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Quarterly Environmental Law Update

19 February 2025

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Deposit Scheme for Drinks Containers (England and Northern Ireland) Regulations

Gregory Jones KC


corona
corona
corona
corona
corona

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Coke
Coca-Cola
zero

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Climate Litigation Update

Gabriel Nelson

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Contents

VKS

Facts

- This was a complaint brought by four individual Swiss women and an association, whose aim was to promote and implement climate protection on behalf of its members, most of whom were over the age of 70.
- The complaint concerned the alleged failure of the Swiss authorities to mitigate climate change and the effects of global warming. Members of the association described the impact heatwaves were having on their health and daily lives.

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Key points

- The court decide that, given the special considerations relating to climate change as a common concern of humankind, this justified granting standing to the association under Article 34 ECHR, subject to certain conditions.
- The four individual women did not qualify- they were not exposed to the adverse effects of climate change with the necessary degree of intensity giving rise to a pressing need to ensure their individual protection. This is a high threshold.
- Article 8 includes a right for individuals to effective protection by State authorities from serious adverse effects caused by climate change. This gives rise to positive obligations on States to adopt, and to effectively apply in practice measures capable of mitigating the existing and future effects of climate change.
- The nature and gravity of the threat posed by climate change, and the general consensus concerning the overarching goal of GHG reduction targets, justifies a reduced margin of appreciation for States in relation to their commitment to combating climate change and its adverse effects. However, a wide margin would be given to States implementing those commitments (i.e. through law and policy).

Dissenting opinion

- There was a strong dissenting opinion from Judge Eicke, the UK Judge at the ECtHR. He considered that the majority had gone beyond what was permissible in unnecessarily expanding the concept of standing. Further, he disagreed with what he characterised as creating a new right and the imposition of new primary duties.
- Notably, he cautioned that the majority decision may in fact be counter-productive, partly due to the significant risk that Governments will now be tied up in litigation about whatever regulations and measures they have adopted or how those regulations and measures have been applied in practice.

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R (Friends of the Earth and others) v Secretary of State for Environment, Food and Rural Affairs [2024] EWHC 2707 (Admin),

Facts

- Judicial review challenge to the third National Adaptation Programme ("NAP3") setting out the Government's plans to tackle the risks flowing from actual and predicted changes to the climate.
- Brought by three claimants: Friends of the Earth Ltd; an individual whose home on the Norfolk coast was at risk due to coastal erosion and was later demolished by the local authority; and an individual with long-term health conditions which made him particularly vulnerable to the effects of extreme heat.
- One of the first considerations by a domestic court of *VKS.*

Background

- Section 58 of the Climate Change Act 2008 imposes a duty on the Secretary of State to lay programmes before Parliament setting out -

a. the Government's objectives in relation to adaptation to climate change,

b. its proposals and policies for meeting those objectives and

c. the timescales for introducing those proposals and policies.

- NAP3 was prepared pursuant to that duty.
- The CCC published its independent assessment of NAP3 in March 2024, and considered that:

"NAP3 falls far short of what is needed... It fails to set out a compelling vision for what the government's 'well adapted UK' entails, and only around 40% of the short-term actions to address urgent risks… are progressed. The lack of a measurable vision will prevent effective delivery of adaptation".

Grounds

- The claimants relied on various grounds including:

a. That the Secretary of State erred in law by misconstruing the requirement for "objectives" under section 58 CCA, which must be read and given effect in a way compatible with Convention rights under section 3 of the Human Rights Act 1998;

b. That the Secretary of State acted contrary to the claimants' rights under Articles 2, 8, 14 and Article 1 of the First Protocol of the Convention; and

c. That the Secretary of State failed to consider the risks to delivery for the proposals and policies for meeting the objectives produced under section 58 CCA.

- There was also a ground relating to the public sector equality duty under s.149 Equality Act 2010.

Statutory Interpretation

- Chamberlain J set out a two-stage approach to the construction of section 58 CCA:

a. the ordinary meaning of the provision must be ascertained by applying domestic principles of statutory construction; and

b. the court must consider whether the claimants' construction was required to achieve compatibility with Convention rights under section 3 HRA.

- There is no principle which requires the court to favour a construction which better promotes Convention rights over one which promotes those rights less effectively. The obligation imposed by s. 3 HRA is of relevance only when one of the competing constructions is incompatible with Convention rights.
- In considering the statutory context, the court drew a distinction between legal frameworks aimed at mitigation of climate change and those aimed at adaptation to the risks of climate change.
- Part 1 of the CCA contains the UK's legal framework for measures aimed at mitigation and includes a duty to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline, in line with the UK's international commitments under the Paris Agreement.
- By contrast, there is no internationally binding quantified standard governing how states must adapt to climate change, as the risks of climate change differ widely from state to state.

- Claimants argued that section 58 imposed a duty to set out objectives in the form of substantive, specific and measurable outcomes.
- Court disagreed - there was no express or implied constraint in section 58 on how ambitious or specific an objective must be (provided it could still properly be described as an "objective"); [93]-[96].
- In considering whether compatibility with Convention rights required a different result, Chamberlain J noted that the focus of the VKS judgment had been on mitigation measures, and Switzerland's breach of that obligation arose from a series of lacunae in its domestic regulatory framework; [98].
- Although the VKS judgment indicated that the positive obligation imposed by Articles 2 and 8 of the Convention extends to adopting and implementing adaptation measures aimed at alleviating the most severe consequences of climate change, the High Court considered that a wide margin of appreciation had to be accorded to states when considering adaptation measures. C.f. the narrow margin of appreciation accorded by the ECtHR in respect of mitigation measures; [105].
- The court reasoned that, in respect of mitigation measures, a narrow margin of appreciation was justified by reference to the internationally agreed objective of carbon neutrality by 2050 and the impact of one state’s default on other states, whereas neither of these features applied to adaptation measures.
- The High Court concluded that the risk reduction goals outlined in NAP3 could properly be described as objectives under section 58 CCA, and that interpretation was not incompatible with Convention rights. This ground therefore failed.

Convention Rights

- The High Court dismissed this ground for essentially the same reasons that the interpretation argument failed: that a wide margin of appreciation should be accorded to states when identifying adaptation measures.
- Chamberlain J considered that *"the CCC's criticisms, trenchant though they were, were the outcome of one part of the system of domestic scrutiny provided for by Parliament in the CCA. That system of scrutiny did not suffer from the regulatory lacunae identified in relation to Switzerland*."
- As to standing, Chamberlain J made no determination as to whether the claimants had victim status in light of the failure of the substance of the claim.
- However, his provisional view was that it would be wrong to prevent either of the individual claimants from bringing a well-founded human rights challenge if it could be established that the Government's failure to implement specific adaptation measures relevant to their circumstances fell outside the state's margin of appreciation; [154].
- The High Court drew a distinction between this case and the restrictive approach taken to victim status in the VKS judgment.
- Noted that while it may be very difficult to establish that a failure to take particular mitigation measures had a direct impact on the applicant, it may be easier to establish a causal link between a lack of particular adaptation measures and the effect on an applicant.

Failure to consider risk to delivery

- The High Court also rejected the claimants' other grounds.
- The approach to delivery risk taken by the court in finding the Government's carbon budget delivery plan to be unlawful was again distinguished because of the difference between the types of obligations in Part 1 CCA compared to Part 4.
- In respect of section 58, the approach to delivery risk is subject to review on the grounds of rationality only, and on the evidence, delivery risk (i.e. whether particular proposals and policies would achieve what they set out to achieve) had been considered at various stages.

Discussion

- The High Court was keen to distinguish the novel approach taken in *VKS* in respect of both standing and the extent of the state's positive obligations under the Convention in the climate change context, and notably praised the *"impressively reasoned"* dissenting opinion of Judge Eicke.
- The High Court justified taking a more orthodox approach in this case by reference to the distinction between mitigation measures and adaptation measures, noting the lack of an internationally binding quantified standard governing how states must adapt to climate change.
- The court was also keen to impress that the VKS judgment took issue with gaps in the Swiss regulatory framework for the mitigation of the impact of climate change, and the court did not consider that the UK's framework in Part 1 of the CCA suffered from the same gaps.
- Interestingly however the court did suggest that this distinction between adaptation and mitigation could justify a less strict approach to victim status than that shown in VKS.

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International Climate Litigation post VKS

ECtHR cases

- *Müllner v. Austria*: an application presently before the ECtHR brought by a person suffering from multiple sclerosis. One of the symptoms of which is paralysis, which worsens with the increase in outside temperature culminating in him becoming wheelchair bound when subjected to temperatures of 30 degrees Celsius and above.
- A case which satisfied the victim test laid out in VKS?

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- *Cannavacciuolo and Others v. Italy*: concerned with the failure of the Italian state to diligently deal with large-scale illegal dumping, burying and/or burning of waste, in an area in the Campania region of Italy (Terra dei Fuochi; "Land of Fires").
- Concerning the standing of the applicant associations, the Chamber made it clear that the extended standing granted in *VKS* was limited to climate change cases and would not be extended beyond that *"specific context"* (§§220-221). Their applications were therefore declared inadmissible.
- In his separate Opinion in that case, Judge Krenc, however, expressed a *"certain bewilderment"* asking whether it is *"not artificial to draw such a clear-cut distinction between climate-related issues, on the one hand, and the environment, on the other".*

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ICJ Advisory Proceedings

- The Court was asked two questions in March 2023:

a. What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions for States and for present and future generations?

b. What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

i. States, including small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are especially vulnerable to the adverse effects of climate change?

ii. Peoples and individuals of the present and future generations affected by the adverse effects of climate change?

- This advisory proceeding is the largest ever handled by the ICJ, with 91 written submissions filed in the Court's registry, along with 62 further written comments.
- A record 97 states and 11 international organizations took part in the oral proceedings, held at the Court over a two-week period beginning on 2 December 2024.
- Judgment expected 2025.

Countries Submissions

- Switzerland made no mention at all of *VKS* and the obligations it might be said to have created.
- Many of the Council of Europe Member States who participated in the proceedings made no or only passing reference to *VKS*.
- More reference appears to have been made to the conclusions in the *Duarte* decision concerning extra-territorial jurisdiction and its assertion that to move away from its established approach would, impermissibly, *"turn the Convention into a global climate-change treaty."*
- The Netherlands, by contrast, stated that they *"take the judgment as starting point for its views related to human rights"* and their relationship to its obligations in relation to the mitigation of climate change.

- The UK expressed reservations concerning the ECtHR's approach in *VKS* to victim status, applicability, causation and breach.
- It also expresses reservations concerning the insufficient regard in the judgment given to the central role of the Climate Change Treaties, in particular the Paris Agreement, in addressing reductions in anthropogenic GHG emissions.
- It stated, in any consideration of the ECtHR's approach, the Court will need to be sensitive to *"the necessary clarity and the essential consistency of international law … [to which] States obliged to comply with treaty obligations are entitled".*
- By reference to the *"wide coverage and membership of the International Covenant on Civil and Political Rights"*, which it says also militates against the ECtHR's approach, the UK further draws attention to the fact that *"[s]ome participants point out that their human rights obligations and development needs may require their GHG emissions to grow, which would be contrary to the ECtHR's approach."*

- The EU, which is not a State Party to the Convention (yet), made extensive reference to *VKS*.
- However, it asserted that the Court had *"not indicate[d] how [CBDR-RC and equity] should be translated into specific GHG emission limitations, let alone by reference to 'fair shares'"*. It concluded that *"[t]he ECHR thereby confirms the absence of any agreed understanding of how to calculate or allocate a State's fair share".*
- In its oral submissions it further asserted that:

  "There is no commonly agreed mechanism for allocating or attributing so-called "fair shares" or for calculating so-called "carbon-budgets". If the Court were to accede to the request to introduce such a mechanism, this would undermine the basis on which the parties consented to the Paris Agreement and introduce concepts of causation at the expense of the primacy of the obligation to act with the highest possible level of ambition. This is not in the interest of any party to the Paris Agreement. It would not lead to a better outcome for humankind."

Final comments

- See Judge Tim Eicke's talk: *"Strasbourg and Climate Change: Taking Stock"* on 6 February 2025 at UCL.
- At the conclusion of his talk, Judge Eicke looked at the current climate litigation landscape in the round. He said that what this demonstrates:

  "the inherent complexities and difficulties of seeking to address and resolve, with the required urgency, the unprecedented global challenges posed to all of us by climate change through international litigation or treaty making; and that is without referring to recent demonstrations of the potential fragility of the international legal framework in respect of climate change.

  Ultimately, it seems to me to demonstrate that answers will have to be found - and found urgently - through the domestic democratic processes."

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Regulation of Waste

Jeremy Phillips KC

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[Contents/agenda] What's in store…

1. A Brief History of 'Waste'
2. R v W and others [2010] EWCA Cim 927
3. R v Jagger [2015] Crim 348
4. Devon Waste Management Ltd and Ors; Biffa Waste Services Ltd v HMRC [2021] EWCA Civ 584
5. European "Green Deal" and Circular Economy Action Plan (CEAP)
6. DEFRA's Residual Waste Infrastructure Capacity Note (30.12.24)
7. Cannavacciuolo and Others v. Italy ("Cannavacciuolo", nos. 51567/14 et al. 30 January 2025

Mid-1300s – ‘rakers’ employed to remove London’s waste and dump it just outside the city.

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1515 – Shakespeare's father fined for 'depositing filth in a public street'

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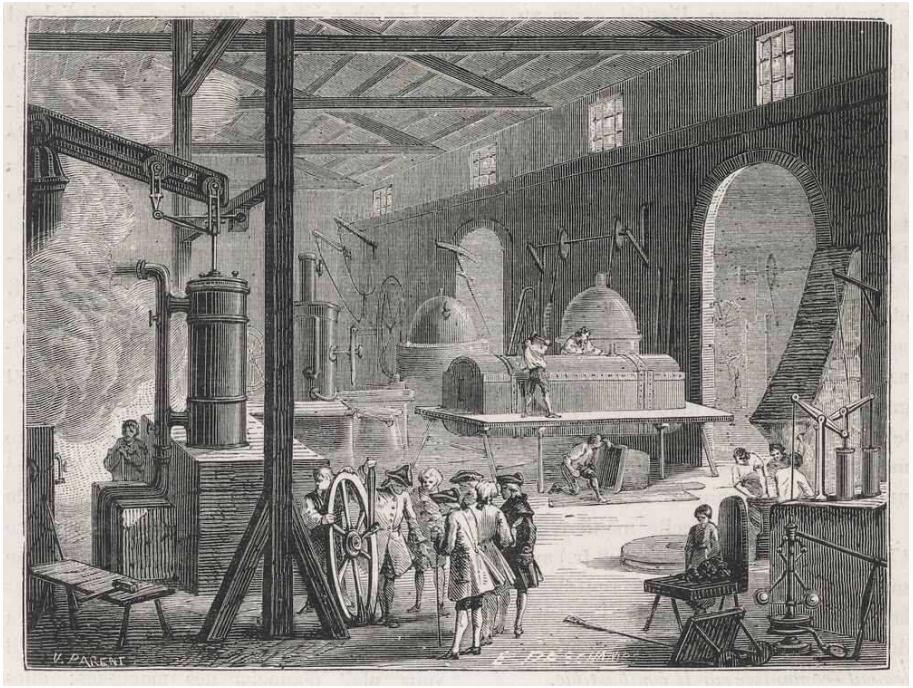
Late 18th century – in the industrial revolution a waste collection and recovery system was established around 'dust-yards'. Coal ash ('dust') had a mark value for brick-making.



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Public Health Act 1848 – designed to manage waste regulation

Public Health Act 1875 – aimed to put an end to scavenging through other people's rubbish. Councils required to remove and dispose of waste.

Regulation of ‘waste’ in the UK has a long history

1927 – law passed making tenants responsible for keeping the front of their houses clear of rubbish

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R v W and others [2010] EWCA Cim 927; [2011] 3 AII ER 291

- Defendants were owners / managers of farm in SAC
- Large quantity of soil and subsoil deposited at the farm by haulage contractors
- Trial judge accepted submission of no case to answer on basis that materials could not be 'waste' because there was not the slightest element of discarding in the use to which the defendants put them
- CA held that wrong test had been put to the jury

1. Excavated soil which had to be discarded by the 'holder' was capable of being 'waste' within the 1990 Act
2. From the moment of excavation at the neighbouring farm, the materials were 'waste' that was required to be disposed of by the producers and by the hauliers, who were themselves 'holders'.
3. There was clearly a case to answer that the material was 'controlled waste', having regard to the definitions contained in s75 and the evidential material.

Appeal allowed – fresh trial to take place.

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R v Jagger [2015] Crim 348

- Appellant convicted of depositing demolition materials into a void created when a floor areas of a pre-existing building was removed. The Crown's case was that it was waste material and that there was no permit in force for dumping of waste.
- Cour to Appeal considered that out of his desire to keep the case simple for the jury, the trial judge had oversimplified his directions. The effect of this was unduly to restrict the jury's consideration of valid arguments available to the Appellant on the question of waste, so that he was deprived of fair consideration by the jury of a significant case.
- Conviction unsafe and would be quashed.

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Devon Waste Management Ltd and Ors; Biffa Waste Services Ltd v HMRC [2021] EWCA Civ 584; [2021] 4 W.L.R. 89

Taxpayers operated landfill sites. Each site contained one or more "cells" which were typically large holes in the ground into which waste was tipped. The bottom of each cell was lined with a thick, impermeable membrane. Taxpayers ensured that the first thick layer of material placed on top of the membrane and part way up the sides of a new cell was black bag waste known as "fluff". The layer of fluff was then lightly compacted before the cell was filled up with general waste. By section 40(1)(2)(a) of the Finance Act 1996 1 , landfill tax was charged on each tonne of taxable waste as "a disposal of material as waste". S 64(1) of the Act provided that a disposal occurred when the person made the disposal "with the intention of discarding the material". HMRC determined that both fluff and EVP were liable to landfill tax. The taxpayers appealed, contending that the fluff and EVP were not liable to landfill tax on the basis that such waste was being "used" and so had not been disposed of as waste within the meaning of the 1996 Act. The First-tier Tribunal dismissed the appeals. On a further appeal by the taxpayers, the Upper Tribunal (Tax and Chancery Chamber) held that fluff and EVP were not liable to tax on the basis that the taxpayers had not intended to discard it.

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Devon Waste Management Ltd and Ors; Biffa Waste Services Ltd v HMRC [2021] EWCA Civ 584; [2021] 4 W.L.R. 89 (ctd)

The Court of Appeal allowed HMRC's appeal, holding that it was not the case that any kind of use of waste material necessarily ruled out an intention to "discard" it within the meaning of section 64(1) of the Finance Act 1996 ; that, rather, various factors might need to be weighed up, depending on the circumstances of the case. The statutory question in the present case was not whether the taxpayers had 'used' the fluff or the EVP, but whether they had 'disposed of it as waste' because they had disposed of it with the intention of discarding it.

The First-tier Tribunal had addressed that question and concluded that the taxpayers had intended to discard the waste material so that the disposals were taxable.

European Commission published a European "Green Deal" and a new Circular Economy Action Plan (CEAP), which aims that

> *"all packaging on the EU market is reusable or recyclable in an economically viable way by 2030".*

European Green Deal proposes to revise the Packaging and Packaging Waste Directive:

> Headline target to reduce packaging waste by 15% by 2040 per Member State(per capita, compared to 2018)

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For the UK, DEFRA's Residual Waste Infrastructure Capacity Note (30.12.24):

"Our current use of resources is economically, environmentally and socially unsustainable and we are determined to transition to a circular economy in the UK. To achieve this, all efforts must be made to prevent waste from arising in the first instance. Where waste does occur, we need to manage it in the most resource-efficient way possible, preparing items for reuse, or recycling those items that cannot be reused."

The Environmental Targets (Residual Waste) (England) Regulations 2023 set a statutory target to ensure that:

> *"the total mass of all residual waste (excluding major mineral wastes) arising in England for 2042 does not exceed 287kg per person. This is the equivalent of a 50% reduction from 2019 levels."*

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For the UK, DEFRA's Residual Waste Infrastructure Capacity Note (30.12.24) (ctd)

Key conclusions:

- less than 10% of municipal waste to landfill by 2035, due to

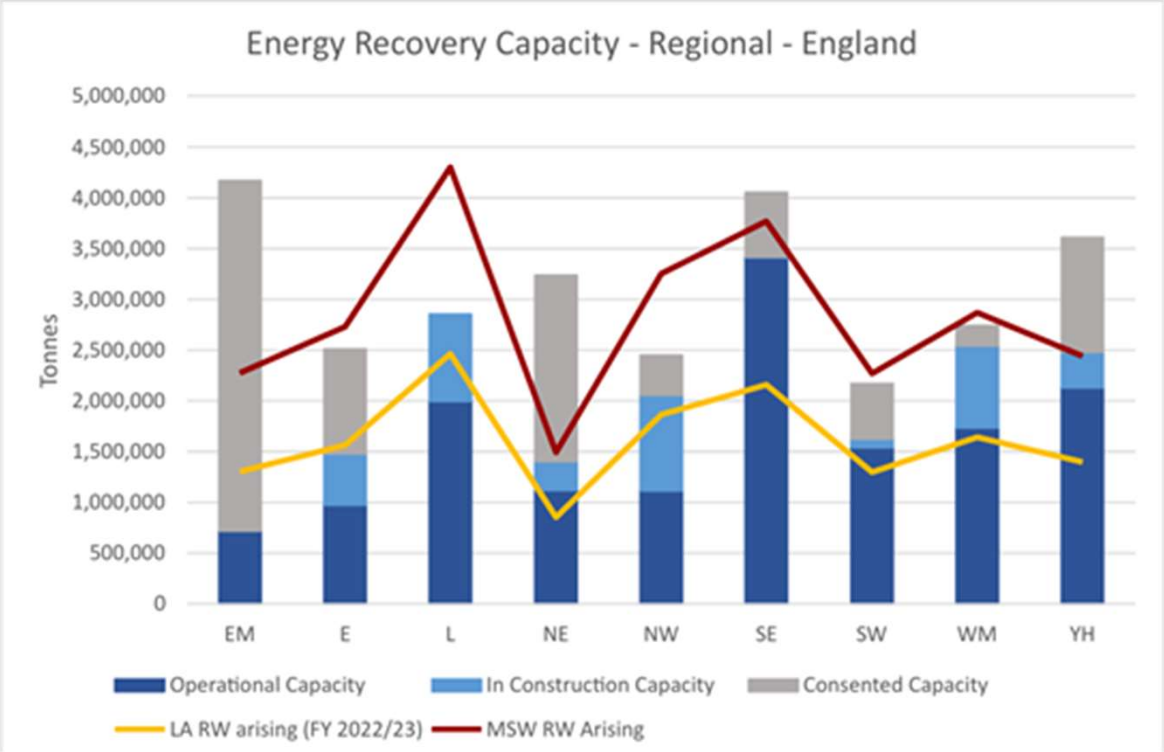
  Extended Producer Responsibility for packaging in 2025

  Simpler Recycling for non-micro businesses in 2025, households in 2026, and micro businesses in 2027 – which will require collections for dry recyclable materials and food and garden waste

  Deposit Return Scheme for drinks containers in 2027

- in the East Midlands and East of England alternative treatment options to landfill for municipal residual wastes are required

For the UK, DEFRA's Residual Waste Infrastructure Capacity Note (30.12.24) (ctd)



Key conclusions (ctd):

- Alternative or additional facilities may be required to divert non-municipal residual wastes away from landfill
- Alternatively, declining municipal residual waste volumes may facilitate the decommissioning of older residual waste management infrastructure in some areas to avoid over-capacity
- There are a number of waste incineration facilities that are consented, but not yet under construction, but it is highly unlikely that these will be brought forward if sufficient waste volumes cannot be secured via contracts to make them financially viable.
- DEFRA will support the development of further residual waste treatment infrastructure where they meet a clearly defined need to:
  - Facilitate the diversion of non-recyclable waste away from landfill, or
  - Enable the replacement of older, less-efficient facilities

Key conclusions (ctd):

- while national residual waste treatment capacity is almost sufficient to manage municipal residual wastes, there are regional variations
- Evidence suggests that alternatives are required to support the diversion of non-municipal wastes from landfill

DEFRA:

- does not support the development of overcapacity of energy recovery infrastructure in England
- will work to strengthen planning considerations to ensure that this does not happen
- will only support energy recovery development projects that offer the best efficiency and are future proofed towards supporting our net zero objectives
- further developments must be able to demonstrate that making use of the heat they produce is viable and can be built 'carbon capture ready' once they come into force
- will also explore incentivising the decommissioning of facilities:
  - that are less efficient,
  - cannot support our net zero objectives or are no longer required

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Cannavacciuolo and Others v. Italy ("Cannavacciuolo", nos. 51567/14 et al. 30 January 2025)

- "*Terra dei Fuochi*": "Land of Fires" – affecting 2.9m people
- 2014 41 individuals & 5 assocns apply ECtHR under Art 2 (Right to life) and Art 8 (Priv/fam life)
- The issue of Locus
- Persons with 'standing' – those directly affected by the pollution
- Approach taken to the standing of associations in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* 'exceptional' - will be limited to climate change cases
- Article 2: Applicability
- Compliance by the Italian State?
- Article 46 and the pilot judgment procedure
- Applicability to *R (Richards) v Environment Agency* [2022] EWCA Civ 26:
  - 'Causation'? – not affected
  - Breach by the state? – case brought prematurely
  - Pilot-judgment procedure? – unlikely to impact on domestic courts…

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NPPF Update

Armin Solimani

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Introduction to the 2024 NPPF

- Introduced in December 2024 by the new Labour government
- Aims to reflect the government's key policy goals for the planning system
- In particular, it seeks to encourage housebuilding and improve climate outcomes

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More robust climate change goals

- Chapter 14 deals with "Meeting the challenge of climate change, flooding, and coastal change"
- The key update is to para 161 (formerly 157). This now reads:

"The planning system should support the transition to net zero by 2050 and take full account of all climate impacts including overheating, water scarcity, storm and flood risks and coastal change."

- This marks a departure from the previous text, which required a "transition to a low carbon future"
- A meaningful change, but perhaps difficult to see what difference it will materially make in practice

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New requirements for demonstrating sustainable transport

- Sustainable transport is plainly critical for reducing climate emissions and conserving the environment
- Key change is a new requirement to take a "vision-led" approach to travel planning (para 109)
- That means moving away from thinking of transport in terms of cars, roads, and highway congestion, and focussing instead on sustainable options
- The differences between a travel plan that is vision-led, and one that merely includes sustainable proposals, is probably a distinction of process rather than substance.

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Flood risk tweaks

- How the planning system prepares development for flooding is a key part of our response to climate change risks
- However government has made minimal alterations to flood risk policies
- The key change is to para 175, which creates an exception for certain developments to not meet the demands of the sequential test
- Developments which are confirmed by a flood risk assessment to not be at risk will not need to meet the sequential test.
- Difficult to see how much of a difference this will make in practice

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The Grey Belt

The new Grey Belt concept

- Grey Belt is perhaps the most famous of the NPPF changes, and save for housing supply changes, the most consequential
- Green Belt policy key to nature conservation and has long preserved the countryside
- Effect of Grey Belt designation is to open up more of the Green Belt to development
- Definition is Green Belt land which is either PDL or which does not strongly contribute to three purposes of Green Belt land, being the prevention of urban sprawl, prevention of town merging, and preserving the character of historic towns.
- Importantly, purpose (c), the protection of the countryside from encroachment, is not among these

The Grey Belt

How the Grey Belt is applied

- Paragraph 155 sets out where Grey Belt land will be deemed not inappropriate for development. Four criteria are to be met:
  - The development wouldn’t fundamentally conflict with GB purposes
  - There is a demonstrable need for the development
  - The location is sustainable
  - The ‘Golden Rules’ in paras 156-157 are met where applicable

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The Grey Belt

The Grey Belt in action: APP/V4630/W/24/3347424

- This appeal concerned a proposal in Walsall for a BESS
- Key question was whether the Green Belt land was in fact Grey Belt
- Inspector found it did not strongly contribute to the identified purposes
- He also found it met the other criteria
- Therefore Grey Belt was established, the development was not inappropriate, and it was approved

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Renewable Energy Update

Mark O'Brien O'Reilly

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Clean Power 2030 Action Plan

- Policy paper published by the Department for Energy Security and Net Zero on 13 December 2024
- Sets out a pathway to a clean power system by 2030 – commitment to clean power by 2030. Said the govt will maintain a secure and affordable energy supply (energy security); create new industries and investment; and protect the environment
- 12 pages on planning and consenting: says current planning system not working at the pace required to deliver clean power by 2030 (highlighted costs and delays) and that the planning system needs to quickly change to enable economic growth and the delivery of clean power

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Clean Power 2030 Action Plan

- Urgency to accelerate the planning process for energy infrastructure
- Committed to equipping LPAs, PINS, government consenting teams and statutory consultees to make quicker decisions and to help them handle projects
- Will update National Policy Statements for Energy and the PPG in 2025 (and confirmed changes to NPPF) – aim is to provide policy certainty for developers and examining authorities
- Will ensure protection of nature is embedded into delivery

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Clean Power 2030 Action Plan

- Committed to an ambitious programme of legislative reform, including through the Planning and Infrastructure Bill
- Building on the reforms in the Nationally Significant Infrastructure action plan, govt will introduce legislative changes to update the NSIP planning system for all infrastructure projects
- Said govt will explore reforming JR processes following recommendations from the review undertaken by Lord Banner re NSIPs – govt has said "this could include changing the rules so that claimants in each case only have one attempt to seek permission for judicial review"

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Changes to the NSIP thresholds

- Under the Planning Act 2008 solar and onshore winds were NSIPs where they exceeded 50mw export capacity
- Previous capacity threshold was not reflective of technological advances in technology (particularly the case with solar)
- Now the NSIP threshold revised from end of 2025 to 100mw export capacity (note consultation proposal for solar was 150mw) – transitional arrangements in place for 2025
- Note also onshore wind projects now introduced back into the NSIP system – following Policy Statement on Onshore Wind (July 24) which removed previous policy restrictions on onshore wind and which has committed to doubling onshore wind by 2030

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NPPF (December 2024)

- Para 160 – Very Special Circumstances in Green Belt "may include the wider environmental benefits associated with increased production of energy from renewable sources"
- Para 161 – planning system "should support the transition to net zero by 2050" and should "support renewable and low carbon energy and associated infrastructure"
- Para 165 – plans should "help increase the use and supply of renewable and low carbon energy and heat" in a number of ways, including by providing a "positive strategy for energy from these sources" whilst ensuring "adverse impacts are addressed"

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NPPF (December 2024)

- Para 165 – plans should also "consider identifying suitable areas for renewable and low carbon energy sources, and supporting infrastructure, where this would help secure their development"
- Para 168: "When determining planning applications for all forms of renewable and low carbon energy developments and their associated infrastructure, local planning authorities should: a) not require applicants to demonstrate the overall need for renewable or low carbon energy, and give significant weight to the benefits associated with renewable and low carbon energy generation and the proposal's contribution to a net zero future; recognise that small-scale and community-led projects provide a valuable contribution to cutting greenhouse gas emissions; and in the case of applications for the repowering and life-extension of existing renewable sites, give significant weight to the benefits of utilising an established site"

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NPPF (December 2024)

- NPPF now more consistent with the National Policy Statements – note EN-3 says renewable projects above the NSIP threshold are "critical national priority" infrastructure and says that "national security, economic, commercial and net zero benefits" should generally outweigh any impacts
- Deleted part of footnote 63 which said "The availability of agricultural land used for food production should be considered, alongside the other policies in this Framework, when deciding what sites are most appropriate for development" – had been relied upon in refusing applications on basis of threat to food production, security and delivery (use of BMVL land still needs to be considered)
- De facto ban on onshore wind now ended
- Consultation draft was more ambitious - watering down, e.g. draft para 164 would have said LPAs should "support" applications

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Grid connections

- Major obstacle to the delivery of renewable projects (and many appeal decisions have recognised a viable and secured grid connection as a benefit of a scheme)
- Developers seeing delays to connect to the electricity grid – connection dates up to the late 2030s; issues with "zombie projects", i.e. stalled or speculative sites – proposals to force them out of the queue by reforming the first come first served system
- Clean Power 2030 Action Plan recognised that there is a "need to reform the grid connections process and reduce the queue to connect" – govt has now committed to a framework to prioritise projects needed for 2030 whilst maintaining a robust pipeline beyond 2030

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Longhedge Solar Farm

- Planning permission granted on appeal for a 49.9MW Solar Farm on a 94.24ha site in Nottinghamshire
- Insp said identified low level of less than substantial heritage harm was outweighed by the substantial public benefits which would flow from the generation of renewable energy
- Insp also concluded that the use of 30.2ha of best and most versatile agriculture land for renewable energy generation was justified
- Also concluded that the Appeal Scheme complied with both the sequential and exception tests regarding flood risk

Longhedge Solar Farm

- Insp found adverse landscape and visual impacts (which he noted were not permanent) but said the harm was outweighed by the many benefits
- Noted that the appeal scheme would result in "significant renewable energy generation that would cumulatively add substantially to meeting national targets" and said that this "weighs significantly in favour of the proposal”
- Characteristic of the pragmatic approach adopted by Inspectors in s78 appeals

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