



**UKELA BTF meeting, 1.30 pm, 30 April 2019 at Shoosmiths, London
MINUTES OF MEETING**

Attending:

Angus Evers (Co-chair) (AE)
Richard Macrory (RM)
Alison Boyd (Operations Director) (AB)
Adam Smith (BTF support) (AS)

On the Phone:

Paul Stookes (WP & Brexit Advisor) (PS)
Bridget Marshall (BM)
Victoria Jenkins (VJ)
Emma Tattersdill (ET)
Begonia Filgueira (Co-chair) (BF)
Nick Ostrowski (NO)
Peter Harvey (PH)
Philip Hunter (PHu)

Action Points Arising

1. **BF** to circulate dates of the upcoming DEFRA stakeholder meetings.
2. **PH** to provide a 'finger in the air' indication of Brexit statutory instruments for the next BTF meeting. **PS** to review to consider more relevant SIs
3. **BF/AE/AB/PS** to consider seminar on part two of the Environment Bill once it is published and after the Annual Conference in the summer.
4. **VJ** to ask an agricultural law expert colleague if they could attend a BTF meeting to brief members on agricultural law issues relating to Brexit.
5. **PS** to send his update on EURATOM to Paul Bowden and Stephen Tromans QC for comments. Once received, PS to send to BEIS to check we are reflecting the current position.
6. **AB/PS** to include an update on BTF work in the next E-Law bulletin to be published end of May (note deadline for copy is 15 May).
7. **AB** to arrange to update members on EFRA and Environmental Audit Committee reports published in the last week (include in E-Law report).

8. **PHu/BM** to circulate the questions on environmental principles and governance in Scotland to Scottish members asap.
9. **VJ/PHu/BM/PS** to ensure responses to consultations in Scotland and Wales are seen by AE and BF before submission to ensure consistency on UKELA approach.
10. **BF/AE/AB** to consider an event in the autumn on responses to the various government consultations in England, Scotland, Wales and NI, possibly in October or November. To be reviewed at the next meeting.
11. **RM** to send a note on tribunal system as an enforcement mechanism to VJ.

1. Apologies

Anne Johnstone, Peter Dixon, Patrick Duffy, Andrew Bryce, Frank McManus, Stephen Tromans QC, Sir Francis Jacobs, Jill Crawford, Colin Reid, Caroline Fielder, Richard Wald, Penny Latorre, Phil Hunter, Christian Jowett, Paul Davies, Richard Barlow, Stephen Hockman QC, Andrew Wiseman, Stephen Sykes, Nina Pindham, Karen Blair, Eloise Scotford, Bob Lee.

2. Minutes of last meeting and matters arising

1. **AE** to circulate the survey / mini-consultation on standards setting to the BTF (deadline Friday 22 February 2019).

AE confirmed he had circulated the response for comments and it was submitted.

2. **BF/AE** to approach Edward Lockhart-Mummery of the Broadway Initiative to arrange a more formal meeting with him on behalf of UKELA.

BF had meeting with ELM and agreed UKELA is not going to join Broadway. The BTF agreed that UKELA should maintain its independence and keep a watching brief.

AE added that he doesn't think there have been any Broadway events since the standards setting event in February.

3. **All Members** to contribute to spreadsheet of external engagement (attached).

PS has circulated the spreadsheet. AE asked everyone to let PS know of any Brexit-related activity (either in a UKELA capacity or personal), to keep the spreadsheet updated. It will be circulated before each meeting and with minutes.

4. **BF** to circulate weekly list of Statutory Instruments implementing technical amendments to the BTF (on a confidential basis).

BF has circulated the list by email to BTF members.

AE said there was a general feeling that everyone had been overwhelmed by the deluge of statutory instruments in run up to 30 March 2019.

BF had advised DEFRA that as time was short ahead of 30 March, the BTF would scrutinise after SIs come into force and provide comments.

RM asks if we should be doing something more substantial before the October deadline now Brexit is delayed. In particular it would be useful to have a mechanism for the Working Parties to identify any issues.

AE said he thinks there have been some amendments to SIs - the one dealing with REACH is one example - where the government missed something in first SI, which has subsequently been picked up and changed. That opens up wider question of whether we should go back over some that have already come into force.

RM felt that if there was a way to flag up the ones that might be relevant to certain Working Parties then that would be helpful.

PH said he could do a “finger in the air” breakdown of the SIs that have gone through so far and the areas they cover. The problem with the no-deal ones is they are so technical that it takes a very long time to work out what they’re saying. PH thought about three to four SIs have been amended (like the REACH SI) where problems have emerged.

BM said one area to prioritise might be where new systems are being but in place like with chemicals and the ETS where new structures will have to be set up after Brexit.

AE says he agreed that should be our starting point.

It was agreed that PH would provide the “finger in the air” breakdown of SIs before the next BTF meeting and then we can assess how everything is progressing and what needs to be the priority.

5. **BF/AE** to keep under review whether to recommend a public comment on the complexity of the technical amendments and the impact on environmental law.

No update. This is still being kept under review.

6. **BF/AE** to consider who should attend the DEFRA/OEP stakeholders meetings based on what is due to be discussed.

BF and PH have been to some. PH is planning on going to one of the two in the next couple of months.

PH says what is very important is that we are seen to be there. He raised the concern that DEFRA can simply use the meetings to say they have consulted UKELA and others when in fact a lot of the decisions have already been made.

BF, PH and AE are all copied in on the dates which happen once a month.

NP has also been to one on 29 March and is going to another on 9 May.

7. **BF/PS/AB** so consider seminar on part two of the Environment Bill once it is published and after the Annual Conference in the summer.

Still awaiting publication. It was agreed to discuss this at the next BTF meeting.

8. **AB** to introduce KB to Dr Viviane Gravey, Queens University, Belfast

AB confirmed this has happened.

9. **BF/ET** to check on agricultural law expert to brief BTF.

ET says her firm, Freeths, has a team of agricultural experts. They are not doing anything specific on Brexit at the moment and don't have any specific documents to circulate but they may be able to respond to questions from the BTF.

BF said NFU are part of the DEFRA consultation process and it might be worth linking up with them as well.

VJ suggested Ludivine Petetin as an academic agricultural law expert who is coming to the Royal Welsh Agricultural Show for Welsh UKELA. VJ said they are currently in negotiations for the exact day for that but it is most likely to be Tuesday 23 or Wednesday 24 July.

It was agreed VJ should ask Ludivine if they could attend a BTF meeting to discuss agricultural law issues resulting from Brexit.

10. **PS** to get an update from BEIS on where we are with EURATOM.

PS has not contacted BEIS but he has prepared an update from his own research. In summary the points raised by UKELA on EURATOM in the report have in fact come into play and what UKELA suggested has come into force.

BF suggested PS send his update to Paul Bowden and Stephen Tromans QC and ask for comments and, if they are happy to put their names to an update then we can send that to BEIS.

11. **AB/PS** to pull together newsletter on BTF activities and impact for UKELA members.

This is still in progress. AB and PS will aim to get something in the next E-Law and deadline for that is 15 May to be published end of May.

It was agreed the update doesn't need to be very long but something similar to the Working Party updates.

12. **All Members** to think about the future of the BTF for discussion at the next meeting.

See agenda item 7 below.

RM added one point on the House of Commons EFRA committee report into the OEP published earlier in the week and the Environmental Audit Committee report published last week. Andrew Bryce features in both and the EFRA report picks up on the interim powers issue, which is something UKELA have been pushing.

AB say it would be good to update members on that. AE said this seems like a very good result and agreed about updating members. This can be part of the E-Law update.

3. Scottish update

a) responding to the Scottish Government: Consultation on environmental principles and governance in Scotland

PS has circulated a draft of the consultation response.

AE mentioned the UKELA Scottish conference on Thursday afternoon this week to brief members in Scotland and get views from them to inform the response.

PS has also circulated a list of questions for members to consider. AE asked if it was the plan for that to be circulated to members at the conference.

PHu says he thinks questions are a good way to drive engagement with members but thinks we want to circulate the questions as widely as possible to the Scottish membership and so maybe we should not circulate them at the conference since those people will be engaged already. This was agreed.

RM asked who the consultation response will come from. RM's view was that it should come from the Scottish Working Party (and that the Welsh consultation response should come from the Welsh Working Party when that response is submitted) in discussion with the wider UKELA membership. It may have more influence if it comes from a Scottish or Welsh body.

BM and PHu agreed it makes sense for Scottish response to come from Scottish Working Party. The tone has to be right and it is better that it is seen to come from Scotland.

VJ said when they responded to Welsh Environment Act they did so as the Welsh Working Party.

BF said the BTF should be led by the Scottish and Welsh Working Parties on what is best. BF is happy for responses to come from the national Working Parties. She added that if there is anything that can be done to join up thinking across UK that would be good.

VJ said they have an event on 14 May specifically about consultation responses and that she would send an update to AE/BF/PS before anything is submitted.

RM says before anything goes in it should be checked with AE and BF to make sure the wording on UKELA's position is consistent. This was agreed.

PS said the deadline is 11 May for Scottish response. We should circulate the draft as it is now plus the questions to the Scottish members tomorrow (1 May) and then get something back to PS by Wednesday next week (8 May) to then get in finalised form by 11 May.

PHu says he would hope by the end of this week that they would have an almost final draft to circulate.

BF suggested having a joint event to compare where we are with all the devolved administration consultations and UKELA responses. There could be a role for UKELA analysing how things can work between England and the devolved administrations.

It was agreed that the BTF should consider an event in autumn, possibly in October or November. This can be reviewed at the next BTF meeting

b) Scotland Conference 1.30 pm, on 2.5.19, Edinburgh University

See above.

AB confirms there will be someone to take notes and we expect about 40 people in attendance.

4. Wales update

See above.

a) responding to the Welsh Government: Consultation: *Environmental Principles and Governance in Wales Post European Union Exit*

See above.

RM added that the Welsh Government seems to be moving towards a tribunal system for enforcement. RM thinks the Lands Chamber in the Upper Tribunal is a good forum because it has High Court judges, so they can hold judicial review proceedings. That is better than the First-Tier Tribunal which doesn't have those powers.

RM said he would send a note on tribunal system to VJ.

b) Seminar on the Welsh Government's EPG Consultation at 5.30 pm, 14.5.19 Blake Morgan Solicitors, 1 Central Square, Cardiff CF10 1FS

It was agreed this was a good event to be holding.

5. Northern Ireland update

No one present to update. **PS** was not aware of any significant shift in the position since the last meeting – which was that nothing really is happening without a devolved government in place.

6. Update on other Brexit related activities – e.g. attending stakeholder events etc.

See above for engagement spreadsheet. **AE** underlined people should send details to PS.

7. BTF future

AE said we thought we might have left the EU by now but of course we haven't. AE feels until we leave the BTF needs to remain in existence.

RM agreed. We can have informal conversations at conference about the future but it seems likely there is enough work to keep the BTF going until October. It might be that what UKELA needs is a better mechanism for getting all the Working Parties together to tackle to future challenges.

VJ said she finds it really useful to get a broad perspective of what is going on across the country aside from just the Brexit-related topics.

AB agreed that there needs to be some mechanism for the Working Parties to coordinate. In the early part of post-Brexit the members of BTF or its successor will probably stay very much the same.

BF agrees the BTF should carry on as it is until the Brexit position is finalised. At that point, BTF should make a recommendation to Council on next steps.

8. AOB

BF says Nina sent an email to say she is having a meeting on 9 May with DEFRA on enforcement action for the OEP. This is probably looking at issues such as tribunals etc. and other alternatives to judicial review.

9. Date and place of next meeting

Agreed for 4 July 2019, 1.30pm - 4pm at Shoosmiths, London.

A final decision on whether to go ahead can be made at conference depending on developments.

MEETING ended at 3.01 pm.