



e-law

Better law for the environment

July/August 2018 | Issue 107



Welcome to the July/August edition of elaw.

The focus of this issue is 'environmental law in post-Brexit Britain' to complement the theme of our recent annual conference.

We are grateful to Professor Colin Reid who has provided us with an update on the constitutional issues that have arisen between the UK and Scottish governments as they continue to disagree over where powers should be returned from Brussels. In particular, Professor Reid highlights that the arrangements for separate legislation, and different sets of principles and timescales, make it ever more challenging to achieve collaboration between the UK and Scotland, see [Brexit – A view from Scotland](#).

On 12 July 2018, the Department for Exiting the European Union published a white paper on [The Future Relationship between the United Kingdom and the European Union](#). In the Foreword by the Prime Minister, Theresa May confirms the government's intention to deliver Brexit by leaving the Single Market and the Customs Union, ending free movement and the jurisdiction of the European Court of Justice in the UK, and leaving the Common Agricultural Policy and the Common Fisheries Policy. The proposals set out in the paper are said to advance a principled and practical Brexit. Everyone will have their own views on this, but we are all united in grappling with the likely implications of Brexit for environmental law and the impact this will have on environmental protection in the UK. For a summary of the environment and energy aspects of the white paper, see the [environmental headlines](#).

On a positive note, I was delighted to hear that the Annual Conference was a sell-out in UKELA's 30th Anniversary year. Unfortunately, I was unable to make this year's conference, but I have heard numerous accounts of how enjoyable/inspiring/thought provoking it was. For anyone who missed the conference, or who would like a reminder of some of the conference highlights, please read the [conference reports](#) prepared by a number of our student members to whom we are grateful.

It is also my last edition as editor of elaw. My family and I have decided to move back to Australia, and I have commenced work as a Knowledge Lawyer at Maddocks, a law firm in Sydney.

I am truly grateful for the opportunities UKELA has given me as a member, trustee and editor of elaw. Over the past 11 years I have made many friends through UKELA and learned an enormous amount about UK and EU environmental law and policy.

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I am immensely grateful to UKELA Council members and staff (both past and present), for the support I've received over the years. I'm also extremely thankful to Jessica Allen, Ben Christman and Lewis Hadler who volunteer their time to assist with editing and producing elaw and to Simone Davidson for covering my role during maternity leave. Your dedication is invaluable and much appreciated.

I would also like to make a special thank you to Alison Boyd for her endless support, encouragement and appreciation. It made those late nights working on elaw that much easier!

Finally, I am pleased to hand over the role of editor to Sophie Wilkinson, a professional support lawyer at LexisNexis. Sophie moved to LexisNexis from Shoosmiths LLP where she was a Senior Associate. Prior to this Sophie trained at Browne Jacobson LLP and spent 6 years at Eversheds LLP. Sophie has over 13 years' experience as an environmental law specialist, and I have no doubt she will do a fantastic role shaping the future of elaw alongside the editorial assistants and the rest of the elaw editorial board.

We hope you enjoy this edition. I look forward to keeping in contact and reading future editions of elaw as an international member.

Best wishes,



Hayley Tam
UKELA Trustee & e-law Editor

E-law editorial team

Hayley Tam, Editor – Hayley is a Knowledge Lawyer in the Public Law team at Maddocks, Sydney. Prior to this, Hayley was Head of Environment at LexisPSL. She has worked in both the private and public sector at the Environment Agency, Allen & Overy, Stephenson Harwood and Ashurst Australia. She is qualified as a lawyer in Australia, England and Wales.

Jessica Allen, Assistant Editor – Jessica is a postgraduate student pursuing the Bachelor of Civil Law at the University of Oxford, having recently finished her term as Vice President for Academic Activities of ELSA United Kingdom. She graduated with honours in Law with French and French Law at the University of Nottingham in 2017.

Dr Ben Christman – Assistant editor, is an independent environmental law researcher.

Lewis Hadler, Assistant Editor – Lewis currently studies the BPTC at the University of the West of England, having previously worked as a paralegal with Richard Buxton Environmental & Public law. He graduated in 2015 after completing his LLB at Anglia Ruskin University Cambridge.

Words from the Chair



This edition of *elaw* reflects on our annual conference, held this year at the University of Kent. In our 30th anniversary year, the conference was a sell-out and we are enormously grateful to the conference organising committee, led by Simon Tilling, and all of our speakers for a packed and

thought-provoking two days.

Topics ranged across waste, planning reform, Brexit, natural capital accounting, climate change, sustainable development and ESG. Some common themes repeatedly emerged. As Terry A'Hearn, Chief Executive of SEPA, informed us, if everyone in the world lived as we do in the UK we would need three planets to support us. We therefore need to reduce our ecological footprint by two thirds to achieve a sustainable and equitable level. Terry posed the question, and challenge to UKELA, whether the progress needed can be made within the existing legal framework, or whether it is time for something completely new.

The ways in which the environment is crucial to our wellbeing were touched upon repeatedly. Kat Moore spoke of her experiences of a year in the Solomon Islands, where the islanders' traditional way of life is threatened by disrupted weather patterns, causing both severe flooding and drought. Richard Broadbent highlighted the link between the environment and mental health. Access to green space and attractive natural environments confers a feelgood factor in itself, but pleasant local environments also foster social relationships, which has its own mental health benefits. UKELA patron Paul Leinster stressed the importance of health and wellbeing in his presentation on natural capital accounting and the 25 year environment plan and also how collaboration and co-operation will be key in delivering development and achieving the aim of leaving the environment in a better state than that in which we found it.

These are just a few of the many moments of inspiration I took away with me, and I hope you enjoy reading the thoughts of our contributors. I'd like to leave you with a quote from one of our international speakers, John Milner, who turned to William Faulkner to remind us all of our duty as environmental custodians:

"So, never be afraid. Never be afraid to raise your voice for honesty and truth and compassion, against injustice and lying and greed. If you, not just you in this room today, but in all the thousands of rooms like this one about the world today and tomorrow and next week, will do this, not as a class or classes, but as individuals, men and women, you will change the Earth."

A final word of thanks to Hayley, for all her hard work producing *elaw*. We wish her and her family all the best with their move to Australia.

Regards,

Anne Johnstone

Anne Johnstone
UKELA Chair

UKELA News

Meet our new Trustees

We are delighted to welcome 3 new trustees to Council. Find out about them below:

Simone Davidson – Simone is a solicitor and Head of Environment at LexisPSL. Prior to joining LexisNexis she trained and worked at Clyde & Co, where she advised on a broad range of environmental legal issues – ranging from regulatory and compliance to transactional risk management and support. Simone's was previously Acting E-law editor for UKELA.



Nina Pindham – Nina is a specialist planning and environmental law practitioner and regularly advises a wide range of clients including landowners, developers and local planning authorities on a range of planning and environmental matters. Ranked in Chambers and Partners as a leading junior, she is also ranked as one of the country's top-rated juniors by Planning Magazine. She has appeared before the High Court, Court of Appeal, and the Aarhus Convention Compliance Committee. She has extensive experience in environmental law matters in the context of planning applications, including controversial minerals development (such as fracking and minerals development in particularly sensitive environments), hazardous substances consents, waste, EIA, SEA, agriculture, water, air quality, and nature conservation issues. She is also editor of the Trees chapter in Butterworth's Planning Law Encyclopedia.



Alison York – Alison is a solicitor and Head of Legal in the Scottish Environment Protection Agency. She has over 20 years' experience practising in environmental law and regulation in the public sector in Scotland. Recent work includes involvement in the development and implementation of SEPA's new enforcement tools and in the development of the new Integrated Authorisation Framework. [photo?]

Brexit Task Force – new co-Chairs

We are delighted to welcome Begonia Filgueira (Foot Anstey) and Angus Evers (Shoosmiths) as new co-Chairs of the Brexit Task Force. They take over from Richard Macrory QC and Andrew Bryce. Thank you to Richard and Andrew for their very hard work steering the task force through its initial 18 months of intense activity.

Membership survey

Please help us with our membership development – we are always looking for ways to improve the membership offer and so attract more members. Take part in our short survey (just 5 questions) to give us your thoughts on what you like about UKELA and how we can attract more members. Thank you! Take the survey [here](#).

Membership fees

Our trustees have agreed that a small increase, in line with the rise in the cost of living, for annual subscriptions will be implemented across the board from January 2019, with the exception of those on the lowest membership tiers and those paying the international rate. This small increase has been agreed to help with the increasing workload and costs across the organisation.

UKELA's subscription rates continue to offer excellent value for money, comparing well with other membership organisations in the sector. Membership benefits continue to be valuable, with reduced entry to our wide range of events including the leading annual conference in the environmental law field. Members also benefit from our members' only area on the website, which gives exclusive access to speaker presentations and up-to-date editions of e-law.

The increase will be reflected in your January renewal. Details are in the table below:

Membership Tier	2018 fees	2019 fees
Student/Unwaged/Graduate	£15	£15
International	£30	£30
PB Individual	£58	£60
Retired	£58	£60
Individual	£74	£77
NGO corporate	£74	£77
Local Authority corporate	£96	£100
Statutory Body	£164	£170
Private Company	£436	£450

Membership summer offer

We are pleased to offer membership at 50% of the normal rate for the summer period. If you know anyone who is interested in joining, please encourage them to do so with this tempting offer! Attached to e-law is a membership flyer – please use this to advertise the key benefits of membership within your networks. Thank you for your help in spreading the word.

Details are on our [website](#).

Working Party news

Nature Conservation Working Party – Wildlife Law Bursary 2018

The wildlife law course arranged every November under the auspices of UKELA's Nature Conservation Working Party makes a little profit due to the generosity of the tutors and Browne Jacobson solicitors. The working party decided that the profit be used to fund an annual bursary of £1,000 to support a post graduate research project addressing wildlife law.

Applications are therefore invited to be submitted to the convenor of the Nature Conservation Working Party by the 26 September briefly setting out the proposed research project (suggest no more than a page of A4). The project must address a legal issue or issues for and effecting nature conservation in the UK or within the UK's overseas territories. Applications will be considered by the chairman and convenor of the working party together with at least 2 of the wildlife law course tutors, with the award made by the 26 October.

The successful candidate will produce a paper and be required to give a presentation on the project and the conclusions reached at a meeting of the Nature Conservation Working Party either at the UKELA annual conference or in September 2019. The paper will be published in the UKELA journal e-law.

For further information, please contact [Wyn Jones](#).

New Waste Working Party – co-convenor

Angus Evers has stood down as co-convenor of the Waste Working Party, after many years. We are extremely grateful to Angus for his hard work in the role. We are delighted to welcome Ellie Reeves from Ashurst to the co-convenor team. A big thank you to her for stepping up to this important role.

Water Working Party – convenors sought

We have a vacancy for a convenor for the Water Working Party. Nina Pindham has stepped down as she is now a trustee. Would you be interested? It is a role that can be shared by 2 or 3 people, so you don't have to manage it on your own. Take a look at what the working party's terms of reference and key activities are on our website and if you would like to chat informally about the role, please get in touch. We look forward to hearing from you.

Students News

Student publication opportunity

Interested in co-authoring a hot topic article with an environmental professional? UKELA provides an opportunity for students to publish their work in e-law, our members' journal which is circulated to over 1400 practitioners. Students are invited to email a short abstract of up to 500 words to [Lewis Hadler](#), our student advisor. If selected, the Editorial Board will endeavour to pair students with a supervising practitioner in that field. Articles can be on the e-law issue theme or on any topic related to environmental law. The theme of the next issue is 'Water resources and marine management', expected to be published in the week commencing 1 October.

Annual careers evening – 8 November

The date for this year's careers evening has been fixed, so note your diaries. Further details to follow very soon. We are delighted to be back at Francis Taylor Building in Inner Temple. Come along and meet professionals across the sector and find out how you can make the best of your career opportunities.

UKELA Events

Climate Change and Energy Working Party Seminar: Climate Change Update – 4 September

Join UKELA's Climate Change and Energy Working Party for a seminar updating on climate change policies and practices. We have an expert panel of speakers who will give an update on UK, EU and international legal developments on climate change including on the recent Peoples' Climate case being brought by 10 families against the EU. Please [book](#) through the website.

Wild Law Conference – 21 September

Join us in Bristol for our Wild Law Conference 2018. We are delighted to welcome expert speakers on current issues. This conference is open to members and non-members and will be of interest to anyone with an interest in earth jurisprudence, rights of nature and the legal strategies available for implementation of wild law principles. [Bookings](#) are now open.

London Meeting on Water Resources Management & Regulation – 24 September

Join us in London for a review of water resources management and regulation, following one of the driest summers on record. Our expert panel of speakers are drawn from industry, the bar, the regulator and others. [Bookings](#) are now open.

Annual Scottish Conference – 27 September

As we near Brexit, and with the environment being a devolved subject in Scotland, are we ready for a brave new world of standing on our own, or will we follow the rest of the United Kingdom in forging common policy dictated by trade deals and harsh realities. Our Conference, taking place in Edinburgh, looks back at the preceding year; addresses topical issues; and looks ahead to what might lie around the corner. Always a popular event, the conference once again features a packed programme of expert speakers and is excellent for CPD. [Bookings](#) are now open.

Nature Conservation Working Party Introduction to Wildlife Law Course – 14-16 November 2018

Members of the Nature Conservation Working Party have arranged an introductory course on wildlife law again this year. The course is being held from the 14th to 16th November at Browne Jacobson's Nottingham office. This course is designed for those whose jobs require them to understand the practical impact of the legislation surrounding wildlife. It will concentrate on enabling participants to make the best use of the law on the ground and to avoid the pitfalls that accompany such a technical subject of the law.

The cost of the course held over 3 days, is £175. Participants will need to make their own arrangements with regards to accommodation and travel. [Bookings](#) are now open.

UKELA Diary Dates

Nature Conservation Working Party Meeting – 26 September

Please save the date; [booking](#) details coming soon.

Public Health and Environmental Law Working Party Meeting – 4 October

Members are invited to attend 39 Essex Chambers. Please let the [convenor](#) know if you wish to attend.

Young UKELA – ‘Chimneys and tunnels’ – 13 October

Our next Young UKELA event will be a private walking tour entitled ‘Chimneys and Tunnels’ with Dotmaker Tours, followed by an informal meal locally. [Bookings](#) opening soon.

Brexit and NI (Joint event with CIWM) – 7 November

Join us in Belfast for a seminar looking at Brexit issues in Northern Ireland. This joint event organised by the Brexit Task Force with the Chartered Institute of Waste Management (CIWM) will be held in central Belfast. [Booking](#) details coming soon.

London meeting on fracking – 12 November

Join us at Herbert Smith Freehills for an early evening seminar on Fracking. [Booking](#) details coming later in the year.

Annual Garner Lecture – 23 November

Join us at Freshfields Bruckhaus Deringer on Fleet Street for the Annual Garner lecture. We are delighted to welcome Advocate General Dr Juliane Kokott from the Court of Justice of the European Union. Please save the date; [booking](#) details coming soon.

Fundraising lunch – 5 December

Join us for a relaxing lunch with keynote speaker Dame Barbara Young, UKELA Patron, former Chief Executive of the Environment Agency and current Chair of the Woodland Trust, in the elegant surroundings of Norton Rose Fulbright's private dining room and help raise funds for UKELA's work. The organiser is Stephen Sykes, so please let him know if you wish to attend: stephen@ukela.org

The e-law 60 second interview



Simon Tilling, UKELA Vice Chair and Partner at Burges Salmon

Simon is a Partner in the environmental law team at Burges Salmon specialising in all aspects of UK and EU environmental law. His practice includes regulatory advice, transactional support, appeals, regulatory engagement, corporate defence and environmental litigation. He has been a UKELA member for 15 years and is currently Vice Chair of UKELA. Simon was Chair of the Conference 2018 organising team.

How did you get into environmental law?

I had an interest in the environment from a young age (I am a proud Blue Peter Green Badge winner), but it was during my degree – a Joint Honours in Chemistry and Law – that I realised that environmental law would enable me to fuse my interest in environment science, law and policy into an actual career. I then discovered that Burges Salmon had an excellent environmental law practice, so I signed up for their training contract and here I am.

What are the greatest achievements in environmental law during your career?

I am a big believer in evolution not revolution, and in good old fashioned pragmatism, so rather than pick out any one piece of legislation or a specific case, I would rather highlight the success of environmental law as a body of law. I believe that we have seen significant environmental improvements as a result of well thought out regulation based on sensible principles. It's not universal, of course, and there is much more to be done, but we have been going in the right direction and we need to stay on that path.

What barriers (if any) have you seen to achieving environmental justice in the UK?

As a scientist-turned-lawyer, I am often disappointed in the quality of public debate, particularly in the media, on environmental issues. Public participation and transparency are absolutely essential, but to make that work we all need to get better at communicating what are complicated issues in a way that the public can understand them. If it was easy, we would have solved these problems by now: we need to work harder on obtaining consensus for the solutions of the future.

When did you get involved with UKELA?

The Burges Salmon environment team have always been active members of UKELA, so when I joined as a trainee in 2004 I was thrust in the UKELA scene, attending my first conference in 2005 (Edinburgh), and I have been active ever since.

How does UKELA contribute to the development of environmental law in the UK?

UKELA is a unique organisation: no other organisation brings together such a broad and diverse spectrum of those involved in environmental law in the UK. UKELA is therefore uniquely placed to be the authoritative voice on matters of environment law, as it has demonstrated so well with its insightful and measured interventions on the issues around Brexit.

What is your favourite UKELA memory?

Beer-pong against Stephen Tromans (Cambridge Conference, 2013), although to call it a 'memory' is probably overstating it... One of many hazy conference memories across the years. It was a bit of a revelation to make it to the start of Saturday morning this year, but given that I was welcoming everyone, I had no choice!

What are the main benefits of UKELA membership?

If you are filling in your business case for paying the membership fee, the answer is that there is no better organisation for knowledge-sharing, learning and networking within environmental law. That's all absolutely true. Equally important, however, are the friends you make: the environmental legal community is such a great bunch of people.

What opportunities exist to advance environmental law in the UK?

As I said in my introductory remarks at conference, this is an exciting time to be an environmental lawyer. Brexit brings a once in a generation opportunity to shape the framework for UK environmental law, not least in the form of the promised Environmental Principles and Governance Bill. There has never been a more important time to make your voice heard as an environmental lawyer, and the best way to do that is to get involved in UKELA's consultation responses and interventions.

What changes to environmental law in the UK do you think we'll see over the next decade?

As I have said, right now we are seeing big changes in the structure of UK environmental law, its principles and governance. But what happens then? Is it de-regulation, driven by the need to sign trade deals, or is it delivery of the promise of the 25 Year Environment Plan, to be the first generation to leave the environment in a better state than we found it? It is up to us as professionals in environmental law to ensure that we achieve the latter through the evolution of

sensible, pragmatic environmental law to meet the challenges ahead.

Theme question: What differences can you see from five years ago in how our members engage with UKELA. What are we doing better, what would you like to see us improve in the next 5 years?

UKELA has never been more relevant than it is now. Thanks to its insightful and measured interventions on issues around Brexit, UKELA has the attention of decision-makers right up to the Secretary of State for the Environment. That's a major change, and it is one we need to capitalise on over the next five years. UKELA is nothing more and nothing less than a bunch of people with an interest in making environmental law work, so it's the positive engagement of all of the members that makes UKELA the voice on environmental law. Get involved!

Conference report

Wild Law Weekend – Lake District



Colin Robertson, Solicitor and Expert with the UN Harmony with Nature Programme

Once again, the calendar has come around to the end of May and it is time for the UKELA wild lawyers to gather for their annual coming together to explore and discuss theoretical and practical issues dear to their hearts: wilderness, rewilding, ecological restoration, legal personality for nature, and much more. This year attention is on the practicalities of estate management and balancing restoration of nature with everyday farming and agricultural management. The focus of attention is an upland estate, recently leased by the John Muir Trust for three years at Glenridding in the Lake District of England, covering sheep-grazing land stretching up to the highest levels and taking in the iconic mountain Helvellyn (950m).

For the first time the John Muir Trust (JMT), based in Pitlochry in Scotland, has leased land to manage in England, and with that they have taken on a new ecosystem, a different legal system and different methods and traditions of managing the land. In particular, the presence of specially protected breeds of sheep, notably the Herdwick, and protected grazing rights held as 'commons' by two sheep farmers ensures the need for JMT's finely honed management skills to come to the fore. The Lake District is much loved by many people, both those who live and work there and those who come to it from outside as an enchanted space that adds value and meaning to their lives. Many people must be consulted, many concerns addressed and a path found that preserves traditional scenery and ways, while moving forward to restore elements that have been lost over the years.

A whole day, Saturday, was devoted to walking the ground, studying different ecological and farming dimensions, seeing how paths were being repaired and learning about rewilding possibilities that might be envisaged for the future over the years, in partnership with the local community. The day's excursion spanned the length of the estate from Glenridding village, with a pause at Red Tarn for a sandwich stop, up the craggy Swirral Edge to Helvellyn, followed by a gentle return to the minibus via Whiteside Bank. The Wild lawyers warmly thanked their expert guides from JMT, Pete Barron and Isaac Johnston for their time and enthusiasm.

Over the years, it has become a tradition for the Wild Lawyers group to spend the first day of their weekend on a guided visit to an estate where rewilding and ecological restoration are underway and the second day in direct personal experience of wild land, or

wilderness, through a day's hike.

This year was no exception. The first day had been spent at Glenridding Estate; the second day was for personal exploration of mountain ecology. From the weekend base at YHA Coniston Coppermines a path led directly up to the high hills behind and surrounding it. Long and high enough to be challenging and offer magnificent views far and wide. The weather had been kind on the previous day and was again so on this Sunday, though it should be mentioned that there had been an initial damp start on the Friday, the day of arrival, as the 19 participants gathered from far and wide, though mostly by train from the south, collected at Penrith station by Crispin and John and brought by minibus up to the wild and sheep-busy track that leads to the former mining office that now caters for YHA residents. The Sunday walk led past the summits of Wetherlam (762m) and Swirl How to the Old Man of Coniston (803m). The wind gusted fiercely on the tops in the afternoon, and for those brave enough to try it a cool dip in Low Water Tarn on the way down provided gratifying reinvigoration.

Yet, if a Wild Lawyers weekend is about visiting, experiencing and learning at first hand about wildness, wilderness and ecology, it is also about meeting, exchanging ideas, talking and rethinking one's assumptions. New participants are warmly welcomed, and the old hands reminisce over past achievements. A happy exchange, which goes on continuously, from breakfast until past dinner time. For the evenings too are spent in discussion. On the first evening, a warm welcome to all and information about the weekend plan, followed by topics that were new for this year. The Wild Law conveners discussed the Wild Law website and how to make it better. A conference on Wild Law is being organised in Bristol on 21 September 2018, and abstracts, presentations and participations are sought. (Information can be found on the [UKELA website](#)). Thirdly followed discussion on a concept brought into being in recent times by court decisions round the world and particular legislation in New Zealand (Te Awa Tupua (Whanganui River Claims Settlement) Act 2017). The concept is 'legal personality' for aspects of nature, such as rivers, mountains, ecosystems. Was that a good idea, or necessary, and if so how should the concept be organised? Here, the big advantage, it was suggested, was that it could mean a community learning about new development proposals immediately and having a chance to discuss them on their merits from the outset, rather than being able to

take action only after decisions had been made, when it was too late. The Wild Law view perceives the community as being closely involved with the concept of legal personality for nature and being its principal defender. So, the point seemed very relevant.

On the Sunday evening the group were treated to an exposition of a farming view of Lake District management by Julia Aglionby of Natural England. She began with an introduction to the English law of commons, which is where persons who are not owners of land may have rights to graze a certain number of sheep or cattle. Commons were widespread in former times. They have been whittled down in recent centuries through enclosure of land, but they remain important in many places, such as at Glenridding in the Lake District. Her talk neatly complemented the visit of the previous day. It left the group thinking that perhaps it could also be good to spend a day studying the realities of a working farm. How far are farmers the principal managers of land and restorers of nature and wildlife? What roles for pesticides and artificial fertilisers? What role for organic farming in health and ecological restoration? What balance between livestock and wildlife? What is the impact of subsidies? Many questions for future discussions.

And so, all too soon the weekend was over, the train south was beckoning, the minibus filled up and the abandoned Coppermines were left to the quiet grazing of the sheep, white against green under an azure blue sky. Time now to review images for the website and to plan for next year's adventure together, but also to become a member of JMT and donate to their fund for the ecological restoration of Helvellyn. Thank you to everyone who contributed so much to the success of the weekend! Thank you, Simon for making the arrangements and planning.

Colin Robertson studied law at Aberdeen University, graduating in 1975, where he became interested in environmental law. He apprenticed as solicitor in private practice and has been a member of the Law Society of Scotland since then. Between 1979 and 1991 he was in Scottish government legal service. In 1990 he passed the EU Court of Justice legal translator competition, and subsequently moved to Brussels and the Legal Service of the Council of the EU as legal-linguistic reviser from 1993 to 2013. He has published numerous articles on EU legal language, as well as a book, 'Multilingual Law: A Framework for Analysis and Understanding' (2016, Routledge). Since retiring, he has revived his interest in environmental law and with his spouse Michèle is currently researching the language of wild law, earth law and rights of nature as concepts for law-making. In 2016 he was nominated as expert with the United Nations Harmony with Nature Programme.

Conference report

UKELA 30th Anniversary Annual Conference – Kent

The Recyclists' Tale

A Recyclist

Day the First

And so, dear reader, we come to that time of the year when a skeleton argument of lawyers, consultants, public authorities, NGOs etc. collect their wits and plan a way to cycle, yes dear reader *cycle*, to the annual UKELA conference. The eagle-eyed and dedicated readers of *elaw* will be familiar with the sorts of scrapes and jollies that this troupe have found themselves becoming entangled in over the years (remember the reminiscences of the cycle out to Cambridge along the River Lea, stopping off to say hello to *Cambridge Water* just For Fun? Remember the cliff edges populated by cows that were traversed on the two-skinny-wheeled contraptions en route to Edinburgh? Remember, pray do please remember, the crossing of the Pennine way and the hailstorm that nearly defeated the spirits of even the sturdiest and jolliest Re-Cyclist heroically making their way to Liverpool?). Never fear! Twenty Eighteen was no exception! Hurrah, you cry excitedly, avidly reading on...

Ever keen to find any excuse to hit the pub for a good old planning-the-route-and-discussing-logistics session, and of course corralled by The logistics Chief and Leader themselves, the Re-Cycling clan started meeting almost as soon as conference twenty seventeen was over to determine just how many hills they could manage the following year, how many miles they could squeeze into 1.5 days, and how many pit stops would in fact be necessary to keep them all going. Naturally, Canterbury being the final destination inspired plenty of pilgrim themed (read: hair brained) ideas. Ditching the bikes for mules, donkeys, or other such four legged-beasts befitting the original pilgrimage was discounted for no other reason than an inability to source said steeds. Oh and what the R.S.P.C.A might have to say. Speaking only in Middle English was a pre-requisite to joining *groupe*. Luckily all UKELA members are exceptionally clever so this was *not a problemme*.

Thanks to the dedication and enthusiasm of The RouteMasters (I – IV), the route was swiftly plotted and The Plan was Decered. The environmental law nerds met at 0900 *sharpe* (well, it would have been *sharpe* had The Leader not come a-cropper *en route* to the meeting point) in the shadow of Southwark Cathedral.

Luckily all that medieval praying to whatever weather god(s) still exist paid off, and the sun warmed the stones of that magnificent place of *worshippe* as the troupe stood astride their aluminum/titanium/carbon-fibre/steel/wooden chariots, making final preparations before setting off.

Special mention is to be made at this point for the bravery, heroism, and energy that The Scotsman showed in cycling all the way from the Cairngorms in *hys bonnie countree*. Carrying all of his kit (yes reader, not kilt, but kit) in four jauntily coloured panniers and without even a slither of a thought for sneaking onto a train to make life a bit easier. Some of the *groupe* had only cycled from King's Cross and were feeling a bit tired by that point. But not The Scotsman. After hundreds of miles he was still fit as a fiddle and luckily so for there were just over 130 km left to go on his lengthy pilgrimage.

As motley a crew as Chaucer's pilgrims themselves, the gathering was a sight for curious eyes. Many of you will know that, on the whole, the Re-Cyclist pilgrims prefer – yes, dear reader, *choose* to wear Lycra. These grown-up professionals prefer above all garments to clad themselves in well-padded elastic polyurethane fibre. And Go Out in Public. That is with the exception of a few brave rebels. This year The Returner donned what can only be described as 'casual weekend city-wear'. And dear fellow The Fashionista opted to channel the spirit of 1970s France in what – also – can only be described as French Riviera leisure wear. Colours were limited to black, electric blue, black, shocking pink, black, lucozade orange, (and yes our fine Leader and Logistics Chief were in matching attire), black, and well, black.

But let us not turn this into a Catwalk, dear reader. 'Press on!' You cry into your illuminated screens (please don't confess to *printing* Elaw!) And press on they did.

In seamless formation the peloton glided its way through the morning traffic of Southwark, Greenwich, and Blackheath, climbed the first of many, many hills, and contentedly noticed London was being left behind. They were off! The traffic light system of a sprawling metropolis might have slowed them down, might have broken the peloton up, might have caused some measure of directional confusion, but it did not dampen their spirits. The happy smiles and charming

banter betrayed just how pleased these pilgrims were to not be sat at a desk in a stuffy office staring longingly out of the window, but instead be in the saddle. How pleased they were to be dodging potholes (a healthy correlation between the size of pothole and distance from Zone One being noted by one and all) and avoiding pedestrians/drivers/other cyclists who couldn't but help remark on occasion as to just how much this raggedy peloton happened to Be In The Way.

Fearless as ever and pressing on, they made it out and beyond Millwall, Catford, Coldharbour. But not so fast as you might think, because it is at about this point that the first Wrong Turn was taken. Fortunately the homing instinct of The Pretend Antipodean kicked in: despite the fact that she had been away from England for a good length of time (and sorely missed by all Re-Cyclists, it must be added. As one of the longest standing members of the peloton her absence was keenly felt by all until she returned), she realised the error of the cycling ways. Luckily it only took but a few revolutions of wheels and a swift recalibration to get them back on track. It was not long thereafter that Hark! What was that murmuring up ahead? What was that faint buzz that grew increasingly to a roaring and continuous crescendo? None other than the M25. They had done it. They had succeeded in finding the edge of London. But it was not without trepidation that they crossed the flyover. They bunched closer together, unblinking, peering into the bright blue yonder straight towards: BrexitLand.

Never to be deterred from their Mission, onwards they pedalled, wondering if they might have the chance to meet the Pub Landlord along the way. Musings aside, they had to up their game as new recruit Anglo-Frenchman rightly identified: 'if we keep this pace up' *seyd hee* 'we won't be there before dark!' Perhaps he feared his accent might give him *awaye*. Perhaps he was already hungry. Either way, onwards they pressed picking up the pace with all the pedal power they could muster, whizzing down the idyllic country lanes until: the First Mishap.

This mishap, dear reader, is where the flaw to the great reconnaissance plan came to light. Splitting as they did the reccy into two parts: the first being Up To the M25, the other being Just the Other Side of the M25, this no-man's land between the two presented multiple challenges. Firstly, the 'No Cycling' sign. Secondly, the strangely un-cycle friendly gate that needed to somehow be navigated over/through/under/around. Thirdly, the gravel path. And Fourthly, the helpful passer-by who glibly informed the cluster of confused faces up that 'Up ahead there be three brydges to cross the olde railway line'. This threw the planning team into something of a tailspin. Which way to go? The choice being: to follow the Strava map (dear reader, if you don't know, this is

like google maps¹ but for cyclists) and hit the aforementioned three-bridges; or turn off onto the Main Road (every cyclist's nightmare) to bypass such difficulties. 'Press ye on' came the cry from somewhere towards the back of the pack. And press on they did. Alas, dear reader this is where the Second Mishap occurred. On difficult terrain, unwelcoming to cyclists and in particular skinny, skinny wheels, it was only a matter of time before some kind of fall took place. Fortunately all precious and human related parts were safe and ok. Unfortunately a phone-of-i² was smashed almost to smithereens, much to the collective distress of those in that generation that sees their phone as an extension of their limbs. The intake of breath was sharp, the condolences effervescent. But there was no time to contemplate this loss. The peloton had to move, pursuing the Strava route and blithely ignoring the (wise) words of the local.

And so now we get to the Third Mishap (and yes, *ye really did see it coming did ye not?*). Bridgegate. There were in fact three *brydges* and they were in fact all complete with steep and narrow *steppes*. One by one each pilgrim had to dismount (a strange feeling to a creature who believes its second set of limbs are wheels) and carry, yes carry, their faithful steeds up and over; up and over; up and over. But did this deter them? Not a one. Onwards and onwards was the mantra. Probably because it was lunchtime and stomachs were growling. Crossing no less than five more motorways the peloton powered through to pit-stop number one: The Five Pointed Star in West Mailing.

Thanks to the foresight and genius of The Chef (you might recognise is also the Logistics Chief) meals had been pre-ordered and the pub was expecting the arrival of such a bedraggled bunch. Thankfully so because we all know what happens when long queues and unforeseen circumstances get between a cyclist and their lunch: they stare desperately and confusedly into space and linger by the bar too long, emanating that well known cycling perfume. Luckily food was swiftly served and drinks (for purposes of refreshment and rehydration) were even more swiftly gulped. But alas, dear reader, we now come to Mishap Four. Or rather, an Unforeseen Circumstance. Can you imagine the look of surprise (read: disappointment) on The Leader and The Borrower's faces when instead of the Quinoa salad being served, a Superfood Salad was placed before them. Now we all know that superfoods come and go and take various forms in various colours and typically are not indigenous to Britain thus negating environmental benefits of being Vegan in the first place. But they typically count for more than lettuce and kale. This dear reader, was what the plate was covered in. Three kinds of green leaves. Oh and a smattering of olives to presumably make the salad even more 'super'. Calorie count in total: c. 45. As you can imagine, this doth not a cycle-friendly lunch make. With heavy hearts, and after burning more calories

chewing on this meal, they managed to muster up the courage to eat bowls of chips. How happy they were that deep-fried potatoes are vegan! How delighted to have some carbs to give them pedal power!

Just as lunch was concluding The Scholar arrived. Having traversed the *countrie* on not one, not two, not three, but four different trains to get there and admirably continuing in the face of delays and yet more delays, she was welcomed with a roaring cheer! One of the longest standing members of the *groupe*, the pilgrims had felt somewhat lost without her. But there was no time to lose. Efficient as ever, The Efficient One called on them to down their drinks, scoff the last of the chips, and jump back onto their saddles to continue on with the adventure. And then they were off once more, to cycle through the Garden of England. They were more than half-way! They were fuelled by food (mostly chips) and drinks (possibly beer) and merry again to be whizzing through the *countrie* lanes.

It could not be long before the Second Wrong Turn occurred. So wrong in fact, that it flew in the face of all logic. Following the route (as you will have come to understand by now, Strava is gospel) the Canadian pointed out some rather fine looking 'No Through Road' signs at the entrance to the Manor Park. For reasons as of yet unfathomable, this wisdom was, well frankly dear reader, ignored. And onwards they still pressed, whizzing by more 'no through road' signs, each of which failed to deter this enthusiastic lot. It took them to cycle all the way to the other side of the grounds of the Manor Park to realise that the gate up ahead (i.e. the thing that would have enabled them to pass through) was firmly locked and unyielding. An about turn was swiftly ordered and, shaking their heads at what one can only hope is there sense of complete idiocy for ignoring all relevant signs, and The Canadian's wisdom, they beat a retreat.

Back on track though and it was not yet quite plain sailing. Our dear cyclists had to navigate the final motorway crossing but without the aid of a handy flyover. This route had roundabouts instead and they are not, as I am sure you can imagine, optimal protection from afternoon rush-hour London-Kent traffic. Taking their own life into their own cycling-gloved hands, onwards they pressed. It was hairy. The HGVs, the vans, the cars, all loomed high above their saddles; the speed did not appear to slow at any juncture leaving or arriving at the roundabouts. And then! Dear reader, they were separated. Like bunches of grapes pulled apart into ever small bunches, the peloton was divided into three lots of lycra. It was disconcerting to them all and for a moment it seemed as if the pilgrims simply did not know what to do next. Turning back was *not an optionne*, however. They could only press on (*ye detect a theme here, no doubt*). With all the strength they could muster (the pit-stop

had done the trick. Who says a swift pint at lunchtime can't put the world to rights?), they fled the roundabout junction and hit the open roads. Undeterred they swept through the hilly, picturesque Kent Downs, waving to actual walking pilgrims along the way. Perfect day for a ride, The Borrower remarked to nobody in particular, thankful to have borrowed such a nifty bike. Yes, dear reader, borrowed. As yet another long-standing member of the Re-Cycling adventure club, The Borrower has managed to beg and borrow (NB, not steal!) a bike for each and every cycle. Typically from her loving and dear mum. This year, however, when opening the conversation a couple of days before departure with 'dearest mum, you know your amazing road bike?...!' she was interrupted by the enthusiasm befitting any Re-Cyclist to actually join the cycle herself. And join them she did! Which was lucky. This group did in fact need a Grown Up to keep an eye on things...

Narrowly avoiding the cars that zipped around the narrow roads, hidden by hedgerows, they managed to pass the afternoon *sans* mishaps.

That is until they reached The Biggest Hill Ever. At least, the biggest on this particular route and not quite clear just how punishing it would be from any kind of map. By this time the chip-power was wearing thin. Reinforcements in the form of chocolate and energy bars were required. This was going to take some doing. Each revolution of the wheels helped them climb higher and higher. Not one false summit, but two, threatened to break their resolve to keep going. But encouraged by supportive cries from The Enthusiast of '*press ye on, fellowe ryders, press ye on!*' they scabbled together for the final push.

Imagine the blissful, joyous, relieved smiles of our weary weary pilgrims when they turned into the avenue of the farm that was to be their home for the evening. Upon arrival they could do nothing but collapse onto the neatly manicured lawn (clearly having no appreciation for such aesthetic matters) and bask in the final rays of the summer sun. They had made it! Cheers and beers all round as they congratulated themselves on part one of the adventure.

Setting up in the bunk-house proved to be as simple as it sounds and soon – thanks to the cooking team of The Soon To Be Dad, The Scholar, The Speedy One, and the Grown Up, ably led by The Chef, vegetarian (and yes a vegan variety) pasta was presented and swiftly consumed in bowl after bowl by the ravenous pilgrims. Refuelling was paramount. It had been a long day and there were still more hills to go. Pudding was essential of course, and vino. Plenty of vino.

Led by The Leader, an important Toast was also made to the Re-Cyclist who was not able to join them that year. Their very own Haydn Davies had so sadly and

unfortunately been involved in a cycling accident earlier that year and was still in deep recovery. A long-standing and loved member of the peloton. Haydn had been sorely missed by all and had never been far from anyone's thoughts. 'To our dear absent friend, wishing him his speedy and healthy recovery' was toasted by one and all that evening. And toasts will continue to be made until his health has returned and he is able to join the peloton once more.

And then it was time for lights out. Plates were cleared, breakfast prepared for the following morning, teeth were brushed, and like some Enid Blyton novel, boys in one dorm; girls in another, the group soon settled in to bedtime chatter before the final call of 'goodnight John Boy'.

Day the Second

After a peaceful night's rest in the countryside, the troupe were up and ready to break their fast at the appointed hour. It is important to state here, dear reader, that such appointed hour was far earlier than it otherwise might have been owing to one thing, and one thing alone. That is to say, despite being but a hair's breadth of a distance from their final destination, there still happened to be around 30km to go. How can this be, you (and many of them) cried! Have we lost all power of map reading? Surely as the crow flies we should be able to make it in under 30 minutes? Came the twitterings and murmurings from the breaking fast table. But as you by now know very well, dear reader, flying as the crow does is not something a Re-Cyclist was born to do. Especially not when there might be the possibility of Dipping Into The Sea in sight. And so it was that on that bright morning, through the smokeless and glittering air they pedalled, not East to Canterbury, but North. To the Sea.

And after yet more hills, and pleasant country lanes, lo and behold there it was: SeaSalter. A place that evokes very British memories of childhood seaside dips. A place of pebbles and uncomfortable stones underfoot. A place that sounded strangely like it was designed to actually feed Sodium Chloride into the water to keep it, well, the sea. Most swam, but some chose not to, The Soon To Be Dad amongst abstainers. You see dear reader, he had insider information (which he happily shared with them all) on a certain treatment plant of something or other near by and preferred to remain out of the water in the fresh air. Undeterred by any such revelation our pilgrims jumped right in.

Joining the *groupe* on this second day were: The Committed One and The Returner. The Committed One earning such a name for joining the cycle despite his i) starting a new, very impressive job that very week (and things being more busy than usual) and ii) it being his wife's very important birthday. The team was delighted to now be complete in number. So delighted in fact that only moments after setting off

from the seaside jaunt they took another Wrong Turn. Giddy with the thought of the glass of fizz awaiting them at the destination (or perhaps something emanating from the sea) they took no notice of the signs, Strava, or general common sense and were about to end up in some very, very strange place indeed when The Speedy One and RouteMaster IV came to her senses and called for the about turn. '*Fellow pilgrims; quoth she 'this be nat the waye to Canturbury. Turne yor bykes arounde!*'

Happily, the final trail was a straightforward one that led them to the University. The end was in sight! They had (nearly) made it! But straightforward is not part of the DNA make-up of any Re-Cyclist and lo and behold – the University campus managed to bamboozle them so much that the peloton split into not two, not three, but four splinter groups (not in any political sense, you see dear reader, simply in terms of numbers and geography). Our weary pilgrims were clearly experiencing some sort of delirium brought on by consumption of energy bars, energy drinks, too much pasta the night before, and too many croissants that morning (or maybe there really *was* something dreadful in the sea). The fuel was failing them and they were experiencing the End of Cycle Sugar Crash. How were they to find one another? How were they to make it to Alison who would be there, balloons in one hand, fizz in the other, ready to greet them! Maybe all was lost and the poor pilgrims, having failed at the final hurdle would just keep circling the campus ring-road until, like a spinning pound coin, they would lose all momentum.

Never! Sense returned and slowly, collectively, they remembered that they had telephonic devices! That they could communicate to one-another, even when separated! Calls were dispatched, pins were dropped, descriptions of buildings were shared, until finally, finally they regrouped ready for the final triumphant entrance. And dear reader, what a sight they were to behold. All that lycra (and other attire); all those panniers; all that faint whiff of, well 134km's worth of cycling; and, of course, all those smiles. They had made it. Final destination: UKELA conference 2018. The welcome was warm, the fizz was cold, and the timing was nearly – oh so nearly – perfect.

Another year, another pilgrimage, some new recruits and some long-standing riders, all made it through the adventure. Well done to all and dear reader, should you ever have a desire to join in the fun (and I hope these few words have been illuminating on that very point) please do get in touch with any of the pilgrims as detailed below. Until then!

Special thanks to be made to 39 Essex Chambers for carrying the Re-Cyclists extra baggage and conference attire and materials. It would have been impossible to get up all those hills without this support!

Vital stats

Wrong Turns: 4
Distance: 134km
Elevation: 1,542m
Hills: too many
Punctures: 1
Bowls of pasta: average 3 each
Pints of milk: 100
Terrible lycra jokes: unquantifiable

The Pilgrims

The Leader (James Burton)
The Logistics Chief *and* Chef (Richard Wald)
The Bike Nerd and RouteMaster I (Matthew Ingham)
The Bike Enthusiast and RouteMaster II (Joe Newbiggin)
The 1970s French Fashionista and RouteMaster III (Ned Westaway)
The Speedy One and RouteMaster IV (Alex Dillistone)
The Pretend Antipodean (returned) (Juliet Munn)
The Scholar (Olivia Hamlyn)
The Soon To Be Dad (second time) (Nicholas Ostrowski)
The Efficient One (Angus Evers)
The Scotsman (Jeremy Warner)
The Committed One (Gordon Nardell)
The Frenchman (Matthew Hunt)
The Canadian (Adrienne Copithorne)
The Returner (Matthew Dale-Harris)
The Newbie (Sam Bright)
The Borrower (Kirsty Schneeberger)
The Grown Up (Dawn Rose)
The Returner (John Jolliffe)

Endnotes

- 1 Other online and digital maps are available
- 2 Other telephonic devices are available

Conference report

UKELA 30th Anniversary Annual Conference – Kent



We invited some of our student members to report on some of the sessions at our conference. We are very pleased to present their reports below.

Past Perspectives and Future Horizons

Melanie Baines, UKELA Student Member

Chair: Lord Justice Keith Lindblom, UKELA Patron
Panel: Terry A'Hearn, CEO, SEPA
Professor Richard Macrory, UCL
Professor William Howarth, Professor of Environmental Law, University of Kent
Peter Kellett, Director of Legal Services, Environment Agency
Emma Lui, Policy Advisor, ONS
Sue Sljivic, RSK (founder member)

Bill Howarth explained that a diverse group had formed UKELA in the 1980s, united in the faith that they could explain why the new problems of the post-industrial age existed and how they could be defined and addressed by a new legal toolbox. It became evident that international legal frameworks were needed to tackle trans-boundary issues such as 'acid rain'.

In a post-Brexit future, it is not just about replication of EU rules, but about governance and accountability and ensuring that the environmental principles remain flexible and underpin policy. Also, how will the UK link into international regulatory culture when it 'goes it alone'?

In relation to environmental law, Terry A'Hearn asked 'Should we improve it or replace it?' Terry recalled the clean-up costs of toxic water environments in the 1970s and the millions of pounds currently spent to '...make it easy to waste water'. He spoke of the massive transformation required to effect the Scottish Environment Protection Agency (SEPA) regulatory strategy of 'One Planet Prosperity' and suggested that 'revolution not evolution' would likely drive the innovation needed to remain within the planet's regenerative capacity. Environmental law could spark business innovation by being flexible enough to allow trials. SEPA has signed a Sustainable Growth Agreement with Scottish Water to support innovation in drainage systems, wastewater and urban planning.

Peter Kellett cited eels and salmon in the Thames as just one indicator of the success of environmental law, but warned of the considerable challenges ahead, particularly how the conservation of water resources

and biodiversity can be achieved given the 'need' for new homes. Leakage and abstraction levels are unsustainable as is the significant water pollution from water companies and agriculture. Risk based permitting and sophisticated interventions work, but we need 'heaps' more environmental permitting regulation and fines that are proportionate to turnover. There is also a concern that the advantages of decentralised, small-scale production may result in regulatory oversight. 'Good law' must incentivise companies to go beyond compliance and will involve compromise and participation between business, regulators, NGOs and government via legal processes.

Richard Macrory also felt that environmental law was established and respected, but that there was more to do. He suggested that the First Tier Environment Tribunal could play a more significant role in simplifying the appeal system by 'taking on' statutory environmental appeals, the Environment Commission, third party appeals on Aarhus substance and procedure challenges (reducing pressure on judicial reviews, many of which are disguised merit cases) and environmental judicial reviews could go to the Upper Tier Tribunal. However, there is an ongoing bureaucratic dispute blocking the Tribunal's expansion. In the future, Richard suggested an enforceable duty of care on individuals and that we need to solve the problem of disaggregated government departments in order to produce holistic regulations.

Sue Sljivic felt that systems are still too structured and that a fundamental shift is required in order to achieve a circular economy. In her company's work they consider effects, mitigation and decommissioning as they develop environmental impact assessment. She identified the lack of trust between regulatory agencies, consultants and the public as a stumbling block and felt that communication could be improved by less wordy documents (e.g. the Environmental Statement) and clarity of language. Looking 30 years ahead, rather than more laws, she would like to see an '...economic and social licence to operate' facilitated in part by the inclusion of law and ethics in the school curriculum.

Emma Lui analysed why public perception of the environment has changed since the 1980s and how consumer power is changing product design and manufacturer/retailer ethical behaviour. She spoke of greater awareness due to visual media, which spark an emotional connection, generational trigger events such as the 'hole in the ozone layer', Deepwater Horizon and the 'Blue Planet Effect'. The Aarhus Convention has facilitated public information and participation, along with the internet and social media. A combination of these factors, along with a sense of 'public ownership' of the environment, protective cost orders and crowd funding have spurred on activists and prompted litigation. International frameworks and commitments e.g. COP21 in Paris and the EU Plastics Strategy have demonstrated the Environmental Law response.

As a first time attendee, I admit to feeling daunted, when I recognised only one face at the conference and somewhat in awe of the collective intellectual presence, many of whom I have cited in assignments. However, I found everyone that I spoke to very friendly and stimulating – the excursion to Stodmarsh NNR was a great opportunity to 'talk and walk'. (Thanks to Angus Innes for distinguishing warblers) I have resolved to do more with UKELA Scotland!

Melanie Baines is studying for an LLM in Environmental Law and Management at Aberystwyth University. She graduated in Geography from Manchester University in 1981 and retired from teaching in 2014.

Conference report

UKELA 30th Anniversary Annual Conference – Kent

Student review of conference plenary 4: The 25 Year Environment Plan and the Natural Environment

Michaela Belham, UKELA Student Member

Speakers: Richard Broadbent – Head of Legal Services, Natural England

Professor Paul Leinster CBE – Cranfield University, member of the Natural Capital Committee and UKELA Patron

The plenary session on the Government's [25 Year Environment Plan](#) (25 Year Plan) was central to this year's UKELA conference theme of Brexit, with Richard Broadbent highlighting the Secretary of State's speech that Brexit is an opportunity for us to 'Un-Freeze' environmental law and deliver a 'Green Brexit'.¹ Whilst some commentators have criticised the plan for its lack of proposed legislation and lengthy timescales for dealing with problems,² the decision to focus on 25 year goals is ambitious in its aim to improve environmental protection across governments and generations.

Richard Broadbent opened the session by 'horizon scanning' the future of environmental law and providing a comprehensive summary of the 25 Year Plan. In line with the 25 Year Plan's focus on ensuring that environmental protection extends into the future, Richard's discussion surrounding Conservation Covenants was particularly relevant, whereby landowners would be able to protect their environment in perpetuity in collaboration with organisations such as National England or a local wildlife trust. Similarly, both Richard and the 25 Year Plan highlight how it is crucial to focus on the relationship between people and nature in order to protect the environment. Modern society is somewhat divorced from nature, with 12% of children failing to visit the natural environment each year.³ This has far reaching consequences in terms of mental health issues and, at a societal level, the value that we place on our natural environment. In response to this divorce of society and the environment, Richard proposed the notion of 'stewardship'. The idea of stewardship creates a moral imperative and a sense of responsibility to protect the environment and is present in all major religious and humanist traditions. Richard argued that this imperative is the ethical

dimension underpinning environmental law and should shape the future form of environmental law.

Professor Paul Leinster further explored the idea of the value of the natural environment by examining the 25 Year Plan's discussion of Natural Capital. The Natural Capital approach emphasises the importance of the environment for economic and social welfare, however as Paul argued, there can be many different interpretations of the value we place on the environment. He cited the example of the proposed Oxford and Cambridge Corridor whereby various stakeholders such as Highways England, Network Rail and the Homes Agency have all completed different Natural Capital Assessments. There are further practical difficulties in that some aspects of the environment simply cannot be costed – for example, how do you place a value on biodiversity? The Natural Capital approach also raises moral questions as well as practical, with some commentators arguing that this kind of thinking perpetuates the system which has led to the degradation of the environment to begin with.⁴ These are difficult issues with many competing views. It is clear, however, that in order for the 25 Year Plan to be able to successfully implement a Natural Capital approach, it will be important to agree a universal Natural Capital Assessment and collaborate on its implementation at local, regional and national scales. Throughout his discussion, Paul examined practical measures that can be taken to target and measure the success of the Natural Capital approach. In particular, he pointed to the Natural Capital Committee's 'How to Do it' Workbook which has been produced to help decision-makers and communities make and implement decisions about the environment.⁵

Throughout the plenary both speakers stressed the need for the 25 Year Plan to result in concrete actions to protect the environment by enshrining it in statute and by creating an effective environmental body to hold the Government to account. However, as a student member of UKELA attending the conference for the first time, what struck me most was Richard's focus on the notion of stewardship and Paul's examination of the value of nature. These ideas go to

the root of the purpose behind environmental law and principles and highlight the social and personal responsibility of people to protect the natural environment around us. The call to increase the engagement of people, particularly the younger generations, was heard repeatedly throughout my time at the conference. Similarly, the 25 Year Plan itself proposes 2019 as a 'Year of Action' for the environment, aiming to engage children and young people using the hashtag *#iwill*.⁶ From my time at the conference, I will take forward this sense of responsibility to our environment and the need to ensure that environmental law engages with society at large in order to reflect and enforce this responsibility.

By making the ideas of stewardship and value accessible to the public, hopefully values and norms can be created whereby the environment is placed at the heart of future development. We have a unique opportunity to create a 'Green Brexit' whereby environmental laws are strengthened and greater environmental protections are put in place. If this can be successful, there is every reason to hope that we can achieve the 25 Year Plan's ambition of becoming *'the first generation to leave the environment in a better state than we found it and pass on to the next generation a natural environment protected and enhanced for the future'*.⁷

Michaela is a trainee solicitor at Ashurst LLP and is currently on secondment to BP. She originally studied Geography at the University of Oxford before completing her GDL and LPC at the University of Law in Moorgate.

Endnotes

- 1 <https://www.gov.uk/government/speeches/the-unfrozen-moment-delivering-a-green-brex-it>
- 2 <https://www.independent.co.uk/environment/theresa-may-environment-government-flaws-science-plastic-pollution-michael-gove-speech-a8153536.html>
- 3 25 Year Plan, p72 – https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693158/25-year-environment-plan.pdf
- 4 <https://www.theguardian.com/environment/georgemonbiot/2014/jul/24/price-nature-neoliberal-capital-road-ruin>
- 5 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/608852/ncc-natural-capital-workbook.pdf
- 6 25 Year Plan p80 – https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693158/25-year-environment-plan.pdf
- 7 25 Year Plan, p5- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693158/25-year-environment-plan.pdf

Conference report

UKELA 30th Anniversary Annual Conference – Kent



International Perspectives

Virginia Butcher, UKELA Student Member

Chair: Ben Stansfield, Stephenson Harwood
Panel: John Milner, American Bar Association SEER
Chair: Alex Makray, Partner, CSMV Advogados
Katrina Moore, Clifford Chance

The insights shared by the three speakers at Saturday's International Perspectives plenary, exposed attendees to a fascinating array of facts and anecdotes from contrasting parts of the globe. Against a backdrop of the increasing importance of transboundary environmental law and the imminent solitary position that the UK will find itself in post-Brexit, the expertise of the speakers highlighted the main environmental challenges in the USA, South America, and the Solomon Islands.

The first speaker, from Mississippi, USA, is the Chair of the American Bar Association's Section of Environment, Energy and Resources, focusing on environmental law and litigation in state and federal courts. John Milner opened his talk by addressing the neologism 'fake news', emphasising the quote 'facts and truth really don't have much to do with each other' from the Nobel laureate, William Faulkner. With the scandal-ridden, climate-skeptic, Scott Pruitt at the helm of the US Environmental Protection Agency (EPA) for the last 18 months and Trump watching on nonchalantly, John addressed the five main environmental policy changes that have occurred in the US since the advent of this 'newfangled' leadership. The US have pulled out of the Paris Agreement; there have been fundamental changes at the EPA, trending towards deregulation and downsizing; the Clean Power Plan is to be repealed; there have been a number of victories for the oil industry, including a permit to construct the Keystone XL pipeline and the opening of the Arctic National Wildlife Refuge for oil and gas drilling; and a number of national monuments have been grossly reduced in size. John closed with another, very apt, quote from Faulkner, 'never be afraid to raise your voice for honesty and truth and compassion, against injustice and lying and greed'. The topicality of John's talk is unmistakable, as just two weeks later Pruitt resigned and coal-lobbyist Andrew Wheeler was appointed as acting head of the EPA.

With the unenviable task of explaining all of South America's environmental issues in 20 minutes, Alex

Makray, partner of CSMV Advogados in Brazil, was next to speak. Alex focused primarily on Brazil, Chile and Colombia and began by explaining the application of environmental liability in Brazil. The collapse of the Samarco dam in Mariana in 2015 illustrates the three types of environmental liability: civil (personal damages and remediation); administrative (fines); and criminal (imprisonment and criminal action). Alex chose the most critical environmental issues in each country and explained the problems and possible solutions surrounding each. All three countries share four main environmental issues; environmental licensing, waste, the rights of indigenous peoples and climate change. Additionally, Brazil has a serious deforestation problem. 60% of the country is natural forest and there are extensive pressures on this land from farming, infrastructure, and wood harvesting. In conjunction, Chile and Colombia struggle with large infrastructure projects, particularly relating to mining and extractive industries, and environmental licensing with administrative litigation. Alex stressed the importance of having active and 'pro-environment' supreme courts in these countries.

Moving across to the other side of the Pacific Ocean, Katrina Moore discussed the environmental law issues that face the Solomon Islands and its inhabitants. Katrina is a Senior Associate at Clifford Chance LLP, has practiced as a lawyer in Australia, and volunteered for the Public Solicitor's Office in the Solomon Islands advising on mining, logging and protected areas law. Katrina's talk was engagingly vivid, as she described the work she had done in the Solomon Islands using personal stories. One project that Katrina worked on involved helping a local group of landowners halt logging in a conservation area, after extensive research she found that the logging company was owned by the then Prime Minister and so within a few months of being on the Islands she served an injunction on the Prime Minister. Katrina also worked to protect the wildlife and fauna on the Islands; upon receiving reports of sea turtles being illegally sold, action was taken to extinguish the illegal trade and the turtles were successfully freed. A significant part of Katrina's role was to educate the local people about their rights and teach them how to effectively use the law to protect their livelihoods, homes and the environment. A toolkit was formed for local people to

help them designate protected areas, and a new taskforce was created to crackdown on environmental crime. Katrina's talk clearly displayed how environmental issues affect the lives of everyday people, and underscored the notion that actions we take on our side of the world can have a detrimental impact globally.

This International Perspectives plenary afforded a variety of perspectives on environmental law, and provoked the audience to consider the bigger, wider, more inclusive picture. As a student, it was refreshing to learn about international issues and be encouraged to think about more than just our tiny island.

Virginia Butcher is a third year LLB Law student at the University of Plymouth, and is the South West Student Ambassador for UKELA. She has a keen interest in biodiversity, habitat protection, and marine law.

Conference report

UKELA 30th Anniversary Annual Conference – Kent



International Perspectives: the Latin-American Perspective to Climate Change

Monserrat Madariaga, UKELA Student Member

During the 2018 Annual UKELA Conference, the International Perspectives Plenary provided a useful insight into South-American environmental law. A comparative study of Brazil, Colombia and Chile regulation identified common challenges, specifically the development of large infrastructure projects and environmental licensing due to bureaucratic procedures and time-consuming litigation. The speaker, Alex Makray, also identified waste and the rights of indigenous people as pressing issues. Finally, referring to climate change, he argued that the policies of the three countries do not address climate change as a national priority.¹ This assertion of his was only a comment on his presentation, but it represents the starting point for my reflections that follow.

Coming from Latin America I was struck by the assertion that for my country – Chile – and our neighbours, climate change is not a top priority. Especially if one considers that in our geographical area, climate impact has not been kind. The factual magnitude of the problem is undeniable, regardless of the priority local authorities choose to give it. Extreme weather phenomena like El Niño have caused not only damage to housing and fishing stocks, but also to the ecosystem.² Droughts have been intensifying not only in Brazil and Central America³ but are also causing the first reported cases of climate change migration in Chile.⁴ In a geographical area surrounded by vast oceans, rising sea level and ocean acidification are also urgent matters.⁵ Why then is climate change not a top priority in our national policies? A few hypotheses may be drawn:

1 The Kyoto protocol effect on national policies – The Kyoto protocol was signed in 1997 as a response to the Berlin Mandate that authorised the negotiation of a protocol containing quantified emission limitation objectives only for developed countries and excluding new ones for developing ones.⁶ This meant that between 1992 when UNFCCC (United Nations Framework Convention on Climate Change) was signed and 2015, when the Paris Agreement was adopted, developing countries like Chile, Colombia and Brazil together with those

developed countries that decided not to ratify the protocol did not have strong mitigation targets. The only commitments to which they were subject were those stated in the UNFCCC agreement which “avoids legally binding targets and timetables”⁷ Without a pressing mitigation commitment to which to comply, developing countries’ national regulation had less incentive to generate a mitigation platform than Kyoto countries, for whom this had been a requirement since 1997. Therefore, for developing countries, capacity building and regulatory challenge regarding mitigation has only existed as an international climate change law requirement since Paris.

2 The categories and negotiation groups on UNFCCC – The UNFCCC adherence is almost universal.⁸ In order to ensure an effective negotiation, parties have usually formed like-minded alliances and negotiate not as individual states but ‘through groups of parties’ that originated for the Kyoto negotiations, and have a strong developed/developing countries division.⁹ G77¹⁰ represents the main developing countries forum. However, because it is so numerous and the interests and views on climate change issues are so different among different parties, there are many sub-groups, such as the African Group, Arab Group, the Small Island Developing States and the group of Least Developed Countries.¹¹ These groups or blocks have evolved over time.¹² Latin American and Caribbean countries are far from being a cohesive alliance or sub-group.¹³ There are two “Latin American” alliances. One is formed by market-oriented economies (IALAC), and the other by socialist ones (ALBA).¹⁴ They do not have all American countries as members and some of their members are compromised with other interests. Venezuela, while being part of ALBA subscribed with the Like-Minded Developing Countries Group. And of course, Dominican Republic, Antigua and Barbuda, Grenada and other island states are members of the Alliance of Small Island States (AOSIS). In a completely different approach, Brazil, which is considered as a strong polluter, is part of BASIC¹⁵.

This variety of groups represents the diffuse interests in the continent. Alas, those who had the strongest and most cohesive voice accomplished some demands to be met at the agreement. For example, for the Least Developed Countries and AOSIS strong views and negotiation resulted in the integration of “loss and damages” into the agreement; a long-pursued objective. Countries like Chile or Colombia are neither massive polluters, nor threatened small island states in urgent need to be a leader on the international climate change agenda. They are both members of the market-oriented developing countries association AILAC, which is not a strong negotiating group. That does not mean that climate change issues are not affecting these countries, or that they should not look carefully at their emissions and promote a lower account. However, the diversity of interests and groups formed by Latin-American countries can explain the secondary role of some of these countries in climate change negotiations and the secondary role of climate change in their own policies.

- 3 The language issue – When looking at national policies and regulations in countries like Chile, Brazil and Colombia, a question arises: How much of the regulation under ‘forestry’, ‘fisheries’, ‘water scarcity’, ‘air pollution’ and other concepts is actually about climate change? Only in the process of submitting National Determined Contributions (NDC) the bridge between (for example) resource management regulation and climate change regulation can be built. Al Gore’s presentation on COP 23¹⁶ drew on how strong the renewables energy policy and regulation was in Chile, recognising it as positive for the climate change agenda. But in domestic ‘regulatory language’ it is regulated under energy and not climate change law and policy.¹⁷ For that reason, submission of NDC contributions represent a unique opportunity to revise national policies and regulations and to frame them in climate change regulatory language and standards.

These factors may be just a few among many others that explain the current ‘secondary’ role that countries like Chile, Colombia and arguably Brazil have on the International Climate Change agenda, and vice versa, explain why NDCs are not a priority on domestic law and policy. The Paris Agreement brings opportunities for further involvement of such countries in the international climate change sphere. The submission and monitoring of NDCs are only a part of it. The Sustainable Development Mechanism could be of high relevance for our continent, as well as international co-operation on adaptation and loss and damages. It could also provide an opportunity for more regional co-operation and a strongest more cohesive Latin American negotiating group.

Montserrat Madariaga Gómez de Cuenca studied law at Pontificia Universidad Católica de Valparaíso in Chile. After graduating in 2012, she practiced as an Associate on Environmental and Administrative Law, mainly doing consultancy work cases being debated at the Supreme Court or the Environmental Court, such as the recent oil spill in Quintero Bay. On 2015, Monse joined the Cabinet of the General Comptroller’s Office in Chile as Legal Advisor of the General Comptrollers – an institution that oversees the legality of acts of the state administration and safeguards the correct use of public funds. There she worked until September 2017, when she came to the UK to pursue an LLM in Environmental Law and Policy at UCL, which is now finishing.

Endnotes

- 1 Alex Makray, Partner, CSMV Advogados.
- 2 Sergio Rossi and Marcelo de Oliveira Soares, “Effects of el niño on the coastal ecosystems and their related services”, Mercator, Fortaleza, v. 16, e16030, 2017
- 3 <https://www.worldwildlife.org/climatico/climate-change-impacts-in-latin-america>
- 4 <http://www.latercera.com/tendencias/noticia/los-primeros-migrantes-climaticos-del-pais/141080/>
- 5 Idem (n.6).
- 6 Bodansky, Brunnée, Rajamanu, International Climate Change Law, OUP, 2017, p. 100.
- 7 Ídem, p. 158.
- 8 As 18.07.18, there were 197 parties to the UNFCCC. <https://unfccc.int/process/the-convention/what-is-the-convention/status-of-ratification-of-the-convention>.
- 9 Bulmer et al, Negotiating History of the Paris Agreement, p. 51. The key negotiation groups are G77 and China, the Environmental Integrity Group, the Umbrella Group, the Economies in Transition group and the European Union.
- 10 Only Mexico is part of the Environmental Integrity Group.
- 11 <https://unfccc.int/process-and-meetings/parties-non-party-stakeholders/parties/party-groupings>, visited last on 18.07.18.
- 12 Some sub-groups have raised and multiplied, especially within the G77 group, which was formed by 5 sub-groups on 2005 and by 12 on 2017. See Bulmer (n. 9), p- 50-60.
- 13 Ibid.
- 14 The Independent Association of Latin American and the Caribbean accounts for 8 market-oriented Latin American countries while, on opposites sides, the Bolivarian Alliance for the Peoples of our America represents socialists governments has 11 members.
- 15 A G77 sub group formed by Brazil, South Africa, India and China.
- 16 Conference of Parties of the Paris Agreement, Bonn, November 2017.
- 17 Energy 2050, Chilean Government.

Environmental law headlines

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

Government publishes white paper on future UK-EU relationship (environmental and energy aspects)

Practical Law Environment

On 12 July 2018, the Department for Exiting the European Union (DExEU) published a white paper on [The future relationship between the United Kingdom and the European Union](#), which sets out more detail of the UK government's vision for the future UK-EU relationship. The white paper reiterates that the government's policy is for the UK to:

- Leave the single market and the customs union.
- End the free movement of people and the jurisdiction of the Court of Justice of the European Union (CJEU) in the UK.
- Leave the Common Agricultural Policy and the Common Fisheries Policy.
- End significant contributions to the EU budget.
- Gain flexibility to conclude new international trade agreements, making particular mention of agreements for trade in services.

This update summarises the comments in the white paper on environmental law, energy and nuclear. For information about the white paper as a whole, see [Legal update, Brexit: government publishes white paper on future UK-EU relationship](#).

Environment

The white paper includes the following proposals on environmental issues:

- **Reciprocal commitments on environmental standards.** The UK's proposal for an economic partnership would include reciprocal commitments by the UK and the EU to maintain current high standards through non-regression provisions in areas such as environmental law (*paragraphs 7, 108 and 118*). The white paper cites the UK's domestic climate change standards and co-operation on marine pollution as examples of these commitments. The UK also suggests ongoing environmental co-operation, including in international fora, to solve shared global environmental challenges (*paragraph 118*).
- **A common rulebook underpinning the free trade area for goods.** In the case of manufactured goods, a common rulebook would include rules that set environmental requirements for products, such as their energy consumption (see [Practice note, Energy efficiency in products and appliances: overview](#)) (*paragraph 25*).

- **Co-operation between regulators.** UK regulators propose establishing co-operation arrangements with EU regulators to ensure that authorities on both sides can take appropriate, consistent and coordinated action to prevent non-compliant products from reaching consumers or harming the environment. This should be complemented by the exchange of intelligence, including information received directly from businesses and consumers, and reporting mechanisms (*paragraph 45*).
- **Chemicals and Biocides Regimes.** The UK proposes that it would be an active participant, albeit without voting rights, in the European Chemicals Agency (ECHA), which regulates the REACH and biocides regimes. This participation would involve the UK making an appropriate financial contribution. The UK wants to secure access to relevant IT systems to ensure the timely transfer of data between UK and EU authorities. It would also seek to ensure that UK businesses could continue to register chemical substances directly, rather than working through an EU-based representative (*paragraph 30*).

Energy

The UK is seeking broad energy co-operation with the EU, including arrangements for trade in electricity and gas, co-operation with EU agencies and bodies, and data sharing to facilitate market operations (*paragraph 139*). The white paper suggests that the future energy relationship could be achieved by the UK either:

- Leaving the Internal Energy Market (IEM). In this case, the UK would explore what would be needed to ensure trade over interconnectors would continue without automatic capacity allocation via the IEM system.
- Participating in the IEM to preserve the existing efficient trading practices over interconnectors. In this case, the UK would need a common rulebook with the EU on the technical rules for electricity trading, and a consistent approach to carbon pricing necessary for the market to function (for example, by remaining in the EU's Emissions Trading System (see [Practice note, EU Emissions Trading System \(EU ETS\): overview](#)). However, the UK does not believe that participation in the IEM should require a common rulebook on wider environmental and climate change rules (*paragraph 140*).

The UK wants to explore with the EU the options for continued Transmission System Operator participation

in the Inter-Transmission System Operator Compensation Mechanism, and continued membership of the European Networks of Transmission System Operators for Electricity (ENTSO-E) (see [Practice note, EU network codes for electricity: overview](#)) and Gas (ENTSO-G) (see [Practice note, EU network codes for gas: overview](#)) (*paragraph 141*).

The government is committed to facilitating the continuation of the Single Electricity Market (SEM) between Northern Ireland and Ireland (*paragraph 138*).

Nuclear

The UK will seek a close association with Euratom, based on a comprehensive nuclear co-operation agreement (NCA) between the UK and Euratom. This should:

- establish a co-operation mechanism between the UK safeguards regulator (the Office for Nuclear Regulation (ONR)) and Euratom;
- provide for UK association with the Euratom Research and Training Programme;
- ensure continuity of contractual arrangements for the supply of nuclear material, either by allowing for existing nuclear supply contracts with the UK to remain valid after the UK's exit, or by providing for their seamless re-approval before Brexit;
- minimise barriers and simplify export control arrangements in the trade and transfer of sensitive nuclear materials, equipment and technology between the UK and the Euratom Community;
- provide for technical co-operation on nuclear safety, including continued notification and information sharing arrangements on radiological events and monitoring, with the UK participating in EU systems;
- continue UK co-operation and information-sharing with the European Observatory on the Supply of Medical Radioisotopes.

(*Paragraph 145*.)

For more information, see [Legal update, Brexit: government publishes white paper on future UK-EU relationship \(environmental and energy aspects\)](#).

Liability in respect of Japanese knotweed encroachment (*Network Rail v Williams*)

Lexis®PSL Environment

The Court of Appeal has decided in *Network Rail Infrastructure Ltd v Williams and another* [2018] EWCA Civ 1514 that damages can be obtained if Japanese knotweed spreads to property from a neighbouring property.

The claimants owned a couple of bungalows in Wales. The plant had moved into their garden from land

owned next door by Network Rail, land which abutted the railway tracks. They had complained to Network Rail about the presence of knotweed for some years and Network Rail had made some but not much effort to control it.

According to the Court of Appeal, there is a potential liability even before the knotweed has caused physical damage. The mere presence of its roots (known as rhizomes) is sufficient if reasonable steps have not been taken to prevent it spreading.

Given the invasive, persistent and highly damaging nature of the plant, this is likely to be a cause of many claims in the future.

For more information, see News Analysis: [Japanese knotweed-nuisance, liability to neighbours \(*Network Rail v Williams*\)](#) or listen to the July edition of the LexisPSL Environment News [Podcast](#) for coverage of this case.

First enforcement undertaking for odour pollution

Lexis®PSL Environment

The Environment Agency (EA) recently agreed its first enforcement undertaking (EU) for alleged permit breaches relating to odour at an installation.

The EU was agreed with Renewi UK Services Ltd, formerly Shanks Waste Management Ltd, after local businesses and residents complained of being affected by odours from the site in 2014. Having worked with the operator to identify changes that were needed, the EA accepted an EU from the company which included a £60,000 donation to a local environmental charity, an increase to the biofilter stack height, alterations to the management of the processes on site and increased sampling and monitoring.

EUs are being used more and more frequently as an alternative to a criminal prosecution. There is no reason in principle why the range of offences to which an EU can be offered should not be extended going forwards.

For more information, see News Analysis: [First enforcement undertaking for odour pollution](#) or listen to the July edition of the LexisPSL Environment News [Podcast](#) for coverage of this case.

ICAO endorses key rules of Carbon Offsetting and Reduction Scheme for International Aviation (CORSA)

Practical Law Environment

In October 2016, at the 39th session of the International Civil Aviation Organization (ICAO) Assembly, the ICAO agreed to establish a global market-based measure (GMBM) to offset international aviation carbon dioxide (CO₂) emissions. The GMBM will be known as the Carbon Offsetting and Reduction Scheme for International Aviation (CORSA).

CORSA will compensate for the CO₂ emissions generated by international aviation activities above 2020 levels. The emitting airline will be required to buy and surrender emission units generated by projects in other sectors that will reduce CO₂ emissions to offset any increase in its emissions. The first phase will run from 2021 to 2027 and will be voluntary. To date, 73 states, representing 87.7% of international aviation activity, have confirmed they will participate in CORSA from its outset.

On 27 June 2018, at its 214th meeting, the Council of ICAO endorsed the key rules of CORSA, which specify how airlines must monitor, report and verify (MRV) their CO₂ emissions from January 2019. The Council also:

- Approved the 2018 version of the CORSA CO₂ Estimation and Reporting Tool (CERT), which is a simplified tool for small operators to monitor and report their CO₂ emissions.
- Agreed further details for a CORSA Central Registry (CCR).

The rules will be contained in three sources (called the implementation components):

- The Standards and Recommended Practices (SARPs) in Volume IV of Annex 16 to the Convention on International Civil Aviation (Chicago Convention), which cover what states and airline operators must do to comply with their obligations under CORSA, including MRV, how to monitor fuel use, estimation and reporting methods and emissions monitoring plans.
- The Environmental Technical Manual (ETM) Volume IV, which provides guidance on how to implement CORSA. Specifically, it gives guidance on MRV and calculating offsetting requirements.
- The Implementation Elements, which although they do not require actions by states or operators, provide information that is essential to implementing CORSA. These will be contained in 14 documents that will support the requirements in Volume IV of Annex 16 and cover topics such as the CERT tool, sustainable aviation fuels (which can be removed from the offsetting requirements),

eligible emissions units and the CCR.

The ICAO Council will continue to develop the implementation components and will decide on rules on the use of biofuels and credits to offset aviation emissions at the next Council session in autumn 2018.

For more information, see [Legal update, ICAO endorses key rules of Carbon Offsetting and Reduction Scheme for International Aviation \(CORSA\)](#).

Low-carbon economy package: Effort sharing Regulation and Land use, land-use change and forestry (LULUCF) Regulation published in Official Journal

Practical Law Environment

On 19 June 2018, two Regulations for the EU's low-carbon economy package were published in the Official Journal. The Regulations come into force on 9 July 2018, 20 days after publication in the Official Journal.

The Effort-sharing Regulation 2018 imposes binding annual greenhouse gas (GHG) emission targets for member states for the period 2021 to 2030 for the sectors of the economy not regulated under the EU Emissions Trading System (EU ETS), including buildings, agriculture, waste management and transport (*Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013*).

Annex 1 sets out the percentage reduction for individual member states to achieve by 2030 in comparison to their 2005 emissions. The Commission must publish implementing acts setting annual emission allocations for member states for the years from 2021 to 2030.

The Land use, land-use change and forestry (LULUCF) Regulation 2018:

- Provides that member states' GHG emissions from LULUCF must not exceed removals of GHG emissions from those activities for the period 2021 to 2030 (the no-debit rule).
- Introduces rules for the accounting of emissions and removals from LULUCF and for checking member state compliance.

(Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and

energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU.)

Member states must report to the Commission every five years on their compliance, over two compliance periods, from 2021 to 2025 and 2026 to 2030.

For more information, see [Legal update, Low-carbon economy package: Effort-sharing Regulation and Land use, land-use change and forestry \(LULUCF\) Regulation published in Official Journal](#).

Court of Appeal considers what constitutes 'recovery' of waste (Neal Soil Suppliers Ltd v Natural Resources Wales (No 2))

Lexis®PSL Environment

The Court of Appeal has decided in *Neal Soil Suppliers Ltd and another v Natural Resources Wales (No 2)* [2017] EWCA Crim 645 that the first appellant, which held an environmental permit for treatment of waste soil and aggregate, could only be prosecuted for alleged breach of an enforcement notice requiring it to remove waste material that had, contrary to the permit, been stored on site for more than three years 'prior to recovery', if the prosecutor could prove that the three years preceded the commencement, rather than completion, of the recovery operations.

The court also confirmed that terminology in an environmental permit had to be construed consistently with the Waste Framework Directive 2008/98/EC, and that an enforcement notice issued under the environmental permitting regime had itself to be interpreted in conformity with the terms of the underlying environmental permit.

The concept of recovery is becoming more important than ever as waste management operations become increasingly more complex. The judgment provides useful guidance on the meaning of 'recovery', emphasising that it is an operation rather than the state of affairs which results from the operation. For more information, see News Analysis: [Court of Appeal considers what constitutes 'recovery' of waste \(Neal Soil Suppliers Ltd v Natural Resources Wales \(No 2\)\)](#).

State of the Environment: Water Resources report

Lexis®PSL Environment

The Environment Agency's State of the Environment: Water Resources report has found that action needs to be taken to increase water supply, reduce demand and cut down on wastage or many areas will suffer supply deficits by 2050. The report includes the following key findings:

- impacts of pressures on water resources are evident and will increase with a growing population, changing climate and changes to how we use land
- abstraction, drainage and altered water levels are major causes of damage to wetlands
- in 2017, abstraction from around 28% of ground water bodies and up to 18% of surface waters was at higher than sustainable levels
- in 2016, unsustainable abstraction prevented at least 6% and possibly up to 15% of river water bodies from meeting good ecological status or potential
- winter rainfall has increased since the mid-18th century and summer rainfall has decreased slightly over the same period
- high winter river flows have increased over the past 30 years, with a subsequent increase in the frequency and magnitude of flooding
- there is no clear trend in droughts, but summer river flows and groundwater levels may decrease in the future

For more information, see News Analysis: ['Rapid action' needed to tackle England's water supply shortages](#).

Environmental Law in Post-Brexit Britain

Brexit – A view from Scotland



Professor Colin Reid, Professor of Environmental Law at the University of Dundee

At a glance

- Brexit has proved to be a major issue of constitutional contention between the UK and Scottish governments, with the Supreme Court now scheduled to play a vital role.
- The constitutional arguments over where powers returning from Brussels are to be held and how common frameworks are to be developed has resulted in separate legislation dealing with the carry-over of EU law on UK and devolved matters.
- The Scottish Bill's competence is to be tested in the Supreme Court.
- Arrangements for environmental principles and governance are being discussed at both UK and Scottish levels, but with different sets of principles and different timescales which make it more challenging to achieve strong collaboration.

In the referendum in 2016 there was in Scotland a clear majority in favour of remaining in the EU, with a 62% vote in favour of Remain. Recognising that the UK would be leaving the EU, the Scottish Government's policy has long been in favour of staying in the Single Market and the Customs Union. In its policy paper *Scotland's Place in Europe*, published in December 2016,¹ it also called for:

- a "differentiated" position for Scotland that would allow Scotland to retain close alignment with the EU regardless of what arrangements were made for the rest of the UK;
- all powers in non-reserved areas currently exercised in Brussels to return to Edinburgh;
- additional powers to be transferred to Scotland in some areas dominated by the EU (e.g. health and safety); and
- the establishment of a means for Scotland to create international agreements in areas of devolved power.

This is not the course that has been followed by the UK authorities.

Constitutional Disagreement

As the UK Government has struggled to define its own position, relations between London and Edinburgh have been dominated by the major constitutional row over where the powers returning from Brussels are to rest. The Scottish position is simple, namely that all

power in matters not expressly reserved to the UK under the Scotland Act 1998 (as amended) should come to Edinburgh. The devolution settlement created a clear divide between a limited list of reserved matters that are for the UK institutions to handle, and everything else which is within the competence of the Scottish authorities. To provide for any non-reserved powers to rest, even temporarily, in London, it is argued, would disregard the fundamentals of the devolution settlement.

The UK position is that certain non-reserved powers should initially come to London to allow for an assessment of where uniform measures across the UK are needed, and for appropriate action to be taken, before the powers are passed on to devolved administrations. Many powers could be passed on immediately and even where there was a delay, it is argued that in practice this would mean that there is no less control exercised in Edinburgh than at present, with the prospect of a rapid increase in exercisable powers as areas of responsibility are transferred from Westminster.

In the absence of any resolution, this dispute continued throughout the debates of the European Union (Withdrawal) Bill, which was finally passed in a form reflecting the UK government's position. The Bill completed its passage without the legislative consent from the Scottish Parliament which is "normally" a pre-requisite for legislation at Westminster that affects Scotland.² This absence of consent is not a legal obstacle to the legislation being made, but although the Withdrawal Act now states the law, it has not ended the political arguments.

One consequence of the constitutional impasse has been that the Scottish Parliament has passed its own legislation to deal with the carry-over of EU law within the areas of devolved competence. The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, which has completed all its parliamentary stages, is broadly parallel to the EU (Withdrawal) Act 2018 in retaining existing EU law and giving Ministers powers to make the adjustments necessary for it to operate, but with some differences. Of particular environmental significance:

- the general principles of EU law and the Charter of Fundamental Rights are retained as part of the law (s 5);

- in the exercise of “tidy up” powers to allow “retained EU law” to operate, Scottish Ministers must have regard to environmental principles and animal welfare (see below) (s.13B);
- the Ministers must within six months produce and consult on proposals on guiding principles on the environment and effective and appropriate governance relating to the environment (s 26A).

When introduced into the Scottish Parliament there was disagreement between the Presiding Officer and the Government over whether all the terms of the Bill fell within devolved competence and Royal Assent has been delayed since the Advocate General has now referred this issue to the Supreme Court (hearings are scheduled for 24 and 25 July). Whatever the Court decides, there will be further work to be done to clarify the arrangements for the continuity of EU law in devolved and reserved areas.

Common Frameworks

The depth of the constitutional disagreement over where powers should lie has unfortunately overwhelmed the depth of agreement over the need for some issues to be dealt with on a collaborative basis for the UK as a whole. All sides agree on the need for common frameworks in some areas, for environmental reasons among others. Indeed in October 2017 all the administrations agreed in the Joint Ministerial Council that common frameworks should be established where they are necessary in order to:

- enable the functioning of the UK internal market, while acknowledging policy divergence;
- ensure compliance with international obligations;
- ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;
- enable the management of common resources;
- administer and provide access to justice in cases with a cross-border element;
- safeguard the security of the UK.³

What followed, though, was not an open and principled discussion with stakeholders of where these criteria might be met. Instead there just emerged from London (with an unknown element of discussion with other authorities) a list of areas where frameworks were considered necessary. Moreover there is still no agreement on how the frameworks are to be developed – through imposition from London, through full agreement with all the administrations, or something in-between. The EU (Withdrawal) Act sets out procedures that hope for discussion with and consent from the devolved parliaments, but ultimately allow for rules to be made in London without agreement, even on devolved matters. This leaves open questions over scrutiny and accountability, between the administrations and between the Executive and Parliament in each case.

Environmental Principles and Governance

Environmental principles and governance have proved to be another area of some fluidity. The major consultation by the Department for Environment, Food & Rural Affairs (Defra)⁴ has to some extent been upstaged by the provisions belatedly added into the EU (Withdrawal) Act 2018 (s16) and it remains to be seen what will emerge later in the year. In relation to principles, the list included in the Scottish Continuity Bill is shorter than that in the Westminster Act. It covers:

- (a) the precautionary principle as it relates to the environment;
- (b) that preventative action should be taken to avert environmental damage;
- (c) that environmental damage should as a priority be rectified at source;
- (d) that the polluter should pay; and
- (e) that regard must be had to the welfare requirements of animals as sentient beings.

In terms of environmental governance, Scotland faces the same issues as for the rest of the UK in terms of gaps left by the loss of EU machinery. A sub-group of the Scottish Government’s Roundtable on Environment and Climate Change produced a paper on *Environmental Governance in Scotland on the UK’s withdrawal from the EU* which identifies the gaps that will be created and provides a range of options for consideration.⁵ The paper also recognises that with time getting short before Brexit, there may be a need for interim arrangements since it may not be possible to get any new formal statutory framework in place before the EU Commission’s role in overseeing environmental compliance disappears. The Environment Minister has welcomed the paper and will be producing more detailed proposals in due course, as required by the Continuity Bill.⁶

On the key issue of collaboration across the UK, the Roundtable’s paper notes the value of UK-wide co-ordination but cannot avoid the constitutional issue, simply saying that the arrangements should reflect the devolution settlement, whether that means separate bodies in the different nations working in conjunction or an agreed unified structure. Defra’s consultation similarly holds out the prospect of discussion over various forms of collaborative working. Nevertheless, two things stand in the way of the likelihood of productive progress towards beneficial collaborative arrangements. The first is that the structural planning is progressing on different schedules – the UK Act requires a draft Bill by the end of the year, whereas the Scottish Bill’s six-month period for consultation and reporting will not begin until after Royal Assent which can come only after the Supreme Court’s decision later in the year. Secondly, the breakdown of trust and co-operation between London and Edinburgh means that the environmental

benefit of close collaboration could be a victim of the constitutional battles.

Conclusion

While we await the Supreme Court's decision on the Scottish Bill's competence, and the further political and legal discussion that will inevitably follow whatever the result, we face the prospect of having to live with two broadly parallel but different regimes for ensuring the continuation of retained EU law. This will lead to the need to identify clearly those matters which fall under the Westminster and those under the Holyrood provisions, an issue which has been largely avoided in the past given the broad powers under the European Communities Act 1972 which created shared responsibility for implementing EU law. We also have two separate programmes developing the role of environmental principles and governance, with different sets of principles embedded and the likelihood of separate governance structures which seem unlikely, in the immediate future at least, to provide any clear means of dealing with those matters that do not fit neatly into a single administration's responsibility.

Finding a way forward will not be straightforward given the lack of trust and collaboration between the governments in London and Edinburgh. The disagreement over where powers are to rest and how common frameworks are to be established is one that rests on deep constitutional principles, but means that despite the clear benefits to the environment, rapid progress seems unlikely in developing soundly integrated mechanisms and approaches for environmental regulation and governance. At least partly because membership of the EU provided a safeguard against excessive fragmentation, the devolution settlement failed to provide any strong machinery for intra-governmental co-operation and dispute resolution (other than relying on Westminster's ultimate supremacy), and this deficiency is now being exposed. The difficulty in developing a clear approach on Brexit at UK level has further muddied the waters, and has contributed to the lack of transparency, of collaboration with the devolved administrations and of stakeholder engagement at key stages in developing policy, both on Brexit in general and on the environment in particular. Still, the Cabinet meeting at Chequers in early July will surely get key issues sorted out neatly and leave everyone happy [oops!].

Prof Colin Reid is Professor of Environmental Law at the University of Dundee, and a member of the UKELA Brexit Task Force and the sub-group of the Scottish Government's Roundtable on Environment and Climate Change.

Endnotes

- 1 Available at <http://www.gov.scot/Resource/0051/00512073.pdf> (accessed 19/7/18).
- 2 Scotland Act 1998, s.28(8).
- 3 See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Join_t_Ministerial_Committee_communique.pdf (accessed 19/7/18).
- 4 See <https://consult.defra.gov.uk/eu/environmental-principles-and-governance> (accessed 19/7/18).
- 5 See <http://www.gov.scot/Publications/2018/06/2221> (accessed 19/7/18).
- 6 See <https://blogs.gov.scot/rural-environment/2018/06/01/next-steps-on-environmental-governance> (accessed 19/7/18).

Adverts, jobs and tender opportunities

RSPB Brexit Planning Team Volunteer – Belfast, Northern Ireland

The RSPB is a conservation charity working to secure a healthy environment for birds and wildlife, helping to create a better world for all of us. We belong to BirdLife International, the global partnership of bird conservation organisations. In Northern Ireland, we are working with colleagues throughout the UK to ensure there is no weakening of our nature protection on leaving the European Union. To this end, we need a volunteer to work on and help with our review of all the proposed changes to existing EU derived environmental legislation as part of the Brexit process. Your time and skills could make a real difference to the work of the RSPB and it would be great if you could join us.

The volunteer should have/be working towards a qualification as a barrister or solicitor, or a course which has a legislative element (e.g planning), and have an interest in ecology, sustainable development, and environmental studies/issues.

Required skills:

- * Good organisational skills and attention to detail
- * Previous experience with reviewing legislation would be beneficial but not specifically required
- * Good communication skills
- * The ability to work as part of a team and on your own initiative
- * The ability to take guidance
- * Experience in Microsoft Word and Outlook

The role will commence upon publication of NI draft Statutory Rules, with a time commitment of one to two days per week until the legislation has passed into law. Appropriate training will be provided and expenses will be reimbursed where necessary.

For more information, please contact [Colin Graham](#).

University of Dundee Research Project – Uncovering the Environment: The Use of Public Access to Environmental Information

Who uses the public's right to access environmental information? What information do they want? In what ways does having the information make a difference? These are the key questions for a research project at the University of Dundee on the use of public access to environmental information.

The ESRC-funded project is investigating how individuals and non-governmental organisations utilise their right to obtain environmental information from Scottish public authorities. Our aim is to analyse the operation of the laws currently guaranteeing the right in Scotland, discovering how, and to what extent, this right to information is used by various members of society. To assist in this work, we are conducting a survey on the experiences of public authorities and individuals and non-governmental organisations in guaranteeing and using the right to access environmental information from Scottish public authorities, both through using published data of all sorts and through specific requests for information. The issues highlighted through these surveys will be further explored through a series of interviews and workshops with both users and holders of environmental information.

Although the direct focus of our project is Scotland, we are also interested in hearing views from those in the rest of the UK about their experience of the law on access to environmental information. The pattern of the law is the same throughout the UK, but the narrower focus builds on a close working relationship with the Scottish Information Commissioner, Scottish Natural Heritage and the Scottish Environment Protection Agency. It should produce a varied but manageable case-load to study.

The project will allow us to assess the impact that the law has had on promoting better governance and

achieving better environmental outcomes. Is access to environmental information actually delivering the benefits it was designed to achieve? How might the system be improved to make it less burdensome for authorities and more useful for the public? By exploring and answering these questions, we are aiming to positively contribute to how each group understands and engages with the right of access to environmental information in Scotland and the UK: individuals and non-governmental organisations will gain a better understanding of the potential use of the right and public authorities will gain an awareness of how the right is being used in practice, which will inform disclosure and dissemination practices.

To find out more information about the project and its findings, or to contribute to the project, please visit our [website](#) or contact the project researcher, [Sean Whittaker](#).

Book reviews

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

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The editorial team is looking for quality articles, news and views for the next edition due out in October 2018. If you would like to make a contribution, please email elaw@ukela.org by 19 September 2018.

Letters to the editor will be published, space permitting.

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Who are we?

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What else do we offer?

Members can join our Working Parties, Regional and Special Interest groups which cover areas such as Climate Change and Energy, Nature, Public Health and Environmental Law and Young UKELA. We run various competitions throughout the year specifically for students and graduates



What are the benefits of joining UKELA?

We have a lively events programme covering the UK, with special rates for members. This is a fantastic opportunity to mix with like-minded people and to learn more about the area of environmental law. We are proud to offer the leading Annual Conference on environmental law. You get exclusive access to our online journal e-law and a chance to influence the law as it's drawn up

Brexit Task Force

Our Brexit Task Force, set up in September 2016, advises us on matters relating to the UK's withdrawal from the European Union - our members have access to these reports and papers; and the opportunity to contribute to consultation responses.

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Here are some of our members explaining how they have benefited from their UKELA membership:

UKELA has provided me with valuable and up-to-date information on environmental law, with thought-provoking events and excellent networking opportunities. I firmly believe that this placed me in a stronger position to pursue (and achieve) my dream of being an environmental lawyer.

Heather Hamilton, lawyer at ClientEarth. Member since being a student and currently a UKELA Trustee

Through its conferences and seminars, I have met some wonderful people and gained a much broader understanding of the breadth of depth of environmental law in the UK... and this has given me some very important insights that I have used in the development of my own environmental law practice.

Simon Tilling, Partner at Burges Salmon. Member since being a trainee solicitor and currently vice-chair

UKELA has and continues to provide a unique platform to meet and engage with a wide variety of people, all with a common interest! UKELA has without doubt had a huge influence not only on my decision to become an environmental lawyer but also on my career to date. Thank you UKELA.

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