e-law

UKELA Making the law work for a better environment

EDITORIAL

We stand on the brink of what may prove to be a very interesting parliament. As I write the Conservatives and Lib Dems have agreed a coalition. Chris Huhne MP has been announced as the new Energy and Climate Change Secretary and Caroline Spelman MP is the new Environment Secretary. The election was unique in so many ways and we should congratulate Caroline Lucas of the Green Party who won their first seat in the Commons.

Interestingly a poll in The Independent on Sunday on 25 April reported that almost 60% of voters believed that green issues had been ignored by the main parties up to that time and the same poll found that "less than half the electorate" believed that David Cameron's commitment to the environment is "genuine". In the news section you can read more about the Coalition agreement on environmental issues.

It was a reasonable bet that a hung parliament would move green issues sharply up the agenda given the requirement for Lib Dem support. We will watch developments closely over the next few months as the intentions of the new government with regard to the environment become clearer. With that in mind UKELA is planning a post election seminar on the Environmental Challenges for the new Government. The editor of ENDS, Nicholas Schoon, has agreed to chair this early evening event which will be in September and hosted by Freshfields in London. Once we have the dates and speakers lined up you'll receive an invitation. Please look out for it as this promises to be an exciting discussion at a critical time.

Globally the federal administration has just approved the construction of giant wind farm in Nantucket Sound of Massachusetts. This is the first US offshore wind project and had been resisted for many years by environmentalists. The timing of the announcement is almost certainly coincidental and the fall out from the explosion on the BP Deepwater Horizon Rig will make interesting reading for environmental lawyers over the coming months.

Closer to home don't forget to book for the annual conference which takes place in Exeter at the end of June. We've got all the hot topics – planning, climate change and regulatory reform with great speakers and some excellent field trips.

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In this issue

Highlights of the Coalition agreement on environmental issues

The parties agree to implement a full programme of measures to fulfil our joint ambitions for a low carbon and eco-friendly economy, including:

- The establishment of a smart grid and the roll-out of smart meters.
- The full establishment of feed-in tariff systems in electricity – as well as the maintenance of banded ROCs.
- Measures to promote a huge increase in energy from waste through anaerobic digestion.
- The creation of a green investment bank.
- The provision of home energy improvement paid for by the savings from lower energy bills.
- Retention of energy performance certificates while scrapping HIPs.
- Measures to encourage marine energy.
- The establishment of an emissions performance standard that will prevent coal-fired power stations being built unless they are equipped with sufficient CCS to meet the emissions performance standard.
- The establishment of a high-speed rail network.
- The cancellation of the third runway at Heathrow and the refusal of additional runways at Gatwick and Stansted.
- The replacement of the Air Passenger Duty with a per flight duty.
- The provision of a floor price for carbon, as well as efforts to persuade the EU to move towards full auctioning of ETS permits.
- Measures to make the import or possession of illegal timber a criminal offence.
- Measures to promote green spaces and wildlife corridors in order to halt the loss of habitats and restore biodiversity.
- Mandating a national recharging network for electric and plug-in hybrid vehicles.
- Continuation of the present Government's proposals for public sector investment in CCS technology for four coal-fired power stations; and a specific commitment to reduce central government carbon emissions by 10 per cent within 12 months.
- Agreement to seek to increase the target for energy from renewable sources, subject to the advice of the Climate Change Committee.

The Liberal Democrats have long opposed any new nuclear construction. The Conservatives, by contrast, are committed to allowing the replacement of existing nuclear power stations provided they are subject to the normal planning process for major projects (under a new national planning statement) and provided also that they receive no public subsidy.

The two parties have agreed a process that will allow Liberal Democrats to maintain their opposition to nuclear power while permitting the government to bring forward the national planning statement for ratification by Parliament so that new nuclear construction becomes possible.

This process will involve:

- the government completing the drafting of a national planning statement and putting it before Parliament;
- specific agreement that a Liberal Democrat spokesman will speak against the planning statement, but that Liberal Democrat MPs will abstain; and
- clarity that this will not be regarded as an issue of confidence.

UKELA AGM and Election to Council

All members are advised that the AGM of the Association will be held at 11.20am on Sunday 27 June 2010 at the Annual Conference at the University of Exeter. You can access the agenda, minutes of last year's AGM and the Annual Report and Accounts 2009 via the links on the home page of our website.

At the time of writing it is still open for nominations to be received for election to Council. The closing date to receive them is Wednesday 19 May so this may well have passed by the time you read this. In the event that an election is needed ie if the number of nominations received exceeds the number of places available on Council, then you will receive your voting instructions via email so do look out for this and let us have your views. Remember, it is your Council and your vote is important. Further details on the election can be found by following the link on the home page of our website.

Membership Renewals

Any memberships not renewed by the beginning of April 2010 are now lapsed. Don't miss out on all the benefits of membership - if you would like to reactivate your membership please contact alisonboyd.ukela@ntlbusiness.com.

Many thanks to all those who have renewed already - your continued support of UKELA is much appreciated.

Alison Boyd, Member Support Officer

Law and Your Environment

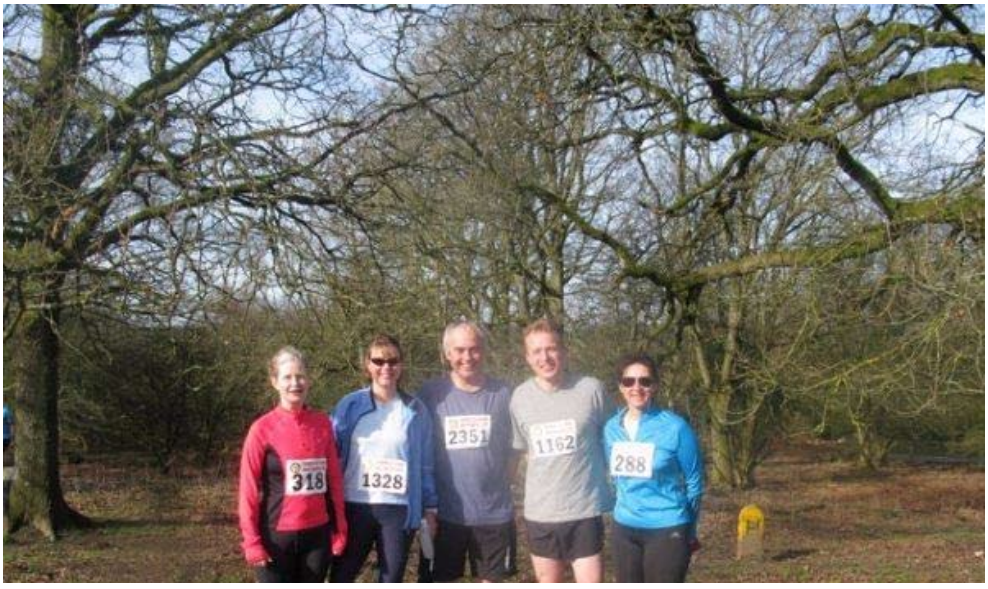
Our Law and Your Environment website which provides information on environmental law has been up and running for nearly a year now and the results are encouraging. We have nearly tripled the number of visitors since last summer – over 3,300 visits were made in April and it's increasing all the time. People come along looking for information mainly on causes of flooding, water quality and pollution, public rights of way and noise and nuisance.

We've used some of the income from the Lord Nathan Memorial Fund for the Environment to fund our working party support officer, Rosie Oliver, to update the site. She's been concentrating on planning and climate change, where a lot of changes have happened, but will be looking at new topics like nuclear too. Jamie Whittle, one of our Council members based in Scotland, has been adding Scottish content and advising on updates.

Our Google AdWords campaign took a lot of preparing and has been submitted for approval. That should do a great job in attracting more visitors to the site as when they search for a relevant topic an Ad will pop up directing them straight to the information on Law and Your Environment.

Fundraising for Law and Your Environment

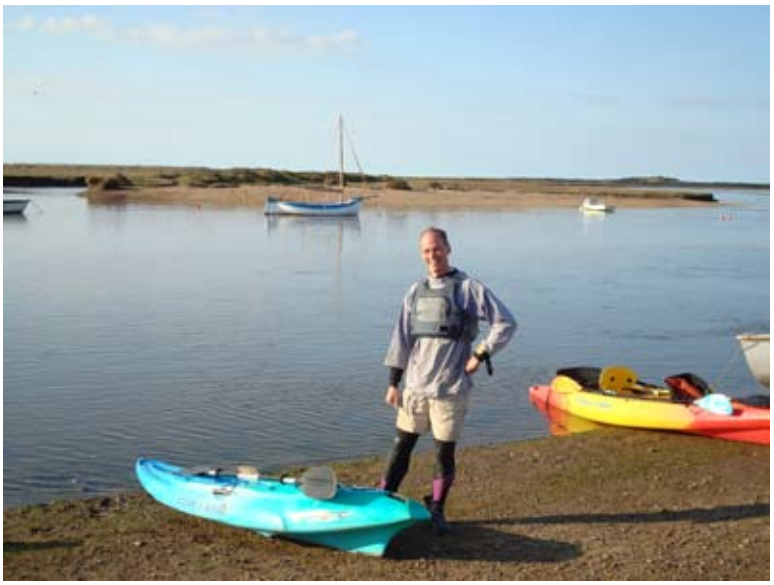
The sponsored half-marathon which involved a team from UKELA's led by the chair, Peter Kellett, raised over £1700. That will go into the Lord Nathan Fund.



News

David Hart QC of One Crown Office Row organised a sponsored kayak which has just taken place. So far we've raised over £3,600, you can still donate on http://www.charitygiving.co.uk/dhkayakpaddle, to show your support. Over 30 kayakers took part with several supporters coming along to cheer. The route was six miles down a creek from Burnham Overy Staithe in Norfolk – a normally tranquil area only slightly disturbed by the kayakers and supporters. A big thank you from UKELA to David Hart, the kayakers, and all the donors!

The group pre-kayak



David Hart QC, host and co-ordinator of the weekend

If you have any ideas about organising a sponsored event please do let us know – we're happy to advise and market the event and they're a huge amount of fun. We're also very grateful for donations - Blackstone Chambers recently made a £250 gift out of their charitable funds for which we're very grateful. It's a really big help.

If you'd like to make a donation online please click here.

Higher rate income tax payers

Did you know that if you're a higher rate income tax payer you can personally reclaim the difference between the 20% basic tax rate and the 40 or 50% rate you pay (depending on how much you earn)? The new 50% top rate applies to people earning more than £150,000 a year and came into effect on 6 April. A £100 donation to UKELA from someone in the top tax bracket would actually be worth £176.28 after Gift Aid and tax had been reclaimed (if the donor chose to pass on the reclaimed tax). The same donation before 6 April was worth £160.25.

Some higher rate tax payers might see this as an extra incentive to donate as either you gain personally or the charity does. Either way it's a win. So if you've been feeling fed up about the 50% rate remember that every cloud has a silver lining…

Insolvency practitioners and environmental law

By Martin Edwards of 39 Essex Street

No doubt it is a sign of the economic times that there is growing interest in the relationship between insolvency and environmental law. As relationships go it is not necessarily an easy one. This is no possibly due to the fact that, when a company gets into financial difficulty, its survival or orderly wind up is the primary focus of the company's administrators or liquidators. Ensuring that the company continues to comply with the mass of environmental laws that it may operate under inevitably takes second place (at best). Equally, however, environmental regulators will be only too aware of the potential increased risk to the environment that often goes hand in hand with a company in distress. In short, the interests of insolvency practitioners and environmental regulators may appear to pull in opposite directions. In reality, however, there is much to be gained from a mutual recognition of the respective roles and responsibilities and an appreciation of the potential gains that may flow from a co-operative approach.

In an economic downturn it is not surprising that cuts in maintenance and capital expenditure can increase the risk of exposure to a variety of potential environmental liabilities. If measures were not in place to prevent spillages and pollution from factories or sites it is possible that environmental liability claims, whether from regulators or third parties, may arise. As most insolvency practitioners know, a company's poor environmental performance may be one of the earliest indicators of a company in financial trouble as poorly maintained equipment and management systems fail. Another pernicious consequence may be that the company had failed to maintain any or adequate environmental liability insurance.

Occasionally those unfamiliar with environmental law and liability assume that these are matters of, at best, peripheral concern facing insolvency. However as any experienced environmental lawyer knows, there can be hard commercial consequences that directly result from breaches of environmental law. A criminal fine or a civil penalty can result in an already financially stretched company facing a significant impact on its ability to ride the financial storm, a situation that could be made unbearable were clean up costs also to be factored in. Even if the fines or costs incurred do not prove to be fatal there is always the knock on effect on the company's reputation that could undermine its market share or asset value.

Similarly it hardly needs stating but the prospect of a company's insolvency may provide opportunities for others to acquire the assets more quickly and cheaply. Those transactions are generally riskier but informed purchasers can use their knowledge and experience of environmental liabilities to negotiate the best deal possible. From the perspective of the insolvency practitioner it is therefore essential to have an informed appreciation of those potential liabilities so that the real risks can be identified and a true assessment made of the impact, if any, that they may have on the value of the company or its assets. In many cases it may be prudent, if not essential, to seek advice and assistance from specialist environmental lawyers and consultants so that a realistic assessment can be made of any actual or potential environmental liabilities. Without that knowledge how can the insolvency practitioner know that he is getting the best value for the company or its assets and thereby complying with his duties to the creditors?

As a starting point, when a company gets into financial difficulty and administration or liquidation appears likely, it is important that the insolvency practitioner quickly establishes what will be the Environment Agency's policy aims and approach to the insolvency situation bearing in mind the particular operational nature of the company concerned. Primarily this will be to identify how all the relevant environmental permits under which the company may have been operating could be affected by the insolvent event. Is there a danger that conditions on permits may be breached or, worse still, the permit suspended or revoked? Similarly the Agency will need to be informed early on about the role and liabilities of the insolvency practitioner so that it can assess how best it can work with the company. The main policy aims of the Agency will be to ensure that the environment is protected, to work with the company in order to manage the situation and, where appropriate, to achieve the whole or partial transfer or surrender of relevant environmental permits and where this proves to be impossible to try to ensure that the site is left in a satisfactory state and not at risk of becoming "contaminated land" within the meaning of Part IIA of the Environmental Protection Act 1990.

Generally speaking, the Environment Agency has recognised as key aspects of its approach the need to become involved as early as possible, to work constructively with the company and its representatives and to provide advice and assistance as necessary. To this end the Agency has established an internal insolvency group and acknowledged the need to appreciate the commercial reality of the particular insolvency event. This should be one of the first ports of call for the newly appointed insolvency practitioner.

There are essentially two forms of environmental liability that may be involved which the insolvency practitioner needs to appreciate and address from the outset: the activity based liability attributable to the actions or inactions of the company or the individual and asset based liability that principally affects the value of the company's assets which could impact on the prospects of it surviving and coming out of administration or the amount of money available to creditors following liquidation. Inevitably there is always a degree of overlap between these two forms of liability e.g where a nuisance is adopted or where a failure to comply with an environmental permit condition leads to the loss of the permit.

Not all insolvency events end in the liquidation of the company. The introduction of the process of administration has led to the promotion of a corporate rescue culture where the management of the failed company is replaced by insolvency practitioners who then owe duties to all the company's creditors. Consequently an insolvency practitioner needs to know early on just what potential environmental liabilities may be involved and whether these could affect the company's survival prospects. There are a variety of reasons for doing this. It is possible that in some circumstances the insolvency practitioner may become personally liable. In keeping the company operating it will be essential to ensure that all necessary steps are taken to ensure that there is full compliance with the requirements of relevant environmental laws and permits if prosecutions or regulatory enforcement measures are to be avoided. More likely, however, is that a breach of environmental law may have an impact on asset value, for example, by the loss of a relevant environmental permit. It hardly needs stating but nowadays the body of environmental law is massive and complex. However there are some fundamental areas of environmental law that the insolvency practitioner needs to be familiar with and the issues that they can involve. For example, a manufacturing company may have a distribution site from where a number of vehicles are based. The insolvency practitioner needs to know of the potential consequences of laying off vital maintenance staff. A simple failure to regularly check and clear the fuel interceptors may result in fuel oil escaping into a nearby river. If so the insolvency practitioner would then have to face the stringent implications of the well-established judicial interpretation of "causing" in section 85(1) of the Water Resources Act 1991.

When the intention is to continue to keep a company running with view to either a re-structure or a sale the principal concerns should be to ensure that there is full compliance with all relevant environmental laws. Naturally those will be dictated by the company's sphere of operation. It is therefore important for the insolvency practitioners to gain a quick understanding of the nature of the company's operations so that some basic questions can then be addressed. One problem, however, is that the company may operate under a variety of environmental laws where subtly different legal considerations may apply. The following is by no means an exhaustive list. What it does do, however, is use a number of examples to highlight the complexities that may be involved:

- What is meant by "knowingly causing" under section 33 of the Environmental Protection Act 1990 or regulation 38(1)(a) of the Environmental Permitting Regulations 2007;
- What is the difference between "causing" and "knowingly permitting" in section 85(1) of the Water Resources Act 1991 or section 33 of the 1990 Act;
- What might be the consequences of a contravention of a permit condition under section 33(6) of the 1990 Act, or the implications of regulation 38(1)(c) of the 2007 Regulations in the event of a failure to comply with various statutory notices. Might the permit be suspended or revoked?
- What could happen if the company is found to have kept or treated controlled waste without a permit contrary to section 33 of the 1990 Act, a situation that is further complicated by the Agency's sometimes imaginative and extended interpretation of "controlled waste" – see, for example, Environment Agency v Inglenorth Ltd [2009] EWHC 670 (Admin);
- The need to ensure that if the company is to continue to operate a regulated facility or installation it is done so under and to the extent authorised by a relevant environmental permit – see regulations 1 and 38(1)(a) of the 2007 Regulations. This may mean that expenditure will be required in order to maintain or upgrade equipment to ensure continued compliance;
- The ramifications of the statutory contaminated land regime under Part IIA of the 1990 (see further below);
- The need to ensure strict compliance with the Greenhouse Gas Emissions Trading Scheme Regulations 2005 and the potentially draconian civil penalties that can be imposed – for example, in the case of Alphasteel Ltd a steelworks failed to surrender the requisite EU ETS allowances thereby incurring a civil penalty (based on a prescribed EU wide formula) in the region of £500,000; and
- The new liabilities flowing from the Environmental Damage (Prevention and Remediation) Regulations 2009 which impose duties on operators to prevent and remedy environmental damage and impose civil liability for investigations and clean-up costs incurred by enforcing authorities. Advice may be needed on potential criminal liabilities and on the application of the definitions of "activity" and "operator" and how they may affect the company in question.

Whilst many of the above may be categorised as activity-based environmental liabilities, it would be wrong to place greater

emphasis on them than on asset-based liabilities. In many cases these liabilities may lurk unseen but they have the financial potential to obliterate the company's survival prospects or wipe out any residual value on liquidation. It is also important for the insolvency practitioner to appreciate that some environmental liabilities may arise many years after the incident that caused them. This was dramatically demonstrated in the recent appeals by Redland Minerals Limited and Crest Nicholson plc against a remediation notice issued by the Environment Agency pursuant to section 78E of the Environmental Protection Act 1990 on a former chemical works site at Sandridge, Hertfordshire that had been redeveloped for housing in the 1980s and completed in 1987 but where the contamination issues only came to light at the turn of the century. In that case the notice was served in June 2002 and the resulting appeals were dismissed in July 2009. Whilst that may be seen as an extreme case there can be no guarantee that similar problems do not exist elsewhere.

It is also important to recognise that the insolvency practitioner may not be immune from personal liability. This is probably best demonstrated with regard to the statutory contaminated land regime where section 78X(3) of the Environmental Protection Act 1990 provides:

(3) A person acting in a relevant capacity—

(a) shall not thereby be personally liable, under this Part, to bear the whole or any part of the cost of doing any thing by way of remediation, unless that thing is to any extent referable to substances whose presence in, on or under the contaminated land in question is a result of any act done or omission made by him which it was unreasonable for a person acting in that capacity to do or make; and

(b) shall not thereby be guilty of an offence under or by virtue of section 78M above unless the requirement which has not been complied with is a requirement to do some particular thing for which he is personally liable to bear the whole or any part of the cost.

It is clear therefore that this provides a qualified protection. Sub-section (4) then defines what is meant as a "person acting in a relevant capacity" as:

(a) a person acting as an insolvency practitioner, within the meaning of section 388 of the Insolvency Act 1986 (including that section as it applies in relation to an insolvent partnership by virtue of any order made under section 421 of that Act);

(b) the official receiver acting in a capacity in which he would be regarded as acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986 if subsection (5) of that section were disregarded;

(c) the official receiver acting as receiver or manager;

(d) a person acting as a special manager under section 177 or 370 of the Insolvency Act 1986;

(e) the Accountant in Bankruptcy acting as permanent or interim trustee in a sequestration (within the meaning of the Bankruptcy (Scotland) Act 1985);

(f) a person acting as a receiver or receiver and manager—

(i) under or by virtue of any enactment; or

(ii) by virtue of his appointment as such by an order of a court or by any other instrument.

Of course, asset-based liabilities do not begin and end with the statutory contaminated land regime. In most cases involving contaminated land, the regime may not be relevant. However the potential for third parties affected by migrating contamination may lead to environmental claims based in private nuisance where the damages awarded can be significant.

There have been surprisingly few cases that have examined in any detail the relationship between insolvency and environmental law. The first case to consider is Meigh v Wickenden [1942] 2 KB 160. This is not an environmental case but it does involve the analogous relationship between the Factories Act 1937 and insolvency and therefore may be considered to inform the discussion of the relationship between the insolvency practitioner and environmental law. It would, however, be wrong to read too much into this case or to treat it as setting some sort of precedent directly relevant to modern environmental statutes. Having said that, with the widespread use of provisions imposing personal criminal liability on directors, managers and others running companies for environmental offences committed by the company this case may come to assume some significance.

In this case the appellant had been appointed as a receiver and manager of a company by a debenture holder acting under a debenture. The appellant had been convicted of two offences, having failed to provide a strong guard for the cutter of a milling machine "in consequence of which one Dale suffered bodily injury", contrary to regulation 3 of the Horizontal Milling Machine Regulations 1928 and sections 130 and 133 of the Factories Act 1937. Section 130(1) provided that "In the event of any contravention in...a factory of the provisions of this Act, or any regulation...made thereunder, the occupier...of the factory shall... be guilty of an offence." Similarly section 133 provided that "if any person....suffers any bodily injury, in consequence of the occupier... of a factory having contravened any provision of this Act, or any regulation...made thereunder, the occupier...of the factory shall...be liable to a fine.."

The question before the court on appeal was whether the receiver was the occupier of the factory. The court dismissed the appeal and upheld the finding of the magistrates that the appellant, as a receiver appointed by a debenture holder, was the occupier of the factory. As Viscount Caldecote CJ observed: "He was appointed, not to receive directions from the directors, but to give directions. He might at any time remove them and appoint someone to take over their duties. He might himself perform those duties, if he had the necessary technical qualifications It may, indeed, be said with accuracy, I think, that he took the place of the directors and was responsible in their stead for the management of the affairs and business of the company even while he permitted them to manage the business under him. No doubt the company continued to exist, and, unless and until steps were taken to wind up the company's affairs and to liquidate the company, it would continue to be answerable for engagements into which the company had entered before the appointment of the appellant as receiver and manager."

In a Scottish case, Lord Advocate v Aero Technologies Ltd (in receivership) [1991] SLT 134 Lord Sutherland in the Outer House was called upon to determine a petition from the Health & Safety Executive seeking an interdict and interdict ad interim against the company in receivership and also against the joint administrative receivers, from relinquishing physical occupation and control of a factory where substantial quantities of explosives were stored. Section 23 of the Explosives Act 1875 applied to the "occupiers" of the factory. Once again, therefore, the court had to determine who the occupiers of the factory were. In determining this issue Lord Sutherland stated: "In my opinion in deciding who is the occupier of this factory the reality of the situation must be looked at. The provisions of section 2 of the Explosives Act 1875 are there in the interests of public safety and should not in my opinion be elided on some highly technical ground unless that technical ground is unassailable. I see no reason in principle why both the company and the receivers, who are after all acting on behalf of the company and as managers for the company, should not be regarded as joint occupiers.....Having regard to the fact that the receivers are acting as as managers for the company they are for practical purposes in occupation of the premises in order that they can carry out their task. The requirement to comply with statutory duty is a management function and accordingly I see no reason in principle why the receivers should not be occupiers for the purposes of the Explosives Act...." The interdict was granted.

Whilst these two cases relate to what can best be described as analogous areas of law, the Court of Appeal's decision on 10 February 2000 in Re Rhondda Waste Disposal Co Limited (in administration) sub nom Environment Agency v Paul Clark (Administrator of Rhondda Waste Disposal Co Limited) [2000] 3 WLR 1304 does suggest that the courts may adopt a similar approach to environmental legislation. The Court of Appeal overturned a decision in the Chancery Division in a case involving a landfill site where there had been a failure to comply with the conditions on the waste management licence. The Environment Agency commenced proceedings under section 33(6) of the 1990 Act. Shortly after the proceedings were commenced an administration order was made in relation to the company. The Chancery Division held that the prosecution constituted "other proceedings" for the purposes of sections 10 and 11 of the Insolvency Act 1986 and consequently it was not open to the Agency to bring criminal proceedings under the 1990 Act without the leave of the court or the consent of the administrator and leave was refused by the Court. In overturning that decision and giving the Agency leave to prosecute the Court of Appeal accepted that the prosecution did constitute "other proceedings" but considered that the lower court had given too much weight to the interest of the company's creditors and not enough to the reasons for prosecuting.

Probably the most directly relevant case is that of the Court of Appeal's decision in Official Receiver (liquidator of Celtic Extraction Ltd and Bluestone Chemicals Limited) v Environment Agency [2000] 2 WLR 991 where the Court of appeal had to consider two related questions. First, is a waste management licence granted under the 1990 Act "property" within the meaning of that word as defined in section 436 of the Insolvency Act 1986 and, second, if so, if it is onerous is the liquidator or trustee in bankruptcy of the holder of that licence entitled to disclaim it pursuant to section 178 of the Insolvency Act 1986?

Both questions were answered in the affirmative. Morritt LJ noted the definition of property in section 436 as "includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property." After an analysis of the relevant caselaw Morritt LJ concluded that the cases indicated the salient features which are likely to be found if there is to be conferred on an exemption from some wider statutory prohibition the status of property. First, there must be a statutory framework conferring an entitlement on one who satisfies certain conditions even though there is some element of discretion exercisable within that framework. In his view this was satisfied by the provisions of sections 35(2), 36(3) and 43 of the 1990 Act. Second, the exemption must be transferable. Third, the exemption or licence must have value. Consequently it was his view that a waste management licence comes within the definition of property contained in section 436 of the Insolvency Act 1986 and, in the alternative, it could be considered to be an interest incidental to property, namely the land to which it relates.

In answering the second question Morritt LJ noted the public policy behind the insolvency legislation and he considered that it an important part of the implementation of that policy is the ability to disclaim onerous property. In his view clear words would

be required to exclude the operation of section 178 from specific items of property or specific insolvents. An example of where this had happened was to be found in section 36 of the Coal Industry Act 1994 which provides that a licence under that Act is not to be treated as property for any of the purposes of the Insolvency Act 1986. The Court of Appeal therefore ruled that the Official Receiver could disclaim the waste management licences.

Whilst the number of cases that directly examine the relationship between insolvency practitioners and environmental laws is currently small it is not unreasonable to suggest that this position may change for two reasons. First, modern environmental laws are relative recent in origin – the 1990 Act is, after all, only 20 years old. Second, most of the modern environmental laws have come into operation at a time when the economy has been favourable. Now that the economic outlook for the coming years is, at best, challenging and company insolvencies are on the rise, this relationship may come under considerable strain. If so then the role of the court in adjudicating between these two important areas of public policy is likely to be of central importance.

Prize Winner - Tom Cleaver

"The UK's care of the environment has been more hindered than enhanced by European law." Discuss.

Andrew Lees' prize essay by Tom Cleaver

Tom Cleaver is congratulated by Prof Mark Poustie of Strathclyde University with competitions' organiser, Richard Kimblin of No 5 Chambers, and Claire Collis, UKELA student adviser

The citizens of Un Lun Dun, in China Mieville's 2007 fantasy novel of that name, have a legend: long ago in another land, the sentient cloud of pollution which stalks their city was defeated using a magical weapon called the 'Klinneract'.

Their hope is misplaced, since the legendary weapon on which they rely is the Clean Air Act 1956. The only magic is that of a good, honest Act of Parliament.

It is rather more difficult to imagine a novel which makes a plot point of the Environmental Impact Assessment Directive. To most observers, iconic environmental successes are the preserve of global summits and national governments; the EC's contribution has been a mass of obfuscatory definitions and nitpicking regulation, combined with an overriding emphasis on economic development which has tended to cast environmental care into the shade. Environmentalists with an eye to their movement's overarching goal – of convincing people to adopt new values and recast their lives – might well consider anything which so detracts from the power of the central message a hindrance.

This is an essay in defence of the hidden contribution – the non-iconic success. European law has provided British environmentalism with an impetus it lacked. Community pressure to improve standards, however unglamorous its manifestations, has freed the environmental movement from the need to draw energy from crises and political moments, and allowed the UK's advances to settle into a constant flow.

1. British approach

As the fathers of modern industrial pollution, the British have historically balked at attempts to tell them how to discipline their child.

The UK's early environmental record was not undistinguished. It had the world's first anti-pollution inspectorate under the Alkali Act 1863, the world's first national system of mandatory planning control under the Town and Country Planning Act 1947, and the world's first environmental ministry in 1970. One of the EC's most prominent environmental successes – its Emissions Trading Scheme, operational since 2005 – drew heavily on the experiences of the UK's domestic equivalent, introduced three years earlier. A sense that the environment could be cared for without external involvement is therefore understandable; this is, after all, a country which had a Royal Society for the Prevention of Cruelty to Animals nearly fifty years before it had a National

Society for the Prevention of Cruelty to Children.

Early EC environmental law did little to challenge that instinct. The famous problems caused by the definition of "waste" in the Waste Framework Directive, for instance – described extrajudicially by Carnwath LJ as "completely incomprehensible" – were poorly received by a country which prizes the organic sensibility of its legal doctrines.

Equally damaging was the sense that the EC's priorities lay elsewhere than in the environment. For the first fourteen years of UK membership the Community had no explicit environmental purpose, and the priority of commerce threatened to tug the Community in entirely the opposite direction. Even now, the EC's maintenance of relatively generous cod fishing quotas – in the face of scientific opinion that cod fishing must essentially cease – sounds an uncomfortable note.

2. Necessary changes

The UK's approach, however, was far from perfect itself.

First, as Lord Scarman wrote in 1974, "English law reduces environmental problems to questions of property." The common-law system, in which one party seeks recompense from another for damage done to him, works well enough when the most pressing environmental concern is the smell from a pigsty, as in *Aldred's Case,* but is bewildered by modern industry's less containable effects.

Statute has proved little better, remaining largely reliant on environmental 'incidents' – a sanitation scare or, in the case of the 'Klinneract', the Great Smog of 1952 – to create the requisite political will. The courts, moreover, have had trouble reconciling environmental legislation with their old interpretative habits; *Alphacell v Woodward*, the "difficult case" in which their Lordships wrestled with the application of the concept of *mens rea* to an environmental penalty, points to a basic tension between common-law principles and the components of a functioning system of environmental care.

3. Community impact

EC law has occasionally played to these difficulties directly. The Landfill Directive gave the UK the political will to turn its weak and half-ignored landfill tax into a tool of genuine value. Similarly, the Community's role in giving 'teeth' to otherwise edentate international obligations forced the UK to stop dumping sewage sludge at sea, in line with Article 14 of the Urban Waste Waters Directive, where the relevant treaties themselves had not.

Nevertheless, Community law's real contribution has been to yoke the UK to a dynamo from which it can drawn the energy to adapt.

First, the state machinery itself has been affected. Six Environmental Action Programmes since 1973 have provided the UK with constant pressure for environmental care independent of the political cycle. The courts, influenced by European jurisprudence, have – as in the Sitefinder case – opened themselves to outcomes which traditional English approaches would not permit.

Second, rules requiring better access to environmental information – established years before Aarhus – have dealt NGOs a stronger hand, enabling them to apply pressure to the state from beneath.

The above successes have also been insulated from domestic legal change. Unlike the old autonomous Northern Irish government, with its famously bad environmental record, the post-1998 devolved administrations sing from the hymnsheet handed out by the EC, and there is even evidence – for instance, in the Water Environment (Controlled Activities) (Scotland) Regulations 2005 – of devolved administrations leading the way.

Even Community laws with no environmental aim may come to the movement's aid, as the EAT proved last November by ruling – in *Grainger plc v Nicholson* – that regulations of Community origin could outlaw discrimination on the grounds of a belief in environmentalism.

But the most crucial characteristic of Community law is that it does not go away. The UK is now bound by supranational law to consider environmental issues constantly, rather than to address them when political considerations require it. Though EC achievements may lack fanfare, and occasionally lapse into tunelessness, the UK at last has a conductor resolutely beating time.

Alison Boyd - Member Support Officer for UKELA

I joined UKELA over 5 years ago from a background in the Civil Service – DTI as it was known when I was there – where I worked on a range of issues from funding of major overseas projects in the water and waste water industries to Post Office issues. Now, in my spare time, I am a volunteer adviser for Citizens Advice Bureau.

The questions:

What is your current role?

Member Support Officer for UKELA – I think you all know me! I look after a wide range of activities within the organisation from Board related matters to membership queries.

How did you get into environmental law?

I'm only on the periphery unlike all you committed and clever folk out there, but learning all the time.

What are the main challenges in your work?

Making sure we continue to meet the needs of our members.

What environmental issue keeps you awake at night?

After nearly a week of empty skies over my house, it would be the over–reliance the world has on air travel.

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

Everyone understanding the need to do their bit.

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

I appreciate the hard work and dedication of all our volunteers within the working parties, regional groups and special interest groups, so I would have to say all of them!

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

For me, it's the people – and our members consistently tell me it's the opportunity to network with others across the environmental law spectrum.

Student Update

UKELA's entry into the world of social media is getting off to a great start with its expanding Facebook membership. Thanks to all of you who have joined in and passed on the invitations to the site. If anyone has any further suggestions for use of the group please let me know. With the help of Julian Bertrand, Andy Stone and Rebecca Breen we are planning to expand the use of social media to include YouTube, with video from some of UKELA's events, so watch this space!

The first UKELA student competitions day was held at UCL in March. Our thanks to UCL for hosting the event and to No 5 Chambers for their generous sponsorship.

Thomas Cleaver, a pupil barrister at Blackstone Chambers, won the Andrew Lees Prize 2010 and a free place at UKELA's conference in Exeter. Entries had to address the question: "The UK's care of the environment has been more hindered than enhanced by European Law?" The other finalists were Elspeth Wrigley, of 1 Crown Office Row, Oliver Newman of BPP and Matthew Hunt of Holman Fenwick Willan. The standard of entries and presentations was very high making it a tough decision for the judges - Prof Mark Poustie (of Strathclyde University) and Richard Kimblin (of No 5 Chambers). You can read Tom's article elsewhere in e-law. The competitions day also involved semi-finals and finals for the moot which made for an interesting afternoon. You can read Richard Kimblin's account of the moot elsewhere in e-law. We're grateful also to Lawtext Publishing for providing subscriptions to Environmental Law and Management to the moot winners. I hope more of you can attend the competitions day in 2011 as it was a fantastic learning opportunity and fun too.

Entries for the Simon Ball Prize has now closed, thank you to everyone who took the time to apply. The winner will be announced shortly.

The ever popular Student Social and Careers Evening is approaching on Tuesday 23rd November, kindly hosted once again by Landmark Chambers. I would very much appreciate some volunteer helpers for the event and any suggestions as to the professions you would like to see represented at the evening.

If anyone has comments or issues relating to the group please contact me. I am also keen to hear from anyone, student or otherwise, with any comments or suggestions of their own initiatives that UKELA could develop for the benefit of students and UKELA.

I look forward to hearing from you.

Best wishes,
Claire

collisclaire@hotmail.com

UKELA Student Vocational Bursary Scheme: Latest Awards

By Donald McGillivray, of Kent University
Scholarship and Teaching Special Interest Group

UKELA is pleased to announce details of the students who will be funded for 6 week placements in 2010 under the Student Vocational Bursary Scheme.

Kirsty Schneeberger, a graduate in Government & International Relations and Philosophy who is between studies for the GDL and BPTC (both at BPP Law School) is being funded to work with Think2050, a project based in London that aims to broaden the participation of young people in Government policy-making and legislation. The projects includes the drafting of a 'Future Generations Bill' that Think2050 is aiming to have introduced into the House of Commons later in 2010 to 'institutionalise

the rights of young and future generations' as part of the organizations campaign to entrench intergenerational equity in law and policy-making. The Bill will also set out plans for a 'Future Generations Ombudsman' in the UK, following the lead from the Hungarian Ambassador with this portfolio (on which see the discussion in e-law issue 56). Another aspect of the work is establishing Youth Advisory Panels for DECC, as part of the UK's broader implementation of the Aarhus Convention. These panels of young people will advise the Government on national policy and legislation relating to the environment, energy security and climate change. The advice will offer a youth perspective so that DECC and Government officials can understand the importance of long-term planning when legislating for the environment.

Kirsty Schneeberger as Chair of the event. Credit: Andy Bodycombe (www.andybodycombe.co.uk)

The second recipient is Nicola Peart, a graduate in Plant Sciences and Ecology, and in Environmental Economics and Policy, who will be doing the GDL at the College of Law in London in 2010/11. Nicola's internship is with the Law of Nature Foundation on Bantayan Island, The Philippines. The Foundation is an organisation of environmental lawyers and conservation scientists that uses environmental law to change environmentally destructive behaviour, and promote sustainable practices amongst rural and urban communities, industry and commercial sectors. As part of this the Foundation has established a school that seeks to educate young (12□18 year old) Filipinos in environmental law and sustainable development (the Sailing School of the SEAS (Sea and Earth Advocates)). The School provides an academic background to environmental responsibility, with a key emphasis on environmental law. The school trains young people, students, and children of fishermen as well as fishermen, fish wardens and law enforcement officers. The Foundation also carries out 'Environmental Compliance Audits', which involve the assessment of local ordinances and their compliance with two existing Philippine laws (The Solid Waste Management Law and the Fisheries Code). Issues of compliance are brought to the attention of the local and national political leaders concerned, and those public officers who are tasked to implement, comply and enforce the Law are held accountable for their inability or unwillingness to comply with the relevant environmental laws (a mechanism that has certain common features with the European Commission's complaints procedure). In looking to affect industry and commercial sectors, the Foundation applies a similar model of compliance audit. Coincident with Nicola's internship, the Foundation is launching an audit on the problem of illegal encroachment on municipal waters of commercial fishing boats using trawls and other highly efficient (but harmful) fishing gear in the Visayan Sea. Commercial fishermen breaking the law are arrested and tried using the legal expertise of the Foundation's volunteers.

Mentoring Nicola will be Mr Antonio Oposa, professor at the Philippine Judicial Academy, and the chair of the Philippine Bar Association Environment Action Team. Antonio Oposa has a global reputation for his scholarship, and will be known in the UK from the landmark case Minors Oposa v. Secretary of the Department of Environmental and Natural Resources (1993) in which, amongst other things, the Philippines Supreme Court held that children may sue to enforce constitutional environmental and intergenerational rights on behalf of both their generation and future generations. During the internship, Nicola will assist Mr Oposa with lectures and classes in environmental law, teaching and demonstrating the establishment and maintenance of Marine Protected Areas (MPAs), and working on compliance audits.

UKELA received a very strong set of applications this year, and each would have been a worthy recipient of support. The number of applications, however, was down on last year and, should funds be available for 2010/11, it is hoped that more students (or recently graduated students) will apply and, perhaps more importantly, that the scheme will be publicised by academics (who may also be the recipients of collaboration over the vacation) and by organisations who stand to benefit from collaboration.

UKELA MOOTS REPORT

By Richard Kimblin of No 5, Master of the Moot

The UKELA Moots were held on 30th March 2010, the finals being before Lord Justice Carnwath. The topic area was the potential interaction between penalties for environmental offences in the criminal jurisdiction and the approach to determining the amount of a civil penalty under the Regulatory Enforcement and Sanctions Act 2008. There was a fantastic response to the moot problem which attracted skeleton arguments of unprecedented high quality from both entrants to the junior moot and to the

senior moot (the Lord Slynn Mooting Competition).

The problem was as follows. The Environment Agency brought a prosecution against Luckless Limited who had allowed paint to escape from its works into a surface water drain and to pollute the Clean River. The agreed aggravating factors of the offence were that the escape was easily avoidable; the Environment Agency pollution prevention visits had highlighted the possibility of such an escape; there was a risk of harm to aquatic life, but no actual harm. The agreed mitigating factors were that there had not, as a matter of fact, been any harm to aquatic life and that the company was of good character. Further, the company had cleaned up the release in a speedy manner with full cooperation with the Environment Agency and an early guilty plea, as soon as advice had been received.

The Judge sentenced the company to a fine of £140,000 and to pay prosecution costs of £10,000, having approached the matter on the basis set out in the statutory guidance to accompany RESA 2008. The grounds of appeal were that: (1) the fine imposed was manifestly excessive, and; (2) that the Judge misdirected himself by applying a method of calculation which was not applicable to the criminal jurisdiction. In fact, the Judge had wrongly proceeded as if he were imposing a variable monetary penalty (VMP) under RESA 2008.

Lord Justice Carnwath was satisfied that the appellant was right in respect of ground 2. He could see interesting arguments in the future as to the interaction between civil penalties and the approach in the criminal jurisdiction but thought it was too early to decide that relationship now. He further held that the penalty imposed was manifestly excessive.

Most importantly, it was clear that all of the participants have thrown themselves fully into their preparation for the moot and have enjoyed the experience enormously. In respect of the junior moot, congratulations go to James Corbet Burcher and Clodagh Power who won the junior moot. Similarly, congratulations go to Rebecca Clutton and Ned Westaway for their success in the senior moot.

The moot winners celebrate, left to right:

Prof Mark Poustie; Rebecca Clutton; Ned Westaway; Lord Justice Carnwath; Clodagh Power; James Corbet Burcher; Richard Kimblin

Alexander Maxwell Law Scholarship Trust (AMLST)

AMLST exists to promote legal writing and legal research through making a series of grants. The Trust is unique in that it is committed to favouring projects put forward by those actively involved in legal practice - often young practitioners. In 2010 awards were made to Dr Duncan Curley of Innovate Solicitors to write a book entitled Supplementary Protection Certificates – Law and Practice; Charles Mynors, a barrister at Francis Taylor Building, for a book on Making Changes to Churches and Churchyards: a Guide to Law and Procedure; and Lucy Reed, of St John's Chambers, Bristol, who is writing a book called Family Courts Without a Lawyer. We are now seeking applications for our 2011 awards. Further details about the Trust can be found at http://www.amlst.org.uk/

Wild Law – May Bank Holiday Weekend

By Simon Boyle, of Argyll Environmental and Wild Law Group convenor

Background

Twenty delegates from UKELA, the Gaia Foundation and the John Muir Trust spent a very enjoyable and informative weekend at Loch Ossian Youth Hostel. The event was organised by Sir Crispin Agnew and Jamie Whittle of the UKELA Scottish Group, Steve Perry, Vicki and Alison. We are very grateful for the hard work they all put in.

The purpose of this report is to give members a flavour of what we got up to and hopefully encourage some of you to give Wild Law in Scotland a go next year.

The choice of venue by Crispin was inspired because the hostel, owned by the Scottish Youth Hostel Association (SYHA), is one of the remotest in Britain with the nearest road some 10 miles away, although access by train is relatively straightforward. Most delegates took the train from Glasgow to the station at Corrour (those from London took the famous sleeper train) and from there it is an easy walk of a mile or so over to the hostel. As you can see from the photographs the hostel is situated in the heart of the highlands surrounded by snow streaked mountains and at the foot of the western end of the beautiful and enchanting Loch Ossian.

Although the hostel with its wood burning stove afforded a very comfortable and warm home for us, and was where we held our group discussions, the main objective was to get outside to breathe the fresh highland air and be in nature. This did not necessarily involve going far, three steps outside the hostel door and one was surrounded by nature and delegates could often be seen bird-watching or simply looking and listening to nature at the banks of the Loch. Two of our party were even brave enough to go for a morning swim in the Loch. The author, who put a hand in, can attest that the water was icy cold and a morning dip is only recommended for those with a strong constitution!

Saturday

Saturday morning commenced, after breakfast (ample supplies of milk and bread having been arranged by Crispin), with a discussion about the basis of Wild Law. This is principally that our current economy and legal system is anthropocentric and therefore views all other species as merely resources. However, this perspective is false as we humans are not superior to other species but are, in fact, entirely dependent upon them. It is because of this failure to recognise the rights of other species and treasure them as we should that our planet is being ecologically destroyed through what is often termed ‘the sixth mass extinction’.

After our discussion towards the end of the morning, we put on our boots and hats and, in small groups (usually in deep discussion), walked along the south shore of Loch Ossian to visit the Corrour Shooting Lodge. The Lodge is the main building of the 70,000 acre Corrour Estate owned by the Rausing family and managed by Philip Dean, a professional forester. The Estate generously provided us with lunch in the magnificent dining room && and we were then given a fascinating tour by Philip. We heard how the Estate was working with the John Muir Trust to enhance the biodiversity, for example, by taking down the sitka spruce and replacing it with native species such as scots pine, silver birch and rowan. When these native trees are established it is expected that native fauna in decline can return.

In order to allow planted seedlings to survive it will be necessary to extensively cull the red deer population. We also heard how one seemingly small action could completely change the balance of an ecosystem; a few years ago someone had, without the permission of the Estate, introduced pike into the Loch and these had now decimated the trout population.

Philip also explained about the economics of running a Highland Estate. Most obtain the bulk of their income from the shooting of red deer (it costs £400 to shoot a deer, always accompanied by a professional stalker) and, in the case of Corrour, from holiday lettings. Some estates derive a large part of their income from electricity generation from either hydroelectric and wind and at Corrour they are looking to build a large hydroelectric plant on the River Ossian which would provide significant revenue for the Estate.

After our tour delegates walked back to the hostel according to choice, some back along the Loch others over the mountains.

In the evening we walked westwards for a mile or so from the hostel over to the Station House at Corrour for our evening meal. As we walked we had spectacular views of the Ben Nevis range (still in deep snow) and the Mamores.

Corrour Lodge dining room

The Station House is the only building at Corrour station and is owned by the Corrour Estate and leased to the SYHA who have extensively renovated the building over the last year and it was opened just before we arrived. Although we did not stay there it now offers bed and breakfast accommodation for up to 11 people (in single or double rooms) and would provide an ideal weekend base for UKELA members who want to experience the grandeur of the Highlands but in some comfort! We had an excellent dinner and then returned back to the hostel.

Once we were all back at the hostel (kept warm by a log stove) Professor Denis Mollison of the John Muir Trust gave an illuminating lecture. Denis was one of the founders of the Trust in 1983 and is still a Trustee and gave us a fascinating insight to the remarkable life of John Muir and the work of the Trust. John Muir was born in Scotland in 1838 but at the age of eleven emigrated with his family to the United States where they settled in Wisconsin. Muir was a brilliant inventor and developed a deep understanding of nature. He formed the Sierra Club, which has grown to become the biggest environmental charity in the United States. Today John Muir is seen as the father of the world conservation movement.

The John Muir Trust was set up to preserve the remaining wilderness areas, in the UK, and its first success was the purchase of Knoydart, one of the wildest areas of the British Isles and which was at risk of being bought by the MOD. Since then the important wilderness areas that the Trust has purchased include the Ben Nevis Estate, Sandwood, Schiehallion and Suilven. Ownership of the areas by the Trust guarantees that they will remain wild for us and for nature.

Sunday

Although it was now May it was still fairly cold and there had been a frost overnight. But the skies were clear and it was an ideal day to put on our outdoor gear and head up into the hills. We divided into two. Steve Perry led a walk along the ancient drovers' track to the ruins of Corrour Old Lodge. This walk was very much in the spirit of John Muir, taking time to connect with nature in all her manifestations. Many members took binoculars to look for rare birds such as the black throated diver. The other party, led by Crispin climbed Beinn na Lap, our nearest Munro (that is a mountain over 3,000 feet). This was straightforward; the only real challenge was keeping pace with Crispin who for 20 years had led British Army expeditions all over the world (including Greenland, Chilean Patagonia and Api Himal) and clearly had no intention of slowing down! Many of our party were experts in Scottish wildlife and geology and the author, for example, was treated to a fascinating lecture on lichens and mosses from the summit plateau.

By early evening both parties returned from the hills and refreshed by tea and toast we settled down to hear Crispin's lecture entitled 'Scotland and Wild Law'. For those of us from south of the border with limited knowledge of Scots law it was revealing to hear some of the key advantages of the law compared to England & Wales. Although Scots law does not recognise the term Wild Law the conservation of biodiversity is absolutely central. For example, The Nature Conservation (Scotland) Act, S.1 states that 'It is the duty of every public body and office-holder, in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions.'

There is less legal protection for Scotland's precious wild landscape. So far, 40 areas have been designated National Scenic

Areas, which does provide some protection against development, but what is urgently needed is statutory wild land protection.

Crispin also gave us some very useful practical information for those of us who enjoy being out in the Scottish hills. Scotland has some of the most progressive access legislation in Europe arising from the Land Reform (Scotland) Act 2003. Wild camping is permitted on most unenclosed land, although not land with crops. Thanks to a 1930s court ruling it is also possible to ride a bicycle on footpaths as it was held that a bicycle is merely 'an aid to pedestrianism'.

After this lecture we returned to Corrour Station House for our second dinner there – which was again superb and warm hospitality was provided by SYHA managers Tim and Lucy. Two of our party then left and took the train from Corrour where we waved them off.

Back at the hostel we had a round up session looking at what we had done and our plans for the future. The group felt that we needed a medium term goal and supporting the John Muir Trust for an EU Landscape Directive whereby wild areas would be given high level statutory protection would be a very important step. The Wild Law Group will therefore discuss this with UKELA Council to see if this could become an aim of UKELA.

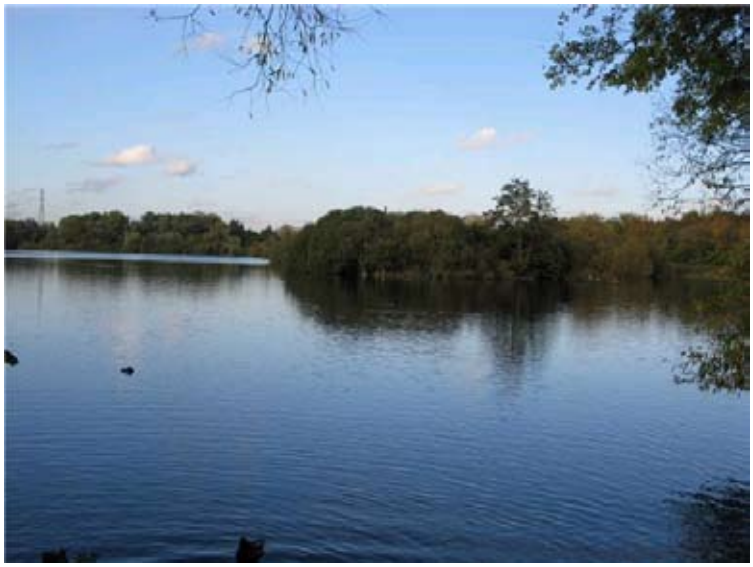
Monday

Most delegates packed up and took the early morning train from Corrour station. A few of us stayed on an extra day to get out on the hills and one of our party is carrying on walking up the west coast.

The weekend was a success in every way, we all made new friends, learnt a great deal and are looking forward to working together and meeting up for next year's UKELA Wild Law in Scotland weekend. It would be great to see you there!

Annual Wild Law Workshop: 5pm Fri 24 Sept – 2pm Sun 26 Sept 2010

Lee Valley Youth Hostel Association, Cheshunt, Herts.



Lee Valley Country Park

2.5 CPD points (to be confirmed)

This year's main Wild Law workshop will take place at the comfortable and conveniently located Lee Valley YHA, just outside of London. The theme of the workshop is *our habitat* and *how we relate to the land*. We will explore, in the beautiful and uniquely 'wild' setting of the Lee Valley Country Park, how we can move from 'exploitation' to 'relationship' with the land.

Our speakers, David Hart QC, Colin Tudge and Dr. Mayer Hillman, will provide expert insights from a legal, philosophical/ scientific and public policy perspective. Participants will have the opportunity to learn outdoors and experience one of the few remaining semi natural habitats in greater London.

As with previous wild law workshops, the event will be multidisciplinary, highly experiential and participatory. Above all, it will be fun! All new participants are very welcome – you'll meet other 'thinkers' and make new friends. For further information and to book click here.

Working Party News

New, expanded Climate Change and Energy Working Party: a call for volunteers

With so much going on around green energy at the moment, UKELA wants to boost its activity in this area.

The Climate Change Working Party is already responsible for looking at energy efficiency, renewable energy, carbon capture and storage, new low carbon technologies and emissions trading. We want to extend the working party's scope so it can lead on a wider range of environment-related energy issues.

The new, expanded Climate Change and Energy Working Party would provide an opportunity to meet and discuss energy and climate change related issues, hold events on hot topics, and contribute to development of new policies and legislation by participating in consultations. As climate change and energy issues cross over into other areas, the group would have to collaborate with other working parties – for example around planning legislation, water pollution and waste.

Would you be interested in joining the expanded Climate Change and Energy Working Party? Are you already a member of the Climate Change working party, and interested in getting more involved in energy issues? If so, let Tom Bainbridge (t.bainbridge@nabarro.com) know. The more active members that join the new Working Party, the more it will be able to achieve.

Climate Change

The next meeting will be at 1730 on 15th June at Nabarro's, speaker Francesco Sindico of the University of Surrey, on "Climate Change and International Trade". Full details at http://www.ukela.org/rte.asp?id=62. There will also be an opportunity to discuss the new remit of the working party.

Regional Group News

East Anglia Regional Group – Convenor needed

The current convenor of the East Anglian region, Helen Korfanty, is standing down due to other commitments. UKELA would like to take this opportunity to thank her for hard work organising activity in the region over the past few years.

This means we need someone new to step forward – could it be you? The role of convenor, supported by a committee if possible, is to arrange events in the region for UKELA members. This usually means at least 2 speaker meetings per year and an AGM but we welcome other initiatives and ideas.

If you would are interested in this role and would like to chat to someone about what it might entail, please do contact the Regional Group Co-Ordinator on Council, Kenneth Ross at kenneth.ross@brodies.com or Alison Boyd, Member Support Officer at alisonboyd.ukela@ntlbusiness.com who will be pleased to help.

Northern Ireland

A half day seminar in Belfast is being planned for the autumn. If you would like to be involved with the organisation or would like to have more details please contact Alison Boyd:

alisonboyd.ukela@ntlbusiness.com

Scotland

The next UKELA Scottish Regional event will be on Thursday 27 May 2010. The subject of the talk will be "The EU, Noise and Water". Venue: B32 Merchiston Campus, Edinburgh Napier University. Start Time: 5.30 pm for 6 pm with tea, coffee and biscuits beforehand. The event finishes at 8pm with wine and snacks.
Speakers:
Sarah Hendry of Dundee University - The EU and Water

Regional Group News

Professor Francis McManus - Noise and the EU
Cost: £10 for members and £15 for non-members. Students £5. All places must be booked.
Click here to book.

The Scottish Regional Group is planning a conference on October 7th. More details will be available shortly.

Wales

A small group of volunteers with Prof Bob Lee and Lynda Warren at the helm, is drawing up plans for a series of events in Wales. The first is planned for July 1st at Geldards in Cardiff, starting at 4.30 with tea and coffee and speakers at 5pm.

The National Assembly for Wales now has legislative competence to introduce Assembly Measures in relation to the environment following the passage of a Legislative Competence Order ("LCO"): The National Assembly for Wales (Legislative Competence) (Environment) Order 2010. The Government of Wales Act 2006 established the concept of LCOs to confer specific legislative powers on the National Assembly for Wales. Each LCO confers legislative competence on the National Assembly in relation to specific topics. The LCO provides the National Assembly for Wales with competence to make Assembly Measures on specific matters, namely waste, pollution and nuisances.

This Joint seminar organised by the Wales Public Law and Human Rights Association and UKELA explores three topics namely the constitutional import of LCOs, the process by which they are introduced and the significance of the Environment LCO in the wider policy context in Wales. The speakers at this event were all engaged in the introduction of the LCO, offering a unique insight into both procedural and substantive issues involved in the LCO.

Speakers are currently being finalised and the full details will be posted on www.ukela.org as soon as possible, with an invitation being sent to all our members in Wales.

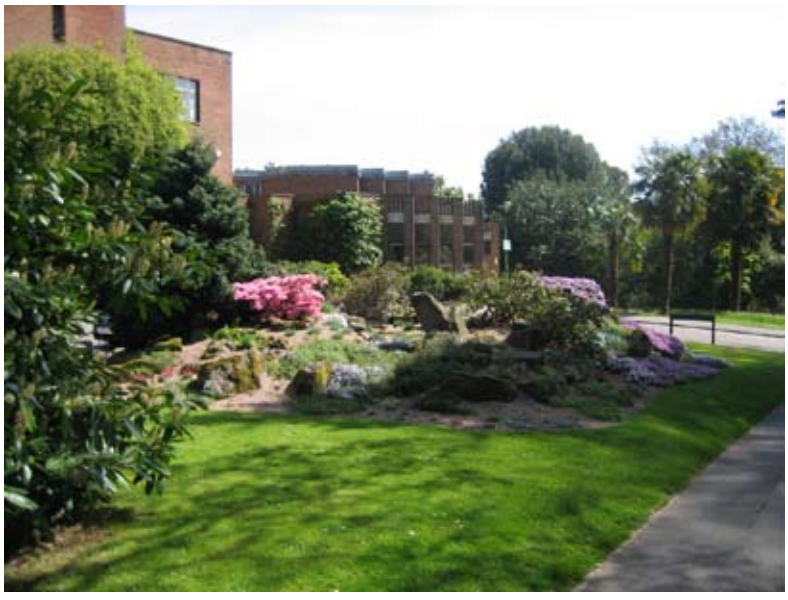
East Midlands

The East Midlands regional group programme of meetings for 2010 is now available on their webpage. Go to www.ukela.org for more details and to book. Their next event is on June 8th at 6pm.

UKELA events

UKELA Conference 2010 – University of Exeter

Friday 25th – Sunday 27th June 2009



There have been some slight changes to the conference programme – most notably Robert Upton, Deputy Chair of the Infrastructure Planning Commission, will now open the presentations on Friday (in place of Douglas Evans).

Revised programme:

'Climate Change and the Changing Face of Regulation'
UKELA Conference 2010 – University of Exeter
Friday 25th – Sunday 27th June 2009

'Climate Change and the Changing Face of Regulation'

Friday 25th June

4.00pm – 5.30pm Registration/Tea & Coffee – **The Peter Chalk Centre**

UKELA events

5.30pm – 6.45pm	Welcome by **Lord Justice Carnwath**, President of UKELA **Chair:** Professor Malcolm Grant CBE **Speaker:** Robert Upton – Deputy Chair of Legal Services at the Infrastructure Planning Commission
7.00pm – 7.30pm	Welcome drink – **Holland Bar**
7.30pm – 01.00am	Buffet Dinner & Bar – **Holland Hall Dining Room**

Saturday 26th June

7.30am – 9.00am	Breakfast – **Holland Hall Dining Room**
	Conference Sessions - **The Peter Chalk Centre**
9.15am – 10.50 am	**Climate Change**
	Chair: Professor Malcolm Grant CBE Speakers: Climate Change after Copenhagen? Adrian Roberts of DECC Climate Change Litigation – Kate Harrison, Greenpeace lawyer and Harrison Grant partner The Story of Renewables - Sarah Holmes- Bond Pearce
10.50 am – 11.10 am	Coffee break
11.10am –12.45pm**:**	**The Changing Face of Regulation**
	Chair: Lord Justice Carnwath/Peter Kellett
	Speakers: What can we learn from US regulation? Richard Macrory How would the Environment Agency use Civil Sanctions – Anne Brosnan – Head of Serious Casework Habitats, Birds, Renewables and Tidal Power – Energy v Species Lynda Warren
12.30pm – 2.15pm	Lunch – **The Peter Chalk Centre**
2.30pm – 6.00pm	**Afternoon tours**: Dawlish Warren Nature Reserve Walking Tour of Exeter including Cathedral River Exe boat trip Academic Session World Cup
7.30pm – 8.15pm	Drinks Reception – **Powderham Castle**
8.15pm – 11.00pm	Gala Dinner – **Powderham Castle**
	Guest Speaker: Satish Kumar on Climate Resilience, introduced by Professor Richard Macrory

UKELA events

Sunday 27th June

7.30am – 9.00am	Breakfast – **Holland Hall Dining Room**
	Conference Sessions - **The Peter Chalk Centre**
9.30am – 11.00am	Working Party Sessions – **The Peter Chalk Centre**
	[including Environmental Mediation and Wild Law]
11.00am – 11:20am	Coffee Break
11.20am – 1.00pm	**AGM then The Year's Hottest Cases Reviewed**
	Chair: Peter Kellett
	Speakers:
	Nathalie Lieven QC – Landmark Chambers
	Martin Edwards – 39 Essex Street
	Angus McCullough – 1 Crown Office Row
1.00pm – 2.00pm	Packed Lunch – **The Peter Chalk Centre**
2.00pm	Close of Conference

Have you booked your conference place yet?

Delegate fees remain excellent value at the 2009 rate:

- Choice of en suite or reduced price shared bathroom
- Special rates for those on lower incomes

Travel: Exeter has fantastic train connections (e.g. just over 2 hours from London or Cardiff, 7 hours with one change from Edinburgh)

6.5 CPD points

To book online click here.

With thanks to our main sponsors: GroundSure Ltd; Landmark Information Group; 39 Essex Street; WSP Environment and Energy.

London meeting on Corby and its Implications: 15th July.

Speakers include those involved in the Corby case. Organiser: Richard Kimblin.

Post election seminar "The Environmental Challenges for the New Government": date TBC.

This topical discussion will be hosted at Freshfields Bruckhaus Deringer in Fleet Street, London and chaired by Nicholas Schoon, Editor of ENDS. Date being finalised and invitations will be sent out asap.

Diary Date: Garner Lecture

This year's Garner Lecture will be given by Sir Konrad Schiemann at Clifford Chance at 6pm on November 18th. Please put this in your diary. Bookings will open in early September.

Nuclear Law

Author- Stephen Tromans

Hart Publishing
610 pp PRICE £95.00
ISBN1841138576 /9781841138572

Reviewed by Scott Lyness

This is a timely and much expanded new edition of a standard text, which coincides with a revival of interest in nuclear power in the UK.

It provides a practical guide through the complicated international, European and domestic law relating to the peaceful uses of nuclear energy and radioactive substances, including the permitting and operation of nuclear power stations, the decommissioning and clean-up of former nuclear facilities, radiological protection, the management of radioactive waste and spent fuel, liability and insurance and the security and transport of radioactive materials.

Each of these related themes is addressed in both high-level overview and scholarly detail, where historical context is balanced with a straightforward explanation of contemporary issues. It deals in an accessible way with one of the most pressing concerns of our times - how we provide ourselves with a safe, economic and sustainable energy supply in a world overshadowed by climate change and emerging nuclear threats.

This book will be welcomed by practitioners seeking a single source of learning on the subject, however it deserves a widespread readership. Anyone wanting to look beyond the headlines and properly understand this important topic should consult it.

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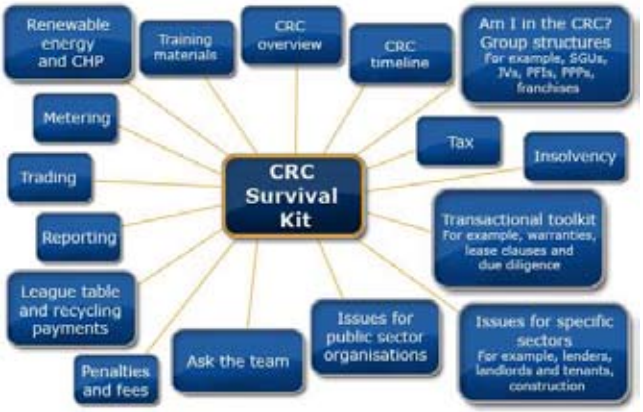

The CRC Survival Kit forms part of PLC Environment, a specialist service covering a wide range of developments in environmental law and policy. PLC Environment is one of a range of services available from Practical Law Company, the UK's leading provider of legal know-how.

"I've been very impressed with the quality and accessibility of the documents in the CRC Survival Kit."
Charlotte Prosser, Senior Counsel, Group Legal, AXA UK

"We use the PLC CRC Survival Kit as our external CRC resource. This area is multi-faceted and PLC has done some serious thinking about the various issues that may be of practical concern. It really is a tremendous effort and a great piece of work, which we have been happy to recommend."
Louise Moore, Partner, Herbert Smith LLP

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E - LAW

The editorial team wants articles, news and views from you for the next edition due to go out in July 2010

All contributions should be dispatched to Catherine Davey as soon as possible by email at:

catherine.davey@stevens-bolton.co.uk by **8 July 2010**

Please use Arial font 11pt. Single space. Ensure headings are in bold capitals.

Letters to the editor will be published, space permitting

Designed by Kim Elcoate May