcast series

We are pleased to announce that No5 Barristers' Chambers, in collaboration with UKELA, will produce a series of podcasts on various important environmental law issues. If you have a topic about which you feel passionately and you would like to join the discussion in a future podcast, please [contact us](#), providing a brief outline of your proposal, theme and why you feel it would be a great listen. Alternatively, if you have any suggestions for future themes but do not wish to appear, we would very much welcome your thoughts. Send any ideas to us at [UKELA](#) for consideration.

Look out for the first podcast which will be released in October, featuring Kirsty Schneeberger and Ned Westaway; UKELA's previous and current Chairs respectively.

Details will be on the website and in our Friday mailing. We look forward to hearing from you!

Careers advice series

As circumstances have prevented us from hosting an in person careers evening, we held a series of careers advice sessions via Zoom. Recordings of these are all available on the [website](#). We will be recommending these over the next couple of months and would like your help. If you would have the time to speak to the next generation of environmental practitioners, please [contact us](#). Equally, if you have any suggestions for specific topics or areas you feel would be beneficial to our students and young people, please do let us know. Thank you.

UKELA working party news

The early autumn working party convenors meeting took place on 15 September 2021, with consensus that the specialist working party sessions at this year's Annual Conference had been a success, with high numbers of delegates at all sessions and the quality of presentations and debate very impressive. All of the specialist sessions were recorded and are available for members' viewing on the UKELA [website](#). Convenors' views on the approach to Conference 2022 are now being sought.

The lead up to COP26 is keeping many working parties busy, along with a perhaps unsurprising run of government consultation papers on regulatory and policy reform across the four nations. Recent consultation responses include submissions to the Law Commission on its 14th reform programme, proposals to amend the Civil Procedure Rules in England and Wales to provide for environmental review by the Office for Environmental Protection (OEP) and evidence to the House of Lords Common Frameworks Scrutiny Committee which is covering questions of devolution post-Brexit. You can read all our responses on our [website](#).

Plans to develop a Student Working Party that aims to help students develop their skills and involvement with UKELA while providing the opportunity for students to work alongside the specialist working parties continue. The activities and work plan for the Student Working Party will broadly align to other working parties. All student members will be encouraged to join this working party when becoming a student member, and this may be a springboard/stepping stone into other working parties. One aim is to help encourage equality of membership across all working parties regardless of experience and expertise. Additional detail is in the student news section.

The Governance and Devolution Group meets again on 14 October 2021. It is continuing to liaise with Defra as part of the OEP stakeholders' group. It is developing a Strategic Watching Brief (SWB) to help inform its activities over the coming 12 months. The SWB is loosely based on the various sections of the Environment Bill including e.g. environmental principles, targets, governance, air pollution, biodiversity, water and waste, but covers the four nations.

Devolved news

Northern Ireland

UKELA hosted an online Northern Ireland half day conference on 9 September 2021 which was chaired by Brendan Martyn, Associate Director in Cleaver Fulton Rankin.

A stellar line up of speakers had been put in place by the organising group to include Dame Glenys Stacey, Chair Designate of the OEP, Trevor Rue, former Deputy Chief Commissioner in the Planning Appeals Commission as well as others from the NI legal profession, the Northern Ireland Environment Agency, industry representatives and the Chancery Lane Project. The broad topics covered were agriculture, climate change legislation and litigation trends and environmental governance in NI post Brexit with some very stark figures presented leading to some lively discussion.

The event was extremely informative and topical and was particularly well received and well attended by just under 40 delegates. Given the success of the event, it is hoped that this could become a more permanent annual fixture going forward.

Off the back of this conference, Dame Glenys Stacey has offered to meet NI members for more discussions given the substantial input UKELA already has offered in responding to consultations in relation to post-Brexit governance.

Students news

Many of you, like us, will be returning to university this month. Whilst it is likely to be a busy time remembering where lecture rooms are and preparing for the term ahead, we hope that you will be able to make time for some exciting events planned by UKELA. These include the Introduction to Wildlife Law Course from 7-12 November 2021. This is a series of half-days providing a great opportunity to learn about an area of law which is not typically covered at university – full details are available on our [website](#). If you think our events could be of interest to others at your university who aren't current members of UKELA, it would be great if you could share them with your clubs and societies and help spread the word.

Other exciting news includes the newly formed Student Working Party. This is a great opportunity for students to get involved with the work of UKELA, network and generally improve your understanding of environmental law. This is a group that is open to all student members – across STEM, law and any other subject background! If you are interested in hearing more about this, you can [contact us](#) for more information, or keep an eye on the social media channels.

As always, if you want to get more involved in UKELA's work or talk to the student advisors about what we do, please [contact](#) the student advisors.

UKELA 2021 moot competitions

We are pleased to announce that the 2021 UKELA moot competitions problem has now been released. Thanks to the generosity of No5 Barristers' Chambers and Lawtext Publishing who are once again sponsoring this event, we have some excellent prizes including a trophy, a cash prize, and a year's subscription to Environmental Law and Management. Please visit the [website](#) to download the 2021 moot problem, along with a copy of the rules and competition form. There are two competitions; the Dame Frances Patterson (Junior) and the Lord Slynn (Senior); full details may be found in the competition rules. The deadline for skeleton argument submissions is **midday on 1 November 2021**. Those teams who are successful in securing a place in the semi-finals will be notified the week commencing 15 November 2021. The semi-finals and finals will take place via Zoom on 3 December 2021. Please ensure you read and adhere to the rules and that each entry is accompanied by a correctly filled out competition form. If you have any questions, please [contact us](#). Good luck!

UKELA student members' Facebook group

Want to link up with fellow UKELA student members to share your views and have discussions during this time of social distancing? If so, please join our [UKELA Student members' Facebook group](#)!

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 our [student advisers](#). If selected, the Editorial Board will aim 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. All upcoming themes are available on the [website](#).

UKELA events

Please note that for all of our online events, joining details will be sent out to delegates after the booking window has closed.

UKELA East AGM: 13 October 2021

Please join us for the UKELA East AGM.

Our AGM will start from 4pm. At 5pm we will be welcoming our speakers Stephen Tromans QC, Celina Colquhoun and Juan Lopez from 39 Essex Chambers to discuss issues around COP26 – why is it important, what should be the focus for environmental lawyers, consultants and academics. This will be followed by drinks and networking.

The venue will Birketts LLP Office, Station Road, Cambridge or you can join online. Please register your place on the [website](#).

Young UKELA and Young ELF the Basics: International Environmental Law: 21 October 2021

Join us on 21 October at 6pm for a joint event from UKELA and the Environmental Law Foundation (ELF) on international environmental law, where we explore the body of substantive international law and procedural rules that aim to protect the environment.

Young UKELA The Basics and Young ELF events are aimed at those in the early stages of their career, but all are welcome. After the webinar has concluded, there will be an opportunity for informal networking. [Bookings](#) are now open.

Not the Wild Law Weekend seminar: 23 October 2021

Don't miss Part 2 of our Wild Law programme for 2021 (Part 1 was in April, [watch it here](#)).

Join us for a morning of discussion and debate – we have been fortunate to secure an excellent line up of expert speakers. After watching their presentations, you will have the opportunity to discuss the issues raised in an inclusive and friendly forum via our Zoom platform. The full programme is on our website, where you can also [book your place](#).

The changing role of insurance to manage environmental risks – transactions and ESG: 28 October 2021

This lunchtime event co-hosted by Howden M&A will cover the changing landscape of environmental insurance, including traditional and tailored warranties and indemnities insurance, as well as new products and initiatives from the insurance market designed to meet ESG and sustainability risks. At the end of the speakers' presentations, the event will open up for attendees to ask our experts questions about the elements covered, and in turn start some meaningful discussion on important topics. It is free to attend, and you can book your place on our [website](#).

Introduction to Wildlife Law course 2021: 7 to 12 November 2021

The annual course will this year be hosted online from 7–12 November 2021. It will be spread over five half day sessions, giving participants plenty of opportunities for breaks away from the screen and for individual study. A short pre-course introductory and 'getting to know you' session will also be held on the evening of 7 November 2021.

The course tutors, Andrew Baker, (Director, Baker Consultants Ltd), Richard Barlow (Partner, Browne Jacobson Solicitors), Bernie Fleming (Fleming Ecology consultancy), Wyn Jones (retired Head of Habitats Advice, Joint Nature Conservation Committee), Carl May-Smith (Barrister at Browne Jacobson Solicitors) and Dr Eunice Pinn (Seafish), have a wealth of experience of wildlife law.

Full programme details are available on the [website](#) and bookings are now open.

Annual Garner Lecture 2021: Professor Sir Partha Dasgupta: 18 November 2021

We are delighted to welcome Professor Sir Partha Dasgupta as our distinguished guest speaker for the 2021 Annual Garner Lecture.

Professor Dasgupta has been a Professor of Economics at the University of Cambridge since 1985, serving as Chairman of the Faculty of Economics from 1997 to 2001. He has won numerous awards, and in 2002, he was named Knight Bachelor by the Queen for services to economics. His research interests have covered welfare and development economics, the economics of technological change, population, environmental and resource economics, the theory of games, the economics of undernutrition, and the economics of social capital. Last year he was commissioned by HM Treasury to lead a global independent review on The Economics of Biodiversity. The [review](#) was published in February 2021.

Please book your place now via the [website](#).

UKELA Mooting Competitions Semis and Finals day: 3 December 2021

The 2021 moot problem is now available on our [website](#), along with a copy of the rules and competition form. There are two competitions; the Dame Frances Patterson (Junior) and the Lord Slynn (Senior); full details may be found in the competition rules. The deadline for skeleton argument submissions is **midday on 1 November 2021**. Those teams who are successful in securing a place in the semi-finals will be notified the week commencing 15 November 2021. The semi-finals and finals will take place via Zoom on 3 December 2021.

The e-law 60 second interview



Iain Johnson, Senior Environmental Consultant at Royal HaskoningDHV

What is your current role?

I'm a Senior Environmental Consultant at Royal HaskoningDHV, based in the North-East. My work interests are carbon management and climate change, environmental permits and management systems, and legal compliance and due diligence.

I'm also part of the internal net zero team at Royal HaskoningDHV.

How did you get into environmental law?

I've always been interested in the environment and decided at university that I wanted to pursue a career as an environmental professional in some capacity, but have largely followed the consultancy route. Although I did work in industry for a few years as an Environmental Manager.

What are the main challenges in your work?

It depends on the project! Typically, time and client expectations, as clients like short turnarounds to their projects, which isn't always possible for a variety of reasons and their expectations need to be managed accordingly.

Climate change is also challenging, as it is a rapidly developing area of work, not least because of current issues including the forthcoming COP26, and commitments to cut emissions.

What environmental issue keeps you awake at night?

A lot of environmental issues keep me awake, the state of the environment, climate change, loss of biodiversity and peoples' attitudes towards the environment being the main ones!

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

More green or open space coupled with a greater understanding and appreciation of it.

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

Ha, tricky! I'm involved in a few groups! Probably the climate change and energy working party, as it is probably my main interest both personally and professionally.

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

Being part of a diverse network of like-minded people who genuinely want to make a difference and create a better environment.

Environmental law headlines

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

IPCC publishes Sixth Assessment Report, 'Climate Change 2021: The Physical Science Basis'

[Lexis®PSL Environment](#)

On 9 August 2021, the Intergovernmental Panel on Climate Change (IPCC) published its Sixth Assessment Report entitled 'Climate Change 2021: The Physical Science Basis', which aimed to address the most up-to-date physical understanding of the climate system and climate change, combining the latest climate science developments, and evidence from various simulations and observations.

The [report](#), issued fewer than three months before the 31 October–12 November 2021 COP26 conference in Glasgow, finds that '[i]t is unequivocal that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred.'

Further findings from the report include:

- 'The scale of recent changes across the climate system as a whole and the present state of many aspects of the climate system are unprecedented over many centuries to many thousands of years'
- 'Human-induced climate change is already affecting many weather and climate extremes in every region across the globe. Evidence of observed changes in extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones, and, in particular, their attribution to human influence, has strengthened since [the Fifth Assessment Report]'
- 'Global surface temperature will continue to increase until at least the mid-century under all emissions scenarios considered. Global warming of 1.5°C and 2°C will be exceeded during the 21st century unless deep reductions in CO₂ and other greenhouse gas emissions occur in the coming decades'

The report further states that the world is likely to see 1.5°C warming in the next one or two decades without immediate action. It calls for global emissions to be cut to net zero by mid-century starting immediately to limit global warming to 1.5°C in the long term.

The report includes a Summary for Policymakers (SPM) and a Technical Summary (TS). The SPM details a high-level summary of the understanding of the current state of the climate, including how it is changing and

the extent to which humans influence the changes. Further, possible climate futures are considered, and information on how to limit human-induced climate change.

The TS is primarily built from the Executive Summaries of the individual chapters and atlas and provides a synthesis of key findings based on multiple lines of evidence.

For more information, see: [AR6 Climate Change 2021: The Physical Science Basis](#) (IPCC release) and News Analysis: [Comment—IPCC publishes Sixth Assessment Report on the science of climate change](#).

Environment Bill amendments on interim targets, exemptions, OEP, biodiversity and climate emergency declaration, soil health and air quality

[Practical Law Environment](#)

In September 2021, the House of Lords passed several amendments to the Environment Bill 2021-22. The amendments, many of which were passed despite government opposition, include changes that:

- Ensure that the government has a statutory duty to meet any interim targets set on environmental strategy.
- Remove the power for the Secretary of State to provide guidance to the Office for Environmental Protection (OEP).
- Remove restrictions on the discretion of the court to grant a remedy where a breach of environmental law is established (however, the bar on awarding damages to the OEP is retained).
- Require the government to make a formal declaration of a domestic and global biodiversity and climate emergency.
- Require the government to adopt a target on fine particulate pollution (PM_{2.5}) less than or equal to the World Health Organisation's (WHO's) guideline level of ten micrograms per cubic metre as an annual mean, to be attained by 2030 at the latest.
- Set a target for soil health, which will among other things, improve the ability of soil to sequester carbon.

The Lords also passed several government amendments, including on requiring guidance on the separation of waste and littering, on recovery of environmental regulator costs for their producer responsibility functions, and on a report to Parliament

on eliminating discharges from storm overflows in England.

For more information, see [Legal updates, Environment Bill: Lords' amendments on interim targets, exemptions and OEP passed](#) and [Environment Bill: Lords' amendments on biodiversity and climate emergency declaration, soil health and air quality passed](#).

Defra consultation: Amending the Civil Procedure Rules to establish environmental review

[Lexis®PSL Environment](#)

On 26 July 2021, the Department for Environment, Food & Rural Affairs (Defra) launched a [consultation](#) seeking views on amendments to the Civil Procedure Rules (CPR), which will establish environmental review as the litigation mechanism for the new Office for Environmental Protection. While Clause 38 of the Environment Bill introduces the environmental review mechanism, amendments to the CPR are required to establish the practical mechanisms, and to specify important procedural matters.

Given the similarities in some respects between judicial review and environmental review as provided for in the Environment Bill, it is expected that the rules for environmental review will largely mirror the existing provision in [CPR 54](#), with adjustments made to reflect the technical differences between the two procedures. However, for the areas that the Environment Bill does not provide a guide as to the procedural approach, a number of questions have been posed, including (but not limited to):

- What provision should be made in the rules regarding the role of interested parties in environmental review?
- What provision should be made in the rules regarding the role of interveners in environmental review?
- If you consider there should be a role for interveners, should the application procedures differ in any way from those for judicial review?
- What provision should be made in the CPR regarding the awarding of costs in environmental review?
- Should provision be made in the CPR regarding the costs of interested parties and interveners in environmental review?
- Should provision be made in the CPR to allow claims to be decided without a hearing, replicating [CPR 54.18](#)?
- Are there any further areas where you consider the procedure for environmental review should differ from that for judicial review?

For more information, see: Defra opens consultation on establishing environmental review by amending CPR, [LNB News 26/07/2021 7](#).

Government publishes UK hydrogen strategy package

[Practical Law Environment](#)

On 17 August 2021, the Department for Business, Energy and Industrial Strategy (BEIS) published the UK hydrogen strategy. The strategy sets out how the UK will rapidly and significantly scale up production and lay the foundations for a low carbon hydrogen economy by 2030. It also outlines a whole-system hydrogen economy enabling the production, distribution networks, storage and use of hydrogen across industry, power, buildings and transport. It includes a 2020s roadmap, which sets out a shared understanding with industry of how the hydrogen economy needs to evolve.

Furthermore, the strategy includes significant funding commitments and indicates that the government will take a twin-track approach of supporting both:

- Green hydrogen: produced by splitting water using electrolyzers principally powered with renewable energy.
- Blue hydrogen: produced by splitting natural gas and capturing most process emissions principally with carbon capture and storage (CCS) technology.

In addition, the government also published related consultations on a:

- Preferred hydrogen business model, which would use a similar approach to the offshore wind Contracts for Difference (CfD) support to overcome the current cost gap between low carbon hydrogen and fossil fuels.
- £240 million net zero hydrogen fund, which aims to support the commercial deployment of new low carbon hydrogen production plants.
- Low carbon hydrogen standard, which projects seeking support under the business model or fund will need to achieve.
- Possible legislative change required to enable the delivery of a hydrogen grid conversion trial.

For more information, see [Legal update, Government publishes UK hydrogen strategy package](#).

Noise nuisance caused by military aircraft—historic noise—declarations/damages (Jones v Ministry of Defence)

[Lexis®PSL Environment](#)

On 12 August 2021, the Queen’s Bench Division in *Jones v Ministry of Defence* [2021] EWHC 2276 (QB) rejected the Claimants’ submissions for declaratory relief and/or damages in relation to an alleged nuisance to their land situated near Mona Airfield in Anglesey. Mr and Mrs Jones (the Claimants) had sought to establish a holiday leisure park, Parc Cefni, but alleged that their business had failed as a result of their land being blighted by the Royal Air Force’s (RAF) use of an airfield which undertook circuit drills that trained fast jet pilots.

The court dismissed their claims based on the grounds that the noise from the aircrafts was pre-existent when the Claimants purchased their land and could now form part of the locality for the purposes of considering actionable nuisance.

The court adopted a ‘presumption of reality’ approach to the matter and formed a judgment as to whether the noise created by the RAF’s activities initiated a nuisance as an issue of fact and judgement, or fact and degree. The court rejected the Claimants’ submissions as it felt they were unable to complain about the noise generated by the aircraft owing to the fact that:

- The aircraft had flown over the land and in its vicinity for a significant period of time.
- The noise was, in any event, justified given the need to utilise the airfield for national security reasons.

The court further found that:

- The noise had been part of the environment for many years and that it would be artificial and unrealistic to exclude a feature of the locality that was present for generations.
- The area of Anglesey had been disrupted for many years by the sound of fast jets making circuits around, landing at, and taking off from the Mona Airfield, which has been in use since 1951.
- The RAF had taken all initiatives possible to minimise the nuisance suffered by Parc Cefni.
- The Claimants had materially changed the use of their land when introducing activities that were sensitive to the noise created by the aircraft at RAF Mona.

In relation to a separate claim under the Article 8 (in relation to right to respect for private and family life) and Article 1 of the First Protocol (in relation to every person’s entitlement to peaceful enjoyment of their

possessions) of the Human Rights Act 1998, the court dismissed the claims on the basis that there had been no unlawful act (given the nuisance claim failed) and any interference would, in any event, be justified on the basis of national security. With regard to the Article 1 of the First Protocol claim, the ‘possession’ which the Claimants purchased was purchased while it was subject to loud noise from overflying noise. Thus, the land use was always limited and so they were not deprived of anything by reason of the alleged nuisance.

For further information, see News Analysis: [Noise nuisance caused by military aircraft—historic noise—declarations/damages \(Jones v Ministry of Defence\)](#) and judgement: [\[2021\] EWHC 2276 \(QB\)](#)

Challenge to Department for Transport’s second road investment strategy on climate grounds fails (High Court)

[Practical Law Environment](#)

In *R (Transport Action Network Ltd) v Secretary of State for Transport* [2021] EWHC 2095 (Admin), the High Court dismissed the application for judicial review by NGO, Transport Action Network (TAN), of the Secretary of State for Transport’s (SST) March 2020 decision to set the second Road Investment Strategy covering 2020 to 2025 (RIS2). The court dismissed the application for judicial review as TAN was unable to demonstrate that the SST’s decision was vitiated by irrationality.

Under the Infrastructure Act 2015 (IA 2015), the SST must have regard to the effect of the RIS on the environment. The court did not accept that RIS2 was an environmental decision-making document. The focus in setting the RIS was on the objectives with which Highways England must comply and the financial resources to be provided by the SST. Environmental matters did not need to form part of those objectives.

The SST was briefed by the Department for Transport (DfT) officials that the RIS was ‘consistent with a major carbon saving required to deliver net zero’ and that this was based upon ‘a comprehensive programme of analysis’. The fact that the numerical analysis was not provided to the Minister did not open the decision on setting RIS2 to legal challenge. The conclusion in the DfT’s briefing note could rationally be drawn from that material. The briefing was a legally adequate precis of the analysis for the purpose of deciding to set RIS2, in the context of the statutory scheme and the policy material of which the SST was already aware.

It was implicit in the Supreme Court’s reasoning in *R (Friends of the Earth Ltd and others) v Heathrow Airport*

Ltd [2020] UKSC 52, that the objective in Article 4.1 of the Paris Agreement (the urgency objective) was not to be treated as an obviously material consideration for the SST. There was no reason for reaching any different conclusion in the context of the IA 2015.

For more information, see [Legal update, Challenge to Department for Transport's second road investment strategy on climate grounds fails \(High Court\)](#).

Defra to consult on banning various polluting plastics by autumn 2021

[Lexis®PSL Environment](#)

On 28 August 2021, the Department for Environment, Food & Rural Affairs (Defra) announced that it will consult on banning a number of polluting plastics in autumn 2021 in an effort to tackle plastic waste in England. Single-use plastic plates, cutlery and polystyrene cups are among the list of items that may face prohibition.

The plans will build on the success of previous measures, including banning microbeads in rinse-off personal care products, dramatically reducing the number of plastic bags being used and restricting the supply of single-use plastic straws, stirrers and cotton buds, and will form part of the government's commitment to prevent all avoidable plastic waste by the end of 2042.

Defra has also announced that it will introduce a plastic packaging tax from April 2022, set at £200 per tonne, on plastic packaging that does not meet a minimum threshold of at least 30% recycled content. The tax is set to launch alongside the April 2022 Budget.

For further information, see: [Defra to consult on banning various polluting plastics by autumn 2021, LNB News 31/08/2021 24](#).

Voluntary Carbon Markets Integrity Initiative (VCMI) launched to prevent greenwashing

[Practical Law Environment](#)

On 29 July 2021, the Voluntary Carbon Markets Integrity Initiative (VCMI) was launched, which will develop guidance on using carbon credits and making credible net zero greenhouse gas (GHG) claims. It will also work with governments and the United Nations Development Programme to establish strategies for countries to access finance from the voluntary carbon market (VCM).

As part of the launch, VCMI published a consultation on how carbon credits can be used by businesses as part of credible net zero strategies. The consultation outlined ten principles for voluntary corporate climate action, which recognise the need to address the biodiversity crisis as well as the climate crisis. The consultation closed on 15 September 2021.

VCMI is also working with other complementary initiatives, such as the Taskforce on Scaling Voluntary Carbon Markets (TSVCM). Earlier on in July 2021, the TSVCM published its final report for the development and implementation phase in scaling up the voluntary market for carbon offsets. The report focuses on governance and sets out the next steps (see [Legal update, Taskforce on Scaling Voluntary Carbon Markets publishes report on governance for scaling up voluntary carbon markets](#)).

For more information, see [Legal update, Voluntary Carbon Markets Integrity Initiative \(VCMI\) launched to prevent greenwashing](#).

Climate change, net zero and the run up to COP26

COP26 – Global climate cooperation or green-technology competition?



Maya Sainani

At a glance

- For decades, climate policy has been seen through the lens of environmental policy. However, in recent years, it has increasingly also translated into industrial and innovation policy. As a result, climate policy now also concerns global economic competition and who will play what role in the green economy of the future.
- Many countries are joining the 'green race', placing green technologies and infrastructure at the centre of economic development. In a world of clean energy, international power structures will likely change. The energy transition will not only cut emissions: it will redistribute power.
- While countries are cooperating to achieve carbon neutrality, where industrial interests are concerned, competition will prevail over cooperation.

1. COP26

In about one month, world leaders will descend onto Glasgow for the UN climate change summit – the 26th Conference of the Parties, COP26. COPs happen annually and bring together the 197 signatories of the United Nations Framework Convention on Climate Change (UNFCCC). The COP26 summit provides a unique opportunity for countries to come together and plan what action needs to be taken to turn the tide on the climate crisis while recovering from the pandemic in a sustainable way. According to the official COP26 website, the main goal of the COP26 is to accelerate action towards the goals of the Paris Agreement and the UNFCCC.¹ Almost every country has joined the Paris Agreement on climate change, which calls for keeping the global temperature to 1.5°C above pre-industrial levels. If countries continue to produce emissions that cause climate change at their current rate, then temperatures will continue to rise beyond the 1.5°C limit which threatens lives, livelihoods and biodiversity globally.

2. Shift in climate policy

A number of countries are making commitments to achieve carbon neutrality or 'net zero' emissions within

the next few decades. The European Union, Japan and the UK, along with more than 110 other countries, have pledged carbon neutrality by 2050. China says it will do so before 2060.² The planet's major advanced economies, including the EU, China, the UK and the USA are entering into a dynamic of cooperation to achieve carbon neutrality. For decades, climate policy has been seen through the lens of environmental policy. However, in recent years, it has increasingly also translated into industrial and innovation policy. In order to reach carbon neutrality, countries must develop, manufacture and export low-carbon technologies such as photovoltaics (PV), wind power and electric vehicles, among others.³ Hence, the same nations that want to achieve carbon neutrality are also looking to transform their economies in the process, creating a competition to gain 'first-mover advantage'. As a result, climate policy now concerns global economic competition and who will play what role in the green economy of the future. Many countries are joining the 'green race', placing green technologies and infrastructure at the centre of economic development (including the EU's Green Deal, South Korea's Green New Deal and the Biden administration's 10 year 2 trillion climate investment plan).⁴ Andrew Forrest, chairman of Fortescue Metals Group, explains: 'You'll see change everywhere [...] Any country which does not take green energy very seriously, but clings to polluting energy, will eventually get left behind'.⁵

3. Energy transition

In simple terms, the above-mentioned transition can be described as an energy shift, from oil and gas to electricity sourced from renewable sources. The former President of Iceland and Chair of the Global Commission on the Geopolitics of Energy Transformation, Olafur Grimsson, says that this 'energy transition' will create a new form of politics, explaining: 'As fossil fuels gradually go out of the energy system [...] the old geopolitical model of power centres that dominate relations between states also goes out the window'.⁶ In other words, in a world of clean energy, international power structures will likely change. The energy transition will not only cut emissions: it will redistribute power. Some see it as a 'clean energy space race'.⁷ Countries that export fossil fuels, such as Russia and some countries in the Middle

East, will likely see a decline in power as a result of the new system. On the other hand, countries that export green energy or import smaller amounts of fossil fuels will likely benefit from the new system. The question of which countries will end up ahead is still unclear. Nonetheless, there is a broad consensus that change is happening. Pascal Lamy (the former head of the World Trade Organisation) goes as far as comparing the shift from one energy system to another with the industrial revolution: 'If you compare the world today with the world 18 months ago, the big difference is that [...] only 25 percent of the world had a decarbonisation horizon. Today, 75 percent of the world economy has a decarbonisation horizon. This is a major shift.'⁸ We can already see this change happening: last year, new renewable power hit a record 200 gigawatts, while the rest of the energy sector shrank.⁹

The [Irena report](#) (outlining a path for the world to achieve the Paris Agreement goals) defined three ways for countries to have influence in the 'new energy system'. One is by exporting electricity and green fuels. The second way is through controlling the raw materials used in clean energy (e.g. lithium, cobalt). The last way is by gaining an edge in technology (e.g. electric vehicle batteries).¹⁰

4. Leading nations in the green race

To an increasing extent, world leaders are approaching climate change action as an economic race rather than as an environmental crisis. According to Simone Tagliapietra (a research fellow at the Brussels-based Bruegel think tank) 'Where industrial interests are concerned competition will prevail over cooperation.'¹¹ While this may not sound too positive for environmentalists, the renewable energy industry is arguably at a point where it no longer needs governments to want to 'do good'. Instead, they can do what makes sense economically, and do good anyway.

a. China

China is the world's biggest emitter of greenhouse gases and is heavily dependent on coal, which supplies 58% of all its electricity.¹² However, Chinese groups are ahead in almost every area of green technology. According to the Financial Times, China produces more than 70% of all solar photovoltaic panels, half of the world's electric vehicles and a third of the world's wind power. It is also the biggest electric battery manufacturer and controls many of the raw materials crucial for green-tech supply chains, such as cobalt, rare earth minerals and polysilicon, a key ingredient in solar panels.¹³ This means that while China is the world's biggest polluter, its companies are going to benefit greatly not only from the domestic energy transition but from growing demand for clean-tech products around the world. As other major

economies look for ways to reach their net-zero commitments, they will have to buy more solar panels, batteries and critical minerals. Currently, the main supplier for all of these is China. As Leslie Hook (the Financial Times Environment and Clean Energy Correspondent) puts it: 'making an electric vehicle without involving China is almost impossible.'¹⁴ This is worrying for those such as the EU and the USA, who will make a costly transition in order to reach their net zero commitments, while the economic benefit of that is reaped disproportionately by China.

b. European Union

Germany's Green political movement was the first to gain widespread international credibility when it ran for its first election in 1980.¹⁵ As such, environmental considerations have been an important political topic in Germany (and indeed throughout Europe) for many years. When it comes to green innovation, the EU is arguably ahead in the global race. The same is true when it comes to innovation that is both green and digital (despite the US leadership in most digital domains). For example, according to the European Investment Bank, the EU registered 50% more patents in green technologies than the USA, with China even further behind.¹⁶ Moreover, the EU registered 76% more patents that combined both green and digital technologies than the USA, and four times more than China.¹⁷

While the EU is in a good position right now to be a leading force on the 'new energy market', it needs to innovate its approach continuously and rapidly because it is in a race with other big economies around the world. The EU now has the opportunity to build on its leadership in green technologies to recover from the pandemic, reach its climate commitments and maintain its ability to compete in the global technology race. Europe's response to Covid-19 (the block centred its €750bn fiscal European Recovery Fund on promoting a Green recovery) suggests that it is committed to staying ahead when it comes to the green competition.¹⁸

It is important to highlight that despite the EU's seemingly good position in the climate race, according to the European Commission, the gap between the EU's climate objectives and actual climate investment is growing. Investments in the continent's energy system would need to rise from an average of 1.3% of GDP per year over the last decade to 2.8% of GDP over the next decade if the EU is to meet its goal of cutting greenhouse gas emissions by 55% by 2030.¹⁹

c. United States

After years of environmental inaction under Donald Trump's administration, the USA has re-entered the Paris Agreement under Joe Biden. While this is good news, Europe is worried about being outcompeted

and outspent. The European Green Deal, which among other things aims to reach net zero by 2050 and make Europe the first climate neutral continent, has given the EU a policy lead.²⁰ However, Biden has promised to inject two trillion dollars into clean energy during his four-year term, almost double the size of the EU budget for 2021-2027.²¹ While the actions of the Biden administration are great news for the environment, they have also raised concerns among EU Member States, who worry that the EU's own efforts to mitigate climate change will be overshadowed. The European Commission President Ursula von der Leyen expressed that 'The US return is great news [...] It is further reason for Europe to speed up its efforts to keep moving, and to keep the first-mover advantage [...]: 'I like competition' – she added – 'it's good competition, positive competition when it comes to the green economy.'²²

In order to get ahead in the race to dominate energy transition industries, nations around the world (including the EU, the USA and China) should approach the Covid-19 recovery as an opportunity to restart their economies by investing into the new energy market and creating new jobs. All three countries mentioned above have included significant green commitments in their stimulus packages, though the USA and the EU outpace China in this regard (green stimulus is at 30% in the USA, 20% in the EU and 5% in China).²³

Conclusion

At first glance, the COP26 represents global cooperation to reverse climate change. However, when looking closer at the relationship between big global economies, it becomes clear that global climate cooperation has created a 'green race', where major economies compete to gain advantage in the new energy market. It is not yet clear who the winner (or winners) of this green race will be. This is something that only time will tell.

Maya Sainani recently graduated from the University of Sussex with a first class degree in Law and Media and is the recipient of her university's 2021 environmental law award. Maya aspires to specialize in environmental law and human rights legislation. She is currently working as a writer for the Landmark Academy (an online platform for environmental lawyers) and has previously worked as the memberships officer for Brighton Peace and Environment Centre. Maya was also involved with multiple environmental and social initiatives, including "Breathe in Brighton", "Refill" and "Enactus-Jifunza".

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Have you COPped on yet?

Jenni Ramos



At a glance:

- Net zero targets must flow through organisations and their entire value chain so that all operations are viewed through a net zero lens.
- Lawyers can lead the way in drafting the solutions that facilitate the rapid and widespread transition recommended by the Intergovernmental Panel on Climate Change (IPCC) in energy, land, infrastructural and industrial systems.
- [The Chancery Lane Project](#) (TCLP) has already published a [collection](#) of over 70 free contract clauses to help organisations align their legal agreements with their net zero targets. This article provides an overview of the key elements of net zero drafting.

‘Cop on’ is an Irish term for acquiring sense.

Limiting the effects of global warming is urgent as there is no safe level of greenhouse gas (GHG) that can continue to be emitted.¹ The [UN Climate Change Conference of the Parties](#) (COP 26) in Glasgow is soon to take place and the [Race to Zero](#) is gaining momentum. Net zero is a complex concept and the world has less than ten years to make systemic changes that will change the global economy from one where GDP is intrinsically linked to GHG emissions² to a net zero economy. The level of net zero ambition that countries but also organisations, businesses and communities adopt will determine if the world has a chance of keeping the rise in global mean temperatures to 1.5 °C above pre-industrial levels in line with the Paris Agreement goals.

Many governments, regions, businesses and communities have committed to net zero targets. However, targets are just that. To result in meaningful GHG reductions, these targets need to flow through the relevant organisation and its value chain so that all operations are viewed through a net zero lens. Lawyers have a significant role to play in this; by adding clauses to contracts that address climate risks and impacts of the relevant transaction, they translate an organisation’s net zero targets into action. Lawyers can lead the way in drafting the solutions that facilitate the rapid and widespread transition recommended by the IPCC in energy, land, infrastructural and industrial systems.³

[The Chancery Lane Project](#) (TCLP) has already published a [collection](#) of over 70 free contract clauses to help organisations align their legal agreements with their net zero targets. Aiming to cut through this complexity and to help organisations pick up the pace

of their net zero race, TCLP will be publishing its Net Zero Toolkit ahead of the COP. It will help lawyers to both understand the concept of net zero and equip them to draft, use and negotiate our climate clauses. Importantly, it will also help them to understand the shades of green and the nuances of net zero targets to ensure that their (and their client’s) net zero transition is both ambitious and efficient. Ambitious net zero drafting will:

1. Cover all scopes of emissions (1, 2 and 3), as defined by the Greenhouse Gas Protocol⁴ and all types of greenhouse gas⁵ (rather than just referring to carbon dioxide).⁶
2. Aim to reduce emissions as soon as possible, in line with a 1.5 °C future,⁷ rather than backloading decarbonising efforts until just before 2050, as the cumulative effect of GHG emissions means that this would ‘bake in’ a higher degree of warming. Specifically, ambitious climate drafting will specify a percentage year-on-year footprint reduction, which will vary according to industry sector. It has been suggested that, as a minimum, organisations should aim to halve absolute emissions every decade (a 7% year on year reduction).⁸
3. Set short- and medium-term interim targets and a realistic plan to avoid meaningless pledges. It will also provide specific timings and immediate action⁹ with reference to maintaining a state of net negative after net zero is reached.¹⁰
4. Specify how the organisation will use offsetting to reach its net zero target and set criteria to ensure the transparency and quality of such offsets. Organisations should follow the mitigation hierarchy so that reducing emissions is prioritised over offsetting and offsets are only used to compensate for unavoidable or residual emissions. Ideally drafting would specify that the organisation should move towards funding only projects that remove emissions, rather than avoid or reduce third party emissions.
5. Consider how the contract aligns with the Paris Agreement requirement for equity and differentiated responsibilities and aligns with a Just Transition. Lawyers should consider how the company’s stakeholders and supply chain partners are affected by climate change or transition implications.
6. Provide for good climate governance including formal, top-level commitment, interim targets, transparency through regular reporting and tracking, and clear plans with specific operational implications.¹¹ Lawyers should ask whether the drafting requires decisions on climate impacts,

risks and opportunities to be taken at board-level and ensure accountability, such as through the reporting and verification of climate targets. Are there any obligations regarding C-suite capability, such as requirements for persons with climate expertise? Are remuneration schemes linked to climate action targets? How is transparency and accountability ensured? What disclosure frameworks are used? How is progress measured and contractually enforced?

7. Require obligations that align a counterparty's lobbying activities, trade association memberships and public policy positions with achieving the Paris Agreement goals or, as a minimum, disclose information on how Paris-aligned these positions are.

Every lawyer needs to be a climate lawyer.

Environmental lawyers are critical to making climate conscious drafting a mainstream activity and to assisting their colleagues with the nuances and complexities described above. Please visit [TCLP's website](#), look out for the launch of our Net Zero Toolkit this autumn and come along to our workshops to see how you can be part of the change.

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Double jeopardy or win-win: tackling the biodiversity and climate crises together – Note of the Joint Climate Change & Energy and Nature Conservation Working Parties event on 13 September 2021



Becky Clissmann and Richard Barlow

At a glance

- Restoration or the creation of saltmarshes delivers huge carbon sequestration.
- Nature-based solutions are important but we would need a land mass the size of Australia to deliver the carbon benefit required so they need to be used while simultaneously reducing fossil fuel use.
- Restoration of lowland peat habitat (as at the Great Fen Project) also delivers huge carbon storage benefits.

The Climate Change & Energy and Nature Conservation Working Parties collaborated to convene the session on 13 September 2021: 'Double jeopardy or win-win: tackling the biodiversity and climate crises together'.

The speakers were Roger Proudfoot – the Environment Agency's Estuary and Coast Planning Manager, John Carstensen – Climate Change lead for Mott MacDonald in international development, and Lorna Parker and Kate Carver each of the Bedfordshire, Cambridgeshire and Northamptonshire Wildlife Trust.

1. Marine and Coastal Restoration

Roger Proudfoot explained that some of our valuable coastal habitats, which have been lost or degraded, can be practically restored. These habitats can make a substantial contribution to climate change mitigation.

The Restoring Meadow Marsh and Reef ReMeMaRe ("rememory") initiative aims to restore or enhance 15% of priority habitats along the English coast by 2043. The initiative is restoring meadows (seagrass), marsh (salt marsh) and reef (oysters). This initiative is identifying the benefits of habitat recreation and promoting these to encourage more projects.

There are three proposed mechanisms to support more restoration: establishing a Blue Recovery Fund (it

estimated that for a £25.4 million investment from the public sector an additional £30.6 million funding could be drawn from partners), enhancing the Habitat Compensation Programme for coastal defences and through the Water Environment Improvement Fund. It is hoped that future mechanisms such as the Environment Land Management Scheme or Net Gain from the Town and County Planning Act will also provide new funds for restoration.

Implementing these habitat recreation schemes presents a series of challenges, such as marine regulation and licensing costs. The Environment Agency (EA) and Marine Management Organisation (MMO) are looking to see how regulatory improvements can enable these beneficial schemes.

There are currently a number of legal issues:

- The Environment Agency has general works powers under s165 Water Resources Act 1991 as supplemented by s38 Flood & Water Management Act 2021. These form the basis for necessary flood protection works and beneficial habitat works can be included.
- The process for realigning public rights of way can be a burden.
- Judicial review challenges can arise and can deplete resources.

Roger identified the following practical challenges:

- The length of time taken to establish new habitats.
- The imperative to move quickly to implement sufficient schemes.
- Identifying space for suitable schemes.
- Resistance by landowners and local stakeholders.

However, there are also the following opportunities:

- The policy and forthcoming legal obligation for Biodiversity Net Gain (BNG) is an opportunity and will be applicable to Mean Low Water Mark. Defra is also considering policies on Net Gain in the wider seas.

- Saltmarshes have huge carbon sequestration rates, compared even to woodland.
- The beneficial use of dredged material.

In summary, Roger invited everyone to promote 'smart restoration' which will be strategically valuable in the mitigation of climate change. A series of Blue Carbon Handbooks are being published to support specific habitat type restoration, including on salt marshes, seagrass, oysters and beneficial use of dredged material.¹

2. Nature-Based Solutions

Most nature-based solutions (NBS) can have multiple environmental benefits – so long as those solutions are planned correctly. John Carstensen noted that NBS can deliver climate mitigation and adaptation benefits, can safeguard and restore ecosystems as well as delivering urban greening and air purification or food and water security.

John believes that there is a compelling need to remove CO₂ emissions from the atmosphere leading to negative emissions. However, there is a limit on what NBS can achieve in terms of carbon sequestration. The land area that would be needed for bioenergy with carbon capture and storage (BECCS) to the scale required is a land mass the size of Australia!

Compared to mitigating climate change by reducing greenhouse gases (GHG) from fossil fuel use, NBS can only be a small element. Reducing fossil fuel use is essential and should form a far greater proportion of climate mitigation measures. John considers that NBS should only be used to mitigate residual emissions (after fossil-fuel GHG emissions have been reduced).

'Insetting' is a form of offsetting that finances emissions reductions or removals within a company's own supply chain communities (including the company's own activities and its entire value chain from source to distribution), verified by a carbon offset standard. John did not think that insetting and offsetting should be seen as alternatives. Whether to offset or inset will depend on the activities of the relevant organisation. For organisations with large supply chains in areas of the world subject to deforestation, there are clear opportunities to set up insetting projects that will benefit the communities from which their supply chain is drawn.

John encouraged due diligence when using or relying on certification standards as they vary greatly across different NBS sectors (e.g. wetland, forestry and grassland restoration or creation). He further pointed to interesting research on cost-effective climate change mitigation potential.²

3. The Great Fen Project

Kate Carver and Lorna Parker, Great Fen Project Manager and Restoration Manager at the Bedfordshire, Cambridgeshire and Northamptonshire Wildlife Trust respectively, explained the lofty ambitions of the Great Fen project to recreate a huge swathe of lowland peat habitat. Nearly 99% of the Great Fen habitat has been lost due to drainage and agricultural land use. It is a long-term project with plans out to 2100. It will join up two remaining Site of Special Scientific Interest and Ramsar sites (one of which is a very rare collapsed bog) by acquiring 3,700 hectares to be rewetted.

The team has raised about £19 million to realise the project. The project now owns 55% of the land targeted for purchase.

Some key facts of this inspirational project are:

- 159 bird species have been recorded over the land.
- 22,000 school children have connected with nature through activities with the Great Fen team.
- Over 80 volunteers are involved.
- The Project excavated a WWII Spitfire from a field before it was rewetted.

The project supports the local economy as it is becoming an eco-tourism destination and there are advanced plans for a visitor centre.

The land controlled by the project is being transformed into wet grassland to create the original lowland peatland habitat over five years. The project is also looking at ways in which compatible land-use can be encouraged on neighbouring land. The project is showcasing a new form of farming for the fens – 'Water Works'. Known as Paludiculture (swamp agriculture), this form of farming harvests crops that tolerate growing in a high water table, thereby locking in carbon and preventing carbon loss from agricultural activity.

Examples of suitable crops are:

- Sweet Manna grass – wild rice.
- Water cress.
- Wild celery.
- Bilberry.
- Bog myrtle, which is a beer ingredient and also has insect repellent properties.
- Sphagnum moss, which has multiple applications including as an alternative growing medium for salad crops. It could be grown by farmers and then used to plant crops in, thereby avoiding all the CO₂ emissions involved in peat harvesting (including during extraction of the peat and transport to the relevant farms).

This part of the country has low rainfall in the summer – but significant rain during the winter – so the challenge is to store the water so that it can be used during the drier months.

The project is also investigating how to monetise the 6 million tonnes of CO₂ that will be saved by rewetting the Fen. The key challenge is additionality of the carbon storage for lowland peat because the Great Fen is a continuum that evolves over time rather than a finished habitat, so it does not fit into biodiversity offsets standards. A further issue is the ongoing cost of managing peatland into perpetuity to ensure long-term CO₂ storage, biodiversity benefits and the protection of the restored habitat.

The project is also investigating if carbon credits and BNG credits are stackable – that is, whether they can be claimed for the same project activities.

For all those present, hearing about this long-term inspirational project was a very positive experience. Whilst we are always improving our ability to maximise the climate change and ecological benefits from physical projects, it was affirming to hear that they are being undertaken today to such great success. We just need many more of them!

Becky Clissmann and Richard Barlow

Becky is a joint convenor of the Climate Change and Energy Working Party. She is a Senior Editor in the Environment Team at Practical Law. Prior to that she was a solicitor in Eversheds' Climate Change and Carbon Finance team in London. She specialised in all aspects of environmental law including contaminated land, waste and environmental permitting with a particular focus on climate change and clean energy.

Richard is chair of the Nature Conservation Working Party. He became (and continues to be) a partner at Browne Jacobson in 1999. With a broad environmental practice, Richard personally specialises in ecology law, judicial review and public body governance.

Endnotes

- 1 See e.g. <https://www.decadeonrestoration.org/publications/european-native-oyster-habitat-restoration-handbook-uk-and-ireland>. The other handbooks will be published in early November 2021.
- 2 He noted e.g. Bronson W Griscom et al, 'Natural Climate Solutions', PNAS October 2017.

Adverts, jobs and tender opportunities

Researcher for UKELA's Law and Your Environment Website

UKELA has a public information website called Law and Your Environment. It offers a plain guide to environmental law. It was established in 2008 and has been maintained and updated thanks to an endowment fund set up for the purpose. A review was undertaken recently which identified the need to bring the website up to date and make it fit for purpose and future proofed in today's world. We are looking for a researcher to help with this key task.

Principal Duties and Responsibilities

The purpose of the role is to review, streamline and update the content on Law and Your Environment during a fixed term contract. This will include:

- 1 Undertaking a thorough review of the current content, identifying where and how changes should be made.
- 2 Preparing a gap analysis to identify those areas of environmental law across the UK not currently or adequately covered.
- 3 Rewriting/updating content in a format suitable for the current market, in particular to ensure that the website sits alongside other sources of public information and is consistent with the needs and aspirations of members of the public who seek information and sources of advice on their environmental rights and responsibilities.
- 4 Assisting in the transfer of the updated content to UKELA's current website host, working alongside the rest of the staff team.
- 5 Other duties relevant to the post as may be assigned from time to time.

All duties will be appropriately and reasonably balanced for a role of one day per week.

The closing date is midday 20 October 2021. Further detail and how to apply may be downloaded from our [website](#).

Legal Researcher for UKELA's Governance and Devolution Group (GDG)

UKELA's Governance and Devolution Group (GDG), comprised of leading environmental lawyers from academia, private practice, environmental consultancies and the Bar, was established in February 2020. Its predecessor, the Brexit Task Force (BTF) was set up in 2016 to ensure that UKELA engaged effectively in the Brexit process.

The GDG's role is to co-ordinate and lead UKELA's work on environmental governance and devolution issues within a new, post-EU, environmental law and policy framework. Its Co-Chairs are Professor Colin Reid and Professor Eloise Scotford. The GDG reports directly to UKELA's Executive Committee and Council of Trustees.

Principal Duties and Responsibilities

The role involves supporting UKELA and the GDG by undertaking and contributing to research activity in relation to the ongoing changes in the legal framework for environmental law arising as a result of the UK's departure from the European Union, including the following:

- 1 To undertake legal research as directed and assisted by the Law and Policy advisor to the GDG.
- 2 To conduct individual or collaborative research projects, including with UKELA's Working Parties.
- 3 To prepare, from time to time, reports and information to the GDG, including progress reports.
- 4 To work alongside the GDG (who will lead on submission) in the preparation of reports and submissions to external bodies, such as parliamentary committees and government departments, as appropriate.
- 5 Any other duties as may be assigned from time to time commensurate with the position.

All duties will be appropriately and reasonably balanced for a role of one day per week.

The closing date is midday 20 October 2021. Further detail and how to apply may be downloaded from our [website](#).

ERCS Rights Officer vacancy

The Environmental Rights Centre for Scotland (ERCS) is advertising for a Rights Officer; this is a fixed term contract with an immediate start. The closing date is midday Monday 18 October; to find out more information and apply please visit their [website](#).

Book reviews

The e-law editors are regularly sent book lists by various publishing houses which may appeal to UKELA members keen to write a review. If you are interested in contributing a book review to a future edition of e-law, but would first like some guidance or suggestions, please drop [us](#) a line.

UK Environmental Law Association

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The editorial team is looking for quality articles, news and views for the next edition due out in December 2021. If you would like to make a contribution, please email elaw@ukela.org by 17 November 2021.

Letters to the editor will be published, space permitting.

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