



e-law

Better law for the environment

March/April 2018 | Issue 105



Welcome to the March/April edition of elaw. The theme is waste and the circular economy.

The concept of a circular economy is not a new one. The [Ellen MacArthur Foundation](#) notes that its origins can't be traced to a single author or date. It has evolved since the late '70s and been refined by numerous schools of thought, including cradle to cradle approaches, and natural capitalism. [Wrap](#)

defines it as an "alternative to a traditional linear economy (make, use, dispose) in which we keep resources in use for as long as possible, extract the maximum value from them whilst in use, then recover and regenerate products and materials at the end of each service life."

The importance of moving towards a circular economy, minimising waste and emissions and promoting sustainability has never been greater. In December 2015, the [European Commission](#) put forward a package of measures to support the EU's transition to a circular economy, with several legislative proposals adopted. Post Brexit, one can only hope that the UK continues to take steps to move in a similar direction. In the meantime, tackling illegal waste operations, and grappling with how waste (and in particular, waste imports and exports) will be regulated in the future, remains high on the agenda.

We are grateful to Laura Tainsh, for her article [The Current Picture – Are things improving?](#) Waste crime has been a focus of environmental enforcement in the UK for some time, and this article considers how much of an impact criminal behaviour is still having on the waste sector. We also thank Peter Harvey for his summary of the [Waste Law and the Circular Economy after Brexit – Waste Working Party's joint seminar with CIWM and ESA](#) which was attended by more than 90 people.

Following on from the last edition's theme of environmental courts and tribunals, Stephen Hockman QC's article [Why do we need a new International Environmental Court?](#) summarises the previous proposal for an International Court for the Environment (ICE), sets out how it would operate and highlights its potential benefits. Stephen emphasises that the time is right for establishing an ICE, but that what is required is the "drive, vision and resources to take these projects forwards."

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While Samantha Orenstein's student article on [Earth Law](#) provides us with an interesting update on how this ecocentric philosophy is developing in other jurisdictions, including through incorporation into national constitutions and municipality law. Many thanks to Simon Boyle for reviewing Samantha's article.

And finally, as introduced in our last edition, as part of UKELA's 30th Anniversary initiatives, we have incorporated a special series of 60 second interviews with some of our convenors, trustees and Patrons to share their thoughts on how environmental law has changed during their careers. We are grateful to Anna Willetts, Clyde and Co, Waste Working Party Co-Convenor for allowing us to interview her for this edition. Please do read her [interview](#), which also covers what she thinks will be the most significant changes for the UK to move to a circular economy.

Best wishes,

Hayley Tam

Hayley Tam
UKELA Trustee & e-law Editor

E-law editorial team

Hayley Tam, Editor – Hayley is Head of Environment at LexisPSL having previously worked in both the private and public sector at the Environment Agency, Allen & Overy, Stephenson Harwood and Ashurst Australia. She is qualified as an environmental 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



As part of UKELA's 30th anniversary celebrations, we are currently running our Thirty Plus One campaign. Current members are invited to recruit one new member during 2018, and both will receive a free ticket to the event of their choice (subject to conditions and availability).

Having a vibrant membership is critical to the continued success of UKELA, and although the Trustees focus on it all year round, this is a particularly important time of year because at the end of March, memberships of those who did not renew will have lapsed. It's a good time to think about what UKELA means to you and why your membership is important. So I thought I'd share my personal thoughts on what being a UKELA member means to me.

I can't actually remember when I first joined UKELA, sometime around 2004/5. Certainly my first conference was the 2005 conference in Edinburgh, which I remember fondly as I learned a huge amount and it was such a welcoming and friendly atmosphere. The same can be said for every conference I have been to since. I was encouraged to join by Paul Davies, who I have a lot to thank for because he also later encouraged me to stand for Council, and provided me with my testimonial. When I first joined, I never

imagined that I would end up as Chair. UKELA has given me the opportunity not only to gain board-level experience, but to demonstrate leadership. And that has been hugely influential in my career. I have met an incredible range of people, many of whom I now count as friends. I have benefitted from listening to talks on all manner of subjects, but also from personal conversations with people I know through UKELA who have been generous with their time and knowledge and acted as sponsors and mentors, whether they knew that's what they were doing or not. I have contributed to consultations that have helped shape our environmental laws, and am particularly proud of my small part in the production of the Brexit and Environmental Law standard setting report. I have been in many rooms participating in important conversations that I wouldn't have had access to were it not for the fact that I was there on behalf of UKELA. Being a UKELA member has given me the chance to make a meaningful contribution to debates on issues that really matter to me. I look forward to being a UKELA member for many years to come.

Regards,

Anne Johnstone

Anne Johnstone
UKELA Chair

UKELA news

Membership

Can you help us recruit more members for UKELA's 30th anniversary? To celebrate this milestone, and to help the organisation become even stronger as it heads into the next 30 years, we are calling on all members to help us recruit! Can you add one more member to our ranks? Is there a friend or colleague you know who has been thinking about joining and not quite got round to it? Or do you know someone who used to be a member and has fallen by the wayside?

Recruit someone new or bring back an old friend and help UKELA grow! As an incentive, the first 30 members to recruit a new or returning member will be given 2 free tickets (for them and the new member) to a UKELA event of their choice* – so, get recruiting! To let us know about the person that you have recruited, please [get in touch](#). Our membership application form is on our [website](#).

Thank you!

*Not including the Annual Conference, Scottish Annual Conference or the Wild Law weekend. Events included currently are: Waste seminar on 7 March; Nature and Wellbeing seminar on 26 March; Changing Face of the Energy Mix on 9 May; Water & Marine Issues on 24 September. Other events will be added as they become available. All free tickets are subject to availability and offered at UKELA's discretion. Free tickets will only be issued once the new member has completed registration. UKELA has the right to vary these terms at any time.

UKELA Annual Elections

We will be inviting nominations for election to UKELA's Council later this month. Look out for the email coming your way. This is a great opportunity to join our governing board and help influence the direction of UKELA's strategy over the next few years. We welcome nominations from across our membership and will, in particular, be looking for greater representation from the public sector. If you are interested, please contact [Alison Boyd](#) for an informal chat.

International Merit Award

Do you know someone who is worthy of receiving UKELA's International Merit Award? Take a look at the guidelines below and let us have your nomination by 31 May 2018.

What are we looking for?

Someone who has contributed considerably to furthering/securing/achieving environmental law 'wins' in their career. This could be at both the national and global level. This is not necessarily something that is exclusive to international lawyers. This person may have had a 'straight' career in environmental law (practising as a solicitor/barrister or equivalent), but equally they could come from the wider sector and work at the NGO level.

How to define success?

We are looking for someone who has perhaps secured a great victory, such as a ground-breaking litigious or legislative 'win'. This could be a momentous one-off contribution that has truly helped the environmental law movement move forward and achieve gains beyond that which it would have done in the absence of said win. Alternatively, it could be framed as a lifetime of service where the individual has contributed over time to a cumulative build-up of successes on a smaller, but no less important, scale.

Why is UKELA honouring this person?

This award is in recognition of the impact that this person has had both in the broader field and also on UKELA specifically; for example, as a consequence of a win or victory, UKELA was able to take great steps forward. UKELA may have worked with this individual and they might be part of the UKELA network, or equivalent abroad.

GDPR – Data Protection

We are currently reviewing our privacy and data protection rules and procedures in order to be ready for the implementation of new rules coming into force on 25 May. All members will be contacted very soon with more information.

Regional news

Our regional convenors have been busy pulling together event programmes for members in the last couple of months. Look out for seminars on Brexit, marine pollution, environmental compliance and more coming up.

Student news

UKELA Annual Moot Competition 2018

We are pleased to announce that the winners of the UKELA Annual Moot Competition 2018 are as follows:

- The Dame Frances Patterson (Junior) Moot winners are Joseph Broadway and Michael Linnane (The Open University Law Society)
- The Lord Slynn (Senior) Moot winners are Anne Hogarth and Joseph Meethan (University of London)

Well done to all who took part. It was clear from the nervous energy in the ante-room how much this meant to the entrants; a huge amount of effort went into their preparation and this was reflected in the high level shown throughout the competition.

UKELA would like to thank our Moot master, Nina Pindham; and the semi-finals judges, Thea Osmund-Smith, Howard Leithead, and Lord Justice Dove, who travelled down from Manchester to judge the finals of this competition. We should also like to extend our gratitude to our kind hosts, King's College London; to our generous sponsors, No 5 Chambers and LawText; and to Paul Leonard for taking photographs throughout the day.

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 [Rosie McLeod](#) or [Lewis Hadler](#) our student advisors. 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 'The Mixed Energy Economy' expected to be published in the week commencing 31 May.



Photos © Paul Leonard

UKELA events

North West regional group – Environmental Consultation workshop and discussion group: BREXIT – 19 April

Join us for discussions on topics such as the new environmental watchdog, the transition period and ongoing participation in certain EU institutions, devolution, and the retention of environmental power by Westminster. This will be the first in a series of workshops that will provide a forum for environmental professionals to discuss the tidal wave of expected consultations relating to new legislation and other developments stemming from the Brexit process and the need to plug gaps in the UK environmental legislative framework. For more details, please visit our [website](#).

Public Health and Environmental Law seminar – 25 April

Join us for the inaugural seminar of our newest working party: Public Health and Environmental Law. Given environmental law is built on public health legislation, the new working party provides an opportunity to re-invigorate the link between public health and environmental protection. Please join us for the inaugural seminar for the new working party to find out why it is more important than ever, in a soon-to-be post-Brexit Britain, for environmental law to remember its public health roots in order to affect socio-political change towards the natural environment. For more details, please visit our [website](#).

Young UKELA The Basics: Environmental Information – 30 April

Join us for the next in our 'The Basics' seminars on the topic of Environmental Information. Aimed at junior practitioners, our Young UKELA seminars are informal events on a range of environmental law themes. For more details, please visit our [website](#).

London meeting: The Changing Face of the Energy Mix – 9 May

Please join us for this early evening session looking at some of the policy drivers and current innovations that are changing the face of the energy market. As the UK seeks to gain momentum in its drive to decarbonise its energy supply, progress will be required on the side of both supply and demand. Whilst the UK Government grapples with how best to drive the replacement of our generation, transmission and distribution infrastructure, local and regional authorities will have an increasingly important role to play, not only by leveraging their formal role as the planning authority, but potentially by providing leadership to drive new initiatives on local energy supply and demand reduction. Meanwhile, the private sector, reacting to cost increases, security of supply and sustainability considerations, is exploring new ways to manage the risks and address the opportunities. The session will consider these changes and cross the Atlantic to consider some of the recent drivers steering energy policy in North America. For more details, please visit our [website](#).

Nature Conservation Working Party meeting – 19 May

Join the NCWP for their regular meeting in Nottingham. Please contact the [convenors](#) if you would like to attend.

Wild Law weekend, Lake District – 25 to 28 May

The weekend will be based at the Coniston Coppermines Youth Hostel in Coniston at the foot of Old Man of Coniston – a recently designated World Heritage Site. With activities on the nearby hills, and environmental discussions in the evenings, a stimulating weekend of exhilarating scenery and good company is on offer! We would love you to join us. For more details, please visit our [website](#).

Annual Conference: Past Reflections and Future Horizons: Environmental law in a post-Brexit World – 22 to 24 June 2018

Please join us in Canterbury at Kent University's beautiful campus from 22 to 24 June 2018. Our Conference theme this year is 'Past Reflections and Future Horizons: Environmental law in a post-Brexit World'. This year's conference gives us time and space to recharge as we approach Brexit – and UKELA's 30th anniversary. Our programme starts earlier this year to provide even more CPD value. For more details, please visit our [website](#).

The e-law 60 second interview

30th Anniversary edition



Anna Willetts, Clyde and Co, Waste Working Party Co-Convenor

How did you get involved with environmental law?

After completing my PhD in landfill clay mineralogy, I was employed as a waste management consultant for 5 years. My clients began to face environmental legal issues from 2004 onwards and I felt that this was an interesting and niche area of law that overlapped with technical waste issues and which interested me. I went back to University and completed the Graduate Diploma in Law and then the Legal Practice Course, prior to starting my training contract.

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

A successful outcome in the Court of Appeal in 2017, which related to the dual regulation of Part B Mobile Plant. This clarified the law on this point after two years of hard work.

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

A lack of understanding of the judiciary of environmental legal and technical matters frequently appears to cause barriers to justice. When Magistrates and Judges fail to understand the technicalities of the cases which are presented and then have to rule and reach judgement on those matters, it is a constant source of frustration to clients that their cases do not appear to be fully understood. Courts do not often deal with these cases and are used to dealing with more general criminal matters, so when our clients arrive with highly technical matters regarding hazardous waste, end of waste status, and questions such as 'is stone slurry a waste?', it seems to flummox them.

When did you get involved with UKELA?

I joined UKELA in 2009 when I qualified as a lawyer.

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

UKELA is a key contributor to government consultations on all potential changes in environmental law and therefore at the forefront of any change which would take place. By utilising all views of members of UKELA, it is in a position to put forward strong consultation responses which reflect a variety of cross sections of environmental industries, and therefore represents a mouthpiece for industry to government.

What is your favourite UKELA memory?

The recent UKELA Brexit seminar I found to be engaging and informative for what could potentially be perceived as a 'less interesting' area of environmental law. I thoroughly enjoyed it, myself and many other delegates said how surprised they were that Brexit was so interesting!

What are the main benefits of UKELA membership?

I have found UKELA membership for the last 9 years to be extremely valuable. Meeting a network of like-minded lawyers and consultants all with an interest in developing and furthering environmental law is valuable both personally and professionally. Being part of a UKELA working group which particularly interests me in my professional life (the Waste Working Group) has been extremely useful in terms of contacts, colleagues, and sharing knowledge with similar professionals in this specific area of environmental law.

What opportunities exist to advance environmental law in the UK?

There are plenty of opportunities to advance environmental law in the UK, whether it is through day to day work as a lawyer, advising clients on legal issues and progressing cases in Courts, or through membership of professional bodies such as UKELA which contribute to, and lead on, consultations and influencing policy and government at a high level. There are also opportunities to shape the environmental law of the future with UKELA's junior members' events, and for me as senior (old!) lawyer assisting younger potential lawyers at UKELA's fantastic careers events.

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

I do not think there will be huge amounts of change to environmental law in the next decade; perhaps more 'tweaks' as case law refines and clarifies various issues. Even with Brexit, I feel that most of our environmental legislation is well entrenched now, and little significant change is likely to occur.

Theme question: What do you think will be the most significant changes for the UK to move to a circular economy?

I think product and scheme design at the earliest stages should be key to move to a circular economy. Products and materials should be designed so that all

components, parts and packaging can be reused as a first option, and recycled as a last resort. Full stop. There should ideally be no other last resort of disposal after one use only. Design should include schemes such as deposit return schemes, 'pay as you throw' schemes, and penalising supermarkets and shops who refuse to stop selling black plastic packaging for example, putting bananas in extra plastic bags at the checkouts, and selling cauliflower steaks in individual plastic cartons and wrappers!

Environmental law headlines

February – March 2018

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

ClientEarth succeeds in judicial review challenge to July 2017 UK air quality plan

Practical Law Environment

On 21 February 2018, the High Court gave its decision in the third judicial review challenge brought by the environmental NGO, ClientEarth, against the UK government in relation to its July 2017 air quality plan (*ClientEarth (No.3) v Secretary of State for the Environment, Food and Rural Affairs, Secretary of State for Transport and Welsh Ministers [2018] EWHC 315 (Admin) (21 February 2018)*).

The 2017 air quality plan was published by the UK government following a successful judicial review challenge in November 2016 by ClientEarth, to the (preceding) December 2015 air quality plan.

In November 2017, ClientEarth commenced its third judicial review challenge against the UK government in relation to its air quality plans on the grounds that the July 2017 air quality plan:

- Fails to require any concrete action by 45 local authority areas in England to ensure compliance in the shortest possible time, despite unlawful levels of air pollution.
- Did not impose any legal requirement for the timing or scope for five named cities to introduce clean air zones by 2020.
- Fails to require any action by Wales to bring down air pollution as quickly as possible.

In January 2018, the Welsh Government conceded that its failure to produce an air quality plan was unlawful.

The High Court decided that the July 2017 plan was unlawful because it did not contain:

- Sufficient measures to ensure substantive compliance with the Air Quality Directive 2008 (2008/50/EC) and the implementing legislation in England by 45 local authority areas that are expected to achieve compliance with nitrogen dioxide levels before 2021, but which are in breach now.
- The information required by the Air Quality Directive 2008 and implementing legislation for those 45 areas.
- A compliant air quality plan for Wales.

The court also indicated that it was minded to grant a mandatory order requiring the government to urgently produce a supplement to the July 2017 air quality plan that addressed the deficiencies identified in the decision. The July 2017 plan would remain in force while the supplement was being produced.

The court also took the “wholly exceptional” step of inviting submissions by the parties as to whether it would be appropriate for the court to grant a “continuing liberty to apply”. This would enable ClientEarth to bring the matter back before the court without the need to apply for permission to bring a further judicial review challenge, if it had evidence that the government was not complying with the terms of the court order.

The government has already responded to the judgment by a written statement in Parliament on 22 February 2018 and committed to publish a supplement to the July 2017 air quality plan by 5 October 2018. The Welsh Government has also committed to publish a supplemental plan, following consultation, by 31 July 2018.

For more information, see [Legal update, ClientEarth succeeds in judicial review challenge to July 2017 UK air quality plan \(High Court\)](#).

Court of Appeal decides no arguable claim for pollution against holding company

Practical Law Environment

Royal Dutch Shell (RDS) was incorporated in the UK and was the parent company of the Shell group. Its subsidiary, Shell Petroleum Development Company of Nigeria Ltd (SPDC), was an exploration and production company incorporated in Nigeria. SPDC was involved in a joint venture with Nigerian oil companies and operated pipelines and oil-pumping facilities that had leaked and caused pollution and serious environmental damage.

The claimants who were Nigerian citizens and inhabitants of the areas that were affected by leaks from oil pipelines and associated infrastructure, brought actions for damages for negligence against RDS and SPDC. They claimed that RDS owed them a duty of care as it either:

- Controlled the operation of the pipelines and infrastructure.
- Had assumed a direct responsibility to protect the claimants from the environmental damage caused by the leaks.

The claimants appealed the High Court's decision that there was no real issue between the claimants and RDS, since RDS did not owe the claimants a duty of care, and that consequently the claimants could not rely on RDS as an anchor defendant in order to obtain jurisdiction over SPDC.

On 14 February 2018, the Court of Appeal dismissed the claimants' appeal and concluded that:

- There was no arguable case that RDS owed the claimants a duty of care.
- The court did not have jurisdiction to try the claims against SPDC because there was no real issue between the claimants and RDS that it was reasonable for the court to hear.
- The court had jurisdiction to try the claims against RDS but that the claimants' statement of case disclosed no reasonable ground for bringing the claim.

[*\(His Royal Highness Okpabi v Royal Dutch Shell Plc \[2018\] EWCA Civ 191 \(14 February 2018\).\)*](#)

The court gave further guidance on when a parent company may owe a duty of care to those affected by the operations of its subsidiaries. In particular, it said that for a parent company to issue mandatory policies did not, of itself, mean that the parent had taken control of the subsidiaries' operations such as to give rise to a duty of care to those affected by the policies.

There have been a number of cases recently seeking to extend the liability of parent companies for their overseas subsidiaries. This decision, should therefore, provide some comfort that the mere issuing by a parent company of mandatory policies and standards to be applied throughout its corporate group will not, on its own, mean that the parent has taken control of the operations of a subsidiary such as to give rise to a duty of care in favour of any person or class of persons affected by the policies. UK-domiciled multinationals should, however, continue to ensure that human rights are protected throughout their corporate structures and operations.

The court emphasised that judges must control and limit the volume of material filed by the parties on jurisdictional applications of this nature by deploying "watchful case management". The decision also provides guidance on the approach and the standard of proof required where a jurisdictional application raises a difficult issue of law.

The claimants have stated that they intend to seek permission to appeal to the Supreme Court.

For more information, see [Legal update, No arguable claim for pollution against holding company upheld \(Court of Appeal\)](#)

Supreme Court finds fishing limit breached right to property (R (on the application of Mott) v Environment Agency)

Lexis®PSL Environment

On 14 February 2018, the Supreme Court handed down judgment in *R (Mott) v Environment Agency*.

The respondent had a leasehold interest in a salmon fishery in the Severn Estuary which he had operated as his full-time occupation for nearly 40 years. In order to protect salmon stock in the area, the Environment Agency imposed conditions on the respondent's licence, limiting his catch to 30 fish in 2012, 23 in 2013 and 24 in 2014 without payment of compensation.

The respondent began judicial review proceedings, claiming that the catch limits made his fishery wholly uneconomic to operate. He also claimed that the decisions were irrational and in breach of his property rights under Article 1 of Protocol 1 of the European Convention on Human Rights (A1P1 ECHR). He was successful in the Administrative Court and Court of Appeal.

The issues arising in the appeal were:

- whether the conditions imposed by the Agency amounted to control or *de facto* expropriation under A1P1;
- if the former, whether the fair balance required compensation to be paid; and
- if the latter, whether exceptional circumstances justified the absence of compensation.

The Supreme Court unanimously dismissed the appeal.

The case provides a useful illustration of the way in which the courts deal with the issue of 'fair balance' in a human rights context. Striking a fair balance involves balancing the demands of the general interest of the community and the requirements of protecting an individual's fundamental rights—the requisite balance will not be achieved if the person concerned has to bear an individual and excessive burden.

The fact that the conditions imposed by the Agency were closer to deprivation than mere control was clearly relevant to the fair balance. The Agency gave no consideration to the particular impact on Mr Mott's livelihood, which was severe, and it was doubtful

whether the leasehold interest retained any value.

For more information, see News Analysis: [Supreme Court finds fishing limit breached right to property \(R \(on the application of Mott\) v Environment Agency\)](#).

CPR amendments relating to cost protection in Aarhus Claims

Lexis[®]PSL Environment

The Civil Procedure (Amendment) Rules 2018, SI 2018/239 came into force on 6 April 2018 and amend Part 45 of the Civil Procedure Rules (CPR), dealing with the cost protection afforded in certain circumstances in Aarhus Claims.

The draft amendments implement part of the judgment of the High Court in *Royal Society for the Protection of Birds and others v Secretary of State for Justice and another* [2017] EWHC 2309 (Admin). They set out three amendments to CPR 45:

1. the provisions in CPR 45.42(1)(b) are replaced with new provisions, requiring a claimant, if seeking the benefit of the ACR, to file and serve with their claim form a schedule of their financial resources, verified by a statement of truth, providing details of the claimant's *significant* assets, liabilities, income and expenditure, and in respect of any financial support, the *aggregate* amount which has been or is likely to be provided. This replaces the current requirement to take into account *any* financial support provided or likely to be provided
2. new provisions are inserted at CPR 45.44(5)–(7) which require that an application to vary the default cost caps:
 - must be made in the claim form or acknowledgement of service (depending on whether it is the claimant or defendant seeking the variation), setting out the reasons why the variation in the limit is justified
 - must be determined by the court at the earliest opportunity
 - may only be made at a later stage in the process if there has been a significant change in circumstances linked to the expensive nature of the proceedings for the claimant. Such an application must provide reasons and if made by the claimant be accompanied by revised information on the claimant's financial resources
3. CPR 45.44 is amended to introduce provisions confirming that the court may only vary the cost caps on an application by a claimant or defendant in accordance with new CPR 45.44(5)–(7).

The amendment to Practice Direction 39PD to provide for the first hearing in disputes over the level of cost caps is yet to be implemented.

For more information, see News Analysis: [CPR amendments relating to cost protection in Aarhus Claims to come into force on 6 April 2018](#).

Waste Enforcement (England and Wales) Regulations 2018

Lexis[®]PSL Environment

The Waste Enforcement (England and Wales) Regulations 2018, SI 2018/369 enhance powers to tackle illegal activity at waste sites.

They introduce a new power for a waste regulation authority or waste collection authority to serve a notice on the occupier of land or landowner requiring them to remove waste that is being illegally stored on land, irrespective of whether or not the waste was illegally deposited in the first place. On appeal, a court must quash the requirements imposed by the notice if it is satisfied that the appellant did not keep or dispose of, or knowingly cause or knowingly permit the keeping or disposal of the waste or alternatively if there is a material defect in the notice.

In addition, the Environment Agency and the Natural Resources Body for Wales are given the power to issue a "restriction notice" and apply to the courts for a "restriction order". A restriction notice is an order prohibiting access and the importation of waste to premises for a period specified in the notice of no more than 72 hours. A restriction order is an order made by the courts which prohibits access and the importation of waste to the premises for a period specified in the order, which may not exceed 6 months.

The regulations follow an initial consultation on waste crime powers in 2015 and a further consultation in April 2017. For more information, see: [LNB News 20/10/2017 70](#).

The regulations came partly into force on 29 March 2018 with the remaining provisions coming into force on 9 May 2018. For more information, see: [LNB News 31/01/2018 123](#).

New civil penalties for F-gas infringements

The Fluorinated Greenhouse Gases (Amendment) Regulations 2018, SI 2018/98 come into force on 1 April 2018 and introduce a new civil penalties regime for the enforcement of F-gas regulation from 1 April 2018. Importantly, civil penalties will replace all existing criminal offences, with the exception of the offence for intentionally releasing F-gases. The maximum civil penalty is £200,000 for the most serious infringements, with lower thresholds set at £100,000, £50,000 and £10,000 for certain other infringements.

For more information, see News Analysis: [New civil penalties for F-gas infringements](#).

Waste and the circular economy

The Current Picture – Are things improving?

Laura Tainsh, Partner with Davidson Chalmers LLP and Chartered Waste Manager of the Chartered Institution of Wastes Management

At a glance

- This article considers how much of an impact criminal behaviour is still having on the waste sector across the UK.
- What constitutes waste crime is not always fully understood and this article serves as a reminder of the various types of illegality plaguing the sector.
- Enforcement measures and penalties (which vary in the different UK jurisdictions) have increased, as has the public coverage of those being punished. The latter half of this article gives some examples of the action which is being taken across the UK, highlighting the more effective use of existing measures and those new measures being introduced to try and combat waste crime.

The Problem

In 2016, Sir James Bevan, Chief Executive of the Environment Agency (“the EA”) declared ‘waste crime is the new narcotics.’¹ There are many in the industry whose view is that, some 18 months on from that declaration, the position remains just as severe. Criminality in the waste sector is still at an epidemic level across the UK, and is estimated to cost the economy up to £1 billion in a year² if one factors in lost revenue and landfill tax that would have been earned/collected had all material been handled legitimately.

Aside from the wider impact on the economy and the obvious environmental issues associated with materials being dealt with in an unregulated fashion, waste crime also creates social and economic problems for:

- legitimate businesses dealing with waste management and disposal who not only have to compete with those operating illegally (and lose out to them due to their undercutting on price) but are also tainted by the negative image attached to the sector as a whole;
- landowners, particularly in rural areas who are often subjected to illegal disposals of waste materials on their property and could become legally responsible for the cost of removal of such materials and, in some cases, the wider environmental damage caused to the underlying land, the groundwater or adjacent watercourses;
- local communities who are striving to attract new residents, businesses and tourists to their area; and
- local authorities and regulators fighting to tackle the levels of criminality with restricted resources and budgets as well as dealing with the consequences of waste crime on an ongoing basis (including public complaints, pollution of the environment, removal and disposal of materials and waste fires).

What is waste crime?

Waste crime covers a very wide range of ways in which individuals and/or companies operate outside of the law, some through lack of knowledge of their own statutory obligations and others through organised criminal activity. The management of waste materials is complex and can be challenging so, for the purposes of this article, let us assume that minor non-compliance by those genuinely seeking to be compliant with regulation, in the main, does not constitute waste crime.

Fly-tipping is the most obvious example of waste crime because it is so publicly visible. It is the dumping of waste materials (from any source and of any volume) in an unauthorised location, with no regard to the land ownership position or the potential environmental consequences. It constitutes a criminal offence under section 33 of the Environmental Protection Act 1990 (as amended) (“the 1990 Act”) and there are monetary penalties (of varying levels across the UK) which can be levied on an offender. However, on the basis that it is often difficult to ascertain who has committed the offence, historically there have been very few prosecutions and local authorities spend millions of pounds cleaning up and disposing of the dumped materials every year.

Recent example: the Scottish Environment Protection Agency (“SEPA”) was alerted to a large fly-tipping incident in East Renfrewshire which had caused an infestation of flies in the local vicinity. The land had been rented out and the landowner was unaware of the illegal deposit of waste materials, the clean-up of which was dealt with by SEPA and the local authority at the end of last year.

The deliberate misclassification of waste resulting in landfill tax evasion is still one of the biggest issues for the industry. There are huge inconsistencies between the amount of material received at landfill sites, as reported to the environmental regulators, and the

payment of landfill tax to HMRC and Scottish landfill tax to Revenue Scotland (albeit there isn't yet enough data available to fully assess the level of the deficit in Scotland). To date, there has been very little in the way of financial recovery through criminal prosecution for this type of crime and fines tend to be at the lower end of the scale.

Illegal waste exports primarily to developing countries that already have significant waste management issues of their own take partnership working and substantial funding to detect and prevent. The Chinese ban on receipt of UK exports has not made this issue any easier to deal with.

Recent example: the UK government's Waste Crime Intervention and Evaluation project prevented an estimated 4,000 tonnes of waste from being illegally exported, amounting to a saving of around £400,000 to the UK economy.

Illegal sites, both large and small and operating either out with or entirely without the necessary permit, licence or waste management exemption, have been attracting increasing media attention over the last year or so. Across the UK, with England leading the way, prosecutions and fines for the illegal storage, treatment and disposal of waste materials have been on the rise but the sentences are still not representative of the crimes committed.

Recent example: in March 2018, SEPA secured a fine of £40,000 and a community payback order in respect of the deposit and storage of waste tyres on unlicensed sites in East Lothian during the period from December 2010 to February 2016.

Finally, there is now wide-scale recognition of the fact that there remains a lack of education, awareness and acceptance by many in the waste sector (and beyond) as to their legislative **duty of care** obligations under the 1990 Act (i.e. what needs to be seen, checked, recorded and done with respect to the production, transport, recovery or disposal of waste materials). Fundamentally, if everyone in the supply chain in the UK was acting in compliance with their duty of care then there would be less (or no) waste materials available to criminals operating in the sector.

What is being done about waste crime?

The paragraphs above provide some specific examples of the type of action which has been taken to target criminals operating in the sector. However, it is clear that the scale of the problem and the public call for further action has led to enforcement and punishment measures across the UK being stepped up over the last 18 months as evidenced by the following examples:

- An increased use of 'proceeds of crime' legislation confiscation orders to investigate and achieve compensation for the remediation of sites involved in major incidents of waste crime. At the moment, this is far more common in England although it has been used successfully in Scotland as well, the highest award to date being a confiscation order for £345,558 against Oran Environment Solutions Ltd in 2016;
- The continuation of the EU funded, Life Smart Waste Project being undertaken by SEPA in conjunction with other organisations to: (a) tackle the industry's poor perceptions of how waste crime is handled in Scotland and (b) encourage and facilitate better use of available intelligence on criminal activity in the sector.³ The project lasts until May 2019, following which it is intended that practical measures will be rolled out in Scotland;
- The extension of the scope of landfill tax (in England and Northern Ireland) to include disposals made at sites which do not have the necessary permit or licence. This measure is already in place in respect of the liability to pay Scottish landfill tax but, thus far, has not been readily utilised by Revenue Scotland;
- The increased use of the new enforcement measures available to SEPA without the need for prosecution through the Procurator Fiscal which include fixed monetary penalties (14 imposed to date) and enforcement undertakings (5 accepted to date).⁴ Variable monetary penalties, which would be of greater use for more serious waste crime given that they can be levied at a much higher level, are due to be brought into force during the course of this year;
- The new powers afforded to the EA and Natural Resources Wales ("NRW"), from the end of last month, to: lock up illegal waste sites and block access to prevent further stockpiling of materials; force rogue operators to clean up all waste on a problem site (whether illegal materials or not) and wear body cameras to more accurately gather evidence.⁵ These additional powers are the result of £30million of government funding provided following a public consultation on increasing the EA's powers and a formal evaluation of what effect such funds could have (published in December last year);
- The recently closed consultation on tackling waste crime in England and Wales⁶ is designed to draw out opinions on measures (to be given to the EA and NRW) which will: raise the standard of operator's competence through a more rigorous assessment process; reform the waste exemption regime to restrict their use within the permitting system⁷ and reinforce the householders' duty of care by introducing a new fixed penalty notice for fly-tipping.

Conclusions

Notwithstanding what is set out above, it is argued by many legitimate operators in the waste sector, particularly in Scotland where the criminals' operations are perhaps more obvious on a daily basis, that the regulator(s) are still not taking robust enough action against the very worst criminals.

Environmental regulators have several enforcement powers and sanctions available to them. However, they need to ensure they use them. In addition, environmental sentencing needs to be tougher. In England, the chair of the Environment Agency, Emma Howard Boyd last month said: *'I still don't think the deterrent is strong enough... I am calling for higher fines and custodial sentences for waste criminals... no one should have to live next door to this disgusting criminality'*.⁸ In Scotland, SEPA has stated that they have a zero tolerance attitude to non-compliance. But, will increased enforcement and new powers make a fundamental change to this endemic problem? Watch this space.

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Endnotes

- 1 <https://www.theguardian.com/environment/2016/sep/22/ea-chief-waste-is-the-new-narcotics>.
- 2 <https://www.gov.uk/government/publications/waste-crime-interventions-and-evaluation>.
- 3 <https://www.sepa.org.uk/media/286991/lsw-progress-to-date.pdf>.
- 4 <https://www.sepa.org.uk/regulations/enforcement/penalties-imposed-and-undertakings-accepted/>.
- 5 Powers are provided in the Waste Enforcement Regulations 2018.
- 6 <https://consult.defra.gov.uk/waste/crime-and-poor-performance-in-the-waste-sector/>.
- 7 This is already happening informally (and not consistently) in Scotland in advance of the introduction of the integrated authorisation framework.
- 8 <https://www.gov.uk/government/speeches/what-we-talk-about-when-we-talk-about-green-cities>.

Waste Law and the Circular Economy after Brexit – Waste Working Party's joint seminar with CIWM and ESA



Peter Harvey, Co-convenor, UKELA Waste Working Party

Over 90 attended the Waste Working Party's joint seminar with the Chartered Institution of Waste Management (CIWM) and the Environmental Services Association (ESA) at Clyde & Co's London office on 7 March 2018 for a highly topical seminar.

Andrew Bryce, Co-chair of our Brexit Task Force explained the Task Force's hard work in highlighting the main issues and options for government and business. Defra has recognised the need for a new environmental body, which will be key for waste law, and there have been assurances of maintaining high environmental standards. But there are many questions over the body's form and scope. Should it be on a statutory footing, and follow the Equality and Human Rights Commission model, rather than the New Zealand Environmental Commissioner model? Should it cover all environmental laws, rather than just being limited to EU derived law? Should it monitor government and other public bodies to target strategic issues and should it monitor progress on the 25 year plan?

Alistair McGlone of Alastair McGlone Associates highlighted the importance of trade in waste for the UK, both into and from the rest of the EU. Being unable to export will incentivise criminal activity and environmental damage. Even if trade continues, currency fluctuations could have a considerable influence on waste streams, such as refuse derived fuel (RDF). Alistair summarised the key international conventions with which the UK will still have to comply (Rotterdam, Washington, Montreal and Basel), as well as the EU and UK regulations on transfrontier shipments of waste.

His conclusion was that the UK cannot take back control of trade, only recalibrate it. Currently, it is impossible to say what will happen for waste trade until the negotiation position is clearer. It could be a big problem for Ireland which exports a lot of its hazardous waste to the UK and for the UK with the large amounts of RDF it exports. There is, of course, also the risk of divergence both by the EU when UK law is initially frozen in 2019 while the EU moves on, as well as with the devolved administrations.

Dr Colin Church, CEO of CIWM echoed that the impact depends on the sort of Brexit we have. So far, we have shared common standards, such as the CE marks, toy safety and electrical safety. He thought that ensuring common policy frameworks across the UK will be really important. Already the waste business is concerned by the devolved administrations' competing Withdrawal Bills. There could be very different standards in England, Wales, Scotland and Northern Ireland, for example, with different plastic drink container schemes. We have UK targets up to 2020, but the question is what happens after when the targets could be devolved. There are also positive opportunities. For example, our waste targets are weight based and this may be an opportunity to move to measuring carbon, water or energy impacts.

Roy Hathaway, Europe Policy Adviser at ESA saw considerable challenges for the waste sector with a levelling off in recycling, local authorities under funding pressures and a significant amount of waste crime. ESA is concerned that there is still a policy vacuum pending Defra's new resources and waste strategy due in 2018.

Matters in practice

Why do we need a new International Environmental Court?



Stephen Hockman QC, *Six Pump Court*

At a glance:

- The need to establish a new International Environmental Court ('ICE')
- A summary of previous proposals for the establishment of an ICE
- An ICE would operate in a different way to existing international courts and tribunals
- The potential benefits of an ICE
- The time is right

Introduction

This article contains a summary of a lecture I gave at Middle Temple on 29 March 2017. It reflects a view formed during twenty years of practice in the field of domestic and international environmental law.

Need

The natural environment is probably humanity's most important resource, but its importance has only gradually become apparent to developed countries, let alone to developing countries.

We now know that, if we do not adjust our behaviour, catastrophic climate change will make life infinitely worse for large parts of humanity with virtually no one unaffected. We must do something to solve that problem; we must learn how to adjust our behaviour.

I see the solution as being twin-tracked, and readily acknowledge that the most important of the two tracks is a change of attitude and culture; a greening of social practice. People must learn how to moderate their behaviour voluntarily and develop a new and more respectful culture towards the environment.

But there is another track; in many cases of fundamental social change, what one tends to see is an interaction between changes in attitude and changes in law, regulation and government policy. It is my opinion that an international environmental court ("ICE") should form part of this second track.

One might ask, why does this require a new institution at the international as well as the domestic level? The late Sir Robert Jennings, sometime President of the International Court of Justice at The Hague ("the ICJ"), acknowledged the "...trite observation that *environmental problems, although they closely affect municipal laws, are essentially international; and that the main structure of control can therefore be no other than that of international law*".

In general, those court cases at the domestic level, in which success in protecting the environment has been achieved, have been in the field of public law, involving judicial review of governmental action, for example the familiar *ClientEarth* litigation relating to air pollution. Even in those cases, widely regarded as an illustration of the positive potential of domestic environmental litigation, it must be noted: first, there was no dispute as to the existence of the relevant environmental obligation or its breach; and second, the domestic courts up to the Court of Appeal refused to grant a remedy. It was only upon a reference by the UK Supreme Court to the Court of Justice in Luxembourg that it was held that it was open to our courts to grant a mandatory order against the Government to undertake stronger measures. After Brexit even this measure of success will presumably cease to be attainable, and thus, if anything, the success of the *ClientEarth* cases itself demonstrates the need for an ICE.

I would add that since I gave the lecture, President Trump has announced that the US will be withdrawing from the Paris Agreement on Climate Change. His decision may be thought to strengthen still further the case for a new body at international level.

Proposals

The idea of an ICE has been variously proposed since the Second World War. In 1992 the International Court for the Environment Foundation published a draft statute for such a court. In 1994 a group of international lawyers founded the International Court of Environmental Arbitration and Conciliation. So far as I am aware, both projects are ongoing but no great progress has been made.

The first international tribunal to have had the remit to deal with environmental cases was the Permanent Court of Arbitration ("PCA"), established in 1899. In 2001 the PCA adopted optional rules for disputes relating to the environment and/or natural resources. However, to bring a dispute in the PCA at least one party must be a state consenting to be bound, and its remit is therefore limited accordingly.

The ICJ, established in 1945, may also resolve environmental disputes. To its credit, the ICJ established a distinct 'Chamber for Environmental Disputes' in 1993 but it was abandoned in 2006; in 13 years the specialist Chamber did not have a single dispute referred to it.

To say that the ICJ, however, has not assisted the development of environmental law would be to do it a major disservice. Its 1996 Nuclear Weapons Advisory Opinion highlighted the potential, catastrophic effects of nuclear weapons on the natural environment and recognised that, “*the environment [...] represents the living space, the quality of life and the very health of human beings, including generations unborn.*” This Opinion was followed by the seminal cases of *Gabcikovo and Pulp Mills*, both of which established important principles.

In September 2015 it was recognised in a speech given at the UK Supreme Court by Master Philippe Sands QC that a clear statement by a body such as the ICJ as to what is or is not required by the law may itself contribute to change in attitudes and behaviour. He pointed out that, as Lord Atkin famously held in 1942 in the case of *Liversidge v Anderson*, “*amidst the clash of arms, the laws are not silent,*” and suggested that today, amidst the warming of the atmosphere, the melting of the ice and the rising of the seas, international courts should likewise not be silent.

Character

A limitation of any body like the ICJ is that it can only adjudicate on disputes between states, each of whom has accepted its jurisdiction. An ICE would be a different sort of institution, which would also be able to adjudicate between states and non-state actors, including NGOs and corporations, an institution which could apply international environmental law or domestic environmental law when appropriate.

Above all, I see the need for such a tribunal to develop the principles underlying the law more proactively. In recent years, especially in various domestic supreme courts around the world, including our own, courts have not just recited methodically and rigidly the existing legal framework but have identified and applied broad principles. At an international level there is as yet very little jurisprudence in which the balance is struck between the ever-increasing need for sources of energy and the equally important imperative of environmental protection. I see a role in the medium term for an ICE to develop the principles underlying the law as well as to adjudicate on cases.

Benefits

I see the potential benefits of an ICE as including:

- better flexibility in dealing with complex, technical and scientific environmental data, including a pool of dedicated scientific experts to assist;
- a centralised system of dispute settlement that is accessible to a range of actors;
- clarification of legal obligations and harmonisation of international law related to the environment, thereby increasing legal certainty and predictability;

- encouraging the use of preventative and injunctive measures to minimise ongoing environmental damage; and
- building trust among states, individuals and the business community through the provision of workable solutions to modern environmental concerns.

It could even become the standard compliance and dispute settlement mechanism for environmental treaties, of which over five hundred exist.

Conclusion

The time to press for the establishment of an ICE has never been better. Despite President Trump's withdrawal, the Paris Agreement, still, in my opinion, demonstrates international appetite for strong environmental regulation. Indeed, more recent efforts by the international community to consolidate and develop principles of international environmental law include the proposal for a [Global Pact for the Environment](#) and the recent call, by UN Special Rapporteur on Human Rights and the Environment, John Knox, for the formal recognition of a human right to a healthy environment. What is now required is the drive, vision and resources to take these projects forwards.

As expressed by Alfred Rest in 2004 in *'The Law of Energy for Sustainable Development'*:

“alongside national courts and tribunals, international judicial control is indispensable for the proper protection of the environment on a regional and global level, as well as for the proper protection of the global commons and the human rights of those individuals that are threatened or injured in cases of transnational pollution... [it] is also strongly needed to control the activities of states, to remind them of their collective responsibility for the protection of the environment and to guarantee the implementation and application of international environmental agreements”.

Stephen Hockman QC is Head of Chambers at 6 Pump Court; a co-convenor of the UKELA Climate Change and Energy Working Party; and a Founding Member of the ICE Coalition, an NGO dedicated to promoting the idea of an International Environmental Court.

Student article

Earth Law

Samantha Orenstein, University of Sussex
Reviewed by Simon Boyle, Argyll Environmental



At a glance:

- Earth Law is an ecocentric philosophy and reality which recognises rights of ecosystems defensible in court.
- The successes of Earth Law will depend upon an active citizenry of groups and individuals to uphold these rights on behalf of nature.
- Earth Law is being incorporated into national constitutions and municipality law across the world.
- Future successes will depend largely on its continuing recognition through both educational and legal systems.

Introduction

In the English town of Frome, Somerset, the local population seeking to progress their town, including the [Sustainable Frome](#) organisation, together with [Nature's Rights](#), a non-profit environmental group, are amidst innovative plans. They are currently within the pre-consultation stage of a pursuit to guide Frome Town Council in introducing a new byelaw that would recognise the River Frome (as so far as it falls within the boundary of the town) to have a range of inherent rights defensible in law. These groups hold the belief that the social and economic welfare of Frome is intrinsically bound up with the state of the natural environment it shares. If triumphant, Frome Town Council will be the first municipality in the UK to identify inherent legal rights of the environment and lead the way for the establishment of these byelaws equipping nature all over the UK.

What is Earth Law?

Earth Law, as known in the US, "is the idea that ecosystems have the right to exist, thrive, and evolve – and that nature should be able to defend its rights in courts" ([Earth Law Center](#)). This philosophy is clearly an ecocentric stance to perceiving the relevance of the natural environment, which implies value to natural entities regardless of considerations as to their human utility.

The propositions relied upon seem to mark a stark departure from the long history of anthropocentric arguments. This view rests in the belief that humans are the centre of the universe and the lens in which through all things should be valued. Initiatives operating from this foundation manifest as arguments of human welfare or the consequences of a debilitated environment on humans now and in the future. One

such promising case of particular significance in the UK is currently ongoing, as [Plan B](#) (CIO) and 11 claimants seek permission to bring a claim in judicial review against the Secretary of State for Business, Energy and Industrial Strategy. They are seeking an increase in the ambitions of the UK's 2050 carbon targets, so as to align and effectively adhere to the Paris Climate Agreement, which, amongst other notable benefits, would safeguard the future for people and life on earth.

Conversely, Earth Law's proposal is for rivers, lakes, oceans and land ecosystems to hold rights similar to that of a person or corporation, which recognises sanctity and non-interference whilst also incorporating the particular vulnerabilities of the environment. These vulnerabilities include the environment's flexible nature, multifaceted needs and interdependent structure. Natural entities granted these rights will no longer be perceived as property to be owned.

It is believed that in affording such rights there are concurrent advantages that may prevail for humans. When nature's rights are violated it is likely that so too are human rights. In Indonesia for example, there are critiques of the Palm oil industries' practices, where every hour [roughly 300 football fields of rainforest is destroyed for palm oil plantations](#), without hope to regenerate or be free from human disruption. At the same time this exploitation has incredible interference on human rights, with the U.S Department of Labor identifying palm oil as one of [the four most notorious sources of forced and child labor in the world](#).

A key advantage of granting natural entities legal rights is that stakeholders, interest groups and the public as a whole can defend these rights in court; to protect and defend from abuses. Most particular it allows for indigenous groups and local communities who have historically been fiercely sympathetic to nature's rights a viable option to have their voice heard. A new avenue is thus opened toward tackling exploitation with the entity abused as a core claimant. There is however a reliance on active citizens and groups to uphold these rights, which might prove difficult to initiate.

In *Walton v The Scottish Ministers* [2012] UKSC 44, [152], Lord Hope in *obiter dictum* sets out the importance of individual's rights to uphold interests outside of their own private affairs. In a hypothetical example of the

effects of proposed development on an osprey, he states, “the purpose of environmental law, [which] proceeds on the basis that the quality of the natural environment is of legitimate concern to everyone. The osprey has no means of taking that step on its own behalf, any more than any other wild creature. If its interests are to be protected someone has to be allowed to speak up on its behalf”.

International Earth Law Developments

Many countries and local authorities have begun incorporating Earth Law as part of their wider jurisprudence. Over the last 10 years Ecuador and Bolivia have incorporated rights of nature into their constitutions and so too has Mexico City into its law. In 2011, the case of *Wheeler c. Director de la Procuraduria General Del Estado de Loja* upheld the Rights of Nature granted in Ecuador when a road expansion project was found to be damaging the River Vilcabamba. In 2017, New Zealand recognised the rights of the Whanganui River after 140 years of pressure from the indigenous Māori people of Whanganui. In Colombia, the Atrato River has been recognised as a subject of rights under a new framework of biocultural rights. In the US in particular, over 30 municipalities have already incorporated rights of nature into law, stretching from Pennsylvania to California, with a focus on preventing land from being used in ways particularly damaging to the environment. The UN’s General Assembly too has been systematically adopting resolutions on Harmony with Nature, calling for a new sustainable model for human interaction with the planet.

“Devising a new world will require a new relationship with the Earth and with humankind’s own existence”.¹

Resistance however is abundantly explicit. In 2017 lawyers working to establish rights for the Colorado River in the case of *Colorado River v State of Colorado* were forced to drop the case after the Colorado Attorney General threatened penalties due to what she saw was an “[unlawful and frivolous](#)” claim.

The Future of Earth Law

The potential reach and implementation of Earth Law is great. Here in the UK, the Green Party in England and Wales has adopted Rights of Nature into their policy platform of [Responsibilities & Rights](#). RR1002 reads, “*The State shall defend and enforce the rights of nature. People and communities shall be empowered to defend and enforce the rights of nature for perceived breaches, which will then be judged through the legal system*”. Nature’s Rights have been drafting an EU directive outlining the way in which rights of nature might be enshrined into EU law. In the US, the Earth Law Centre believe widespread education is integral to the successes of Earth Law finding its place within legal systems. Earth Law is being taught at Vermont Law School as well as being presented to Law schools throughout the US. They are also focusing on educating environmental lawyers and judges on how to effectively advocate and judge environmental issues using Earth Law philosophy and precedent.

The opportunities that Earth Law presents are a microcosm of a potential paradigm shift in human interaction with our planet towards a more holistic approach. Earth Law, although not without its faults, might be an alternative solution to addressing the realities of the natural world where current legal policies seem to be falling short.

Samantha Orenstein is a first year LLB student at the University of Sussex and Legal Research and Blog Associate at the Earth Law Centre. She has a particular interest in the use of the law towards achieving environmental sustainability and social justice.

Endnotes

1 [Harmony with Nature, United Nations](#)

Adverts, jobs and tender opportunities

Flood Consultant

Argyll Environmental are a component of Landmark Information Group with offices in Brighton town centre. We deliver environmental insight and excellence to the majority of the top law firms in the UK, along with other niche markets such as SIPPs and developers.

We are specifically looking to recruit a Senior Flood Risk Consultant who has 3+ years of experience in completing and reviewing Flood Risk Assessments, a BSc/BA (Hons) in an Environmental Science or similar, alongside relevant professional affiliations (IEMA, CIWEM). Core skills will include the completion of:

- Flood risk assessments of all levels of complexity and scope
- Knowledge of drainage strategies including SUDs
- Basement impact assessments
- Comprehensive proposals and project tenders

As well as writing and reviewing assessments of this nature, another key requirement of the role is the provision of training, support and mentoring to the wider consultancy team to ensure we can scale this area of the business. To support this growth initiative, the successful candidate will be expected to develop and maintain relationships with repeat clients and identify new sources of business.

To co-ordinate the delivery and growth of a business area, the role requires commercial understanding of the cost structure in different roles and an ability to delegate and manage work effectively. Developing excellent inter-personal relationships is key to the success of this role, both internally and externally with clients. As the lead technical voice for flood services, they may be required to support sales and marketing initiatives in the form of client meetings, webinars, external CPDs and training.

Given the many areas of focus within this role, successful candidates must demonstrate energy, flexibility, autonomy and emotional intelligence.

If you feel that you stand out from the crowd, we would love to hear from you. To apply, please send your CV and a short note explaining why you are the right person to work at Argyll to [Mandy Hawkins](#).

Deputy District Judge 2018

The JAC exercise to select candidates for the post of Deputy District Judge launched on 1 March. There are 303 vacancies across England and Wales.

This presents an excellent opportunity for solicitors, barristers and fellows of the Chartered Institute of Legal Executives with at least five years post qualification experience. Candidates must also be able to offer a reasonable length of service – usually four years – before the statutory retirement age of 70.

Deputy District judges hear a wide variety of civil and family law cases, including:

- claims for damages and injunctions
- possession proceedings against mortgage borrowers and property tenants
- divorces
- child proceedings
- domestic violence injunctions
- insolvency proceedings

The JAC is extremely keen to reach a wide range of potential candidates and to attract a strong and diverse pool of applicants. Information about the process, including key dates and the competency framework, can be found on the JAC website.

If you have any queries or need any further details, please contact the [Selection Exercise Team](#).

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.

UK Environmental Law Association

elaw

The editorial team is looking for quality articles, news and views for the next edition due out in May 2018. If you would like to make a contribution, please email elaw@ukela.org by 16 May 2018.

Letters to the editor will be published, space permitting.

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