



e-law

UKELA Making the law work for a better environment

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Editorial

Welcome to the July e-law; delayed a little so that we could report on the Southampton conference but hopefully reaching your inboxes in time to provide you with holiday reading. The next e-law will be out in September and we already have news of a number of exciting events planned for the autumn.

In this edition you will find a report on the new strategic plan to take UKELA through to 2015, and the launch of *The State of UK Environmental Law in 2011-12: Is there a case for legislative reform?* setting out the key findings and recommendations to emerge from an ambitious three-year collaborative research project involving UKELA, King’s College London and the centre for Business Relationships, Accountability, Sustainability and Society at Cardiff University (BRASS). We are also seeking volunteer expert speakers who can offer talks to our regional groups around the UK.



Catherine Davey, Editor e-law

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Southampton Conference 6-8 July 2012 – Planning for the Energy Challenge

By Ben Stansfield, Clifford Chance and UKELA Council member

The conference started with a round of applause for the cyclists (most of whom were trying to recover at the time and missed the session!), then it was down to serious business with Andrew Lee, Strategy Director of the South Downs National Park Authority, explaining the challenges facing the Authority in facing up to the climate change and energy challenge. The Park was set up officially in 2009, covers 15 local authority areas between Eastbourne and Winchester, and has a substantial population of 110,000. It receives 39 million visits a year and is intensively farmed so the pressures on it are great. Andrew told delegates: “Climate change will have a profound effect on the things we are here to protect – the landscape, wildlife and cultural heritage”. The Authority is encouraging renewables – particularly biomass as there is enough wood fuel in the National Park to heat the equivalent of a fifth of the homes in the Park.



Delegates enjoy a drink before Friday's dinner

After Andrew's presentation, attendees enjoyed a drinks reception and dinner – an opportunity to refresh friendships as well as themselves.



Prof Richard Macrory, session chair, with Andrew Lee

Quizmasters Stephen Tromans QC and Zack Simons provoked a healthy rivalry amongst tables – Andy and Luke of 39 Essex Street working hard to deal with numerous appeals, challenges and accusations of cheating! The quiz culminated with Alison Boyd and Olivia Hamlyn going head-to-head in a tie-breaker for the champagne prize - well done to Olivia for recognising Annie Lennox's “walking on broken glass” and giving the Recyclists' quiz team a much deserved victory -is there no end to their talents?

After dinner, a group of thirty thirsty people went to “Revival” (a mysteriously empty nightclub) for a Jägermeister tasting session. Stick-on moustaches, aviator shades, pink sparkly trilby hats and an inflatable guitar meant that we saw friends and colleagues in a new light and who knew that David Hart QC and Michael Wood could break-dance?

On Saturday a cooked breakfast, strong coffee and orange juice helped fight off any tiredness and set us up for the day ahead. Neil Sinden kicked off the morning presentations with his insights into CPRE's recent campaigning with respect to the NPPF and the Localism Act. David Elvin QC updated delegates on infrastructure planning and surely won a bet with a wag in Chambers by uttering the phrase “*bodily excretions, or dead bodies, of non-human creatures*”, which I think is a UKELA first. The final presentation of the first session was delivered by Richard Ford who pitted centralism (in the red corner) against localism (in the blue corner) and concluded that the centralists would emerge victorious, but not before the localists (or, as my spellchecker would prefer, either “vocalists” or “loyalists” – who knew computers knew about planning?) had landed a few good blows.

After a quick coffee break we recommenced with a warmly received talk from Cameron Hepburn who gave an environmental economist's view of the world, describing our current energy mix, the global impact of an increase in US shale gas production and finishing with some game theory regarding cross-border carbon permitting – all that in twenty minutes.

Marcus Trinick QC spoke on the obstacles to renewable energy, arguing that attacks on onshore wind adversely impacted upon all renewable technologies. Marcus urged the Government to “stop rocking the boat” and further shaking investor confidence. Simon Roberts finished off the formal presentations with a call for greater community involvement with renewable energy projects and he takes the award for the best analogy of the weekend, describing the EU as a nerdy teenager at the school disco who needs to have the confidence to strut its stuff on the dance floor (by itself) in order for others to join in the dance (and enact similar environmental protections) – Simon didn't mention whether stick-on moustaches and pink sparkly hats would help the legislative process but I think that goes without saying.



Speakers in the Planning Session with Chair Sir Crispin Agnew

After a quick lunch, delegates joined one of four working parties for round-table discussions on planning and sustainable development; climate change energy and water issues; nature conservation; and the state of environmental law. Organised afternoon tours, and naps for the less energetic, followed.

Our annual Gala Dinner was held in the Grand Café at South Western House, where most of Titanic's first class passengers would have enjoyed a meal the night before boarding – delegates certainly had an insight into the life of the privileged and famous as we took coaches instead of walking the 250 metres to the venue (parallels to John and Pauline Prescott at the 1999 Labour party conference in Blackpool?). Baroness Bryony Worthington gave us a light-hearted insight into life at the Lords and the value that life peers with specialist skills and passionate interests can bring to our upper chamber. After the raffle (dominated by four Clifford Chance winners) we enjoyed a few more drinks and a few brave souls ventured once more into the Southampton rain for one more drink.

On Sunday, those who remained in Southampton had three break-out sessions to choose from, covering waste and litigation, devolution and wild law; followed by a review of the year's leading cases by Gordon Nardell QC, Robert McCracken QC and Thea Osmund-Smith.

Thanks are due to our main sponsors: 39 Essex Street; Landmark Chambers and WSP Environment and Energy; and to the others: 6 Pump Court; Argyll Environmental; 1 Crown Office Row; Environ; Francis Taylor Building and Lexis Nexis; our organisers and in particular our speakers.

UKELA's 25th anniversary conference will be in Cambridge on 12 to 14 July 2013 and promises to be a fantastic event – please put the date in your diary!



Recyclists' numbers swell to 14 as they brave wind, rain and New Forest ponies to reach Southampton in time for tea

By James Burton, of 39 Essex Street and new UKELA Council member

Only two years ago the notion of a cycle ride to the annual conference was but a two-wheeled twinkle in the eye of one Stephen Sykes. Last year the Recyclists, UKELA's cycling offshoot, was formed and embarked on its first adventure, making the Norwich conference after a three-day happy wander around East Anglia. Since then the Recyclists have grown in number, enthusiasm and organisation and we like to think that the annual cycle ride is now a full blown fixture in the UKELA conference firmament.

This year's adventure culminated with no fewer than 14 Recyclists boarding the Hythe ferry and crossing to Southampton to arrive not just in style but en masse. We did so after something in the order of 120 very scenic miles from Oxford. These included (i) numerous overly large hills (the Ridgeway south of Didcot brings back fond memories, as do a few others) (ii) one painful and drawn-out nettle and muddy-trench encounter before Thursday lunch (iii) a certain slightly unprofessional but nonetheless effective reliance on smartphone google maps at various key moments (iv) lots of sun on Thursday (v) lots of rain on Friday (vi) a few restorative pints (vii) double meal orders in the Amesbury Wetherspoon's on Thursday night (viii) much affection for the New Forest ponies (ix) entirely gratuitous cycling back and forth across a ford (x) a certain amount of damp-spirit-lifting singing (xi) a quantity of delightfully neon wet weather gear (xii) a mass cyclist invasion of the tiny Hythe ferry (xiii) some quite impressive fundraising for the Lord Nathan fund and, above all, (xiv) massive camaraderie and a lot of fun.



The Recyclists at the finishing line

For those who enjoy the odd stat, the ride from Oxford to Amesbury (which took us around the sweep of the Thames to Abingdon, then over those various painful hills to Salisbury plain and the Avon) was 63 miles or so, with 1323 feet climbed before lunch alone, and the Friday ride from Amesbury to Southampton (which saw us continue on down the Avon, through Salisbury and eventually to Ringwood, where we swung east and crossed the New Forest in the teeth of the storm to the very accommodating Hythe ferry) was a clean 60 miles, with 1923 feet climbed in all.

Considering that at least 4 of the 14 made the distance on bikes that were more an exercise in weightlifting/gym resistance work

than smooth cycling, this was a serious achievement.

Huge thanks to all those who have sponsored us. And for those who have not, it is not too late to do so. Here is the link: <https://mydonate.bt.com/events/ukelarecyclists/77915>

We have great hopes for next year's ride to the 2013 Cambridge conference, and the present plan is a one-day affair on the Friday, over terrain very much flatter than that covered this time, that will allow more than ever to join in and see us sweep into town in a great Recyclists' wave.

In the meantime, there is talk of an autumn ride and even of UKELA speakers cycling out to seminars.

Could all those interested in any of the above please contact james.burton@39essex.com and we will start building the peleton...

Those Conference 2012 Recyclists in full: Stephen Sykes, Ben Stansfield, Kirsty Schneeberger, Tim Clare, Olivia Hamlyn, Cameron Hepburn, Nicky Peart, Richard Wald, Gordon Nardell, Stephen Tromans, Juliet Munn, Catherine Dobson, Zack Simons and James Burton (with an honourable mention to Mark Fermor who found himself dragged into a rowing boat instead).

Fundraising

By Alison Boyd, Member Support Officer



Fundraising for the Lord Nathan Fund for the Environment went into overdrive the weekend of the Annual Conference as delegates dug deep to support a host of initiatives. First our Recyclists (see the report of their journey elsewhere in this issue) arrived to a heroes' welcome in a rainy Southampton in time for the start of the Annual Conference. Champagne was flowing as they crossed the finish line in fine style and we are delighted to say that donations have exceeded £2300 at the time of writing. Huge thanks to the cyclists themselves who braved some awful weather and to everyone that so generously sponsored them. There is still time to sponsor them and you can do so here: <https://mydonate.bt.com/events/ukelarecyclists/77915>

Next up was the Friday night quiz prepared and presented by Stephen Tromans QC and his team from 39 Essex St. Delegates competed valiantly against each other and in the end it came down to a tie-break between the Chair's Champs and The Recyclists – the latter emerged victorious thanks to Olivia's knowledge of Annie Lennox's back catalogue (and Alison's rather obvious lack of knowledge). Once again the champagne was flowing for the cycling contingent. This enjoyable end to the Friday evening meal raised an amazing £700 for the Fund.

Our thanks go to Stephen and his team for all their hard work in pulling the quiz together.

Finally, at the Gala Dinner on Saturday evening the Raffle was drawn. With some excellent prizes, the sale of tickets was brisk and the magnificent sum of £800 was raised for the Fund. Thanks go to everyone who bought tickets and to all those who donated prizes, in particular GroundSure who donated both first and second prize of a Blackberry Torch and John Lewis vouchers.

More fundraising activity is coming up later this year – see below.

Kayak paddle in aid of Lord Nathan Memorial Fund for the Environment

By David Hart QC

David Hart QC invites you to join him on a sponsored kayak over the weekend of 15 September 2012, in aid of the Lord Nathan Fund. In May 2010 we raised over £5,000, and my objective is to meet or beat that target. I think the 30-odd people who joined me in 2010 and 2011 had a very good time. A number of them were first-timers in kayaks, so don't worry about that. However, all entrants must be reasonable swimmers.



Fundraising

I will provide the kayaks, life jackets, and wetsuits. The plan is to paddle from Burnham Overy Staithe quay very near my house (in North Norfolk), to a buoy in Brancaster harbour, and then return, a distance of about 6 miles. Precise route to be confirmed.

The route is inshore, along a creek dividing Scolt Head Island from the mainland. It is a birdwatcher's paradise, protected by every conceivable European and domestic designation. It is also beautiful in a muddy, sandy, saltmarshy, peaceful sort of way.

The event is not intended to be a race, indeed far from it, though be warned that a certain pace will be required otherwise you will find yourself paddling for much longer periods against a fast-flowing ebb tide. You will also have to carry or drag your kayaks over a short distance (50m at most) of marshland, a manoeuvre which will save you over a mile of paddling against the tide.

Provisional programme

16.00	Saturday 15th September Assemble at Burnham Overy Staithe quay for briefing and issue of kayaks
16.45	start (conditions permitting)
19.00	high tide
19.00-20.00	repair for supper to my house (Lapwing House, Glebe Lane, Burnham Overy Staithe PE31 8JQ)

I will underwrite kayaks, lifejacket and wetsuit hire, food and wine.

The kayaks are a mixture of single and double kayaks. All are easy to paddle: no prior experience required.

However, I would be greatly assisted if those who have some kayaking/canoeing experience could say this when booking. My ceiling on numbers will depend upon having a sufficient number of experienced kayakers amongst us.

Landlubbers

For those who do not fancy getting wet bottoms, there will be a number of spaces either in rescue craft or you can follow our progress at least part of the way by walking along the coastal path from Burnham Overy Staithe towards Burnham Deepdale.

Numbers

Ceiling on kayak numbers is about 40 people, and we can feed and "water" a further 10 people who wish to stay on dry land. So book fast.

Burnham Overy Staithe quay can be reached by public transport from London – train to King's Lynn, then Coasthopper bus. I would also hope that some car-sharing clearing-house be set up closer to the time.

Cost

Cost per head £50 or £25 if trainee/pupil/equivalent – you will pay this by contributing directly to the Fund. Then contact Charlotte Barrow, details below.

Participants are invited to seek individual sponsorship on top of this. I would hope that everybody would aim at least to match their individual contribution with contributions from others. In 2010, we raised over 3 times the entry fees from generous friends and relations.

Accommodation: I can provide 10 or so beds in or near the village – under dormitory conditions. First come, first served.

Dossing in the house also welcome, and there is a reasonable sized garden in which you can pitch their tents – we had 6 or 7 tents last, and there is a large 4-man tent here, as well as a few festival-type tents.

Alternatively, within 2 miles there are (a) two elegant hotels (the Victoria, Holkham or the Hoste, Burnham Market) or (b) a backpacker's hostel in Burnham Deepdale. There are also some B&Bs nearby.

Booking:

Please contact charlotte.barrow@lcor.com who will be helping with the organisation

Please tell her

- (i) whether you would like to kayak or stay on dry land
- (ii) if a dry-lander, would you be happy to be aboard a rescue craft
- (iii) whether you would like me to see whether I can find accommodation (no promises);
- (iv) whether you have some experience of kayaking/canoeing;
- (v) which kind of craft you would prefer (single/double). I will do my best to provide this, though there will also be an

element of 1st come, 1st served on the day.

Your side of the deal

- (i) you must agree to donate to the Fund at or before booking;
- (ii) you must be able to swim,
- (iii) you must agree to wear the lifejacket,
- (iv) you must agree to wear the wetsuit if I so direct (September evenings can be cold).
- (v) you must agree not to do anything daft.

You must also turn up at 4pm on the Saturday if you wish to kayak. I will then give you a detailed briefing on where we are to go, and set the ground rules for the event.

Prompt arrival will also enable you to choose the kayak/canoe combination which suits you best.

Donations: our donation page will be set up very shortly and we will publicise this when it's ready.

Thanks again for your support.

News

Council Elections

As you will know, voting has taken place to elect new trustees to represent you on Council. Mark Brumwell and James Maurici have been re-elected for a further 4 year term after completing their initial term. New trustees are Hayley Tam of Lexis Nexis and James Burton of 39 Essex St. You can read more about them below.

James Burton

James Burton is a barrister at Thirty Nine Essex Street. He specialises in environmental, energy, planning and related areas. He is also a founder member of the Recyclists, UKELA's cycling/fundraising club.



Hayley Tam

Hayley is head of Environment at LexisPSL, LexisNexis having previously worked in both the private and public sector at the Environment Agency, Allen & Overy, Stephenson Harwood and Ashurst Australia.

Booking for Events

Our online events booking system is changing! From 1st August you will notice some changes to the look of our events booking pages when you book for events. This is because, following a tender process, UKELA has moved to a different provider – Symphony Events Management. We are very much looking forward to working with this UK based organisation to continue to provide a high-quality, streamlined booking service. We are confident that this change will enhance your booking experience, although we do ask you to be patient while the new system beds in and staff become thoroughly familiar with the new options. Training is currently underway and the first of our events under the new system will be ready to take bookings during August.

What does this change mean for you? We are confident that you will not experience any loss in service. The booking site will look and feel different from what you have been used to, but you will still be able to book and pay for your chosen event in minutes as now. A welcome new addition to the service we offer is that invoices will now be automatically generated for each booking – something I am sure the majority of you will welcome.

Once the new booking system is up and running, do not hesitate to contact alisonboyd.ukela@ntlbusiness.com if you have any queries.

Strategic Plan

By Mark Brumwell, Chair of UKELA on behalf of Council



Thanks to all members who helped guide the new Strategy for UKELA – providing clear aims for 2012-2015. There was a resounding consensus around our core values:

Promoting good law about the environment; increasing awareness; wanting to educate others; being welcoming, inclusive and encouraging participation; independence and integrity.

There was also clear agreement around the organisation's vision:

UKELA has a vision of a world in which environmental governance and legislation is clear and effective and improves environmental quality and human well-being. UKELA will be influential in securing good quality law and policy on the environment, energy and natural resources. UKELA aims to be the expert voice on environmental law and governance and a forum for the exchange of environmental knowledge. It will support its members with continuing professional development opportunities and provide clear information to the public about the law and the environment.

Five aims emerged from a process which scanned the external factors which will be influencing UKELA's work and assessed the organisation's own qualities and resources. The aims are the big things which will attract staff and volunteer resources to deliver over the plan period.

Aim 1 (joint top priority with Aim 2) – Interventions Make UKELA's interventions more strategic, diverse, focused and influential in order to shape UK environmental law.

Aim 2 – Public Information Improve delivery of information to the public across the UK and improve the general and social media profile of UKELA

Aim 3 – Devolution Ensure UKELA has a sufficiently resilient structure across the devolved administrations so it is prepared to meet the challenges and opportunities of an increasingly divergent UK system of Environmental Law and governance and to prepare scenarios in light of the Scottish referendum in 2014

Aim 4 – Membership Retain, diversify and activate membership networks

Aim 5 – International Interact with international bodies, particularly in Europe, to influence better EU law, and key jurisdictions globally which are relevant to members' working lives, to provide opportunities for knowledge sharing and foster cooperation on key issues

All these aims mean that UKELA will be working differently in some areas and some members are already engaged in helping make the changes needed.

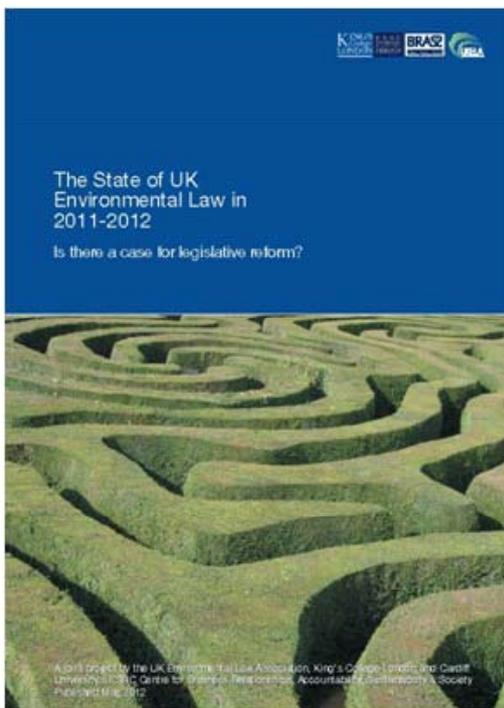
If you are based in Scotland, Wales or Northern Ireland we are already inviting ideas from you on how to make UKELA work more effectively in the devolved jurisdictions. Please do join in the debate and volunteer your ideas and time to ensure UKELA meets the challenges ahead and makes the most of opportunities.

The State of Environmental Law: Final UKELA Report Launched

The project team (Begonia Filgueira, Dr Eloise Scotford, Bridget Marshall, Angus Evers, Jamie Whittle) and Rosie Oliver (primary author of the final report) update e-law readers on the outcomes (so far) of this major piece of work analysing the quality of environmental legislation throughout the United Kingdom.

This May saw the launch of the project's final report: [The State of UK Environmental Law in 2011-12: Is there a case for legislative reform?](#) It sets out key findings and recommendations to emerge from an ambitious three-year collaborative research project involving the UK Environmental Law Association, King's College London and the centre for Business Relationships, Accountability, Sustainability and Society at Cardiff University (BRASS).

UKELA members who were at the 2009 Durham conference may remember the keynote speech by Jonathan Robinson, of the Environment Agency, who asked "who is scrutinising the work of officials to make sure that our environmental law is coherent, principled, accessible and well-informed?" A UKELA team was subsequently formed to rise to that challenge and the work became a strategic aim for the organisation during the 2009-2012 plan period. The project and its outcomes were very much geared towards reflecting the views, knowledge and interests of UKELA members, drawing on their experience with



environmental legislation. The project's outcomes are also intended to inform the working parties, with a view to making their consultation responses more effective and strategic.

UKELA's Institutional Partners: Who was Involved?

The work quickly drew in an academic institution – King's College London – which helped to fund the research and added much needed academic input from Dr Eloise Scotford, who now also sits on UKELA's Council. Interns, from amongst UKELA's student membership, were recruited to carry out empirical research tasks, which included online studies and interviews.

As the final research stage of the project, Professor Robert Lee's department at Cardiff University (the ESRC Centre for Business Relationships, Accountability, Sustainability and Society) also conducted a focused empirical survey of business users of environmental legislation, consulting on the attitude of industry to such legislation, and producing a stand-alone report.

Further, fifteen individual UKELA members had a closely involved role during the project, with many more involved through interviews and the consultation exercise conducted with the whole membership during the project. A big thank you is due to everyone who helped. Thanks are also due to Matrix Chambers, which funded some of the editing, design work, printing and final report launch costs.

The Research

The research focused on the quality of environmental legislation, assessed in terms of coherence (how clear and comprehensible it is), integration (how different laws and regimes interact) and transparency (or accessibility). It examined waste law, environmental permitting regulation, environmental and habitats assessment and its interaction with planning law, and the regulation of water quality and water resources. These areas were chosen to explore the kinds of problems that exist across UK environmental legislation.

The project sought to gather views from the range of groups that make and work with environmental legislation across the UK. Those interviewed and surveyed include people from different sectors and sizes of business, regulators, consultants, legal practitioners, judges and academics. The findings are set out in [three reports](#): a detailed interim research report, a UKELA member consultation report, and the BRASS industry-focused research report.

Project Conclusions: Legislative Quality Problems

The conclusions in the final report are sobering. A key concern shared by environmental professionals and business users alike was that the legislative picture is too complex and lacks clarity. This is due to a number of practices such as frequent amendments, complicated devolution arrangements and intricate drafting. There are also external factors at play, most notably wide-ranging and evolving EU legislation, and the technical nature of some regulatory areas.

The research brought out the importance of guidance in making the law more comprehensible, particularly for business users who seldom consult the legislation itself. Here, though, a number of problems were identified. These include multiple, inconsistent or conflicting guidance on the same subject, and instances of overly technical or very lengthy documents. A recurrent integration problem raised by respondents was the way that regimes for environmental permitting, planning and habitats assessment interact. Far from dovetailing seamlessly, the complicated overlap between these regimes causes uncertainty and difficulties dealing with consents for large complex projects.

Recommendations for Change

These practical problems are among the reasons cited in the report's 'Case for Change'. Issues of legislative coherence, integration and transparency – being technical and certainly not headline-grabbing – are always at risk of being pushed down the list of priorities of governments intent on driving through new policies. But the report brings out some compelling reasons why legislative quality matters. These range from the way that uncertainty can add to costs and inhibit business investment and innovation, to concerns about how opaque, inaccessible legislation can be a barrier to justice and ultimately undermine the rule of law.

The report contains a number of recommendations by UKELA about how governments and regulators can address the problems. These include:

- consolidating legislation more routinely, so that users need only consult a single piece of legislation to gain a clear, complete picture of the law on a subject;

- providing updated or consolidated versions of legislation to the public, for example through legislation.gov.uk;
- reforms to make regimes such as planning and habitats assessments interact more harmoniously;
- improving and rationalising environmental appeal procedures;
- streamlining enforcement powers;
- making sure government and regulator guidance is up-to-date, avoids setting out matters that would more appropriately be addressed in legislation, and is drafted in a way that is appropriate to its function and audience; and
- pressure at European level to influence the drafting of EU Directives and Regulations with a view to making it less ambiguous and better integrated.

Implementing these recommendations would take time and resources and involve difficult work redrafting the complex web of UK environmental legislation. However, despite the scale of the proposed changes, there are grounds to believe that they may find a sympathetic audience within government. Defra's recent [Red Tape Challenge Environment Theme proposals](#) and the Welsh Government's Green Paper [Sustaining a Living Wales](#) both include proposals to rationalise or 'refresh' environmental legislation. Meanwhile, the Scottish Government recently launched a major [consultation](#) on creating a new, more streamlined legal framework for environmental regulation and enforcement.

The question remains as to whether there is a more significant and systemic problem with UK environmental legislation. The report sets out UKELA's recommendations for further work here. These include analysing the emerging picture of fragmented law across the UK, in light of devolution; considering the role for environmental principles (such as 'polluter pays', the precautionary principle and principle of intergenerational equity) in making the law more coherent, accessible and transparent; and improving institutional processes for scrutinising legislation.

What Happens Now?

The main task now is to disseminate the project's findings so that UKELA members – and governments and regulators throughout the UK – are aware of the problems the project identifies and the kind of work and solutions it promotes. Key conduits for this dissemination are the working parties, which are well placed to advise government on proposed changes to legislation. For example, the Waste Working Party's recent short response to the government consultation on transposing the EU Industrial Emissions Directive uses the project findings as a tool: "The Directive is a major piece of legislation which impacts on thousands of installations and UKELA considers that its transposition merits issuing a consolidated set of Environmental Permitting Regulations rather than issuing the fourth set of amending Regulations to be issued in two years, which will only serve to create confusion". The expectation is that UKELA's responses can become more strategic and systematic in promoting a message which will lead to general improvements in the development of legislation overall.

At the recent report launch event, Steven Gleave, head of Defra's better regulation team, gave a response and commended the report. He discussed Defra's major task of regulatory reform, currently underway, in particular through the Red Tape Challenge. He indicated this reform agenda would protect the environment in a more effective and also efficient way, putting fewer burdens on businesses without sacrificing environmental quality. Once implemented, the estimated benefit to business of Defra's planned reform package was more than £1bn over 5 years. 132 statutes or regulations are to be improved, mainly through simplification or consolidation; 70 to be kept unchanged; and 53 repealed, being obsolete. Over five years, this reform agenda, which is still being developed, would lead to "a significantly simplified legislative and administrative landscape".

There are other, more general recommendations in the report that require further research work by others, which are beyond UKELA's limited resources. The project team will be monitoring what happens next with these and with all recommendations in the final report. We will work to ensure that they do not gather dust, and that efforts continue to take the project's work forward. Begonia Filgueira concluded her presentation at the launch by saying: "The principle is not about de-regulation, it's about improving regulation in the 21st Century".

You can read all the project reports and view the presentations from the launch [here](#).

Following the Red Tape Challenge, Defra has begun a cross-cutting review to evaluate the scope for making improvements to the framework of environmental regulation in England. In particular they are looking for ways to: (i) increase its effectiveness in producing environmental benefits; (ii) reduce unnecessary complexity, inconsistency and duplication; and (iii) make obligations more transparent and therefore easier to comply with. Options for rationalising guidance and data requirements will be presented to Ministers by end September, while longer term options for regulatory reform will be submitted to Ministers by end December. Input on the Terms of Reference is welcomed. SERR@defra.gsi.gov.uk
<http://www.defra.gov.uk/corporate/about/how/regulation/>

Regional Groups – Speaker programme

UKELA is looking for expert speakers who can offer talks to regional groups around the UK. This is to support our programme of regional events with a target of holding two a year in each UKELA region (or by combining two regions together if more practical). The regions are Scotland, Northern Ireland, Wales, North West England, North East England, East Midlands, West Midlands, South West England, East England. Audiences at regional group meetings include legal practitioners, environmental consultants and scientists, academics, industry practitioners and students.

Speakers should be able to offer up to half an hour on a current hot topic (aimed mainly at practitioners) and be able to answer questions. Suggested topics include Climate change and energy including new technologies; environmental litigation and the latest cases; recent statutory and policy developments; contaminated land; water resources; waste; nature conservation (particularly biodiversity offsetting); environmental insurance and planning and sustainable development.

Written papers and/or powerpoint presentations would need to be made available for CPD purposes.

The aim is to gather small groups of speakers (eg one or two) who can offer an event, perhaps in more than one region. This is a good opportunity for promotion and marketing, networking, knowledge exchange, improving skills and sharing ideas. Reasonable (eg. 2nd class train travel) expenses can be paid as needed (these can be covered by small fees paid by members attending events). We hope that overnight stays will not be needed but we can discuss expenses for them if they are.

If you are able to offer yourself please send details, including the topic, to Alisonboyd.ukela@ntlbusiness.com

A small panel comprising UKELA council members and staff will consider offers and liaise with the Regional Groups to develop the programme. We are grateful for all offers but whether offers are accepted will depend on the needs of the regions as interpreted by the panel.

Working Party News

Working Party Star Member, July/August 2012

The working party Star Member scheme was launched in March to reward hard work and recognise members who make a significant contribution to activities. We're delighted to announce the winner of the latest nominations' round: Caryl Walter.

Caryl is an associate specialising in planning and environmental law at Bond Pearce LLP. She has been a planning/environment lawyer for three years; before moving to Bond Pearce she was an associate and then consultant focusing on climate change law and policy at Freshfields Bruckhaus Deringer LLP. She has been awarded Star Member in recognition of her contribution to the climate change and energy working party. In the last year Caryl has masterminded the working party's response to two Carbon Reduction Commitment consultations and attended a lot of working party meetings even while in the middle of completing her planning law MPhil in Cambridge.



60 Second Interview



Anne Johnstone, Environ UK Ltd and UKELA Council member

What is your current role?

Senior Manager at ENVIRON UK Limited. I joined ENVIRON in 2002 as a Consultant, having previously worked for WS Atkins in Leeds.

How did you get into environmental law?

When I first started out in environmental consultancy, I spent most of my time out on site, including spells as Resident Engineer on some large remediation jobs. ENVIRON does a lot of property due diligence work, and as I became more experienced I also found myself having to consider an increasingly wide range of environmental issues beyond ground contamination risk. It was a natural progression from there

to working on corporate transactions. I've learnt a lot from working alongside some excellent environmental lawyers on deals involving everything from huge permitted installations to pubs!

60 Second Interview

What are the main challenges in your work?

In the current climate, continually demonstrating to clients the value of our work, and the importance of understanding/dealing with environmental liabilities when they are looking at ways of cutting costs. And specifically in the area of contaminated land assessment, finding workable solutions when there is so much uncertainty and lack of guidance for regulators.

What environmental issue keeps you awake at night?

Energy. We have an energy supply crisis looming, and have probably already left it too late to deal with it effectively. And given that the single biggest threat to humanity is climate change, exploiting fossil fuel reserves is not the answer.

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

Dealing with income inequality, both within this country and between rich and developing countries. There is no incentive for individuals, or countries to behave in an environmentally responsible manner, adopting sustainable solutions and limiting consumption when the drive exists to keep up consumption to try to emulate the lifestyles of a rich and privileged few.

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

That's a hard one! The corporate due diligence and land contamination and insurance working parties are the ones that are most closely aligned to my areas of expertise, but I am also particularly interested in climate change and energy and Scottish law.

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

Gaining access to the wealth of knowledge and expertise within the Association and being inspired to learn more, and do more, myself.

Student Update

By Ben Du Feu, Student Adviser to UKELA's Council

First and foremost, having just returned from the annual conference, I thought I should mention how much I enjoyed it. Below, Nicola Peart explains why attending Cambridge 2013 is a must for any UKELA student member.

Secondly, UKELA is rethinking the package on offer to students. We will be launching a Student Survey in the coming weeks and would really appreciate your feedback on issues such as the student competitions, events and the annual conference. Please keep your eyes peeled for an email from Alison regarding this and please do take the time to reply.

Finally, to give people the heads up, the annual student careers fair will be held on 15 November. 39 Essex Street is kindly hosting the event this year. It provides an excellent opportunity to meet professionals in a variety of environmental law careers.

I look forward to seeing more of you at the events in the coming months.



Southampton 2012: A student's perspective

Nicola Peart

I would thoroughly recommend going to the UKELA annual conference. I have been twice now and have already set aside the dates in my diary for next year. The conference is heavily subsidised for students and well worth the price: for your money, you get rapid updates on the "hottest cases" this year, access to working groups on a range of topical environmental issues, and opportunities to socialise with leading practitioners in the field. For those students interested in the environment, you get to meet and learn from the lawyers, judges and consultants that have taken part in the most important environmental cases. Highlights for me this year were the two day fundraising cycle trip to the conference and Saturday night on the town with some of the delegates (although you've been warned: some of these environmental lawyers party hard!)

Simon Ball prize for outstanding academic achievement

The winner for 2012 of The UKELA Simon Ball Academic Prize for Outstanding Student Achievement sponsored by OUP is Thomas West. Thomas was nominated for his work at Masters level at the School of Law at the University of Nottingham, in particular for his MSc dissertation on “Environmental Justice and International Climate Change Legislation: A Cosmopolitan Perspective”. This was an ambitious piece of work of outstanding quality, originality and maturity, and which followed an exceptional performance on the taught part of his programme of study.



As well as the quality of his academic work, the judges were impressed with the way in which Thomas had mastered the disciplines of human rights law and environmental ethics, as well as other subject areas, without a specific academic background in these. The judges also took into account the circumstances under which Thomas, studying part-time and supporting himself financially through part-time work, undertook his Masters, as well as significant voluntary work which Thomas undertook at the same time. This included help for other students but also work as part-time National Co-ordinator for the National Association for Environmental Education, a small charity dedicated to promoting and supporting all forms of environmental education in both formal and informal settings.

Taking all these factors together, Thomas is a very worthy winner of the 2102 Simon Ball Prize.

Other News

News from the President, Lord Carnwath

Rio Congress

Earlier this month I attended the Rio "World Congress on Justice, Governance and Law for Environmental Sustainability", which was a side event to the main conference, mainly for judges and law enforcement agencies. I wrote a piece for [Guardian On-line](#). Members might be interested to read it.



Angry Planet

On 5th August at 4.30 I shall be singing at the Albert Hall with the Bach Choir at a Prom, with an environmental theme. It is a specially commissioned work by Bob Chilcott, called Angry Planet, and involves children from a number of London schools. "As the culmination of a major youth singing programme, one of England's great choral institutions is joined by the BBC Singers, the National Youth Choir of Great Britain and children from London schools, to perform a specially commissioned work. The Angry Planet is the latest collaboration between prize-winning poet Charles Bennett and composer-conductor Bob Chilcott and expresses, the composer says, 'a deep love for an environment both celebrated and mourned'." Although the concert is sold out it can be heard live on BBC Radio 3.

Contributions - Wind Farms, Richard Wald

The Consenting of On Shore Wind Farms – Changing Landscape?

Richard Wald of 39 Essex Street represented Sea & Land Power & Energy in the Administrative Court



At the end of May Mrs Justice Lang gave judgment in a planning matter relating to the lawfulness of the decision of a local planning authority to refuse a renewable energy company permission for a wind farm on the Norfolk broads. The case, *Sea & Land Power & Energy Ltd v (1) SSCLG (2) Great Yarmouth Borough Council* [2012] EWHC 1419 excited very considerable media coverage, producing numerous pieces in national and local news, many of them describing the judgment as a “landmark ruling” ... “a victory for the landscape preservation over renewable energy targets” and provoking the Campaign to Protect Rural England to comment “The High Court has quashed the idea that national targets have precedence over local concerns”. At the other end of the wind-farming spectrum the representative body for UK wind, wave and

Contributions - Wind Farms, Richard Wald

tidal energy industries, Renewable UK, reacted to the judgment by stating, rather philosophically: “We’re not unduly worried as we’ve always said every application for development needs to be considered on a case-by-case basis – some we win, some we lose.”

Now that the media storm has subsided it is worth looking beyond the news and into the judgment to see, no matter the effect of the case on the Norfolk Broads, what, if any, impact it has on the landscape of on-shore wind farm development in general.

The appeal was pursued on three principle grounds. First, that the Inspector had, in the throes of the confusion about the Coalition government’s unsuccessful attempt at revoking regional spatial strategies, failed to have regard to the East of England Plan and the renewable targets contained therein, or failed to provide proper reasons. Second, that the Inspector had misapplied relevant landscape policy. And finally, that in the face of a conflict between local and national policy, she had failed to give primacy to national policy support for renewable schemes as required by paragraph 11 of the Supplement to PPS1.

Mrs Justice Lang dismissed the first two grounds by adopting the generous approach afforded to Inspectors when exercising their planning judgment and when scrutinising the reasoning in their decision letters (see *Newsmith v SSETR* [2001] EWHC Admin 74 at [6], *South Bucks DC v Porter* (No 2) [2004] 1 WLR 1953 and *Clarke Homes v SSE* (1993) 66 P&CR 263 at 28). As for the third ground Mrs Justice Lang rejected the argument that in the event of a policy conflict national renewable policy takes precedence over local plan policy finding instead that it forms but one of a number of policy considerations to be weighed in the balance. In sum, all of the Claimant’s arguments were dismissed on traditional and rather case-specific grounds.

Then why all the brouhaha? Could it be that the media reaction to this case had more to do with ongoing popular and political debate about the wisdom of peppering our countryside with wind turbines than any new direction in the law relating to the protection of landscape character? At the beginning of the year 101 Tory MPs, led by Chris Heaton-Harris MP, signed a letter to the Prime Minister urging a review of policy relating to the consenting of on-shore wind farms. Amongst other things the letter gave voice to widespread fears that effective opposition to wind farm proposals would be made all but impossible under the new National Planning Policy Framework, in force since the end of March and generally considered a pro-developer compendium of planning policies. And during the week between hearing and judgment in the *Sea & Land Power & Energy* case, a widely publicised cabinet row erupted over a plan by the Chancellor, George Osborne, to cut the subsidy for onshore wind farms by up to 25 per cent.

Whilst the *Sea & Land Power* judgment may leave the legal landscape behind renewable energy development unchanged, the nature and extent of the media response to it seems to suggest that the political tectonic plates are on the move.

Contributions - Legal Aid Reforms

The Practical Law Company has provided an update for UKELA members on the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which removes caps on fines in the magistrates’ court.

The following changes brought about by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) will affect any primary and secondary legislation in England and Wales that gives magistrates’ courts the power to impose a fine for a criminal offence:

- A fine payable on summary conviction that is currently capped at the statutory maximum (£5,000), or capped at a higher amount (for example, £20,000 or £50,000), will become a fine of an unlimited amount in England and Wales. This change will apply to summary offences and either way offences set out in any primary or secondary legislation. However, LASPO also gives the Secretary of State the power to disapply these changes and set new caps by way of secondary legislation.
- Fines below £5,000 (whether expressed by reference to the standard scale or fixed fines) will continue to be capped but the amounts may increase.

Although the Act received Royal Assent on 1 May 2012, these particular changes have not yet been commenced. If and when the changes are brought into force, they will apply across all business sectors and will affect a very wide range of legislation, including commercial, company, financial services, competition, property, health and safety, and environmental laws. Companies and their directors may have to reconsider their approach to any offences which up until now may have been treated as relatively minor because of the low fines involved.

You can read more at at <http://environment.practicallaw.com/6-501-3947>

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Special Notice of October London meeting

The Emerging Environmental Regulatory and Liability Landscape Facing Hydraulic Fracturing in the U.S.: Lessons Learned

UKELA London Meeting: Thursday 25th October 2012 at 6.00pm

At Herbert Smith, Exchange House, Primrose Street, Exchange Square, London EC2A 2HS

The United States is experiencing massive growth in the use of its shale oil and gas reserves. Development of these reserves has engendered significant debate regarding the potential environmental consequences of hydraulic fracturing techniques used to access shale oil and gas, and the nature of the regulatory regime that should be established to ensure that “fracking” is conducted in an environmentally responsible fashion. Rapidly expanding hydraulic fracturing activities have also spawned significant government enforcement attention and claims in federal and state courts relating to alleged human health and environmental impacts of those activities. This event will introduce the key environment regulatory and liability issues that have arisen in the U.S., and examine what lessons can be learned as shale reserves around the world begin to be developed.

Speakers:

- **Karl Bourdeau - Director, Beveridge & Diamond, P.C., Washington, D.C., USA**
- **John Romano – Unconventional Gas Sector Lead, WSP Environment & Energy, Washington, D.C., USA**
- **Louise Moore - Partner, Herbert Smith LLP**

(more details about the speakers [here](#))

Meeting Details

The Meeting will last for approximately 90 minutes after which refreshments will be provided to enable those attending to discuss the issues informally. Registration is 5.30 pm with the seminar due to start at 6 pm. 1.5 CPD points. There will be a small contribution to cover costs at £20 for Members and £30 for Non-members. Discounted places at £15 are available for those on low incomes (NGOs, trainees and pupils, some public sector workers). Students and Unwaged members are free. Your booking is not confirmed until payment has been received. If you wish to accept please contact by e-mail Angela Pallett at Herbert Smith: angela.pallett@herbertsmith.com. All cheques should be made payable to UKELA and sent to: UKELA, c/o Angela Pallett, Exchange House, Primrose Street, London EC2A 2HS, (DX 28 London).

Karl Bourdeau - Director, Beveridge & Diamond, P.C., Washington, D.C., USA

VERY LAST CHANCE TO BOOK!

London meeting: “How much!?” - The prosecution of waste offences and the proceeds of crime; a practitioner’s seminar – 18 July

UKELA members are cordially invited to this early evening session in conjunction with UKELA’s Environmental Litigation Working Party. It will explore issues arising in recent substantial cases involving the prosecution of waste offences. It will then move on to consider confiscation proceedings and current issues for corporate and individual defendants in this developing area environmental litigation

Booking details [here](#).

Scottish Annual Conference: 4 October

This year’s Scottish annual conference will look at the theme of “Environmental Issues in the Planning Regime” and takes place this year at The George Hotel, Edinburgh. The Conference concentrates on Environmental Issues in the Planning Regime with specialist talks from well qualified speakers. There are presentations on Strategic Environmental Assessments and Environmental Impact Assessment; Appropriate Assessments under the Habitats Directive and Environmental Human Rights for planners. Further there are talks on Sustainable Development, the Scottish Government’s “Hydro Nation”. Access to Environmental Justice particularly in challenging planning and energy decisions is a key issue at present with recent pronouncements by the Supreme Court. Marine issues for Offshore Wind Farms are also considered.

Booking details [here](#).

London meeting on Hydrocarbon Fracking: 25 October

See detailed note above

Booking details [here](#).

All day conference on “The New System of Environmental Enforcement and Sanctions: From Principle into Practice”: Thursday 8 November 2012

To be held at UCL’s Centre for Law and the Environment and in association with UKELA.

This main purpose of this one day conference is to consider the impact on the enforcement of environmental regulation following the introduction of a greater range of sanctions under Part III of the Regulatory Enforcement and Sanctions Act.

Confirmed speakers and panelists include

- Rt Hon Oliver Letwin MP, Minister Cabinet Office
- Michelle Crotty, Chief Executive, Sentencing Council for England and Wales
- Jonathan Robinson, Director of Legal Services, Environment Agency
- Anne Brosnan, Chief Prosecutor, Environment Agency
- James Maurici, Barrister, Landmark Chambers
- Andrew Bryce, Solicitor
- Nick Warren, President General Regulatory Chamber, First-Tier Tribunal
- Caroline Connell, DEFRA Legal, Dept of Environment Food and Rural Affairs
- Dr Ludwig Kramer, Client Earth
- Richard Kimblin, Barrister, Chair UKELA Regulatory Working Party
- Josephine Armstrong and Claire Dupont, Milieu, Belgium

Participants are also invited to attend at no extra cost the early evening lecture in the Current Legal Problems Series to be given on November 8th by Professor Richard Macrory and chaired by Lord Carnwath of the Supreme Court. Professor Macrory led the 2006 Cabinet Office Review which gave rise to Part III Regulatory Enforcement and Sanctions Act, and his lecture ‘Sanctions and Safeguards – The Brave New World of Regulatory Enforcement’ will consider the principles behind the Review and the extent to which they have and have not been translated into practice.

CPD Points available for both events

[Register](#) to receive further information.

Fees are currently being finalised and bookings will open shortly.

Student Careers and Social Evening: 15 November

This popular annual event provides students with an opportunity to meet professionals in an informal environment to discuss career paths and opportunities. Please note the date in your diary. Bookings will open later in the year.

Annual Garner Lecture: 29 November

Karl Falkenberg is the Director General of DG Environment in the EU. His lecture is titled: “Better EU regulation for a greener environment and sustainable economic activity in Europe”.

As a former trade commissioner with a background in negotiations he will throw a spotlight onto the inter-relationship between business and the environment, and how it is regulated at the EU level. We hope to involve our regional groups and sister organisations in Europe, and possibly further afield, by video link. We’re grateful to Clifford Chance for hosting this event.

Please note the date in your diary. Bookings will open in September.

Friends of the Earth 2012 legal internships

We are looking for motivated, proactive interns who are good team workers, to work on a range of tasks supporting the work of the Rights and Justice Centre at Friends of the Earth.

Based in our London (Old Street) office you will work closely with the lawyers, providing legal research and helping out with cases and campaigns.

Intern positions are ideal for law graduates, those in the final year of a law degree or postgraduate legal studies, and newly qualified lawyers. Interns should have an interest in environmental law, public interest law or community legal advice. Experience in public law or environmental law is helpful, but not essential.

We welcome all applications, but particularly encourage applications from people from groups who are currently under-represented in the legal profession.

Internships run in 4 to 6 month blocks, starting from September 2012 (start dates later in the year are also available). We are able to consider interns who wish to work full or part time, but we require a minimum commitment of 3 days per week.

Unfortunately we can only provide reasonable travel expenses and a small lunch payment of £4.00 per day for interns. We know that this can make it difficult for some interns to take up the position and we're seeking sources of grants and funding for interns. If you'd like further information about potential sources of funding please request it in your application.

To apply, please send a CV together with a covering letter by email to legal@foe.co.uk, by 12pm on 18 July 2012. Your covering letter should explain:

- Why you wish to be considered for an intern position
- The dates you are available to take up an intern position
- Why you have an interest in Friends of the Earth

Interviews will be held at our London office during the last week of July.

If you do not hear within 3 weeks of the closing date, your application has not been successful. We regret that we are not able to offer feedback in cases where candidates aren't invited to interview.

More information about this position and the work of the Rights and Justice Centre can be found on our web site www.foe.co.uk/legal



Member Offers

The RMLA (which is the New Zealand equivalent of UKELA) is offering UKELA members a special rate (£55.50 at current exchange rates) on its latest publication. "Frontiers of Resource Management Law" provides a collected edition of the very best keynote papers presented at RMLA annual conferences. The book is published to coincide with the 20th anniversary of the foundation of the RMLA, and the 20th RMLA annual conference that will be held in Queenstown from 27 September. You can view more details and a flyer on the publications [page of the website](#).



UK ENVIRONMENTAL LAW ASSOCIATION

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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 September 2012. All contributions should be dispatched to **Catherine Davey** as soon as possible by email at:
catherine.davey@stevens-bolton.com by 10 September 2012

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

Letters to the editor will be published, space permitting

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