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United Kingdom

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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 10);
- 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 Directive;
- the List of Wastes (England) Regulations 2005, 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 2009 (EDR), which implement the Environmental Liability Directive into English law (see questions 3 and 11);
- the Water Resources Act 1991; and
- the Control of Major Accident Hazards Regulations 1999 (COMAH Regulations), which partly implement the directive on the control of major-accident hazards involving dangerous substances in England and Wales.

In addition to the above, the UK has also 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 WEEE and RoHS).

2 Integrated pollution prevention and control

Is there a system of integrated control of pollution?

Yes. The EPR implement the Integrated Pollution Prevention and Control (IPPC) Directive and, as of 27 February 2013, the EU's 2010 Industrial Emissions Directive (IED). They also implement a number of other EU directives, including the 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 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), ie, the most cost-effective way, or ways, to prevent or minimise negative environmental impacts.

Of note, the IED amends, consolidates and replaces seven directives on pollution from industrial installations (including the IPPC Directive, the Large Combustion Plants Directive and the Waste Incineration Directive). The IED repeals these seven directives in two stages: first, the majority will be repealed on 7 January 2014; second, the Large Combustion Plants Directive will be 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 will need to comply with the new IED rules from 7 January 2014 and non-IPPC installations a year later.

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 assume 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 four general types of cases:

- 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 are required to inspect their areas to identify any land that should be classified as contaminated and, once identified, how it should be remediated. Revised statutory guidance to assist English local authorities in carrying out this function entered into force in April 2012. The starting point under the new guidance (which is formed of two separate documents dealing with non-radioactive and radioactive contaminated land respectively) is that land should not be identified as contaminated unless there is good reason to consider otherwise.

Once land has been identified as being contaminated, 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.

The regime places primary liability on those who caused or knowingly permitted the presence or continued presence of the substances concerned. If no such persons are found, liability may, in very limited circumstances, attach to the current owner or occupier of the site. It should be noted, however, that owners and occupiers may attract liability in their capacity as 'knowing permitters' of the presence or continued presence of the substances that have led to actual or threatened contamination, depending on the factual circumstances. The effect of this is that a knowing permitter can in some circumstances be found liable for substances in the ground before 1990 (when the contaminated land regime entered into force) or before they took over operations at the site.

There is also considerable overlap between the contaminated land regime and similar clean-up provisions under the WRA (see question 7).

It is important to note that if contaminated land is caused by an activity that is regulated under EPR, the contaminated land regime will not apply and this will instead be a breach under EPR. Additionally, at the end of the term of an environmental permit the operator will be required to return the site to a satisfactory state (at least to the state it was in before operations began). These conditions are potentially more stringent than those 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, which transpose the Environmental Liability Directive, are also relevant. The EDR 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 are of more limited application than the contaminated land regime since they 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.

Under the EDR, if an operator's activities threaten to cause (or have caused) environmental damage, the operator must take all practicable steps to prevent that damage (or further damage) from occurring and, unless the threat has been eliminated, inform the appropriate authority.

The EDR give the appropriate authorities (generally the EA or local authority) powers to serve prevention and remediation notices. 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 EU Commission guidance on the WFD, published in June 2012.

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 hazardous waste is produced and to keep records. The List of Wastes (England) Regulations sets out wastes that are to be considered hazardous.

The 2008 revision to the Waste Framework Directive, which sets requirements for the collection, transport, recovery and disposal of waste, have been implemented in England and Wales through the Waste (England and Wales) Regulations 2011 (WR). The WR require businesses to apply the waste management hierarchy, which ranks waste management options according to what is best for the environment, namely: prevention; reuse; recycling; other recovery; and disposal, when transferring waste and to include a declaration of compliance on their waste transfer note or consignment note. The regulations also require businesses collecting, transporting or receiving waste paper, metal, plastic or glass to ensure separate collection from 1 January 2015.

In addition to this 'traditional' waste legislation, there is a raft of EU regulation that addresses the overall impact of products on the environment and human health throughout their lifetime. Legislative measures include the packaging waste, waste electrical and electronic equipment (WEEE), batteries and end-of-life vehicles regimes. These so-called '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 EEE placed on the market (the UK's RoHS Regulations, discussed further in question 14 below). 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 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 GHG Regulations (see question 6). 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.

Enforcement of air pollution standards may also be undertaken by local authorities under the Environment Act 1995, which requires those authorities to review and assess compliance with the UK Air Quality Strategy (which consolidates European and international air pollution standards) in their area. If the standards are not being met, local authorities may designate air quality management areas and implement remedial action plans.

6 Climate change

Are there any specific provisions relating to climate change?

Yes. The EU's Emissions Trading Scheme (EU ETS) is one of the measures introduced to help the EU meet its greenhouse gas (GHG) emissions reduction target under the Kyoto Protocol. It is a cap-and-trade system that obliges participating installations to purchase allowances equal to their carbon dioxide emissions each year (one allowance represents one tonne of carbon dioxide equivalent). The EU ETS is at present in phase III, which commenced on 1 January 2013 and runs until 31 December 2020. Phase III introduced a variety of changes to the scheme, the most important of which are: a centralised EU-wide cap (which declines at a linear rate of 1.74 per cent per year), an expansion of the EU ETS to include additional sectors and GHGs, and a shift away from free allocation and towards the auctioning of EU allowances. In addition, in June 2012, a single EU registry system overseen by the European Commission was introduced (replacing the prior system of member state registries). The key UK legislation implementing the EU ETS is the Greenhouse Gas Emissions Trading Scheme Regulations 2012.

Operators of installations 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.

From the start of 2012, airline operators were required to participate in the scheme with respect to emissions from most commercial flights to or from EU airports. The perceived extra-territoriality of the EU ETS was challenged by the Air Transport Association of America in the UK and EU courts. The European Court of Justice held in December 2011 that the inclusion of international aviation emissions in the EU ETS was lawful. Following international pressure (including the passing of laws in the US and China prohibiting national airlines complying with the EU ETS), the EU decided in April 2013 to temporarily defer enforcement against aircraft operators in respect of international flights for 2012, pending progress within the International Civil Aviation Organisation (ICAO) general assembly. The EU's position remains that, in the event that a global market-based mechanism to reduce international aviation emissions is not reached within the ICAO, aircraft operators will be expected to surrender sufficient allowances in accordance with the EU ETS.

A further issue with the EU ETS has been the collapse of the EU carbon price. This has arisen owing to a combination of the over-allocation of allowances in the first two phases and the recession. To reduce the surplus of allowances, a proposal known as 'back-loading', in which the auctioning of carbon allowances is postponed, has been put forward by the European Commission. At first instance, this proposal was rejected by the European Parliament; however, following amendment it received approval on 3 July 2013. For this proposal to become law, it must be approved by the Council of Ministers. It is presently unclear whether and in what form this proposal will take effect.

The UK also has a legally binding target under the Climate Change Act 2008 to reduce its GHG emissions by 80 per cent below the 1990 baseline by 2050 and the following schemes are fundamental to the government's strategy for achieving this:

Carbon Reduction Commitment Energy Efficiency Scheme (CRC)

The CRC Scheme is an additional UK mandatory scheme aimed at improving energy efficiency and cutting emissions in medium to large public and private sector organisations (see also question 12). Special rules apply to emissions already covered by the EU ETS or climate change agreements (see below) to reduce double accounting. Organisations (including groups of companies) qualify as a CRC participant based on their half-hourly electricity usage. Participants must monitor their energy use and purchase allowances for each tonne of carbon dioxide they emit. The CRC Energy Efficiency Scheme Order 2013 (2013 Order) which came into force 20 May 2013 simplifies this complex scheme. Key changes in the 2013 Order include: a simplification of the qualification rules, a reduction in the number of fuels covered, more structured sales of allowances and, importantly for corporate transactions, simplified rules for large acquisitions and disposals and greater flexibility for 'disaggregation'. The new rules on disaggregation, the process where a group or a single undertaking belonging to a participant group registers as a separate participant, have been particularly welcomed by the private equity industry that has often sought to pass compliance responsibilities to portfolio companies or groups. The government will review the effectiveness of the CRC (again) in 2016. This review is expected to consider whether the CRC remains the appropriate policy to meet industrial energy efficiency and carbon reduction objectives, and is also expected to consider alternative approaches that could achieve the same objectives.

The carbon price floor (CPF)

The government considers that the carbon price signal arising from the EU ETS has not been certain or high enough to encourage adequate investment in low-carbon electricity generation in the UK. Consequently, the UK has introduced its own carbon price, known as the CPF, to provide long-term certainty about the cost of carbon. By providing a strong price signal, it is hoped the CPF will support low-carbon investment, including both renewables and nuclear. In the 2011 budget, the government announced that the CPF will rise over time to meet the targets of £30/tCO2 in 2020 and £70/tCO2 by 2030. The CPF has been implemented by way of a tax (under the climate change levy – see below) on fossil fuels used to generate electricity which came into effect on 1 April 2013.

The climate change levy (CCL)

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 is exempt. Climate change agreements

(CCAs) provide a voluntary mechanism for energy-intensive businesses to receive a significant discount from the CCL in return for agreement holders meeting energy efficiency targets. 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.

Renewables Obligation Order 2009 (as amended)

The Renewables Obligation Order 2009 (as amended) requires suppliers of electricity to source an increasing proportion of their electricity from eligible renewable sources each year. Suppliers must either demonstrate compliance to the authority (Ofgem) by submitting renewable obligation certificates (ROCs) obtained from eligible renewable energy generators or pay a 'buyout price' to cover the shortfall.

Renewable Transport Fuel Obligations Order 2007

The Renewable Transport Fuel Obligations Order 2007 requires certain suppliers of fossil fuels to ensure that a percentage of the fuel that they supply each year is a renewable transport fuel (RTF) such as bioethanol or biodiesel. Compliance is demonstrated by accumulating sufficient RTF certificates from the Renewable Fuels Agency to cover the obligation. RTF certificates can be traded and if a supplier does not meet its obligation for a compliance period it may either buy RTF certificates from the market or pay a 'buyout price' to cover the shortfall.

Feed-in tariffs (FITs)

FITs, which came into force on 1 April 2010 under powers derived from the Energy Act 2008, are financial incentives to encourage deployment of small-scale (less than 5MW) low-carbon electricity generation in the UK and are complementary to ROCs. Under the scheme, operators of qualifying installations are guaranteed a specified tariff for each kilowatt hour they generate. In addition, operators may opt to either receive a fixed export tariff or sell their electricity on the open market. As with other European jurisdictions, the UK's feed-in tariffs are the subject of ongoing government review and cuts.

Renewable heat incentive (RHI)

The RHI, billed by the UK government as 'the world's first long-term financial support programme for renewable heat', pays participants that generate and use renewable energy to heat their buildings. The aim of the RHI is to encourage the supply of low carbon heat. The RHI launched for the non-domestic sector in November 2011 and is expected to be opened to the domestic sector in spring 2014. Eligible technologies include solar thermal, ground source heat pumps, on-site biogas combustion and deep geothermal. Support rates vary depending on the technology installed.

Green Deal

The Green Deal is the UK government's flagship initiative to help improve the energy efficiency of buildings in Great Britain. The Green Deal launched on 28 January 2013 in England and Wales and shortly thereafter in Scotland. Under the Green Deal, energy bill payers will be able to improve the energy efficiency of their home or business premises without having to fund the initial capital costs themselves. Instead, energy suppliers will provide the capital, getting their money back via the energy bill. At the heart of the scheme is the 'golden rule': estimated savings on bills should always equal or exceed the cost of the energy efficiency improvements.

Mandatory reporting

UK companies are under a variety of mandatory reporting requirements, the majority of which are contained in the Companies Act 2006 (as amended). The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 has recently brought about two significant changes to mandatory reporting requirements for financial years ending on or after 30 September 2013. First, all companies (both quoted and unquoted, but with an exemption for small companies, as defined under the Companies Act 2006) must produce a standalone 'strategic report' in addition to the standard directors' report. This requirement is, in the main, a structural change, as opposed to a change to the substantive requirements: previously, companies were obliged to prepare a 'business review' within the directors' report. Strategic reports must include an analysis of the company's business using key performance indicators. In addition, quoted companies must include information about the impact of the company's business on the environment and social, community and human rights issues. Quoted companies must also, for the first time, report on the annual amount of GHG emissions for which the company is responsible, including from the combustion of fuel and the operation of any facility. The government will, following a review of the first two years of GHG emissions reporting, take a further decision in 2016 on whether to extend this reporting requirement to 'large companies' (being all those companies who do not qualify as either 'small' or 'medium' sized companies for the purposes of the Companies Act 2006).

7 Protection of fresh water and seawater

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

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), Food and Environment Protection Act 1985 and EDR are also relevant and there is considerable overlap with the contaminated land regime (see question 3). The Water Bill 2013–2014 is currently before Parliament and amends the Water Industry Act 1991 and other related legislation. Amongst other things, the Water Bill would grant powers to the secretary of state to include abstraction licences, flood defence consents and fish pass approvals within the EPR.

A marine licence (under the Marine and Coastal Access Act 2009 (MCAA)) 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.

8 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 9 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).

9 Protection of flora and fauna species

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

There are numerous laws protecting 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 (SSI) legislation.

The Habitats and Birds Directives are transposed into UK law through the Conservation of Habitats and Species Regulations 2010. The directives are also implemented offshore (beyond 12 nautical miles) by virtue of the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007 (as amended). They protect flora and fauna by requiring plans or projects in the designated areas to undergo an appropriate assessment for any adverse effects. In practice 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). In cases of serious environmental damage to protected areas operators may be liable for remediation, 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.

In addition to national nature reserves, the national conservation agencies are responsible for 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).

Separately, in order to protect native biodiversity more generally, there are controls to prevent the spread of certain non-native species of plants and animals. For example, Japanese knotweed is one of the most common and problematic non-native species in the UK and, where present on a site, the owner or occupier is under a duty to prevent its escape onto adjoining land.

10 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 EPR, there are also statutory, public and private nuisance regimes (see also question 28). The question of what remedies are available to those affected, and the defences or grounds of appeal available to an operator who finds itself on the receiving end of 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.

EPA 1990 codifies the law on statutory nuisance (which includes noise, odours and vibrations). An action for statutory nuisance 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 (COPA) allows local authorities to designate noise abatement zones where specific noise restrictions apply.

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 a permit. In addition, it is expected that the Supreme Court will rule on a landmark case concerning the relationship between common law nuisance and the UK's statutory planning regime in late 2013 or early 2014.

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.

11 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, 7 and 9 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 EPR, for example).

12 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, CRC and EU ETS (see question 6) 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 and the standard rate is due to rise from £72/tonne to £80/tonne in April 2014. 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).

As noted in question 6, 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 is exempt. 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

13 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 1999 (COMAH). 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 HSE and the EA in England and Wales). 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.

14 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 HSE 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 came into force 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 UK is currently in a transitional phase between the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009 (CHIP) and the CLP Regulation. The transitional period ran to 1 December 2010 for substances, and continues until 1 June 2015 for mixtures (preparations).

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) replaces the previous directive dating from 2002 and 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, replace the UK's original RoHS regulations and 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.

The storage of hazardous substances is governed by COMAH (see question 13) and the Planning (Hazardous Substances) Regulations 1992. 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 (CAR) 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, 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 at question 4 above).

Industrial accidents

15 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 14). The most hazardous activities are governed by COMAH Regulations (see question 13). 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

16 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 a knowing permitter (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.

17 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 shutdown could affect the borrower's ability to meet its repayment obligations, for example), reducing the value of any security (through land contamination, for example) and/or, in certain limited circumstances, result in the possibility of direct lender liability. In addition to the issues raised in question 16, 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.

Environmental assessment

18 Activities subject to environmental assessment

Which types of activities are subject to environmental assessment?

Environmental assessment in England is largely governed by the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (EIA Regulations), which implements the 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. In October 2012, the European Commission adopted a proposal for a significant amendment to the EIA Directive. The proposed amendment has only recently commenced the European legislative process and it is unclear when, and in what form, any amendment may enter into force.

The strategic environmental assessment (SEA) of plans and projects is governed in England by the Environmental Assessment of Plans and Programmes Regulations 2004, which implement the Strategic Environmental Assessment Directive. The SEA is intended to increase the consideration of environmental issues during decision making 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?

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

Local authorities are responsible for the lower-tier facilities under 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 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).

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.

22 Powers of regulatory authorities

What powers of investigation do the regulatory authorities have?

As noted above (see question 21), authorities have wide powers to obtain information, search premises, conduct sampling and interview people in the course of their investigations. The EA, in particular, has a range of powers including, for the purposes of establishing whether there have been breaches of environmental law, the power to enter premises at any reasonable time (including by force where there is an emergency situation), take samples and photos, question employees, install bore holes and monitoring equipment and take steps to abate or control an emergency situation.

23 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 26).

24 Sanctions and remedies

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

The EA and local equivalents in 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 23, 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.

25 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

Update and trends

The UK has, at its helm, a coalition government which claims to be 'the greenest government ever'. But what does this mean for environmental law within the jurisdiction? To answer this, we would draw out four key trends and topics making the legal headlines in the UK over the past year.

The UK government's 'red-tape challenge'
Through this challenge, the government has attempted to implement 'better' regulation, that is, regulation that reduces the regulatory burdens on business while increasing the effectiveness of environmental protection. The government has embarked on an unprecedented review of a range of highly regulated areas, including health and safety, company, employment and, importantly for this publication, environmental law. The review of the UK's environmental laws has consisted of a coordinated series of thematic consultations, on a diverse range topics from air quality and biodiversity to chemicals and energy labelling. The red-tape challenge has already led to the repeal of certain pieces of legislation (such as site waste management plans, which were revoked from 1 October 2013), legislative simplification and consolidation (such as the revised contaminated land statutory guidance). The roll-out of changes will continue for the next few years and will be followed closely by green groups and industry alike.

Major reform in the energy sector
The 'Electricity Market Reform' is currently being carried through Parliament by the draft Energy Bill and will implement sweeping changes to the way in which 'low-carbon' energy (which captures renewables, CCS and, controversially, nuclear) is incentivised within the UK. Of particular note is the introduction of 'contracts for difference': two-way private law contracts between developers and a government counterparty, which will provide a guaranteed premium tariff for a fixed term. Further, to meet the growing 'energy crisis', a novel 'capacity market' is being established to ensure the lights stay on across the UK.

Continued focus on corporate reporting on EHS matters
As explained in this revised 2014 edition, quoted companies are, for the first time in the UK, obliged to report on their GHG emissions in new-look 'strategic reports'. Furthermore, companies must now report annually on a broader suite of environmental, social, diversity and human rights issues. At the EU level, legislation requiring large natural resource companies to report payments to governments has recently been passed, and reporting obligations on conflict minerals are on the horizon.

Regulation of unconventional energy
Fourth, and finally, as exploratory 'fracking' commences across the UK, we would highlight unconventional hydrocarbon exploration and production as an area of increased regulatory development. The UK has a proud heritage of hydrocarbon exploration, the majority of which, at least in recent times, has occurred offshore. Changes are underfoot to clarify the regulatory landscape surrounding onshore petroleum development, in the form of revised planning guidance and revised environmental permit applications for fracking operations. In addition, at EU level, the Commission has announced that it is currently working on a measure – expected before Christmas 2013 – to address the European regulatory regime for fracking.

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.

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

26 Judicial proceedings

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

Both. For breaches of most environmental laws in England and Wales, the sanction is criminal prosecution by the relevant regulator (but 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 10 and 28).

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.

27 Powers of courts

What are the powers of courts in relation to infringements and breaches 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.

28 Civil claims

Are civil (contractual and non-contractual) claims allowed regarding breaches and 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 10), 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.

29 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 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.

30 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.

31 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 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

32 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 Kyoto Protocol to the United Nations Framework Convention on Climate Change (1997);
- 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); and
- the Convention on Long-range Transboundary Air Pollution (1979).

33 International treaties and regulatory policy

To what extent is regulatory policy affected by these treaties?

International pressure and consensus on issues such as climate change have had a significant impact on the regulatory policy of the EU and the UK. The Kyoto Protocol, for example, has led to a significant body of EU and UK law (see question 6).

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