

## Index

<b>UKELA Council Elections 2004-2005</b>	<b>2</b>
<b>Environmental Protection through the public procurement regime in the European Union and the UK</b>	<b>2</b>
<b>Garner Lecture</b>	<b>7</b>
<b>Mooting and essay competitions</b>	<b>8</b>
<b>Marine law planned to save oceans</b>	<b>9</b>
<b>The Environmental Audit Committee</b>	<b>11</b>
<b>DEFRA Codes of Practice Study</b>	<b>11</b>
<b>UKELA London meeting programme for 2004-2005</b>	<b>12</b>
<b>The UK Environmental Law Association (Scotland) Environmental Law Conference</b>	<b>12</b>



## UKELA COUNCIL ELECTIONS 2004-5

As we enter the period for UKELA elections to the Council of Management 2004-2005, I am taking this opportunity to draw to members' attention the procedure and the ground rules.

As in previous years, the Election Notice will arrive with the invitation to renew your annual subscription, so every member who is asked to renew their membership will also be invited to stand for election if they so wish, as before.

This year there will be 6 places available on the Council: 2 currently held by sitting Council members who must retire by rotation but are eligible for re-election; 3 held by Council members who have served 6 years – or in two cases 7, owing to co-option – and must withdraw at the next AGM, and 1 vacated by a Council Member who has withdrawn from the Council owing to work commitments.

Candidates must be subscribing, Individual Members of UKELA: in other words, a Corporate member may not propose a large number of its employees for Council membership and then, if any are elected, send along any other employee to represent it at a Council meeting. The specific, individual member holds the Council place. The candidate must be proposed by another Individual member, and is expected to attend the quarterly Council meetings, the AGM and the Annual Conference.

As before, candidates are expected to offer to undertake a role on the Council, which might be something major, such as organising an Annual Conference or something less arduous such as keeping a watching brief on a particular issue.

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## ENVIRONMENTAL PROTECTION THROUGH THE PUBLIC PROCUREMENT REGIME IN THE EUROPEAN UNION AND THE UK

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*At the end of August, The European Commission published a long-awaited handbook on "Green Public Procurement". It sets out to explain how public purchasers (schools, hospitals, local and central government generally) can take into account the environment when buying goods, services and building and construction works. The handbook reflects the EU's new Public Procurement Directives, published at the end of April 2004, which make explicitly clear for the first time that public authorities may incorporate environmental considerations into their procurement procedures.*

## **The public procurement regime**

The purchase of good or services is something which is normally left to the buyer and seller, subject to the usual contract law considerations (but governed also by competition law in the case of contracts which might distort markets, or consumer protection law where individual purchasers are involved) but things are different in the case of such purchases by the public sector.

The function of purchasing goods or services from a supplier is commonly called "procurement", with "public procurement" being the term applied to purchasing by a body in the public sector. A significant body of legislation and case law has grown up around public procurement over the past thirty years.

The introduction of public procurement legislation at the European Community level was driven by the achievement of the single market. The Commission says that, before Community legislation was enacted, only 2% of contracts awarded in the Community by the public sector were to firms from a Member State other than that in which the invitation to tender was issued. This evident lack of open and effective competition was seen as one of the most obvious and anachronistic obstacles to the completion of the single market and measures were enacted to address this.

## **The historical background**

Although there were already Treaty provisions relevant to public procurement – notably Article 30 of the EC Treaty, which prohibits restrictions on the free movement of goods<sup>1</sup> - the Community's intervention specifically to encourage competition in this area began with Directives in the 1970s and took the form of a harmonisation of the procurement procedures followed in different countries. It was anticipated that stipulating certain procedural steps to be followed in the award of contracts would allow all firms to compete for contracts on an equal footing and thus help achieve the aim of opening up the market.

EC procurement law has come a long way in the past thirty years but it still takes the form essentially of regulation of procedure, a control over the steps that public authorities ought to follow when awarding a contract.

The first two Directives were 71/305, which regulated the award of contracts for "public works" (i.e. building and civil engineering work) and 77/62 covering the award of contracts for "supplies" (goods ranging from paper clips to kitchen sinks whether bought outright or hired). These two directives were amended during the 1980s and replaced by new consolidated versions: Directive 93/37 on public works contracts and Directive 93/36 on public supply contracts. There were joined by a Directive covering contracts for services other than construction works, 92/50, and until the early part of 2004, these three – the "Works Directive", the "Supply Directive" and the "Services Directive" have formed the basis of EC regulation of procurement by public authorities.

In addition to regulating procurement by the "classic" public authorities (central and local government and other public law bodies) EC law also deals in a similar way (though with a little more flexibility) with the award of contracts by entities classed as "utilities". The reasoning behind this is partly that the functions of electricity generation and transmission, gas distribution, telecommunications services, water supply and some transport functions take place in a market which is still to some extent either influenced by Member States or involves state-owned enterprises. Procurement of works, supplies and services by utilities is covered by the Directive 93/38, the "Utilities Directive".

The key principles of this "procurement regime" are:

- the use of contract value thresholds, above which the regime bites;

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<sup>1</sup> For a description of the relevance of Treaty provisions in this area see Chapter 4 of *The Law of Public and Utilities Procurement*, Professor Sue Arrowsmith, Sweet & Maxwell 1996

- advertising of contract opportunities Community-wide, via publication of a notice in the Official Journal of the European Community (OJEC), now the Official Journal of the European Union (OJEU);
- the supply of relevant information to bidders for contracts, in the notice and other "contract documents";
- the use of objective criteria for the selection of candidates to tender;
- the use of objective criteria for the award of the contract itself, which is to be to the bidder with either the lowest tender or the tender which is the "most economically advantageous" to the authority (i.e. best value for money);
- the use of technical specifications but with a prohibition on those (e.g. unique national specifications) which could discriminate against potential foreign contractors; and
- the use of transparent tendering procedures operated in a fair, non-discriminatory with equal treatment of potential contractors.

The implementation of the Directives in the UK has been by way of Regulations<sup>2</sup> (enacted under section 2(2) of the European Communities Act 1972) covering equivalent areas.

### **Environmental issues**

Although government departments etc have for some years now been encouraged to "buy green", public procurement law has only recently adapted to take on environmental considerations and to address how environment-based specifications and environmental criteria might be used in the selection of a contractor.

There was no explicit reference to environmental protection in the first public procurement directives - not surprisingly since the original "Works" directive preceded even the 1972 Paris Declaration on EC Environment Policy - and they also remained untouched by successive Environmental Action Programmes, or the influence of EC environment-related legislation which burgeoned from the late 1970s/early 1980s onwards, until the Sixth Environmental Action Programme identified public procurement as an area with considerable potential for 'greening' the market through public purchasers using environmental performance as one of their purchase criteria.

The Commission has not, however, been silent on the issue of environmental issues in the procurement process. In its 1996 Green Paper reviewing the current state of the procurement regime<sup>3</sup> the Commission commented that public procurement rules can contribute to the achievement of environmental policy objectives and set out a number of ways in which that may be done, namely:

- 1 the Directives allowed contracting authorities to exclude from contract award procedures any supplier or contractor who had been convicted of an offence concerning professional conduct or found guilty of grave professional misconduct - this can include environmental offences.
- 2 environmental protection considerations can be incorporated into the technical requirements relating to the characteristics of the works, supplies or services covered by contracts e.g. by an EC eco-label.
- 3 the Directives allowed, under certain conditions, environmental protection objectives to be included among the criteria for selecting candidates to be invited to tender. Such criteria are set

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<sup>2</sup> The following comprise the current UK legislation: The Public Works Contracts Regulations 1991 (SI 1991/2680 as amended); The Public Supply Contracts Regulations 1995 (SI 1995/201); The Public Services Contracts Regulations 1993 (SI 1993/3228); and The Utilities Contracts Regulations 1996 (SI 1996/2911).

<sup>3</sup> Public procurement in the European Union: exploring the way forward, COM (96) 583

down in the Directives and relate to the candidates' economic, financial and technical capacity and could include environmental concerns depending on the expertise required for specific contracts.

- 4 during the contract award phase environmental factors could play a part in identifying the most economically advantageous tender, where such factors contribute an economic advantage which is specific to the works, supplies or services covered by the contract. A purchasing organisation could, for example, take account of costs of maintenance, treatment of waste or recycling.
- 5 purchasing entities can pursue environmental protection objectives through performance conditions imposed contractually on successful tenderers. In other words, a contracting entity could require the supplier whose tender has been selected to perform the contract in accordance with certain constraints aimed at protecting the environment.

The outcome of the debate initiated by the Green Paper was a Commission communication of March 1998<sup>4</sup> which emphasised that it is open to any authority, when looking to buy goods or services, to procure an "environmentally-friendly" option (so long as that did not involve any discriminatory measures). It also re-iterated the above possibilities of taking environmental protection into account in public purchasing but, on a cautionary note, the Commission emphasised that "the object of public procurement remains essentially economic and that it is of the utmost importance to determine, for each procurement, the environmental factors linked to the goods and services required, which can, in consequence, be taken into consideration in a contract award procedure." In other words, when environmental factors are taken into account into the procurement they must be relevant to the subject matter of the contract.

The Commission developed and clarified these points in a specific interpretative document issued in July 2001<sup>5</sup>.

### **Finnish Buses**

Meanwhile, the European Court of Justice (ECJ) had considered similar issues in particular in the leading case of the "Finnish buses"<sup>6</sup>. This case came out of a decision by Helsinki City Council in August 1997 to invite tenders for operating the city's entire urban bus network. The tender notice said that the contract would be awarded to the undertaking whose tender was economically most advantageous overall to the city, using three categories of criteria: the overall price, the quality of the bus fleet and the operator's quality and environment programme<sup>7</sup>.

In February 1998 the City Council chose HKL-Bussiliikenne, since it had obtained the greatest number of points overall, including points for a natural gas-powered bus fleet with nitrogen oxide emissions and noise level below certain limits. Another company, Concordia Bus Finland Oy Ab, which came second, appealed to Finland's Competition Council, arguing in particular that it was unfair and discriminatory to award these points for environmental performance of a type of bus which only HKL-Bussiliikenne was in fact able to offer.

The Competition Council said the City was entitled to specify the type of bus fleet it wanted and that the competitors too had the possibility of acquiring buses powered by natural gas. It therefore concluded that it had not been proved that that criterion discriminated against Concordia.

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<sup>4</sup> Public Procurement in the European Union, COM(1998) 143 final

<sup>5</sup> Commission interpretative communication on the Community law applicable to public procurement and the possibilities for integrating environmental considerations into public procurement (COM (2001) 274 final).

<sup>6</sup> Case C-513/99, Concordia Bus Finland Oy Ab v Helsingin kaupunki and HKL-Bussiliikenne Common Market Law Review, February 2003, vol. 40, no. 1, pp. 179-191(13).

<sup>7</sup> For an in-depth analysis and commentary on this case see "Making the Market Work for the Environment: Acceptance of (Some) 'Green' Contract Award Criteria in Public Procurement", Peter Kunzlik *Journal of Environmental Law* Vol. 15 No. 2, p175

On an appeal by Concordia to Finland's Supreme Administrative Court several questions were referred to the ECJ for a preliminary ruling. The most important of these questions was whether the Community legislation allowed an authority to include bus operators' ecological and quality management in the comparison of tenders.

On this point, the ECJ ruled that, where the contracting authority decides to award a contract to the tenderer whose tender is the most economically advantageous, it may take ecological criteria into consideration, provided that those criteria:

- are connected with the subject-matter of the contract,
- do not give the contracting authority an unrestricted freedom of choice,
- are expressly mentioned in the contract documents or the tender notice, and
- comply with all the fundamental principles of Community law, in particular the principle of non-discrimination.

The ECJ also said that the principle of equal treatment does not prevent environmental protection criteria being taken into consideration merely because the transport operator to whom the contract is awarded is one of the few undertakings able to offer a bus fleet which meets those criteria.

### **The new Directives**

For a number of reasons the Commission decided, following on from its March 1998 Communication mentioned above, to review the existing procurement Directives, not least because the regime had become rather complex and some simplification and modernisation was required. In addition changes in the utilities sector meant that telecommunications need no longer be made subject to the regime.

In May 2000 the Commission proposed two new Directives; one to combine the existing directives on works, supplies and services into a single Directive (often called the "Public Sector Directive"), and an updated "Utilities" Directive. After an extended debate, these Directives<sup>8</sup> were agreed on 3 February 2004 and came into force when they were published in the OJEU on 30th April 2004<sup>9</sup>.

The new Directives made explicitly clear that public authorities can incorporate environmental considerations into their procurement procedures. They took their lead from the law as interpreted by the ECJ in the "Finnish buses" case i.e. even though the contracting authority awards a contract to the tenderer whose tender is the most economically advantageous, it may nevertheless take environmental criteria into account when deciding which bids to take into consideration, provided that those criteria are expressly mentioned in the contract documents or the tender notice, are connected with the subject-matter of the contract, do not give the contracting authority an unrestricted freedom of choice, and comply with all the fundamental principles of Community law, in particular the principle of non-discrimination.

The Directives must now be implemented in Member States by 31 January 2006 and the UK Government's Department dealing with procurement, the Office of Government Commerce (OGC), has already conducted one round of consultation<sup>10</sup>, with draft Regulations to be circulated in 2005. However the OGC considers that the environmental aspects of the new Directive are simply clarify the law and can already be relied upon. Indeed, a few months before the texts of the Directives were agreed OGC had, jointly with the Department for the Environment, Food and Rural Affairs, published a note on the scope to

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<sup>8</sup> Directive 2004/18/EC of the European Parliament and of the Council on the coordination of procedures for the award of public works, supply and services contracts and Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors

<sup>9</sup> L 134 Volume 47, 30 April 2004

<sup>10</sup> [http://www.ogc.gov.uk/embedded\\_object.asp?docid=1001910](http://www.ogc.gov.uk/embedded_object.asp?docid=1001910) and [http://www.ogc.gov.uk/embedded\\_object.asp?docid=1001911](http://www.ogc.gov.uk/embedded_object.asp?docid=1001911)

consider environmental issues in procurement<sup>11</sup>; the substance of this note will still apply when the new Directives are implemented.

### **Practical Green Public Procurement**

The European Commission had for some time promised a Handbook on Green Public Procurement and, although it seemed to be on the back burner while the new Directives were settled, it has now been published<sup>12</sup>. It sets out to explain in clear, non-technical terms the possibilities offered by the new Directives for public purchasers to take into account the environment when buying goods, services and works, giving best-practice examples and advice through the steps of a procurement procedure. It also aims to overcome the barriers of lack of knowledge on setting the right environmental criteria in tender documents and legal uncertainty.

The following are examples of how environmental protection can be encompassed within the procurement regime:

- authorities can decide to purchase environment-friendly products or services, defined according to their environmental performance and the production process used;
- authorities may specify the raw materials and the production processes to be used in the contract;
- authorities could, for example,
  - request that energy for public buildings is supplied from a renewable source, or
  - food for a school canteen comes from organic produce.
- authorities can define technical specifications related to environmental performance of a product in line with "Eco-label" criteria;
- authorities can use the selection criteria to exclude a contractor convicted of a relevant environmental offence;
- in some circumstances authorities can use registration of an environmental management scheme to demonstrate aspects of contractors' technical capacity;
- authorities can score more highly on green production processes or for re-useable products;
- authorities can invite "green variants"; ask bidders to make an offer for both regular and green product/service. This can be useful if the authority doesn't know whether green alternatives exist or what their price might be. The green offer will be chosen if it is the best value for money considering all award criteria (including environmental criteria).

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## **GARNER LECTURE**

### **"THE CHALLENGE OF THE IMPLEMENTATION OF THE ENVIRONMENTAL ACQUIS COMMUNAUTAIRE IN THE NEW MEMBER STATES"**

There are still places left for UKELA's annual Garner Lecture on October 7th which is examining the challenges to the implementation of environmental law across the whole of Europe, particularly the new member states.

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<sup>11</sup> Office of Government Commerce and Department for Environment, Food & Rural Affairs Joint note on Environmental issues in Purchasing, October 2003

<sup>12</sup> The Handbook and further information can be found at: [http://europa.eu.int/comm/internal\\_market/publicprocurement/key-docs\\_en.htm](http://europa.eu.int/comm/internal_market/publicprocurement/key-docs_en.htm)

It promises to be a fascinating evening with proceedings being opened by UKELA's President, Rt Hon the Lord Slynn of Hadley, and the main lecture being given by Georges Kremlis, Head of the Legal Implementation and Enforcement Unit in the Environment Department of the European Commission. He will talk about his concerns in getting environmental law to work on a level playing field and set out the measures needed to prevent EU environmental policy being eroded or a "second class" EU membership evolving.

We offer drinks and nibbles and an opportunity to meet other UKELA members. The evening starts at 6pm at the Honourable Society of Gray's Inn, 8 South Square, London, WC1R 5EU.

UKELA thanks Freshfields Bruckhaus Deringer and Landmark for helping sponsor this event.

Please book by emailing your contact details to Daniel Lawrence ([daniel.lawrence@freshfields.com](mailto:daniel.lawrence@freshfields.com)) and sending a cheque for £30, made payable to the UK Environmental Law Association, to Daniel Lawrence at Freshfields Bruckhaus Deringer, 65 Fleet Street, London EC4Y 1HS.

If you would like to bring along a non-member they would be very welcome and their booking fee is £40. We hope to see you on October 7th.

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## **MOOTING AND ESSAY COMPETITIONS**

UKELA has launched three competitions for students, trainee solicitors and pupil barristers to encourage an interest in environmental law. All members can help promote the competitions to likely candidates to encourage an interest in environmental law and UKELA.

Andrew Wiseman, chair of UKELA, said: "as the environmental stakes get higher the demand for lawyers with expertise in environmental law is growing. It is vital that we encourage new entrants to consider it as the focus of their future career to ensure demands for specialists can be met."

UKELA is running three competitions this autumn – an essay competition in memory of environmental campaigner Andrew Lees – and two mooting competitions. There are generous prizes and all entrants will receive free membership of UKELA for one year.

The Moot: the theme is waste prosecution under section 33 of the Environmental Protection Act 1990. The event will be judged in early 2005. The winners of the Senior competition (for pupils, trainee solicitors and others on vocational courses) will receive the Lord Slynn of Hadley Mooting Trophy and cash; there are cash prizes for winners of the junior competition (for students). All finalists will receive subscriptions to the Weekly Law Reports courtesy of the Incorporated Council of Law Reporting and books from Sweet & Maxwell. The deadline for submitting skeleton arguments is 6<sup>th</sup> December 2004.

Andrew Lees Prize Essay Competition: entrants write a 7,500 word essay on "If justice is equality, what does this mean in relation to environmental law and policy, and how might equality be realised in practice?". There are cash prizes for the top three and free places at UKELA's 2005 conference. The deadline is 7<sup>th</sup> February 2005.

UKELA Council member, Martha Grekos, is overseeing both competitions and can be contacted for further information: [mq@no5.com](mailto:mq@no5.com). The full rules are on the website [www.ukela.org](http://www.ukela.org).

### **Why moot?**

“Ms Robinson, I am no longer prepared to listen to this tissue of lies and misrepresentations which you call a case. Such a miserable argument would at least be bearable if made eloquently, but I find your style pedestrian and your point obscure to say the least. If only for your client’s case, please conclude your argument with as much brevity as your natural verbosity will allow.”

“Err....I’m obliged, Your Honour”

“MS ROBINSON! Have you forgotten how to address the House of Lords? Please conceal your lack of respect until you are outside this House!”

“Right, yes, sorry...I mean My Lord”

“Sit down, Ms Robinson. You have exceeded your time limit and are thus excluded from the competition. You will of course forfeit your entrance stake....”

Talking to some people it seems that this is their impression of what mooting involves! That is untrue! Of course, I cannot speak for all moots, though the rumours of corporal punishment for losers are surely unfounded....?

The mooting handbook describes good mooting as conversational in style and “really no more stressful than a tutorial”. Well, possibly. But mooting is certainly a lot more enjoyable than a tutorial and you definitely learn a great deal more. Most importantly, the ability to stand up and argue your case in front of others is certainly a reason to become involved and gain practice...after all we are all wanting to succeed and become excellent lawyers who are able to argue their case with confidence. In addition, the ability to use your legal research skills and your drafting skills, as well as to be able to negotiate and to construct a logical argument (orally and in writing) which is then presented in clear, concise and practical terms to the judge or to your client is a vital skill to have - whether you are aiming to be a Barrister or a Solicitor.

Anyone who claims they never feel nervous is quite simply lying. Everyone does, no matter how experienced. But oddly, it is precisely because of this that mooting can be so satisfying. Bear in mind that all the Michael Mansfields of this world had to start somewhere. So, come and join in - we are looking forward to seeing you there!

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## **MARINE LAW PLANNED TO SAVE OCEANS**

**Elen R. Stokes**

**BRASS (The ESRC Centre for Business Relationships, Accountability, Sustainability & Society)**

The Government’s support of the Marine Wildlife Conservation Bill marks the beginning of a new era in the protection of the marine environment. In a speech delivered to the 10<sup>th</sup> Anniversary of HRH The Prince of Wales’ Business and the Environment Programme, the Prime Minister endorsed the reform of marine nature conservation, claiming that “there are strong arguments for a new approach to managing our seas, including a new Marine Bill.”

Following the passage of the Wildlife and Countryside Act 1981 and the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985, consecutive Government reviews have identified a need to address the shortfalls of provisions in respect of the marine environment. The Environment, Food and Rural Affairs Committee, for example, criticised the legislative and institutional framework governing the protection of the marine environment for being too 'fragmented and complex'. Furthermore, in its eighteenth report, published in July 1999, the House of Lords Committee on European Communities noted that there lacked an 'SSSI-equivalent' to offer protection below the low water mark, and that a new approach to protection of marine environment was essential. The report concluded that:-

"Better legislation to provide workable and effective protection for important areas of nature conservation interest in the marine environment is needed as a matter of urgency."

### **A brief history**

The Marine Bill derives from a private member's Bill proposed on 26 October 2001 by Conservative MP, John Randall, who recognised that protection for the marine environment was disproportionately weak compared with that on land. This imbalance between land-based and marine wildlife was accentuated with the passage of the Countryside and Rights of Way Act 2000. In an attempt to overcome the gap in marine nature conservation, the Bill proposed a new legislative basis for designating a network of nationally important marine areas in the territorial waters of England and Wales. Although it was passed by the Commons, it was blocked in the House of Lords.

Since its demise, the 2001 Bill has been criticised for being too narrow in scope, seeking only to protect sensitive areas.

The Bill was presented again to the House of Commons by Randall on 16 June 2004. In a motion for leave to introduce the Bill, Randall stated that, "as a maritime nation, we will be guilty of a real and lasting failure if we cannot now seize the chance to protect our marine heritage for future generations."

The Bill, which has, thus far, received enthusiastic support, provides for the identification and designation of nationally important marine sites which do not qualify for designation under the EU's Habitats and Birds Directives. More specifically, the Bill stipulates that marine sites of special interests are to be designated by reason their flora, fauna, or geological or physiographic features, and that those sites are to be recorded in public register. It proposes that competent marine authorities are under a duty to exercise functions in order to achieve those conservation objectives.

Although details of the proposed measure are yet to be finalised, the 2004 Bill is likely to be broader in application, extending beyond the aims of wildlife conservation, introducing a marine spatial planning framework so as to control the development of the offshore environment. Furthermore, it is expected to overhaul antiquated legislation that regulates inshore fisheries.

It remains to be seen whether Randall's Bill will succeed this time round. However, it is clear that the land/marine protection imbalance is unwarranted, and that the time is ripe to implement measures that adequately reflect the increasingly recognised sentiment that the marine environment deserves a conservation strategy of equal impact.

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## **THE ENVIRONMENTAL AUDIT COMMITTEE**

**The Environmental Audit Committee** (EAC) is about to publish a report on Wildlife Crime, which may be of interest to UKELA members. Environmental Crime: Wildlife Crime will be published as the Committee's Twelfth Report, HC 605, at 11am on Thursday 7 October 2004.

Copies of the Reports will be sent to all those who gave written or oral evidence to the Committee's inquiry. It will also be available on the EAC website: [http://www.parliament.uk/parliamentary\\_committees/environmental\\_audit\\_committee.cfm](http://www.parliament.uk/parliamentary_committees/environmental_audit_committee.cfm).

The EAC is also hearing evidence at its sub-committee on Corporate Environmental Crime on October 14<sup>th</sup>. The Environment Agency will be giving evidence. This session will be open to the public on a first come, first served basis. Please call the Committee Information Line on 020 7219 2033 for confirmation of the room nearer the time.

On October 20<sup>th</sup> the EAC will be taking evidence from DEFRA Minister Elliot Morley MP on hazardous waste and waste policy. This one-off session is intended to review the Government's progress in waste matters since last year's evidence session with the Rt Hon Margaret Beckett MP, the Secretary of State for DEFRA. As well as covering Government policy on general waste issues, the session will focus on hazardous waste in the aftermath of the ending of co-disposal in July of this year and with the new hazardous waste regulations expected next year.

The Committee is happy to receive memoranda before the session from individuals, companies or other bodies which raise points of relevance to the Government's waste and hazardous waste policies.

This session is open on the same basis as above with the same number to call for room confirmation.

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## **DEFRA CODES OF PRACTICE STUDY**

The Department for Environment, Food, and Rural Affairs (Defra) has commissioned Rupert Taylor's acoustics consultancy to carry out a review of three Codes of Practice adopted in 1982 under the Control of Pollution Act 1974. The three codes are:

- Code of Practice on the control of noise from ice cream van chimes
- Code of Practice on the control of noise from model aircraft
- Code of Practice on the control of noise from audible intruder alarms
- 

The principal objectives of the review are to assess the usage and effectiveness of the codes in their current form. A further aspect of the study is to investigate whether their 'adopted' status has any bearing on their usefulness. At the end of the project, Rupert Taylor will make recommendations to the Department as to what changes, if any, should be considered for each code.

Currently we are contacting Local Authority officers to invite them to contribute to this study by way of a one-to-one telephone discussion. We aim to canvas views over the next week or so, as to whether the codes are beneficial and whether any improvements could be made. After these telephone interviews, we propose to provide a web-based questionnaire next month to enable more officers to contribute.

We are also contacting other bodies who might wish to contribute to the review of specific codes, eg British Model Flying Association, Ice Cream Alliance.

It occurred to me that UKELA Members might have enough collective experience for some of them to have taken cases involving these codes, and/or have a view on the question of 'adopted' status.

We would, ideally, like to receive any comments by the middle of October.

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**UKELA LONDON MEETING PROGRAMME FOR 2004/2005**

Date	Talk Subject	Speakers	Venue	Time
14 October 2004	International Developments	Maria Cull – Herbert Smith Richard Clayton QC – 39 Essex Street (tbc)	Herbert Smith	6 pm
29 November 2004	THE CHANGING FACE OF ENVIRONMENTAL DUE DILIGENCE	Dr Phil Tyson – URS Sally Vivian – URS Daniel Lawrence – Freshfields	Herbert Smith	6 pm
27 January 2005	Asbestos	Anger Evers – Norton Rose Mike Williams – HSE Bill Sanderson – Casella Hazmat	Norton Rose	6 pm
3 March 2005	Land Remediation in Practice	Mark Southwood – Temple Environmental Stephen Tromans – 39 Essex Street Rob Williams – LB Barking and Dagenham Darren Henaghan – LB Barking and Dagenham	Herbert Smith	6 pm
18 April 2005	Opportunities for Mediation in the Environmental Arena: A Route to Better Solutions for the Environment?	Christopher Napier – Clifford Chance Elizabeth Rivers – Mediator	Herbert Smith	6 pm
21 July 2005	Environmental Impact Assessment / Strategic Environmental Assessment	Paul Winter – Eversheds Denise Hill – University of Brighton	Eversheds	6 pm

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**THE UNITED KINGDOM ENVIRONMENTAL LAW ASSOCIATION (SCOTLAND) ENVIRONMENTAL LAW CONFERENCE IN ASSOCIATION WITH ANDERSON STRATHERN.**

**Thursday 28<sup>th</sup> October 2004, George Hotel, Edinburgh**

**ONLY £75 UKELA MEMBERS (£95 NON-MEMBERS)**

The United Kingdom Environmental Law Association are holding a day conference in Edinburgh on the 28<sup>th</sup> of October 2004 which is open to both members and non-members of UKELA.

The topics to be presented include:

- Effects on industry of the definition of “waste”
- Environmental litigation in the ECJ & EctHR
- Nature Conservation Act: an NGO perspective
- Renewable energy
- Environmental & human rights
- Emissions trading
- Agricultural land & waste disposal

Attendance at the conference in Edinburgh on the 28<sup>th</sup> of October 2004 is open to non-UKELA members and offers delegates an opportunity to gain insight into some of the most important issues in environmental law as well as a valuable networking opportunity.

Speakers for the conference come from a diverse range of environmental law and are considered respected authorities on current issues. The speakers include:

**Dr M Sales & N Amner**  
Biggart Baillie WS

**Richard Buxton**  
Environmental Solicitor

**Lloyd Austin**  
RSPB Scotland

**Sir Crispin Agnew QC**

**Rob Forrest**  
Green Power International Ltd

**James Drysdale**  
Anderson Strathern

**Stephen Boyle**  
SEPA

The conference will be chaired by Kenneth Ross, Chairman of UKELA (Scotland).

Further information is provided overleaf with speaker topics and biographies.

To book a place on the conference please contact Peter Hill on **0131 625 7260** or Email [peter.hill@andersonstrathern.co.uk](mailto:peter.hill@andersonstrathern.co.uk) before the 14th of October 2004.

You will also have time to ask the speakers questions relevant to you. To get the most out of your day, email your questions to [peter.hill@andersonstrathern.co.uk](mailto:peter.hill@andersonstrathern.co.uk) in advance so that we can put them to the speakers and allow them to prepare full answers.

*This invitation is also open to others within your organisation who you feel may take an interest in environmental law.*

For more information visit [www.ukela.org](http://www.ukela.org) or click the events page on [www.andersonstrathern.co.uk](http://www.andersonstrathern.co.uk).

## Programme

**09:30 – 10:00** *Registration & Coffee*

**10.00 – 10.15** **Introduction by Kenneth Ross, Chairman of UKELA (Scotland).**

**10.15 – 11.00** **Practical effects on industry of the definition of “waste”.**

Dr M Sales & N Amner, Biggart Baillie

Will attempt to provide a guide through the maze of case law and legislation to reach a useful, working definition of waste. In particular they will look at:

- European Law on Waste,
- the ‘intention to discard’ definition,
- UK Legislation and Case Law on Waste,
- the significance of disposal and recovery operations,
- when does waste cease to be waste.

**11.00-11.15** *Morning Coffee*

**11.15 – 12.00** **Environmental Litigation in the ECJ and EctHR**

Richard Buxton, Environmental Solicitor

Topics to be covered include:

- Nature conservation including Lappel Bank in ECJ, the recent stone curlew (Fisher) litigation, and deep-sea fisheries in the European Court of First Instance,
- EIA including Barker and Wells in the ECJ, and several other cases needing decisions from the Court of Appeal or House of Lords,
- aircraft noise cases including Hatton in ECHR, and how this may affect judicial review in the future.

**12.00 – 12.45** **Nature Conservation (Sc) Act – An NGO Perspective**

Lloyd Austin, RSPB Scotland

Topics to be covered include:

- previous legislation, need for update/reform,
- Scottish Office/Executive proposals and Parliamentary consideration,
- key points of final act: (a) Biodiversity; (b) SSSIs; and (c) Wildlife Crime,
- key implementation issues,
- links to other environmental policy/legislation (e.g. WEWS Act 2003, Birds and Habitats,
- where next?

**12.45 – 2.00** *Lunch*

**2.00 – 2.45** **Renewable Energy (Windfarms, tidal, compositing)**

Rob Forrest, Green Power International

Topics to be covered include:

- review of the opportunities for renewable energy,
- strategic planning and environmental issues arising out of renewable energy.

**2.45 – 3.15** **Environmental & Human Rights (Aarhus Convention; EIAs; Human Rights)**

Sir Crispin Agnew QC

The talk aims to consider the rights which citizens are given in environmental matters either by specific environmental legislation or arising from the ECHR. It considers proposals for access to environmental justice, including:

- Direct enforceability of some EU environmental directives; C-201/02 Wells v S of S for Transport (2004) ECJ; C-131/88 Commission v Germany (1991) ECR 1-825,
- the right to environmental information; EIA (Scotland) Regs 1999; Environmental Information Regs 1992; Freedom of Information (Scotland) Act 2002,
- the right to be consulted on projects; EIA (Scotland) Regs 1999; Art 6.3 of Habitat's Directive;
- Environmental rights under Article 8 and Article 1 of 1<sup>st</sup> Protocol of ECHR; Hatton v UK (2003) 37 EHRR 28; Dennis v MOD (2003) Env LR 34; Marcic v Thames Water Utilities Ltd (2003) 3 WLR 1603,
- Access to environmental justice; Proposal for Directive on access to justice in environmental matters (2003/0246 (COD)); Aarhus Convention.

### **3.15 – 3.30 Afternoon Tea**

#### **3.30 – 4.00 Emissions Trading**

Stephen Boyle, SEPA

- Climate Change,
- Kyoto Protocol,
- Outline of the Directive and regulation,
- implementation timeline past and future,
- the NAP and NAP allocations,
- new entrant's rules and variations etc,
- charges,
- phase two and the future.

#### **4.00 – 4.30 Agricultural Land & Waste disposal (Slurry, Abattoir & sewage waste)**

James Drysdale, Anderson Strathern

Topics covered include the exploration of the regime that allows surprising amounts of waste to be spread on agricultural land.

### **4.30 – 4.45 Chairman's closing remarks**

If you wish to attend please contact [peter.hill@andersonstrathern.co.uk](mailto:peter.hill@andersonstrathern.co.uk) or call 0131 625 7260 to reserve a place.

**UK ENVIRONMENTAL LAW ASSOCIATION**

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