



Francis Taylor Building

FTB Quarterly Environmental Law Update

15 October 2020



Francis Taylor Building

T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

FTB Quarterly Environmental Law Update - 15 October 2020

International Law Origins

and Scope of the Aarhus Convention

Gregory Jones QC
FRGS, LA (RTPI)



Francis Taylor Building

T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Why worry?....and out soon



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

International Covenant on Civil and Political Rights, adopted by the United Nations in 1966 and ratified by the United Kingdom in 1976. General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Declaration of the UN Conference on the Human Environment, which met at Stockholm from 5 to 16 June 1972 (the Stockholm Declaration).



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

The World Charter for Nature (the Charter for Nature) was adopted by the General Assembly of the UN on 28 October 1982. Sponsored General Assembly Resolution 37/7



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

On 7 and 8 December 1989 the First European Conference on Environment and Health (the European Conference) was held in Frankfurt.

In its final session, the European Conference adopted the European Charter on Environment and Health (the European Charter). Once finalised, the European Charter arguably “set the basis for international collaboration in environment and health”.



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

A year after the European Charter was adopted in Frankfurt, on 14 December 1990, the UN General Assembly resolved on the Need to Ensure a Healthy Environment for the Well-Being of Individuals.

The Rio Declaration on Environment and Development (the Rio Declaration) Rio Declaration on Environment and Development, *Report of the United Nations Conference on Environment and Development*, U.N. Doc.A/CONF.151/26/Rev.1 (1992).



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Rio continued

The Rio Declaration had set the stage to develop a more detailed regulatory regime giving effect to the broad principles established by that declaration.

In October 1995, at the Third Ministerial 'Environment for Europe' Conference held by the ECE Environment Ministers in Sofia, European nations endorsed a blueprint for what would become the Aarhus Convention.



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building



This paper and the Q&A session is intended for general discussion only. It is not intended to provide or act as a substitute for legal advice. The materials are not to be relied upon by any party. No representation or warranty is given as to the accuracy or correctness of same. No liability whatsoever (whether in contract, negligence, negligent misstatement or otherwise at all) is accepted arising out of reliance on these materials. Gregory is very happy to give advice upon formal instructions.

...rag or a rect...
...ate...ent...
...very happy to give

advice upon formal instructions.

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building




**KEEP
CALM
AND
THANKS
FOR
WATCHING**

keep-calm.net

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk

Environmental Quarterly seminar, 15 October 2020

Water quality update

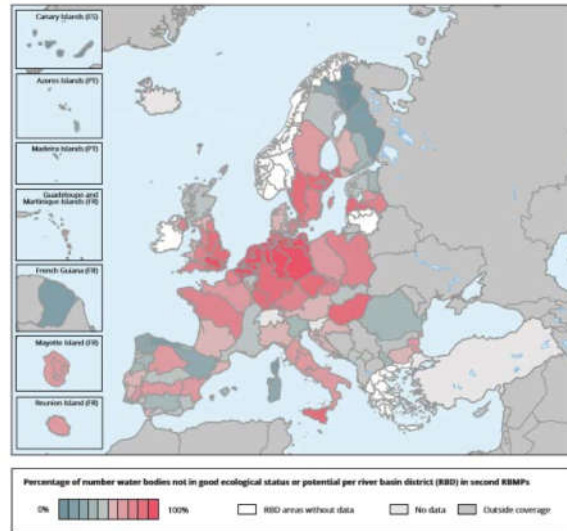


David Graham Barrister, Francis Taylor Building



State of surface water bodies

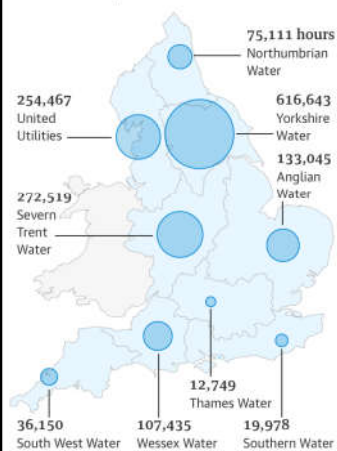
Map 2.1 Percentage of water bodies in Europe's RBDs that are not in good ecological status/potential: second RBMPs



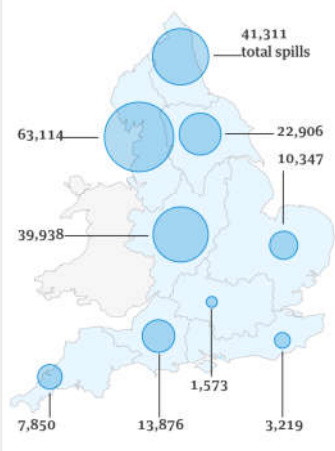
Source: European Environment Agency, [European Waters Assessment of Status and Pressures 2018](#), (2018), p 26.

State of surface water bodies

Water companies in England discharged raw sewage into rivers for more than 1.5m hours last year



Untreated sewage was released into English rivers more than 200,000 times in 2019



Guardian figures obtained from all nine English water companies

Water framework directive: purpose

Water Framework Directive 2000/60/EC, as amended

Article 1: purpose

The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

(a) prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;

[...]

(c) aims at enhanced protection and improvement of the aquatic environment, inter alia, through specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing-out of discharges, emissions and losses of the priority hazardous substances;

(d) ensures the progressive reduction of pollution of groundwater and prevents its further pollution...

Water framework directive: purpose

...and thereby contributes to:

- the provision of the sufficient supply of good quality surface water and groundwater as needed for sustainable, balanced and equitable water use,
- a significant reduction in pollution of groundwater,
- the protection of territorial and marine waters, and
- achieving the objectives of relevant international agreements, including those which aim to prevent and eliminate pollution of the marine environment, by Community action under Article 16(3) to cease or phase out discharges, emissions and losses of priority hazardous substances, with the ultimate aim of achieving concentrations in the marine environment near background values for naturally occurring substances and close to zero for man-made synthetic substances.

WFD: mechanisms

Article 5:

- Analysis of each river basin district's characteristics; economic analysis of water use and review of human impacts on the status of its surface water and groundwater: 2004, 2013 and every 6 years thereafter.

Article 8: monitoring programmes to common standards -Annex V.

Article 13:

- RBMPs: first ones in place by November 2009.
- Reviewed by Nov 2015 and every 6 years thereafter.

Article 11: 'programme of measures' for each RB with minimum contents. Inter alia:

- Prior regulation of point source discharges
- Prior authorisation of abstraction, impoundment, groundwater recharge
- "for diffuse sources liable to cause pollution, measures to prevent or control the input of pollutants" (art.11(3)(h))
- Measures to eliminate pollution by 'priority substances' identified under article 16 and Annex X.

WFD: targets and limit values

Article 10:

MS must ensure discharges into surface waters are controlled according to a 'combined approach' of:

- Emission controls based on best available techniques; or
- Relevant emission limit values; or
- Controls for diffuse sources including as appropriate best environmental practices set out in other directives. (Nitrates Directive, Urban WWT Directive; IPPC Directive etc)

Article 4(1)

- Must take all necessary measures to prevent deterioration of the status of all bodies of surface water (subject to paras (6), (7) – deterioration from 'high' to 'good' quality where the result of mods to the water body or 'new sustainable human development activities', of overriding public interest and/or and all practical steps taken to mitigate adverse impact; temporary deteriorations from or *force majeure* events accidents or natural droughts or floods that are not reasonably foreseeable)

WFD: targets and limit values

Article 4(1) ctd

- Must protect, enhance and restore all bodies of surface water with the aim of achieving 'good' surface water status by 2015, or up to two 60-year extensions to 2027.
--> Means ecological and chemical status both 'good' (art. 2(18)).

Annex V: criteria for surface water status categories:

High, good, moderate, 'poor or bad'.

Ecological status

- Biological (phytoplankton, other flora, microinvertebrates, fish)
- hydromorphological (continuity, hydrology, morphology)
- physio-chemical (thermal, oxygenation, salinity, nutrients, acidification, priority substances, other pollutants)

Chemical status

Environmental Quality Standards Directive 2008/105/EC (as amended by the Priority Substances Directive 2013/39/EU)

- Must protect and enhance artificial and heavily modified water bodies to 'good ecological potential' and good chemical status
- Must take the necessary measures to progressively reduce pollution by 'priority substances'.

WFD: targets and limit values

1.2. Normative definitions of ecological status classifications

Table 1.2. General definition for rivers, lakes, transitional waters and coastal waters

Element	High status	Good status	Moderate status
General	There are no, or only very minor, anthropogenic alterations to the values of the physico-chemical and hydromorphological quality elements for the surface water body type from those normally associated with that type under undisturbed conditions. The values of the biological quality elements for the surface water body reflect those normally associated with that type under undisturbed conditions, and show no, or only very minor, evidence of distortion. These are the type-specific conditions and communities.	The values of the biological quality elements for the surface water body type show low levels of distortion resulting from human activity, but deviate only slightly from those normally associated with the surface water body type under undisturbed conditions.	The values of the biological quality elements for the surface water body type deviate moderately from those normally associated with the surface water body type under undisturbed conditions. The values show moderate signs of distortion resulting from human activity and are significantly more disturbed than under conditions of good status.

Waters achieving a status below moderate shall be classified as poor or bad.

Waters showing evidence of major alterations to the values of the biological quality elements for the surface water body type and in which the relevant biological communities deviate substantially from those normally associated with the surface water body type under undisturbed conditions, shall be classified as poor.

Waters showing evidence of severe alterations to the values of the biological quality elements for the surface water body type and in which large portions of the relevant biological communities normally associated with the surface water body type under undisturbed conditions are absent, shall be classified as bad.

25 Year Plan

We will achieve clean and plentiful water by improving at least three quarters of our waters to be close to their natural state as soon as is practicable by:

- reducing the damaging abstraction of water from rivers and groundwater, ensuring that by 2021 the proportion of water bodies with enough water to support environmental standards increases from 82% to 90% for surface water bodies and from 72% to 77% for groundwater bodies
- reaching or exceeding objectives for rivers, lakes, coastal and ground waters that are specially protected, whether for biodiversity or drinking water as per our River Basin Management Plans
- supporting OFWAT’s ambitions on leakage, minimising the amount of water lost through leakage year on year, with water companies expected to reduce leakage by at least an average of 15% by 2025
- minimising by 2030 the harmful bacteria in our designated bathing waters and continuing to improve the cleanliness of our waters; we will make sure that potential bathers are warned of any short-term pollution risks

Environment Bill

1 Environmental targets

- (1) The Secretary of State may by regulations set long-term targets in respect of any matter which relates to—
- (a) the natural environment, or
 - (b) people’s enjoyment of the natural environment. 10
- (2) The Secretary of State must exercise the power in subsection (1) so as to set a long-term target in respect of at least one matter within each priority area.
- (3) The priority areas are—
- (a) air quality;
 - (b) water; 15
 - (c) biodiversity;
 - (d) resource efficiency and waste reduction.

Cl 6 Significant improvement test

Bill 9 58/1

Environment Bill
Part 1 – Environmental governance
Chapter 1 – Improving the natural environment

- (4) A target set under this section must specify—
- (a) a standard to be achieved, which must be capable of being objectively measured, and
 - (b) a date by which it is to be achieved.

Environment Bill

Water quality

10

81 Water quality: powers of Secretary of State

- (1) The Secretary of State may by regulations amend or modify any legislation to which this section applies for the purpose of—
- (a) making provision about the substances to be taken into account in assessing the chemical status of surface water or groundwater; 15
 - (b) specifying standards in relation to those substances or in relation to the chemical status of surface water or groundwater.
- (2) This section applies to —
- (a) the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (S.I. 2017/407); 20
 - (b) the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003 (S.I. 2003/3245);
 - (c) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 (S.I. 2004/99);
 - (d) the Groundwater Regulations (Northern Ireland) 2009 (S.R. (N.I.) 2009 No. 254); 25
 - (e) the Water Framework Directive (Classification, Priority Substances and Shellfish Waters) Regulations (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 351);
 - (f) the Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2017 (S.R. (N.I.) 2017 No. 81); 30
 - (g) any regulations modifying that legislation made under or by virtue of the European Union (Withdrawal) Act 2018.

Environment Bill

- (3) Regulations under subsection (1) may also, in connection with provision made under subsection (1)(a) or (b), amend or modify legislation to which this section applies so as to make provision— 35
- (a) setting objectives in relation to the substances about which the provision is made, or in relation to the chemical status of surface water or groundwater (including objectives to maintain specified standards or to achieve specified standards by specified dates); 40
 - (b) about how objectives set by the regulations are to be met, including provision requiring, or otherwise relating to, measures to be taken to achieve those objectives;
 - (c) requiring, or otherwise relating to, the monitoring or assessment of any matter relating to the chemical status of surface water or the chemical status of groundwater; 45

Policy papers

A Green Future: 25 Year Environment Plan (January 2018)

Environment Bill Policy Statement (30 January 2020)

Policy Paper: *Water factsheet* (10 March 2020)

Policy paper: *Environment Bill – environmental targets* (18 August 2020)

Sir James Bevan's speech



Questions

David Graham

david.graham@ftbchambers.co.uk



@semaphorist

This presentation and the slides are not to be reproduced, nor electronically uploaded, stored, transmitted or shared, without the prior permission of the author. All rights reserved. Any mistakes are the author's. This presentation was produced for general educational purposes only. It does not constitute legal advice and no responsibility is accepted for reliance on its contents.



Francis Taylor Building



Windfarms: Where are we now?

15th October 2020

Andrew Fraser-Urquhart QC

afu@ftbchambers.co.uk

Francis Taylor Building

T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Context

- Major progress in UK renewables development
- Onshore wind – policy regime altered June 2015, limited progress thereafter
- Offshore wind by NSIP regime
- PM’s Virtual Conference speech envisages major expansion of wind, focused on offshore



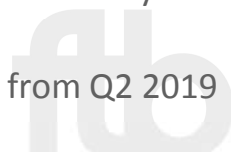
Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Context – current renewable status

- Wind energy already very significant part of UK energy mix – Q2 2020 44.6% of electricity generation
- 29.2% of renewable capacity is onshore, 23.0% is offshore
- Progress from early 2010s – UK Renewable Roadmap (July 2011) foresaw “around 29GW in operation” by 2020; actual figure Q2 2020 48.5GW
- Offshore increasing quickly -21% increase from Q2 2019



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Policy regime (England) – Onshore wind

- Overall framework - Climate Change Act 2008
- Still extant BEIS paper 22/1/13- “Onshore Wind: part of the UK’s energy mix” – wind “a key component”
- Planning – above 50MW – NSIP regime
- NPPF and NPPG for smaller schemes



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

NPPF – Local Plans (para 151)

- positive strategy that maximises whilst addressing adverse impacts (incl cumulative impacts)
- Consider identifying suitable areas
- Consider how developments can secure energy from renewable sources



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

NPPF – Decision-making (para 154)

- No need for applicants to demonstrate overall need for renewables (but NB no ref to weight) and recognise value of small scale projects
- Approve if impacts are (or can be made) acceptable
- Footnote adds local opinion clause for onshore wind



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

NPPG

- Repeats local opinion clause
- Sets out range of effects to consider with detailed guidance on how to be assessed
- Notes mandatory pre-application consultation requirements



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



The balance - Need

- No specific targets
- Large increases already seen -vs- still unsatisfied demand
- NPPF no need to demonstrate need
- NPSs “may be” material consideration – urgent need
- But weight – implicitly acknowledged by NPPG with ref to “considering the energy contribution”



The balance – Adverse impacts

- Need only be “*acceptable*” or made so
- Landscape and visual – “*significant or defining*”; “*a feature in particular views (or sequences in views)*”
- Cumulative impacts
- Fall-over distance, power lines, air safety and radar
- Highways and shadow flicker
- Ecology

The balance – adverse effects

- Heritage – importance of setting (see *Barnwell Manor*)



The local opinion clause NPPG fn 49 and NPPG

- Had chilling effect after 2015 - WMS “final say”
- In an area identified as suitable for wind energy in dev plan; and
- *“following consultation, it can be demonstrated that the planning impacts identified by the affected local community have been fully addressed and the proposal has their backing”* (NB NPPG adds “therefore”
- NPPG – whether has backing is matter for LPA decision



Francis Taylor Building

A total roadblock?

- Local Plan policy – matter for normal local plan process
- Local approval - Matter for LPA planning judgement
- NPPG – planning effects fully addressed “**therefore** the proposal has their backing”
- Has to be addressed as matter of co-valence... who has to agree
- Primacy of development plan – this is material consideration only

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

NSIP - offshore

- Relatively old policy guidance
- Technical issues – siting, transmission, efficiency of turbines, sensitivity
- Different environmental issues – large arrays
- Onshore infrastructure

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

NSIP - onshore

- Very large windfarms – consequent effects
- Full benefit of NPS – both need and expectation of effects
- Local opinion clause in NPPF/NPPG only...
- Front-loaded consultation may assist with dealing with local opinion



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Andrew Fraser-Urquhart QC
afu@ftbchambers.co.uk



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Disclaimer

The oral presentation including answers given in any question and answer session (“the presentation”) and this accompanying paper are intended for general purposes only and should not be viewed as a comprehensive summary of the subject matters covered. Nothing said in the presentation or contained in this paper constitutes legal or other professional advice and no warranty is given nor liability accepted for the contents of the presentation or the accompanying paper. Andrew Fraser-Urquhart QC and Francis Taylor Building will not accept responsibility for any loss suffered as a consequence of reliance on information contained in the presentation or paper. We are happy to provide specific legal advice by way of formal instructions.



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

FTB Quarterly Environmental Law Update - 15 October 2020

Overview of some significant developments

Ned Westaway



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Turbulence



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Route map

1. Climate change
2. The Defra bills
3. Planning and EIA



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Climate change

R (Plan B Earth) v SST [2020] EWCA Civ 214; [2020] PTSR 1446



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Climate change

R (Plan B Earth) v SST [2020] EWCA Civ 214; [2020] PTSR 1446

R (Friends of the Earth Ltd) v Heathrow Airport Ltd, heard in Supreme Court (Lord Reed, Lord Hodge, Lady Black, Lord Sales, Lord Leggatt)
7-8 October 2020



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Climate change

R (Plan B Earth) v SST [2020] EWCA Civ 214; [2020] PTSR 1446

R (Friends of the Earth Ltd) v Heathrow Airport Ltd, heard in Supreme Court (Lord Reed, Lord Hodge, Lady Black, Lord Sales, Lord Leggatt)
7-8 October 2020

Questions:

- Basis of Government's decision
- Is Paris "so obviously material" that must be taken into account
- If so, how



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Climate change

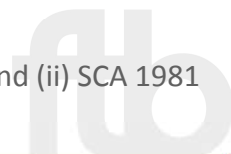
R (Plan B Earth) v SST [2020] EWCA Civ 214; [2020] PTSR 1446

R (Friends of the Earth Ltd) v Heathrow Airport Ltd, heard in Supreme Court (Lord Reed, Lord Hodge, Lady Black, Lord Sales, Lord Leggatt)
7-8 October 2020

Questions:

- Basis of Government's decision
- Is Paris "so obviously material" that must be taken into account
- If so, how

SC also likely to address (i) precautionary principle and (ii) SCA 1981 s.31(2A)



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Climate change (cont.)

R (ClientEarth) v SSBEIS [2020] EWHC 1303 (Admin) 1446

To be heard on appeal 17-18 November 2020



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Climate change (cont.)

R (ClientEarth) v SSBEIS [2020] EWHC 1303 (Admin) 1446

To be heard on appeal 17-18 November 2020

Cf. *R (Vince and others) v SSBEIS* CO/1832/2020

Concession (?) on 25 September 2020 that energy NPSs would be reviewed (but not suspended under PA 2008 s.11)



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Climate change (cont.)

R (ClientEarth) v SSBEIS [2020] EWHC 1303 (Admin) 1446

To be heard on appeal 17-18 November 2020

Cf. *R (Vince and others) v SSBEIS* CO/1832/2020

Concession (?) on 25 September 2020 that energy NPSs would be reviewed (but not suspended under PA 2008 s.11)

See also

R (Transport Action Network) v SST – granted permission in August 2020

R (Packham) v SST [2020] EWCA Civ 1004 – refused permission in July 2020

Francis Taylor Building

T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

The Defra bills

Agriculture Bill

16 January 2020: introduced into HC

12 October 2020: HL amendments considered in HC on 12 October 2020, disagreed to and Bill returned to HL

Francis Taylor Building

T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

The Defra bills

Agriculture Bill

16 January 2020: introduced into HC

12 October 2020: HL amendments considered in HC on 12 October 2020, disagreed to and Bill returned to HL

Fisheries Bill

29 January 2020: introduced into HL

13 October 2020: report stage and third reading in HC, will now be returned to HL

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

The Defra bills (cont.)

The Environment Bill?

30 January 2020: introduced into HC

2nd reading on 26 February 2020 and HC Committee hearings began on 10 March 2020 but adjourned on 19 March

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

The Defra bills (cont.)

The Environment Bill?

30 January 2020: introduced into HC

2nd reading on 26 February 2020 and HC Committee hearings began on 10 March 2020 but adjourned on 19 March

Yet to come back to Committee

28 September 2020: Standing Order No.87A(7), will return to HC on 1 December 2020

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

The Defra bills (cont.)

Issues include

- Non-regression
- Targets

Cf. 19 August 2020 policy paper *Environment Bill - environmental targets*

- Office for Environmental Protection

George Eustice statement to EFRA Cttee 22 September 2020 – “embryonic form”

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Planning and EIA

Planning for the future, DHCLG consultation closes on 29 October 2020



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Planning and EIA

Planning for the future, DHCLG consultation closes on 29 October 2020

Interim measures:

- Minor changes re Covid
- 1 September 2020 three SIs entered into force:

The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) and (No.3) Orders 2020

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Planning and EIA

Planning for the future, DHCLG consultation closes on 29 October 2020

Interim measures:

- Minor changes re Covid
- 1 September 2020 three SIs entered into force:

The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) and (No.3) Orders 2020

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

R (Rights: Community: Action) v SSHCLG CO/3024/2020

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Planning and EIA (cont.)

Consultation on EIA and SEA?

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Planning and EIA (cont.)

Consultation on EIA and SEA?

Meanwhile, litigation continues:

R (Swire) v SSHCLG [2020] EWHC 1298 (Admin) – screening (insufficient evidence (BSE carcasses))

Gathercole v Suffolk CC [2020] EWCA Civ 1179 (alternative sites)

Girling v East Suffolk Council [2020] EWHC 2579 (Admin) (up to date environmental information)

London Historic Parks and Gardens Trust v SSHCLG [2020] EWHC 2580 (Admin) (separation of functions)

Francis Taylor Building

T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

And finally ...

The European Union (Withdrawal) Act 2018 (Relevant Court) (Retained EU Case Law) Regulations 2020

Reg.3 extends definition of relevant court able to depart from retained EU case law to Court of Appeal level

Francis Taylor Building

T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

And finally ...

The European Union (Withdrawal) Act 2018 (Relevant Court) (Retained EU Case Law) Regulations 2020

Reg.3 extends definition of relevant court able to depart from retained EU case law to Court of Appeal level

Case C-567/10 Inter-Environnement Bruxelles ASBL



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Thanks for watching!



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Disclaimer

The oral presentation including answers given in any question and answer session (“the presentation”) and this accompanying paper are intended for general purposes only and should not be viewed as a comprehensive summary of the subject matters covered. Nothing said in the presentation or contained in this paper constitutes legal or other professional advice and no warranty is given nor liability accepted for the contents of the presentation or the accompanying paper. Ned Westaway and Francis Taylor Building will not accept responsibility for any loss suffered as a consequence of reliance on information contained in the presentation or paper. We are happy to provide specific legal advice by way of formal instructions.

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Hearing environmental and planning cases remotely in the Coronavirus pandemic

Morag Ellis QC
Esther Drabkin-Reiter

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Overview

- How will the case or appeal be heard?
- Experience and advice based on hearing cases remotely
- Dos and don'ts



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

How will the case or appeal be heard?

- Variety of approaches being taken by courts / PINS
 - Adjournment
 - In person but distanced as much as possible
 - By telephone
 - Using remote video conferencing software, e.g. Skype, Microsoft Teams, HMCTS own cloud platform
 - In some cases PINS has adopted or considered a “blended approach” where participants cannot access remote software



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Experience of and advice on remote hearings

Matters to consider:

- Hearing / inquiry team – assembled or remote
- Venue
- Document sharing and management
- Timetabling and time management issues



Francis Taylor Building

Experience of and advice on remote hearings

The hearing / inquiry team

Having the team assembled

- Need for space for social distancing
- Possible technical difficulties with feedback where team members are in the same room
- How to ensure witness handling appears fair

Keeping the team remote

- How do you enable instantaneous communication?
- May be more convenient if team members live in disparate areas
- Less of a team feeling at inquiry



Francis Taylor Building

Experience of and advice on remote hearings

The venue – factors to consider

- If accommodating the team, is there sufficient space?
- Background noise
- Internet connection
- Backdrop to video
- Microphone and video quality
- Multiple screens or space for hard copy papers
- If at home – possible interruption from other members of the household? Children, pets?

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Experience of and advice on remote hearings

Document sharing and management

- Accessibility of documents for third parties
- How to put new documents in and share these between parties and the judge / inspector
- Creation of tabbed, numbered electronic bundles AND provision of hard copies?
- Submission of claims electronically – both more and less time-consuming
- Screen sharing can be very useful but need to be confident with the controls
- Informal inter-party communications?

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Timetable issues

Virtual hearings / inquiries take longer

- Need for more frequent breaks
- Witness handling less immediate
- Time needed to access documents on screen

Need to be both succinct and realistic in time estimates

Site visit:

- Inspector may have to travel specially for this – consider in timetable



Do:

- Keep an eye on the expressions / body language of the tribunal even if you can't see their pen
- Practice with the software in advance if you can
- Build thinking about procedures into preparation time
- Be aware of your own health and comfort

Don't:

- Obviously refer to things the inspector / judge can't see – e.g. Google maps or documents not before the tribunal
- Forget you are on screen
- Be afraid to ask for adjustments to the procedure
- Panic! Everyone is getting used to the new normal



Francis Taylor Building

Hearing environmental and planning cases remotely in the Coronavirus pandemic

Morag Ellis QC
Esther Drabkin-Reiter

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Disclaimer

The oral presentation including answers given in any question and answer session (“the presentation”) and this accompanying paper are intended for general purposes only and should not be viewed as a comprehensive summary of the subject matters covered. Nothing said in the presentation or contained in this paper constitutes legal or other professional advice and no warranty is given nor liability accepted for the contents of the presentation or the accompanying paper. Morag Ellis QC, Esther Drabkin-Reiter and Francis Taylor Building will not accept responsibility for any loss suffered as a consequence of reliance on information contained in the presentation or paper. We are happy to provide specific legal advice by way of formal instructions.

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

FTB Quarterly Environmental Law Update

15 October 2020



Francis Taylor Building

T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk