Environment & Climate Regulation

Contributing editors
Carlos de Miguel Perales, Uría Menéndez
Per Hemmer, Bech-Bruun

2017

GETTING THE DEAL THROUGH

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Preface

Environment and Climate Regulation 2017

Second edition

Getting the Deal Through is delighted to publish the second edition of *Environment and Climate Regulation*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on China and the Dominican Republic.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to Carlos de Miguel Perales of Uría Menéndez and Per Hemmer of Bech-Bruun, the contributing editors, for their continued assistance with this volume.

GETTING THE DEAL THROUGH

London
October 2016

United Kingdom

Douglas Bryden and Laura Spota

Travers Smith LLP

Legislation

1 Main environmental regulations

What are the main statutes and regulations relating to the environment?

The scope of UK environmental law is very broad and has expanded rapidly since the early 1990s, largely as a result of legislative and policy developments at an EU level. As a result, this is a heavily regulated area, with detailed, complex and often overlapping regimes. Although the broad areas of environmental legislation are the same across the UK, it should be noted that there is some variation between the laws of England, Scotland, Wales and Northern Ireland (particularly Scotland). This chapter primarily deals with the laws of England and Wales, unless otherwise specified.

The main statutes and regulations (as amended from time to time) discussed in this chapter are:

- the Environmental Permitting (England and Wales) Regulations 2010 (EPR), which make up the main regulatory regime concerning the control of environmentally impacting activities and transpose provisions of a number of EU directives imposing obligations required to be delivered through permits or capable of being delivered through permits (see question 2);
- the Environmental Protection Act 1990 (EPA), which, among other things, implements the UK's contaminated land, statutory nuisance and overarching waste regimes (see questions 3, 4 and 9);
- the Waste (England and Wales) Regulations 2011, which implement the revised Waste Framework Directive;
- the Hazardous Waste (England and Wales) Regulations 2005, which implement the hazardous waste provisions of the Waste Framework Directive;
- the Hazardous Waste (Miscellaneous Amendments) Regulations 2015, which implement in England the EU's List of Wastes;
- Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (EIA), which implement the EIA Directive into law in England (see questions 18 and 19);
- the Environmental Damage (Prevention and Remediation) Regulations 2015 (EDR), which implement the Environmental Liability Directive into English law (see questions 3 and 10);
- the Water Resources Act 1991 (WRA);
- the Control of Major Accident Hazards Regulations 2015 (COMAH Regulations), which partly implement the EU Directive on the Control of Major-Accident Hazards involving Dangerous Substances in England and Wales; and
- the Environmental Information Regulations 2004, which implement the EU's Environmental Information Directive and the first pillar of the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (see question 32).

In addition to the above, the UK has introduced a number of laws and regulations to control and respond to the effects of climate change, as well as to implement EU-derived producer responsibility regimes (such as waste electrical and electronic equipment (WEEE) and restriction of hazardous substances (RoHS)). As with all EU member states, a range of EU environmental, safety and chemical regulations will be directly applicable in the UK.

2 Integrated pollution prevention and control

Is there a system of integrated control of pollution?

Yes. The EPR implements, among others, the EU's 2010 Industrial Emissions Directive (IED) and Mining Waste Directive.

The EPR provide a single regulatory framework integrating waste management licensing, pollution prevention and control, water discharge consenting, groundwater authorisations and radioactive substances regulation.

Under the EPR, environmental permits are required for a wide range of business and commercial activities, from energy production through to intensive pig and poultry farming.

Depending on the activities undertaken at the regulated facility, the environmental permit will include specific conditions with respect to issues such as:

- raw material and energy use;
- how the site operates and the technology used;
- emissions to air, water and land;
- how any waste produced is managed; and
- accident prevention.

Operators are also obliged to operate their facilities using best available techniques (BAT), in other words, the most cost-effective way, or ways, to prevent or minimise negative environmental impacts. As BAT reference documents (BREFs) are being published or revised, more stringent 'BAT associated emission levels' are being introduced, subject to limited site-specific derogations.

The IED amends, consolidates and replaces seven directives on pollution from industrial installations (including the Integrated Pollution Prevention and Control (IPPC) Directive, the Large Combustion Plants Directive and the Waste Incineration Directive). The IED repeals these seven directives in two stages: first, the majority were repealed on 7 January 2014; second, the Large Combustion Plants Directive was repealed on 1 January 2016. The new IED rules apply to all:

- new installations from 27 February 2013;
- pre-existing installations covered by the IPPC from 7 January 2014; and
- non-IPPC installations from 7 January 2015.

3 Soil pollution

What are the main characteristics of the rules applicable to soil pollution?

Part IIA of the EPA sets out the UK's statutory Contaminated Land Regime. It provides a risk-based approach to the identification and remediation of land where contamination poses an unacceptable risk to human health or the environment. The regime is jointly regulated by local authorities and the Environment Agency (EA) (or in Scotland, the Scottish Environmental Protection Agency (SEPA)). Local authorities take the lead role in respect of the majority of sites; however, the EA assumes responsibility for certain sites known as 'special sites'.

'Special sites' are cases of land contamination where it is considered that the EA is best placed to act as enforcing authority. These sites are typically the most seriously contaminated sites, and cover:

- certain water pollution cases, including areas of contaminated land affecting drinking water supply;

- industrial cases, where certain industrial uses such as refining crude petroleum have taken place;
- defence cases, including most land owned by the Ministry of Defence; and
- radioactivity cases, where land is contaminated by virtue of radioactivity (including nuclear sites).

Under the regime, local authorities must inspect their areas to identify contaminated land. English local authorities are assisted in carrying out this function by revised statutory guidance that entered into force in April 2012. Under the guidance (made up of two separate documents on radioactive and non-radioactive contaminated land respectively) the starting position is that land should not be identified as contaminated unless there is good reason to consider otherwise.

Once contaminated land has been identified, the local authority or EA (in the case of 'special sites') must then consider what, if anything, is to be done by way of remediation to reduce the associated risks to acceptable levels. In reaching its decision the regulator must take into account what is reasonable having regard to the likely costs involved and the seriousness of the harm. If the regulator considers that action is required, it will serve a remediation notice on those deemed responsible. Failing to comply with a remediation notice is a criminal offence.

Under the regime, primary liability is placed on those who 'caused' or 'knowingly permitted' the presence or continued presence of the contaminating substances concerned ('Class A' persons). Where no such persons can be found after reasonable enquiry, the current owner or occupier of the site may, in very limited circumstances, attract liability ('Class B' persons). However, it should be noted that, depending on the factual circumstances, owners and occupiers may also attract 'Class A' liability in their capacity as 'knowing permitters' of the presence or continued presence of the substances that have led to actual or threatened contamination. Further, a 'knowing permitter' can in some circumstances be found liable for contamination that existed prior to the contaminated land regime entering into force (2000) or before they took over operations at the site.

In addition to the contaminated land regime, similar and overlapping clean-up provisions exist under the WRA (see question 6). Further, if contaminated land is caused by an activity that is regulated under the EPR, it will be dealt with as a breach of the EPR rather than under the contaminated land regime. Additionally, under the EPR, the operator will be required to return the site to a satisfactory state at the end of the term of its environmental permit (at least to the state it was in before operations began). This requirement is potentially more onerous than that under the contaminated land regime, where, as noted above, remediation is only required where necessary to reduce the risks associated with the presence of substances to acceptable levels.

Additionally, the EDR are also relevant. The EDR implement the Environmental Liability Directive and establish a regime for the prevention and remediation of certain specified types of environmental damage (serious damage to surface or groundwater, land contamination resulting in significant risk to human health and serious damage to certain protected habitats, species or sites). However, the EDR apply only in respect of damage that has occurred since the regulations entered into force in 2009. For certain industrial activities (such as those within the scope of the IPPC Directive) liability under EDR is strict but, for all other activities that cause or threaten environmental damage, liability is fault-based.

The EDR impose positive obligations on operators where their activities threaten to cause (or have actually caused) environmental damage. In such circumstances, the operator must take all practicable steps to prevent that damage (or further damage) from occurring and, unless the threat has been eliminated, notify the appropriate authority (typically the EA or local authority). Where necessary, the authorities may serve prevention and remediation notices. Of note, remediation requirements are broad and may include:

- primary remediation to restore the damage;
- complementary remediation to compensate where primary remediation does not fully restore the damage; and
- compensatory remediation for the loss of natural resources while the damage is restored.

In some circumstances, the authorities may carry out work themselves and recover the costs of doing so from the relevant operator.

4 Regulation of waste

What types of waste are regulated and how?

Waste legislation in England and Wales is extensive. The definition of 'waste' is that provided in the EU Waste Framework Directive (WFD), which describes waste as any substance or object that the holder discards or intends or is required to discard. However, difficulties with the definition often arise, and in August 2012 the UK government published new guidance on the legal definition of waste and its application. The new guidance takes account of the WFD 2008's definitions and provisions and also aligns with European Commission guidance on the WFD, published in June 2012. In order to clarify the often blurred distinction between 'waste' and 'by-products', the WFD 2008 introduced a more specific definition of 'by-products' to help identify when a substance or material should be classified as a by-product as opposed to waste.

The EPA imposes a statutory duty of care on all those who produce, import, carry, hold, treat or dispose of 'controlled waste' (commercial, industrial or household waste) to take all reasonable steps to ensure that waste is managed properly. Additionally, an EPR permit is required for most waste operations involving the treatment, disposal, recovery or transfer of controlled waste. Exemptions for some low risk waste handling operations are set out in schedules 2 and 3 to the EPR.

Additional requirements apply in relation to hazardous waste under the Hazardous Waste (England and Wales) Regulations 2005. These include requirements to notify the EA of premises where more than 500kg of hazardous waste is produced, held or removed in any 12-month period and to keep records. The assessment of whether waste is hazardous or not changed on 1 July 2015. Environmental regulators in England, Wales, Scotland and Northern Ireland have issued new technical guidance on the classification and assessment of waste which must be followed by those who produce, manage or regulate waste.

Requirements for the collection, transport, recovery and disposal of waste under the 2008 revision to the Waste Framework Directive have been implemented in England and Wales via the Waste (England and Wales) Regulations 2011. Under the regulations, businesses collecting, transporting or receiving waste paper, metal, plastic or glass must ensure separate collection from 1 January 2015. Additionally, since September 2011, all businesses in the waste management chain (from the producer to final disposer) must apply the waste management hierarchy when transferring waste. The hierarchy ranks waste management options according to what is best for the environment, namely: prevention, reuse, recycling, other recovery, and disposal. To evidence compliance with this duty, waste transfer notes and consignment notes must include a declaration of compliance with the waste management hierarchy.

In addition to this 'traditional' waste legislation, there is a raft of EU legislation that addresses the overall impact of products on the environment and human health throughout their lifetime, including the packaging WEEE, batteries and end-of-life vehicles regimes. These 'producer responsibility' regimes require businesses to reuse, recover and recycle waste that comes from products they produce. Producer responsibility is an extension of the 'polluter pays' principle and is intended to ensure that businesses that place products on the market take responsibility for those products once they have reached the end of their life. In the case of WEEE, there are complementary regulations restricting the use of certain hazardous substances in electrical and electronic equipment (EEE) placed on the market (the UK's RoHS Regulations, discussed further in question 13). These regulations are intended to both protect human health and the environment, while also encouraging the environmentally sound recovery and disposal of WEEE at the end of a product's life.

5 Regulation of air emissions

What are the main features of the rules governing air emissions?

Emissions to air are primarily regulated through environmental permits under the EPR (see question 2) or equivalent regimes (in Scotland and Northern Ireland, the permit will be under the Pollution Prevention and Control regime). Permits contain emission limit values and other conditions based on the application of BAT. EPR and PPC permits govern most gases other than carbon dioxide, which is governed separately by greenhouse gas emissions permits under the greenhouse gas (GHG) regulations. Emission limit values are set in the permit and emissions must be

monitored and reported against the emission limit values. A breach of permit is a criminal offence.

In addition, as an EU member state, the UK participates in the EU's Emissions Trading Scheme (ETS), one of the measures introduced to help the EU meet its GHG emissions reduction target under the Kyoto Protocol. In the UK, operators that fall within the EU ETS must obtain a GHG emissions permit and open an account in the EU registry. Installations required to participate in the scheme include those conducting energy activities, production and processing of ferrous metals, mineral industries and pulp and paper manufacture. Operators who do not surrender sufficient allowances by 30 April to cover emissions from the previous calendar year will be fined €100 per tonne of carbon dioxide equivalent. In addition, the operator must make up the shortfall in allowances during the next calendar year.

Furthermore, local authorities have powers to enforce certain air pollution standards under the Environment Act 1995. The Act requires local authorities to review and assess compliance with the UK Air Quality Strategy (which consolidates European and international air pollution standards) in their area. Where the applicable standards are not being met, local authorities may designate air quality management areas and implement remedial action plans.

There are additional requirements in respect of Large Combustion Plants (LCPs) (plants with a thermal output of 50MW or more). The IED, which replaced the LCP Directive 2001 from 1 January 2016 (see question 2), sets emission limit values for emissions of sulphur dioxide (SO_2), nitrogen oxides (NOx), carbon monoxide (CO) and particulates (dust) to air from LCPs. However, the new values are much lower than those formerly in place under the LCP Directive.

There is a wealth of measures intended to reduce greenhouse gas emissions and to promote better energy efficiency of buildings, including in particular, the Energy Performance of Buildings (England and Wales) Regulations 2012 (which introduces an obligation to provide 'energy performance certificates' when buildings are either built, sold or rented), the Energy Savings Opportunity Scheme (ESOS) and the CRC Energy Efficiency Scheme (CRC).

Although the government is currently reviewing its position in relation to such regimes, plans are in place for them to be consolidated and streamlined. In particular, the CRC regime will be abolished following the 2018–19 compliance year followed by an increase in the CCL to recover any lost revenue. (See question 11 below.)

In relation to energy audits, the Minimum Energy Efficiency Standards (MEES) will make it unlawful from April 2018 to let buildings (both commercial and residential) in England and Wales which do not achieve a minimum energy performance certificate (EPC) rating of 'E' (subject to certain exceptions). The aim of MEES is to work towards achieving the UK's legislative CO_2 emissions targets, with the ultimate goal of achieving energy efficiency standards of close to an EPC 'A' rating. MEES will apply to the letting of new leases and renewals as of April 2018 and existing leases as of April 2023.

6 Protection of fresh water and seawater

How are fresh water and seawater, and their associated land, protected?

The Water Framework Directive (WFD) introduced a holistic approach to the management of water quality, and establishes a system for the protection and improvement of all aspects of the water environment including rivers, lakes, estuaries, coastal waters and groundwater. The WFD requires all inland and coastal waters to reach at least 'good ecological and good chemical status' by 2015 unless there are grounds for derogation. The WFD has been implemented in the UK by, among others, the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003, which established a system of responsibility for river basin districts.

Water and groundwater discharges may be permitted via the EPR. It is a criminal offence to cause or knowingly permit any polluting matter to enter controlled waters except and to the extent authorised by an environmental permit. The Water Resources Act 1991 (which, among other things, governs water abstraction), the Food and Environment Protection Act 1985, the Water Supply (Water Quality) Regulations 2016 (which consolidate legislation covering the quality of water supply for human consumption) and the EDR are also relevant and there is considerable overlap with the contaminated land regime (see question 3). The Water Act 2014 amends the Water Industry Act 1991 and other related legislation, granting powers to the Secretary of State to include abstraction licences, flood defence consents and fish pass approvals within the EPR. Although many provisions have yet to be formally implemented, the changes are expected to address the issue of growing pressure on water resources by making supply more resilient to natural hazards such as drought and floods, as well as resulting in increased levels of innovation, liberalisation and competitiveness in the water industry. A marine licence (under the Marine and Coastal Access Act 2009) is required for many activities involving the deposit or removal of a structure or object (such as a wind farm, for example) below the mean high water springs mark or in any tidal river to the extent of the tidal influence.

7 Protection of natural spaces and landscapes

What are the main features of the rules protecting natural spaces and landscapes?

There is significant overlap between UK laws protecting amenity and landscape and those protecting wildlife. The rules set out in question 8 that relate to site protection will also protect the relevant natural spaces. In addition, the UK's detailed planning regime is relevant.

Sites may also be designated as national parks or areas of outstanding natural beauty (AONB). National parks are areas protected because of their beautiful countryside, wildlife and cultural heritage. AONBs are areas of high scenic quality that have statutory protection from development in order to conserve and enhance their natural beauty (in the form of landforms, geology, plants, animals and landscape features, for example). Town and village greens may also be registered under the Commons Act 2006.

8 Protection of flora and fauna species

What are the main features of the rules protecting flora and fauna species?

There is a plethora of rules on the protection of flora and fauna in the UK. Some are species specific (such as those protecting badgers, for example), while others have more general application, such as EDR. The EU Natura 2000 programme, which implements the Habitats and Birds Directives at EU level, has resulted in the designations of Special Areas of Conservation (habitat-specific) and Special Protection Areas (bird-specific) in the UK. Most Natura 2000 sites in the UK are also protected under Sites of Special Scientific Interest (SSSI) legislation.

The UK has transposed the Habitats and Birds Directives into UK law through the Conservation of Habitats and Species Regulations 2010. The directives are also implemented offshore (beyond 12 nautical miles) through the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007 (as amended). The rules provide for the protection of flora and fauna by requiring plans or projects in the designated areas to undergo an appropriate assessment for any adverse effects. This obligation is discharged though the environmental impact assessment (see questions 18 and 19).

Flora, fauna and habitats protected under both the Natura 2000 and SSSI regimes are afforded specific protection under the EDR (see question 3). Operators that cause serious environmental damage to protected areas may be liable for remediation under EDR, including undertaking primary remediation to restore the damage, complementary remediation to compensate where primary remediation does not fully restore the damage and compensatory remediation for the loss of natural resources while the damage is restored.

National conservation agencies (such as Natural England) are responsible for managing national nature reserves and enforcing the rules that protect other protected sites such as SSSIs. Activity that is adverse to the flora and fauna protected by an SSSI may be prohibited or strictly regulated (pursuant to the Wildlife and Countryside Act 1981).

In order to protect native biodiversity more generally, there are also rules to prevent the spread of certain non-native species of plants and animals. Japanese knotweed, for example, is a common and problematic non-native species in the UK and, where present on a site, the owner or occupier is obliged to prevent its escape onto adjoining land. In late 2014, the EU adopted Regulation 1143/2014 on the prevention and management of the introduction and spread of invasive alien species. The aim of the Regulation – which is directly applicable in the UK from 1 January 2015 – is to prevent, minimise and mitigate the adverse effects of invasive alien species on biodiversity and ecosystems, as well as on human health and the economy. The 'Union list' of invasive species to which the regulation applies was completed in July 2016.

9 Noise, odours and vibrations

What are the main features of the rules governing noise, odours and vibrations?

In addition to permit restrictions that may be imposed on installations under the EPR and more general health and safety at work legislation (including exposure limits), there are also statutory, public and private nuisance regimes (see also question 27). The question of what remedies are available to those affected, and the defences or grounds of appeal available to an operator subject to proceedings, will be a question of the individual facts and circumstances in each case. However, it remains the case that a successful claimant is prima facie entitled to an injunction against a person creating a nuisance.

The EPA 1990 codifies the law on statutory nuisance (including noise, odours and vibrations). A statutory nuisance action can be brought by a local authority or a person affected by that nuisance. Where a statutory nuisance has been determined, local authorities must generally serve an abatement notice on the person responsible for the nuisance (or, where they cannot be found, the owner or occupier of the premises). Local authorities have a general duty to investigate complaints of statutory nuisance from people living in their areas. The EPA also provides a mechanism for a person aggrieved by a statutory nuisance to apply to the magistrates' court to make an order abating the nuisance. Failure to comply with an abatement notice or order is a criminal offence.

Additionally, the Control of Pollution Act 1974 allows local authorities to designate noise abatement zones where specific noise restrictions apply, however following consultation and as part of the UK government's 'red tape challenge', the government has made clear its intention to repeal sections 63 to 67 of the Control of Pollution Act (1974) and abolish noise abatement zones in England and Wales at the earliest practical legislative opportunity.

Private nuisance enables a person who typically has an exclusive right to possession of land to bring an action in the case of an unlawful interference with that person's use and enjoyment of that land (including noise, odours and vibrations) by initiating proceedings against the person who has caused the interference. In 2012, the Court of Appeal considered the relationship between environmental permit compliance and private nuisance. In doing so, the Court confirmed that it is not a defence to nuisance proceedings to show that the activities giving rise to the nuisance were carried out in accordance with an environmental permit. In addition, in 2014, the Supreme Court ruled on a landmark case concerning the relationship between common law nuisance and the UK's statutory planning regime. In particular, the Supreme Court concluded that planning permission should not deprive a property owner of the right to object to what would otherwise be a nuisance.

Public nuisance provides a private right of action where an unlawful act or omission endangers or interferes with the lives, comfort, property or common rights of the public (again, this could include noise, odours and vibrations). In some circumstances a public nuisance may also be a criminal offence.

10 Liability for damage to the environment

Is there a general regime on liability for environmental damage?

There are multiple UK regimes governing liability for environmental damage. To a certain extent, the appropriate regime will depend on the type of environmental damage that has occurred. See questions 3, 6 and 8 for a discussion of the contaminated land, water and flora and fauna regimes respectively. It may also depend on the severity of the damage. For example, the EDR covers serious environmental damage to surface water, groundwater, land, sites of scientific interest, protected species and natural habitats (see question 3). In other cases, the appropriate regime will relate to the permitted activity itself (under the EPR, for example).

11 Environmental taxes

Is there any type of environmental tax?

Yes. The most commonly encountered examples of UK environmental taxes include the landfill tax, aggregates levy and climate change levy (CCL). In addition to taxes, other fiscal measures include exemptions or relief from certain taxes and levies. Additionally, the CRC and EU ETS, while technically emissions trading schemes under which allowances are bought and sold, are often compared to environmental taxes.

Landfill tax was introduced in 1996 and is currently subject to annual escalation as the UK strives to reduce its dependency on landfill. The tax is charged per tonne of waste landfilled. From April 2015, the standard rate is £82.60/tonne and this rate will rise annually in line with inflation. Higher rates are payable for hazardous waste. Some types of waste are exempt or reduced (such as mining and quarrying waste, for example).

The aggregates levy is a tax on the commercial exploitation of aggregate (sand, gravel and rock, with some exceptions) in the UK. Anyone who is responsible for commercially exploiting aggregate in the UK will need to register and pay the levy (there is one basic rate of £2 per tonne).

The CCL is a tax on the supply of specified energy products (including electricity, natural gas, liquid petroleum gas, coal, lignite and coke) for use as fuels by industry, commerce and the public sector. The aim of the CCL is to encourage businesses to become more energy-efficient and reduce their GHG emissions, so electricity generated from renewable energy sources has, to date, been exempted. However, much to the dismay of the UK renewables sector, from 31 July 2015 (subject to certain grace periods), the 'renewables exemption' under the CCL has been removed. The effect of this is that the CCL will now be due on renewable source electricity. The levy is applied as a specific rate per nominal unit of energy. There is a separate rate for each category of energy product based on its energy content; in kilowatt-hours for gas and electricity and kilograms for liquid petroleum gas and other taxable commodities. Discounts on the levy are available for energy-intensive sectors if they enter into climate change agreements whereby they commit to reducing their emissions. Until 1 April 2013, fuels used in the production of electricity (for example, gas or coal) were exempt from CCL. However, since that date, such fuels have been subject to 'carbon price support rates of CCL' in line with the UK's carbon price floor.

Hazardous activities and substances

12 Regulation of hazardous activities

Are there specific rules governing hazardous activities?

Yes. In addition to the permitting regimes already outlined, 'hazardous activities' may be covered by the Control of Major Accident Hazards Regulations 2-15 (COMAH) which implements the majority of the EU's revised Seveso III Directive. COMAH aims to prevent and limit the environmental and human health consequences of major accidents arising from the manufacture, storage or use of significant quantities of dangerous substances. The regulations impose a general duty on operators to prevent such accidents and mitigate their effect on human health and the environment.

Operators of all installations affected by COMAH must notify certain details about themselves, the site, the dangerous substances held, site operations and environmental issues to the competent authority (the Health and Safety Executive (HSE) and the EA in England). Additionally, all operators are required to prepare a document setting out their policy for preventing major accidents (a major accident prevention policy or MAPP). Top-tier operators are also required to submit safety reports and emergency plans to competent authorities to demonstrate that all measures necessary for the prevention and mitigation of major accidents have been taken. Failure to comply with these obligations may result in criminal liabilities. The 2015 revision of COMAH reflects changes to the EU's Seveso Directive. Key amendments include: changes to the scope (those establishments falling within COMAH), increased public information requirements, a change in notification requirements, amendments to the contents of 'upper-tier' safety reports and minor amendments to on-site emergency planning arrangements.

13 Regulation of hazardous products and substances

What are the main features of the rules governing hazardous products and substances?

In addition to the regulatory regimes already discussed, there is a multitude of regulation governing the control of hazardous products and substances in the UK, much of which is derived from EU law. Some of the key provisions are listed below.

The Control of Substances Hazardous to Health Regulations 2002 (as amended) (COSHH) define hazardous substances as substances (including preparations) that are: designated as very toxic, toxic, harmful, corrosive or irritant under the EU's Classification, Labelling and Packaging of

Substances and Mixtures Regulation (CLP Regulation); that the Health and Safety Executive has approved a workplace exposure limit for; that are biological agents (such as germs); that are inhalable or respirable dust; or that, because of their chemical or toxicological properties and the way they are used or are present at the workplace, create a risk to health. Under COSHH, all employers are required to carry out a suitable and sufficient assessment of the risk to their workforce, contractors, visitors and customers from each substance which is hazardous to health in the workplace, and to prevent or adequately control those risks. Failure to comply with these obligations may result in criminal liabilities.

The CLP Regulation was passed in 2009 and implements in the EU the globally harmonised system on the classification and labelling of chemicals and places obligations on chemical suppliers. Failure to comply with these obligations may result in criminal liabilities. The CLP is, following the 1 June 2015 deadline for mixtures, fully in force in the UK.

The EU REACH Regulation (REACH) concerns the registration, evaluation, authorisation and restriction of chemicals. It came into force on 1 June 2007 and replaced a number of EU directives and regulations with a single system. REACH applies to chemical substances, preparations and articles that are manufactured in or imported into the EU in quantities of one tonne or more per year. Manufacturers, importers, distributors and professional users that market or use chemicals (on their own, in mixtures and in some cases in products) covered by REACH must ensure, where necessary, that those chemicals are registered with the European Chemicals Agency. Registration requires the provision of information on the environmental and human health properties of the chemical substance and an assessment to ensure that the risks arising from its use are properly managed. Some substances that are deemed particularly harmful to human health or the environment require authorisation for use or are banned outright. REACH also places specific notification, communication and other obligations on producers, manufacturers and importers. Failure to comply with these obligations may result in criminal liabilities.

The EU's 2011 Directive on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS 2) imposes a suite of restrictions on manufacturers, importers and distributors placing electrical equipment on the EU market. The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 (RoHS Regulations), which came into force on 2 January 2013, implement RoHS 2 in the UK. The RoHS Regulations ban the placing on the EU market of new electrical and electronic equipment containing lead, cadmium, mercury, hexavalent chromium, polybrominated biphenyls (PBB) and polybrominated diphenyl ethers (PBDE) flame retardants in amounts in excess of defined maximum concentration values. Failure to comply with these obligations may result in criminal liabilities. Of note, RoHS 2 imposes an obligation on manufacturers who have reason to believe that EEE which they have placed on the market is not in conformity with the directive to take corrective measures to bring that EEE into conformity, including, where appropriate to withdraw it or recall it, and to immediately inform the competent national authorities of the non-compliance. In June 2015, pursuant to their delegated powers, the EU Commission added additional phthalates DEHP, BBP, DBP and DIBP to the list of restricted substances. Subject to certain grace periods, these substances will be restricted in electronic products from July 2019.

The storage of hazardous substances is governed by COMAH (see question 12) and the Planning (Hazardous Substances) Regulations 2015. If a hazardous substance is stored on a site above a specified quantity (known as the controlled quantity), then it is necessary to obtain consent from the hazardous substances authority. Failure to comply with these obligations may result in criminal liabilities.

The Control of Asbestos Regulations 2012 prohibit the importation, supply and use of all forms of asbestos. They also impose a positive duty on duty holders (owners, landlords, tenants, management companies who control premises) to manage the risks from existing asbestos in non-domestic premises. Essentially, the duty holder must take reasonable steps to find out if there are asbestos-containing materials (ACMs) on site and, if so, in what amount, where and in what condition. The duty holder is also obligated to make (and keep up to date) a record of the location and condition of the ACMs and develop an ACM management plan that sets out in detail how associated risks are managed. Failure to comply with these obligations may result in criminal liabilities. Additionally, employees who suffer illnesses caused by the inhalation of asbestos fibres may also bring a claim in negligence for personal injury. Damages in respect of a successful claim may be a material liability. In a landmark decision in 2012, the Court of Appeal found a parent company directly liable in negligence for its failure to protect an employee of its subsidiary from the risks of asbestos. This judgment highlights that, in certain circumstances, parent companies, by way of their superior knowledge of the nature and management of health and safety risks, may assume a duty of care for a subsidiary's employees.

In addition, certain categories of products (for example, toys, cosmetics and food contact materials) are subject to a range of specific regulatory restrictions concerning the types and concentrations of substances which they may contain. These include regimes such as the Low Voltage Directive, the Electromagnetic Compatibility Directive, the Food Contact Regulation, the General Food Law Regulation and the Cosmetic Products Regulation. Affixing the EU's well-recognised 'CE' mark to non-food products, illustrating conformity with the applicable EU regimes, is often mandatory. In this context, hazardous products and substances form part of the overall 'products' regimes which address the overall impact of products on the environment and human health throughout their lifetime. There are also specific sectoral obligations for products at the end of their life, including for WEEE, vehicles, batteries and waste packaging (discussed further in question 4).

14 Industrial accidents

What are the regulatory requirements regarding the prevention of industrial accidents?

There is an extensive body of health and safety law that governs activities in the workplace and beyond. The primary legislation is the Health and Safety at Work etc, Act 1974 (HASAWA), which sets out the general duties that employers have towards employees and members of the public, and employees have to themselves and to each other. HASAWA is then supplemented by extensive regulation, approved codes of practice and guidance. Key regulations include the Management of Health and Safety at Work Regulations 1999, which set out the requirement on employers to assess the risks posed to workers and any others who may be affected by their work or business and COSHH (see question 13). The most hazardous activities are governed by COMAH Regulations (see question 12). Employers should also take note of the Corporate Manslaughter and Corporate Homicide Act 2007, which places a duty of care on senior management not to be negligent in organising or managing its activities. Gross breach of that duty can leave a company open to unlimited fines, remedial orders and publicity orders. Additionally, the company and individuals can be prosecuted for separate health and safety offences.

Environmental aspects in transactions and public procurement

15 Environmental aspects in M&A transactions

What are the main environmental aspects to consider in M&A transactions?

Environmental risks and opportunities arising in an M&A transaction will vary depending on the nature of the target business or asset to be acquired and the structure of the transaction itself. However, one key point is whether the transaction is a share or asset sale. On a share sale, all of the target company liabilities, including in relation to remediation and clean-up obligations and any current or historical breaches of environmental law, will remain with that entity. On an asset sale, any pre-acquisition liabilities associated with the assets generally remain with the seller. However, it should be noted that the buyer may still acquire liability under the contaminated land regime as either a knowing permitter or an owner or occupier (see question 3).

Care should therefore be taken to evaluate the risks of each transaction on a case-by-case basis. Warranty protection and, in some cases, an environmental indemnity or insurance, may need to be considered to adequately manage the risks associated with certain environmental liabilities.

In short, the key issues on any transaction are likely to include:

- the existence, transferability and validity of permits;
- historical or ongoing breaches of environmental law or operating permits that could give rise to material remediation costs, enforcement action or criminal or civil liability (for example, in relation to exposure injuries);
- onerous or expensive upgrade works or mitigation steps required to maintain or achieve compliance with environmental law or permits;
- onerous planning restrictions, permissions or agreements that could impede future operations or expansion;

- known or anticipated future changes to environmental legislation that could impede future operations or expansion;
- conservation and protected habitats or sites;
- historical liabilities (for example, associated with former sites) that may give rise to material remediation costs or business interruption (such as contaminated land issues); and
- third-party complaints and claims.

16 Environmental aspects in other transactions

What are the main environmental aspects to consider in other transactions?

In financing transactions, environmental liabilities can affect lenders by reducing the creditworthiness of the borrower (a facility shut-down could affect the borrower's ability to meet its repayment obligations, for example), reducing the value of any security (through land contamination, for example) or, in certain limited circumstances, result in the possibility of direct lender liability. In addition to the issues raised in question 15, these specific areas will need to be addressed (to the extent possible) by undertaking due diligence and giving consideration to appropriate provisions and protections in the facility and security documents. Additionally, before exercising any form of control over a borrower's operations or enforcing security, the lender should carry out a thorough risk assessment to ensure that it will not incur liability (such as under the contaminated land regime).

Corporate restructuring and insolvency present risks for buyers and administrators that are again dependent on the specific transaction. For example, where an entity that has caused land contamination is wound up, responsibility for remediation may pass to the current landowner under the contaminated land regime (see question 3). On real estate transactions, environmental liabilities that attach to the property, such as clean-up costs, will be central to the valuation.

17 Environmental aspects in public procurement

Is environmental protection taken into consideration by public procurement regulations?

The Public Contracts Regulations 2006 (PCR) provide the legal framework for procurement of public contracts for services, goods and works in the UK.

In order to shortlist applicants, public authorities list selection criteria in a pre-qualification questionnaire (PQQ). The PQQ may contain sustainability criteria where these are relevant to the technical or professional ability of the tenderer to carry out the contract. Applicants can be excluded from the tender process for criminal offences, including breaches of environmental and health and safety law. The awarding authority may also take account of any failure by the applicant to meet environmental requirements in previous contracts. After selected applicants proceed to submit a full tender, applications are assessed against the pre-published criteria and contracts are awarded either on the basis of the lowest price or on the basis of the most economically advantageous tender (MEAT).

The PCR allow contracting authorities to use criteria aimed at meeting sustainable objectives for awarding contracts on a MEAT basis, provided that: the principles of Community law are not infringed by doing so, the details are set out in the contract notice or in the contract specifications, and the environmental criteria are linked to the subject matter of the contract and do not confer an unrestricted freedom of choice on the awarding authority.

The Public Services (Social Value) Act 2012 also requires public authorities to consider the economic, social and environmental wellbeing of their area when undertaking public procurements.

Environmental assessment

18 Activities subject to environmental assessment

Which types of activities are subject to environmental assessment?

The environmental assessment of development projects in England is largely governed by the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (EIA Regulations), which implements the 2011 Environmental Impact Assessment Directive (EIA Directive). There are separate, parallel regimes that apply to projects falling outside the town and country planning regime, such as marine and harbour works. Under the EIA Regulations, an environmental assessment must be undertaken for certain development proposals specified in Schedules 1 and 2 of the EIA Regulations before planning permission is granted. For Schedule 1 projects (those deemed to have a significant environmental impact, such as oil refineries, power stations and motorways) an environmental impact assessment (EIA) is mandatory. For Schedule 2 projects (such as certain industrial, agricultural and mining activities), an EIA is necessary only when significant environmental effects are likely to occur due to factors such as their nature, size or location. It is important to note that an EIA is not a licence for development, it is merely a procedural requirement of the development consent process (albeit an important one). Operators may need to apply separately for operational permits. On 25 April 2014, the 2014 EIA Directive was adopted, making extensive changes to the 2011 EIA Directive including the introduction of a definition of EIA and the requirement for member states to introduce penalties for non-compliance. The UK has until 16 May 2017 to implement the revised directive. Of note, a recent Supreme Court judgment re-emphasised the Court's discretion not to quash a planning consent where there has been a procedural defect in the planning process which did not cause 'substantial prejudice'.

Separately, in accordance with the Strategic Environmental Assessment Directive (SEA Directive), certain plans and projects that are likely to have significant effects on the environment are subject to strategic environmental assessment (SEA). In England, the SEA Directive is implemented by the Environmental Assessment of Plans and Programmes Regulations 2004. The purpose of the SEA is to ensure that environmental issues are considered as part of the decision making process related to strategic documents such as plans, programmes and strategies. The SEA identifies the significant environmental effects that are likely to result from the implementation of the plan or alternative approaches to the plan.

19 Environmental assessment process

What are the main steps of the environmental assessment process?

First, for Schedule 2 projects (see question 18), there is a screening phase to determine whether an EIA is required (as noted above, an EIA is mandatory for Schedule 1 projects). During this phase, the developer can choose to request the opinion of the local planning authority (LPA) on whether an EIA is necessary. Alternatively, the LPA may receive an application without an EIA that it determines will have a significant impact on the environment and therefore requires an EIA. Second, the developer may obtain guidance from either the LPA or the Secretary of State on the scope of the environmental statement in the form of a scoping opinion or direction. Third, the EIA is undertaken and an environmental statement prepared. Finally, the environmental statement is submitted along with the planning application. There is an enhanced procedure for planning applications that include EIAs to ensure suitable public participation and involvement of the various statutory consultees (such as the local authority, Natural England and the EA).

Regulatory authorities

20 Regulatory authorities

Which authorities are responsible for the environment and what is the scope of each regulator's authority?

The EA has primary responsibility for environmental law enforcement in England and Wales, alongside Natural Resources Wales (local equivalents exist in Scotland and Northern Ireland). There is also a degree of overlap with other regulators such as local authorities and the HSE.

Local authorities are responsible for the lower-tier facilities under the EPR and also have primary responsibility for the Contaminated Land Regime. They are also responsible for local development control, statutory nuisance and air quality management.

The HSE is primarily responsible for health and safety law enforcement, but it also regulates COMAH sites and has responsibility for REACH and nuclear matters.

The National Measurement and Regulation Office Enforcement Authority is responsible for enforcement of RoHS and regulations on Batteries and Accumulators, Energy Related Products and Energy Labelling. Natural England, Scottish National Heritage and the Countryside Council for Wales have responsibility for biodiversity, species and habitats conservation and general nature conservation.

Additionally, the Marine Management Organisation has responsibility for UK marine licensing and conservation (among other things).

Update and trends

As discussed in question 26, the UK courts are taking a far more robust approach when fining environmental offenders. Recent sentencing guidelines and case law point to far larger fines for corporate polluters and those who breach environmental laws.

Another important topic to consider is the potential impact of the UK 'Brexit' referendum on environmental law and regulation.

The overwhelming majority of the UK's environmental legislation is derived from EU legislation, largely from directives that have been implemented by UK domestic secondary legislation. This covers areas such as air and water quality, waste and nature conservation (eg, the EU Habitats and Birds Directive). If the UK were to leave the EU, it is anticipated that most environmental laws would remain the same, at least initially, in order to avoid a legal vacuum caused by the repeal of EU legislation before UK-specific legislation is put in place.

How and whether UK environmental law will change is contingent on the type of deal negotiated during the Brexit process. For example, a continued level of harmonisation of UK law and EU law would be required if the UK is to remain part of the EEA. In any event, if the UK wishes to continue trading with the EU post-Brexit and have access to the single market, the UK will be obliged to implement the majority of EU environmental laws and comply with relevant EU standards, particularly in relation to product-related controls.

It would appear that the UK government will not abolish and revoke every single EU-based piece of legislation upon exit. As such, there will need to be a detailed assessment of all EU environmental legislation to understand what should continue to apply. This would include an analysis of the application of EU case law and directives that, although implemented by UK legislation, are interlaced with references to EU law.

There is no reason to expect any significant changes to UK environmental laws that have been formed independently of EU legislation, which include the contaminated land regime under Part 2A of the EPA and the common law position in areas of environmental law such as nuisance. Furthermore, a number of environmental laws originate from international conventions to which the UK is a signatory in its own right, for example, the Basel Convention on transboundary shipments of waste, and so the UK would need to continue to meet the requirements of such treaties in any event.

To the extent that the UK has the ability to create fresh legislation post-Brexit, environmental regulatory changes will have to take their place in the queue for parliamentary review in competition with other areas of the law. This could mean that it will be many years after Brexit before any meaningful changes or divergence occur.

21 Investigation

What are the typical steps in an investigation?

Generally, breach of environmental law will be a criminal offence and material incidents will be investigated accordingly. The authorities have wide powers under specific environmental statutes, such as the EPA, to obtain information, search premises, conduct sampling and interview persons in the course of their investigations. Refusal to cooperate is a criminal offence. Interviews must be held under caution and interviewees must be permitted to have legal representation if answers are to be used against them in court. On completion of the investigation the authorities will consider what, if any, enforcement action is necessary. Sanctions include fines and, in extreme cases, the imprisonment of individuals if the offence was committed with their consent or connivance, or was attributable to their neglect. That said, as mentioned below, there has been a significant move towards the 'de-criminalisation' of environmental offences in the UK with the introduction of a wider scheme of civil sanctions.

22 Administrative decisions

What is the procedure for making administrative decisions?

The EA has adopted an enforcement and prosecution policy and supporting guidance to help it decide when and what type of enforcement action is necessary. The HSE has a similar enforcement policy. These documents set out the factors that will be taken into account when making enforcement decisions. The regulator will examine incidents on a case-by-case basis and use sanctions in a manner that is appropriate to the offence. If an operator is not complying with the law the EA will generally provide advice and guidance to help it do so. Where appropriate, the EA will agree solutions and timescales for making any improvements with the operator. However, for significant, persistent or recurring breaches, enforcement action is likely. Enforcement action (specifically the imposition of a sanction) can normally be appealed either through the criminal court process or as a result of specific appeal provisions. Once all other appeal avenues have been exhausted, the lawfulness of administrative decisions may in certain circumstances be challenged by judicial review (see question 25).

23 Sanctions and remedies

What are the sanctions and remedies that may be imposed by the regulator for violations?

The EA and local equivalents in Wales, Scotland and Northern Ireland have a wide range of civil and criminal enforcement powers and sanctions available to them, including:

- enforcement notices and works notices (to prevent or remedy a contravention);
- prohibition notices (where there is an imminent risk of serious environmental damage);
- suspension or revocation of environmental permits and licences;
- variation of permit conditions;
- injunctions;
- carrying out remedial works (the regulator will seek to recover the full costs incurred from the responsible party);
- criminal sanctions, including prosecution; and
- civil sanctions, including financial penalties, may also be imposed in relation to certain offences.

The EA publishes statistics on legal compliance and details of enforcement and successful prosecutions. As noted in question 22, if a breach has been identified and criminal action is considered, the EA will apply its enforcement and prosecution policy to decide when and what type of enforcement action is necessary.

24 Appeal of regulators' decisions

To what extent may decisions of the regulators be appealed, and to whom?

As noted above, enforcement action (specifically the imposition of a sanction) can normally be appealed either through the criminal court process or as a result of specific appeal provisions. Rights of appeal are subject to time limits and to specified grounds, although these will often be fairly broad. In the majority of cases, an appeal is made to the Secretary of State, who has the power to appoint an appropriate person to hear the appeal. Increasingly, the route of appeal for environmental notices and penalties is to the First-tier Tribunal (Environment) or the General Regulatory Chamber.

Once all other appeal avenues have been exhausted, the lawfulness of administrative decisions may in certain circumstances be challenged by judicial review (see below).

Judicial proceedings

25 Judicial proceedings

Are environmental law proceedings in court civil, criminal or both?

Both. For breaches of most environmental laws in England and Wales, the ultimate sanction is criminal prosecution by the relevant regulator, however, increasingly, environmental regulators have a broader range of civil sanctions at their disposal (see question 24). The penalties are usually a fine and, in extreme cases involving individuals, imprisonment. Additionally, in some circumstances, an environmental claim can be brought under civil law (see questions 9 and 27).

Judicial review may, in certain circumstances, also be used to challenge a decision of a public body or regulator if there is no other available remedy or all other appeal avenues have been exhausted. The main grounds of judicial review are that the decision-maker has acted outside the scope of its statutory powers, that the decision was made using an unfair procedure or that the decision was an unreasonable one. However, it is important to note

that judicial review is a challenge to the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached.

26 Powers of courts

What are the powers of courts in relation to infringements of environmental law?

As noted above, in the case of a criminal prosecution, the penalties are usually a fine and, in extreme cases involving individuals, imprisonment.

Additionally, if it can be demonstrated that an offence by a company was committed with the consent or connivance of a director or senior manager, or was attributable to their neglect, the regulator may also, in these more extreme cases, seek to prosecute those individuals in addition to the company.

When deciding on appropriate sanctions, the courts can consider a number of aggravating or mitigating factors, including the economic value of the damage, the previous convictions and culpability of the defendant and his or her behaviour before and after the incident. The defendant may also have to pay a contribution towards the prosecution's costs (and even the costs of investigating the incident in question) and compensation to anyone who directly suffered from the offence.

In the case of a civil claim, the usual remedy is damages, although the courts also have the discretion to grant injunctions where this is considered more appropriate.

New environmental sentencing guidelines for a range of offences came into effect on 1 July 2014 (the Environmental Offences Definitive Guidelines (ESG)). The ESG, which must generally be followed unless the court is satisfied that it would be contrary to the interests of justice to do so, are intended to promote a more consistent approach to the sentencing of environmental offences in courts across England and Wales (historically, there has been some criticism that the courts do not always recognise the seriousness of some environmental offences and sentence too leniently). They set out clear starting points and ranges for fines to help ensure that the level of fines given to offenders is proportionate to the seriousness of the offences they have committed so they are punished, deterred from committing more crime and if they have obtained an economic benefit by committing the offence, receive an appropriate financial penalty.

Recent case law suggests that the UK courts are increasingly willing to impose higher fines on environmental offenders, which are quantified to inflict a 'real economic impact'.

In January 2016, a decision against Thames Water sentenced under the ESG resulted in a record-breaking £1 million fine for polluting a canal in Hertfordshire. Although Thames Water had shown improvements in compliance following repeated sewage waste discharges, the court held that the company failed to proactively manage and monitor such improvements.

27 Civil claims

Are civil claims allowed regarding infringements of environmental law?

Generally, contractual claims in the UK may only follow a breach of environmental law if it is also a breach of an environmental warranty or it triggers an indemnity. Non-contractual civil claims may be brought in nuisance (including under the rule in *Rylands v Fletcher*) (see question 9), trespass (strict liability), negligence (fault-based liability) or for breach of statutory duty.

As noted above, in the case of a civil claim, the usual remedy is damages, although the courts also have the discretion to grant injunctions where this is considered more appropriate.

28 Defences and indemnities

What defences or indemnities are available?

In many cases, breach of environmental law will be a strict liability offence (there is no need for the regulator to establish fault). However, some environmental regimes do include statutory defences. For example, under the EPR, it is a defence to show that the breach resulted from acts taken in an emergency in order to avoid danger to human health and that the defendant took all reasonably practicable steps to minimise pollution and provided particulars of the acts to the EA as soon as reasonably practicable.

There are no statutory indemnities or 'safe harbour' provisions under UK law. Indemnities are contractual remedies that, as a matter of public policy, will generally be unenforceable against criminal liabilities. The statutory limitation period (six years for contract claims and 12 years for claims in respect of deeds) runs from the time the loss is suffered and not from the time of the event which causes the loss.

In certain circumstances a defendant may have a statutory right to claim for contribution from another person where they are jointly or otherwise liable for the same debt or damage.

29 Directors' or officers' defences

Are there specific defences in the case of directors' or officers' liability?

No. If it can be demonstrated that an offence by a company was committed with the consent or connivance of a director or senior manager, or was attributable to their neglect, the regulator may seek to prosecute those individuals in addition to the company.

30 Appeal process

What is the appeal process from trials?

In the civil courts, the appellant will usually make an oral application for 'permission' to appeal to a higher court. If such permission is declined, permission to appeal can be sought from the relevant appellate court. Appeals will be based on a point of law, against a finding of fact, against the exercise of judicial discretion or against the remedy awarded.

In the criminal courts, the appellant's right of appeal generally depends on their original plea. If a not-guilty plea was entered, the appellant has the right to appeal to the higher court against conviction and sentence. If a guilty plea was entered, the appellant may generally appeal their sentence only. It should be noted that, in the case of an appeal from the Crown Court, the appellant must apply to the Court of Appeal for leave to appeal (there

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is no general right of appeal). In all cases, there must be proper grounds for making an appeal and there are strict time limits within which to do so.

International treaties and institutions

31 International treaties

Is your country a contracting state to any international environmental treaties, or similar agreements?

International environmental law treaties generally create high-level obligations between states and are not directly applicable in contracting states. However, where countries or supra-national entities such as the EU transpose those obligations into law, such obligations may be of relevance to transactional work. Some of the key international environmental treaties ratified by the UK include:

- the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998);
- the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- the Convention on Biological Diversity (1992);
- the Convention on Environmental Impact Assessment in a Transboundary Context (1991);
- the Montreal Protocol on Substances that Deplete the Ozone Layer (1987);
- the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989);
- the Convention on Long-range Transboundary Air Pollution (1979); and
- the Paris Agreement (2015) (please note – this has been signed by the UK but awaits ratification).

32 International treaties and regulatory policy

To what extent is regulatory policy affected by these treaties?

International pressure and consensus on environmental issues such as transboundary air pollution and public participation in environmental decision-making have had a significant impact on the regulatory policy of the EU and the UK. For example, the Aarhus Convention, agreed through the UNECE, has led to significant changes to the way in which the public participate in environmental decision-making and obtain access to justice in environmental matters, notably through the introduction of the Environmental Information Regulations 2004.