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EDINBURGH CONFERENCE REPORT

EFFECTIVE REGULATION NEEDED TO FACE ENVIRONMENTAL CHALLENGES

A safe, clean and protected environment is the goal for all those working in environmental law – no matter whose interests they represent. This was the message coming from the UKELA Conference in Edinburgh.

Andrew Wiseman, Chairman of UKELA, said: "Making the law work for a better environment means securing the right laws which are clear and transparent, with ready access to redress if needed. This has to be the goal of environmental law professionals, no matter from which direction you attack the issue.

The Conference attracted a high calibre of speakers and delegates alike.

Robin Harper MSP, Green Party, spoke on how the UK's presidency of the EU will influence environmental policy in Scotland, the UK and beyond.

Sir Ken Collins, Chairman of the Scottish Environment Protection Agency (SEPA) and formerly Chairman of the European Parliament Environment Committee, spoke about the developing close relationship between SEPA as a regulator and the Crown Office and Procurator Fiscal service in Scotland. He also spoke about the lobbying business in Scotland and in Brussels.

Ross Finnie, Minister for Environment and Rural Development welcomed UKELA's decision to hold its conference in Scotland. He said:

"In Scotland we are working closely with colleagues in Governments across the UK to strengthen our environmental performance. At the same time the Scottish Executive is also developing solutions which reflect our own special needs and ambitions.

"When it becomes law next year our Environmental Assessment (Scotland) Bill will mean that the environmental effects of all public sector strategies, plans and programmes will be assessed and subject to public scrutiny. We shall also be launching our own Scottish Sustainable Development Strategy later this year.

"Progress on our range of commitments on environmental crime is proceeding and we have already made changes to Scots Law and spread best practice to ensure that our systems are responding well to new challenges.

Other topics tackled at the Conference include: access to justice - how ordinary people facing environmental problems can take action, what barriers exist and what could be done to overcome them; the challenges to the protection of beautiful landscapes like National Parks; and the need for all the UK to be protected by good quality laws and regulation, of particular concern in Northern Ireland where the need for an independent environment agency is pressing.

REFORMS TO THE JUSTICE SYSTEM

A Bill for reforms to the justice system is urgently needed to provide better protection for the environment, leading academics and lawyers pressed at the UK Environmental Law Association's weekend conference in Edinburgh.

Richard Macrory, a barrister and professor of law at University College London, set out five key points that should be included in an Environmental Justice Bill. "This package would improve consistency and confidence in the application of environmental law", he told delegates. Before the general election the Government had indicated it would consider such a Bill.

Sir Crispin Agnew of Lochnaw QC, a leading Scottish advocate, said the current system led to "a whole host of problems for challenging environmental problems for the public and for businesses".

And Ruth Chambers, of the watchdog, the Council for National Parks, told the conference that a judicial review it had brought against a major development in the Pembrokeshire Coast National Park, threatened the organisation with crippling costs because of the current rules.

Professor Macrory's five points were, he said, an interlocking package "not for negotiation". What was needed were:

Civil penalties to deal with environmental offences which weren't intentional or reckless

A due diligence defence for criminal environmental offences

Wider sentencing possibilities for magistrates and greater use of District Judges

Reform of the costs rule in judicial review so that each party would bear their own costs in cases of public importance (whereas now the loser may be liable for all the costs)

Local environmental tribunals to hear appeals (eg on contaminated land, licences and permits, appeals against civil penalties, and appeals of third parties). The tribunals would not replace the existing roles of criminal and ordinary civil courts in environmental law but perform a distinctive function within the system.

"The significance of getting this debate right is essential if we are to restore public confidence in the application and enforcement of environmental law", said Professor Macrory

Vicki Elcoate

CANCELLATION OF EIA MEETING

The London meeting on Environmental Impact Assessment which was due to be held on July 21st had to be postponed because of the second London bombings. 65 people were booked to attend and nearly everyone was notified in time. This popular topic will be rescheduled for October, date to be confirmed shortly. A separate notice will be sent round about this.

REPORT ON WORKING PARTIES

WORKING PARTY ACTIVITY

1. **Biotechnology Working Party – Convenor, Daniel Lawrence**
daniel.lawrence@freshfields.com

Dr Renate Gertz of the AHRB Centre in Edinburgh University's School of Law was to speak on Animal Cloning Issues at the UKELA Conference 2005. Unfortunately, due to illness Dr Gertz was unable to attend.

2. **Contaminated Land Working Party – Convenor, Matthew Townsend – Matthew.Townsend@allenovery.com**

A meeting is scheduled to take place on 30 June 2005.

3. **Climate Change (Emissions Trading & Flexible Mechanisms) Working Party - Convenor, Helen Loose – helen.loose@ashursts.com Secretary, Anthony Hopley - arh@cmck.com**

A meeting was held on 6 June 2005. The Renewables Obligation Order 2005 was discussed and a letter to the DTI was drafted and sent. This letter formed UKELA's response to DTI's invitation to comment on the structure of the Order.

4. **Environmental Litigation Working Party – Joint Convenors, James Kennedy – james.kennedy@freshfields.com; Justine Thornton – Justine.Thornton@AllenOvery.com**

Environmental Court/ Tribunal Issue

A paper has been produced on this issue. In view of the differing views of the common alliances, it has been decided to hold a Q&A session to gather evidence on the issue and to identify the differences and common ground between the parties.

Civil Penalties

Michael Woods produced a paper on this issue including an analysis of what DEFRA was proposing at its November conference. Following discussion, agreement was reached on the 6 key points.

Michael Woods also spoke at the UKELA Conference 2005 on this issue. There was lively debate following the Working Party Session and the party is now consulting with all who came to research what other views there are.

Following this research, Michael Woods will produce a final position paper on behalf of UKELA.

Cornerhouse

Phil Michaels is producing a paper on the DCA review of the rules which hopefully will become the UKELA position paper.

Liberty are also holding an inquiry.

Sentencing Advisory Council

This is a review of sentences including environmental ones. Richard Kimblin is overseeing this on behalf of the group.

Peter Johnson from DEFRA has offered to talk to the group on Environmental Justice and there is also a session to be held on courts.

5. **Insurance and Liability Working Party – Convenor, Valerie Fogleman – vfogleman@blq.co.uk**

A meeting is due to be set following the UKELA Conference 2005. A Q&A session was held at the Conference to provide an update on the current market for Environmental Insurance Products by Environmental Insurers and Brokers. A panel of specialists were involved to answer any questions.

6. **IPPC Working Party – Convenor, Elisa de Wit - elisa.de.wit@ngj.co.uk**

No meetings have taken place recently.

7. **Nature Conservation Working Party – Convenor, Andrew Baker - andrew_baker@dial.pipex.com**

Tom Huggon of Browne Jacobson spoke on the Natural Environment and Rural Communities Bill at the UKELA Conference 2005.

8. **Planning Law and Sustainable Development Working Party – Convenor, Anne Harrison – aharrison@clarkslegal.com - Deputy Convenor – William Upton – wupton@compuserve.com**

Anne Harrison and Will Upton spoke at the UKELA Conference 2005 on Planning for Sustainable Development – is it a Sound System?

9. **Scottish Law Working Party – Convenor, Gordon McCreath – Gordon.McCreath@dundas-wilson.com**

No meetings have taken place recently.

10. **Waste Working Party – Convenor, Andrew Bryce – bryce@ehslaw.co.uk Secretary, Anju Sanehi - asanehi@aep.com**

Andrew Bryce gave an update on Hazardous Waste Regulations at the UKELA Conference 2005 Working Party Session. Phil Cumming of Parsons Brinckerhoff also spoke on Waste Acceptance Criteria and Hazardous Waste Classification.

11. **Water Working Party – Convenor: Claire Smith Claire.Smith@AllenOvery.com**

A new Convenor is sought for this party due to Claire Smith's departure overseas. Gordon Nardell will be co-ordinating the Group's consultation responses until a new Convenor is appointed.

MARK BRUMWELL

Dundas & Wilson LLP

Working Party Co-ordinator

4 July 2005

Mark.Brumwell@dundas-wilson.com

PRO BONO PLACEMENT AT THE ANGLERS' CONSERVATION ASSOCIATION

Following Stephen Tromans QC's call at the recent UKELA Conference in Edinburgh for firms to consider placements and secondments for their assistants to allow them to conduct pro bono environmental work, the Anglers' Conservation Association would be very pleased to hear from any firm willing to consider such a placement for suitably trained or enthusiastic staff.

Based in Leominster, Herefordshire, the ACA acts on behalf of the majority of angling clubs in England and Wales, bringing common law claims against polluters and others who damage fisheries and giving advice across the range of angling and related law. Please see the ACA's website on www.a-c-a.org for more details.

In the first instance, please contact Guy Linley-Adams on guy@a-c-a.org.

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PRO BONO WITH ELF

Sophie Fairbairn, Advice & Referral Co-ordinator, Environmental Law Foundation

The public perception of lawyers and the fees they charge is less than rosy. This at least is the story told and retold by the press: recently, the *Evening Standard* ran a piece on cuts to the criminal legal aid budget headed, rather predictably, '*Fat cat*' lawyers to have aid fees cut. Yet fat cats or not, our experience at ELF is that the *pro bono* spirit is flourishing and that, astonishingly, a large number of lawyers appear to welcome the opportunity to take on *pro bono* cases.

The Environmental Law Foundation (ELF) is the leading national charity, founded in 1992, providing legal advice for all individuals and communities facing a threat to their environment. Through its nationwide network of specialist lawyers and consultants, it provides *pro bono* guidance and continuing support for those in such need. This assistance is provided through ELF's Advice & Referral (A&R) Service, managed by ELF's A&R Co-ordinator and supported by a team of enthusiastic volunteer caseworkers.

Members of the public can contact ELF for advice and assistance with their environmental problems. ELF will seek to refer their case to a solicitor, barrister or technical consultant - a referral member - from the ELF network. When a referral member chooses to accept a case, they are committed to provide free initial advice to the client either at a meeting, by correspondence or over the telephone. Thereafter, ELF members may choose to carry out further work at reduced rates or, where possible, for free.

Last year ELF received over 1,000 initial enquiries from concerned members of the public and made over 250 referrals to its referral members for formal legal advice and assistance. It is estimated that for each environmental concern that an ELF referral member handles, on average 1,000 people within the local community are affected. Last year over 250,000 people benefited from pro bono legal or technical advice, to an aggregate fee value in excess of £80,000, which ELF's referral members provided.

These are just a few of the many cases handled by ELF's A&R Service this year:

- *Threat to woodland*
A client in High Wycombe contacted ELF about a planning application for a housing development on a site abutting a nature reserve. The client was concerned at the impact on local woodland, which had numerous footpaths and acted as a buffer for motorway noise. The client sought the advice of a solicitor as to whether he had grounds for judicial review. He was referred by ELF to **Michael Jones** of **Able Bishop & Company**, who provided initial advice free of charge and will be able to advise further following the council's final decision.
- *Housing proposals in Essex*
A local residents' group in Essex contacted ELF about problems with their local plan, in particular provisions for local housing development and access to the site. The group sought the advice of a solicitor and was referred by ELF to **David Mytton** of **Boyes Turner**, who gave initial advice free of charge. Although he advised that an appeal was unlikely to succeed, he is ready to advise further once the group hears back about their complaint to the local government ombudsman.
- *New secondary school*
A local residents' group in Hackney contacted ELF about a planning decision to build a secondary school that would be in use seven days a week, with consequent noise pollution and increased traffic. The group sought the advice of a solicitor and was referred by ELF to **Stephen Grosz** of **Bindman & Partners**, who held an initial meeting with two members of the group and wrote a letter before claim. The client was pleased to discover that the decision had not after all been formally confirmed and there was still time in hand.
- *Housing proposals in Wales*
A community group in the Vale of Glamorgan contacted ELF about problems with the region's unitary development plan, in particular proposals for housing that would result in loss of greenfield land and increased flood risk. There were further concerns about poor access to information and lack of consultation. The group was referred to **Ben Garbett** of **Burges Salmon**, who gave free initial advice and requested a referral to a barrister. ELF referred the case to **William Upton** of **Six Pump Court**, who provided a free opinion.
- *Noise from motor racing*
A parish council in Leicestershire contacted ELF about noise pollution from motor racing on a track converted from a disused RAF airfield. The conditions in the planning permission for controlling the noise were not robust enough. The parish council sought the advice of a solicitor and was referred by ELF to **Phil Shiner** of **Public Interest Lawyers**, who gave initial advice free of charge and is ready to advise further once the outcome of a new planning application for the track is known.

- *Noise from police sirens*

A client in London contacted ELF about noise pollution caused by police increasing their use of sirens to seven nights a week, inflicting sleep deprivation and stress on local residents. The client sought the advice of a solicitor and was referred by ELF to **Kathy Mylrea** of **CMS Cameron McKenna**, who gave the client a free initial consultation and advised on statutory nuisance and what his next steps should be.

As these examples show, planning and noise pollution are recurrent themes. However, the types of case are numerous: from planning and property law to noise, water and air pollution, conservation, personal injury, public law and crime. Referral members complete a questionnaire identifying their areas of expertise, and cases are offered to them on the basis of that information. Cases come in from all over the UK and ELF aims to strengthen its referral network, especially in Wales, Scotland and Northern Ireland.

The A&R Service aims to provide better access to justice in environmental matters for the most disadvantaged and the least well-off in society, to benefit those suffering more from the effects of pollution, a poor environment and neighbourhood. ELF's own studies have found that around 65% of users of the A&R Service have annual incomes of under £15,000 (45% under £10,000), far below the average national income.

We are delighted when members take cases regularly. However, we recognise the pressure on our members and are always grateful when someone accepts a case, even if they take just one or two each year. Often the member provides a service for which the client could simply not afford to pay. Following a referral, ELF clients are usually very grateful for the help they receive. Even if the lawyer concludes that the case is unlikely to succeed, this advice is itself of value to the client. And if they end up taking an environmental test case to the High Court, so much the better.

If you are interested in environmental pro bono work with ELF, please contact ELF to discuss membership on 020 7404 1030 or by email at info@elflaw.org.

CONFERENCE PAPERS

The conference papers for 2003 (Plymouth) and 2004 (Manchester) are due to be published in one volume this September. A complimentary copy will be sent to all UKELA members. Thanks to Professor Robert Lee of Cardiff University for editing the papers.

For the 2005 conference, the papers will be published on the UKELA website as soon as possible. We are keen to ensure that members have access to the papers whilst they are still topical and up to date. If you have problems accessing the website or would like the papers in another form it would be helpful to know, so that we can see if members' needs are being met. We could also provide a copy of the papers and presentations on CD to individuals. Please email Vicki.elcoate@ntlworld.com with any comments on this proposal or special requests. We shall let members know when the papers are available on the website. There is no plan at present to publish the 2005 papers on paper.

TRAINING EVENTS

UKELA and the Association of Personal Injury Lawyers have run two excellent training events for members this year. Topics including health and safety, noise, and environmental judicial review were aired and there were well over 50 bookings at the two events. Next year UKELA and APIL are planning a one day conference style training event. If you have any suggestions on what you would like to see included, or have any other views on what training UKELA should provide, please do let us know – Vicki.elcoate@ntlworld.com.

Our thanks go to all the speakers at these events, most of whom are UKELA members: Prof. Stuart Bell; Richard Buxton; Angus Innes; Prof. Robert Lee; Owen Lomas; Robert McCracken QC; David Travers; Stephen Tromans.

WILD LAW: DIARY DATE

Michael Meacher MP is to chair a half day UKELA seminar on the subject of Wild Law – how do we regulate our relationship with the Earth? – on Friday November 18th. You may have read the book, “Wild Law, A Manifesto for Earth Justice” by Cormac Cullinan which takes a radical look at the purpose of law and governance. UKELA is holding the event to promote discussion and to encourage student and community involvement. The full programme of speakers is currently being prepared. The event will be held at Brighton University in the afternoon and UKELA/Environmental Law Foundation members will pay £20; students free. Please put the date in your diary and watch out for further details.

EUROPEAN UPDATE

Air pollution by ozone in Europe in summer 2004 (EEA Technical report No 3/2005)

In summer 2004, the levels of ground-level ozone were high in southern Europe with widespread exceedances of the information threshold value (180 µg/m³), as laid down in the ozone directive (2002/3/EC). The exceedances of the information threshold were similar to earlier years, except for summer 2003, when there was a record number of exceedances. Also the directive's long-term objective to protect human health, 120 µg/m³ of ozone concentration over 8 hours, was extensively exceeded in the EU and other European countries. The target value to protect human health was also exceeded in southern and part of central Europe. The highest levels were reported from Italy and Spain, with a maximum ozone level of 417 µg/m³.

http://reports.eea.eu.int/technical_report_2005_3

Wild Bird Indicator Update 2005

An updated indicator of European wild bird populations shows that between 1980 and 2003 farmland bird numbers fell 28% and forest birds 13% while other common birds rose by 28%. Compiled by NGO Birdlife International and first published in 2003, the data was adopted by the EU in 2004 as the basis for one of its official sustainability indicators, a farmland bird population index. 2005's update includes four new EU member states for the first time and reports separate trends for forest and other common birds for the first time.

http://www.eel.nl/documents/2005_pecbm_indicator_update.pdf

Application No. 55723/00 Fadeyeva v Russia

ECHR 9-06-2005

In the light of Article 44 Para. 2 of ECHR, the governments are legally responsible for preventing serious damage to their citizens' health caused by pollution from industrial installations, even when they are privately owned and run. The ECHR ruled that the Russian Federation was guilty of violating the human rights of Ms. Fadeyeva, resident of the town of Cherepovets, north-east of Moscow. Ms. Fadeyeva had complained that her health had been harmed by long-term exposure to pollution from a Severstal steel plant in the town. The court said the state had failed to protect Ms. Fadeyeva by either resettling her away from the plant or reducing its pollution levels. It ordered the Russian government to pay her €6,000 in compensation and to ensure it resolved her situation. The ruling is binding and if Russia fails to comply it could ultimately be expelled from the Council of Europe, which administers the Court.

The case marked the first time the ECHR had held a state responsible for damage caused by a private company. The only near-precedent was a similar case in 1994 known as López Ostra, involving pollution from a partly-public, partly-private waste plant in Spain. But the ruling is unlikely to interfere with the EU Environmental Liability directive, according to an EU official closely involved in drafting the law. Any pollution likely to trigger a case in the human rights court would most likely already have triggered the directive's provisions, and the two legal regimes would be complementary, he said.

16-22 September 2005, EU mobility weekPlease visit http://www.mobilityweek-europe.org/index_en.php**22 September 2005, European Car-free day**Please see <http://www.22september.org/info/en/camp.html>

ENVIRONMENTAL LAW MASTER CLASS

CLT Conferences are running an environmental law master classes on 7th and 8th September 2005 at The Hatton Conference Centre, London.

For details of the programme contact Central Law Training, Wrens Court, 52-54 Victoria Road, Sutton Coldfield, Birmingham, B72 1SX, DX 708700 Sutton Coldfield. Ph: 0121 355 0900. Fx: 0121 355 5517.
www.clt.co.uk

CONFERENCE UPDATE

A HENRY STEWART PLANNING BRIEFING

“**Three Important Developments in Planning Law and Practice**” will take place on Tuesday, 27 September 2005 at The Mayfair Conference Centre, London W2. The day will cover:

The New Environmental Impact Assessment Regulations
New Interpretations of Sustainable Development
Dealing with Contaminated Land

These are the areas where barriers have been raised for everyone seeking planning consent. This briefing will tell you what has changed and what to do about the changes. The day will be chaired by Philip Wilbourn, Chairman of Wilbourn Associates. Full documentation will be supplied to all delegates and adequate time set aside for questions from the floor. For more information please contact Elizabeth Thomas: elizabetht@henrystewart.co.uk : Tel: 020 7404 3040.

6th ANNUAL GLOBAL CONFERENCE ON ENVIRONMENTAL TAXATION : ISSUES, EXPERIENCES AND POTENTIAL - University of Leuven, Belgium

The Promotion of Renewable Energy Sources through Tax or Other Market-Based Measures – Challenges and Obstacles

22-24 September 2005

For more information please contact Prof. Dr. Kurt Deketelaere, Kristof De Cock or Ms Ann Groffils, IMER-KU Leuven; Tiensestraat 41 B-3000 Leuven Belgium; email:kurt.deketelaere@law.kuleuven.ac.be; Kristof.decock@law.kuleuven.ac.be; ann.groffils@law.kuleuven.ac.be

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For information about working parties and events, including copies of all recent submissions contact.

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E - LAW

The editorial team want articles, news and views from you for the next edition due to go out at end September 2005. All contributions should be dispatched to Catherine Davey as soon as possible by email at: Catherine.Davey@stevens-bolton.co.uk by 19 September 2004. Please use Arial font 11pt. Single space.

Letters to the editor will be published, space permitting

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