

IEMA Legal Update

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Summary of topics

- New regulatory agenda
- Waste and waste duty of care
- Regulatory appeals
- The Omnibus Packages
- Greenwashing update
- PFAS
- Planning and Infrastructure Bill
- Case law update

New Regulatory Agenda (1)

31 March 2025 – [New approach to ensure regulators and regulation support growth \(HTML\) – GOV.UK](#)

- Regulation can be too complex and duplicative, stifling progress and innovation
- Businesses suffer from a lack of certainty and predictability from regulators and regulation
- Our regulatory approach has become too risk averse
- Overhaul system to ensure regulatory system –
 - Support growth
 - Is targeted and proportionate
 - Is transparent and predictable
 - Adapts to keep pace with innovation
- 3 Actions –
 - Tackle complexity/burden of regulation
 - Reduce uncertainty across our regulatory system
 - Challenge and shift excessive risk aversion in the system
- 6 key pledges from EA – AI tool for digital services, faster systems etc...
- 5 key pledges from NE – greater self regulation, streamlined flexible service etc.

New Regulatory Agenda (2)

- 2 April 2025 Corry Review - [Delivering economic growth and nature recovery: an independent review of Defra's regulatory landscape - GOV.UK](#) – Review of Defra regulatory landscape – both regulators and regulation – 5 strategic themes and 29 recommendations
- Focus on outcomes, scale and proportionality, with constrained discretion –
 - macro as opposed to micro, pre-cautionary principle means too risk averse
 - 10 recommendations e.g. – new set of outcomes for regulators to follow linked to EIP, new Strategic Policy Statement for EA and NE stating Govt priorities, consolidate statutory duties, principles and codes to core set
- Untangle and tidy ‘green tape’ to ensure process-light and adaptive regulation – 3,000+ regulations and guidance, with statute book inherited from EU – risk averse application in comparison to others – no bonfire, instead streamline and modernise – 4 recommendations – e.g. rolling program of review Water FD, Conservation Habitats and Species Regs’17, EPR 2016
- Deploy a fair and consistent ‘thin green line’ on regulatory compliance, with trusted partners earning autonomy – 6 recommendations – sharper approach, more self regulation for the ‘good guys’ – use of MoUs and ‘class licences’, guidance re-write, data focused approach, review of enforcement and sanctions, cost/polluter pays review re chargeable services and cost recovery
- Unlock the flow of private sector green finance to support nature restoration whilst better targeting public sector finance
- Shift regulators to be more digital, more real-time and more innovative with partners

Questions

Qst 1 – Do you think the new regulatory agenda will –

- a. Improve environmental protection
- b. Reduce environmental protection
- c. Don't know

Qst 2 – Are you confident that the Government will be able to deliver the stated changes within this parliamentary cycle (4yrs-ish)?

- a. Yes
- b. No
- c. Don't know

Waste and Waste Duty of Care

- Waste is – *any substance or object that the holder discards, intends to discard or is required to discard* – objective, not subjective assessment – still reliant on the EU Waste Framework Definition and related case law – very complicated
 - A waste holder is defined as either -
 - Producer of the waste
 - Person in possession of the waste
 - Waste producer
 - Whose activities produce waste (the original producer)
 - Who carries out preprocessing, mixing or other operations resulting in a change in the nature or composition of the waste
- Very common question – is it waste, or when does it cease to be waste – either never waste in the first place as not ‘discarded’, or it’s a byproduct, or it’s been recovered – end of waste criteria e.g. metal or glass, or waste quality protocol – under review by EA – replaced with paid for resource frameworks - £40k/18 months, EA end of waste service/panel £125ph.

Waste and WDC (2)

- WDC s34 EPA 1990 – duty of care imposed on anyone handling controlled waste - producers, carriers, importers, those storing/treating waste, disposers and dealers or brokers to take all reasonable steps to ensure that the waste –
 - Is not disposed of unlawfully, or treated/kept/disposed of in a way that causes pollution or harm
 - Does not escape from a person's control
 - Is only transferred to an authorised person
 - On transfer is accompanied by a written description – WTNs/CNs
- *NB - Code of Practice*
- Top tips
 - Duty puts obligation on you – it's your waste so you decide. Doesn't matter what others tell you - satisfy yourself
 - Risk based approach
 - Do this at the outset
 - Keep decision making records

Regulatory Appeals

- *R (Suez Recycling and Recovery UK Ltd) v Environment Agency [2023]*
- EA failed to comply with the Regulators' Code in not considering whether to provide a proper appeal mechanism for challenging Compliance Assessment Reports - court determined were 'regulatory decisions'
- Lead to introduction of two-stage appeals process -
 - **Stage 1:** Pre-regulatory appeal decision: within 14 calendar days of being notified of a regulatory decision or not acting in accordance with the 2014 Code, the regulated entity should contact (either in writing or verbally) the individual within the EA who made the decision or took the action.
 - **Stage 2:** Regulatory appeal: the dissatisfied regulated entity will have 28 calendar days from the date of the Stage 1 pre-regulatory decision to request a regulatory appeal. The entity will need to: (a) explain why they believe either that the regulatory decision is wrong or how the EA has not acted in accordance with the 2014 Code; and (b) provide any information and/or evidence related to the appeal.
 - Both stages appeal considered by 'independent' person within EA
- CAR forms, decisions not to accept EUs, not enforcement notices...

Question

Qst 3 – Were you aware of the new regulatory appeal mechanism?

- a. Yes
- b. No

The Omnibus Packages...

- Aim - to address overlapping, unnecessary or disproportionate rules that are creating unnecessary burden
- Package 1 on sustainability –
 - CSRD/CSDDD – scope and dates
 - Dates
 - CSRD 5 Jan'23 – in scope companies report on range of sustainability matters – applied to first tranche of in scope companies from 1 Jan'24 and phased application thereafter – 2-year delays for second and third wave companies to 2028 and 2029
 - CSDDD 25 July'24 - sustainability due diligence duty on large EU companies and non-EU companies with significant EU activity to address specific adverse human rights and environmental impacts in their own operations, their subsidiaries and their chains of activity from 26 July'26 – transposition now 2027 – with revised compliance commencement date of July'28

Omnibus Packages (2)

- Scope
 - CSRD – Change in threshold criteria
 - EU - >1,000 Eees and Net TO >50,000,000E or BS 25,000,000E
 - Non-EU – Net TO 450,000,000E and large EU subsid that meets EU criteria, or EU branch with Net TO >50,000,000E
 - CSDDD – No change to threshold, but change to DD obligations –
 - cap on value chain info sought as part of risk mapping,
 - removal of indirect business partners from risk assessment and DD obligations,
 - no requirement to terminate contracts as last resort,
 - reduced frequency of periodic monitoring,
 - changes to climate transition plan requirements,
 - no cap on financial penalties,
 - removal of EU wide civil liability regime
- New German chancellor suggesting he will repeal German Supply Chain Law and push for complete withdrawal of CSDDD

Greenwashing Update

- Growing risk for organisations across sectors with the increasing disclosure of sustainability-related information, either as part of reporting obligations or volunteered in response to stakeholder interest in corporate environmental credentials. Information may be disclosed in a variety of formats e.g. company reports, website, ads, CRPs etc.
- The Digital Markets, Competition and Consumers Act 2024 (DMCCA) - into effect from 6 April 2025. Replaces the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277) (CPUT)
- Supported by Green Claims Code and CAP/BCAP Codes - ASA
- DMCCA – not greenwashing specific, but prohibits traders from engaging in a range of unfair commercial practices
- Applies to those in UK and outside UK if activities target UK consumers
- DMCCA prohibits -
 - Certain practices that are automatically unfair and are banned outright – e.g. falsely claiming environmental accreditation
 - Actions that mislead consumers and are likely to cause the average consumer to take a transactional decision they would not have taken otherwise e.g. false ecofriendly claims, or omissions re negative environmental impacts
 - Other practices that contravene requirements of professional diligence that are likely to cause the average consumer to take a transactional decision that they would not otherwise have made

Greenwashing Update (2)

- Enforced by CMA and TS, also used by consumers to leverage civil claims – TS via courts and direct via CMA –
 - require compensation of consumers/other remedial steps
 - fines of up to 10% of global turnover,
 - possible criminal offence too,
 - compliance undertakings e.g. Asda/George
- Current CMA investigation into green heating and insulation – future investigation of travel and transport sectors
- Impact of deregulation agenda?

Question

Qst 4 – Have you/your clients held off making legitimate green claims because of concerns about greenwashing accusations/action?

- a. Yes
- b. No
- c. Don't know

PFAS – the basics

- PFAS – generic term given to group of over 10,000 man made chemicals known for their persistence in the environment and potential health effects
- Made famous by the film Dark Waters, but also by some high-profile UK cases Bentham/fire fighting foams and other possible UK sites. Issues across EU
- Limited regulatory guidance/controls in the UK – DWI guidance [Poly and Perfluorinated Alkyl Substances \(PFAS\) – Drinking Water Inspectorate](#) based in WHO guidance
- In May'24 CL:AIRE published C4SL guidance relating to PFAS
- EA business plan includes a commitment to set standards and assessment levels for forever chemicals
- Still waiting for Government/HSE restriction dossier on wide dispersive uses of PFAS e.g. in cleaning agents and coatings to confirm position on regulating PFAS
- Defra International Environmental Protection report – [International environmental protection report – GOV.UK](#) notes
 - EU – Euro Chemicals Agency (ECHA) restriction proposal Nov'24
 - US – access to super fund for remedial costs and obligation to report PFAS use
- In the meantime ongoing investigations and concerns especially in the world of insurance concerning liability of insureds for historic PFAS contamination and related health impacts

Planning and Infrastructure Bill

- Bill first introduced 11 March'25 - Currently at committee stage in HoP
- Purpose to introduce “transformative reforms to get Britain building, tackle blockers and unleash billions in economic growth”
- Environmental aspects of the Bill - Pt 3 - Nature Restoration Fund and Environmental Delivery Plan
 - NRF – developers contributions through levy, used by NE/AN Other for EDPs
 - EDPs – strategic action to address impact development has on protected species/sites. If an EDP exists and a developer uses it, no longer needs own assessments, or project specific interventions for things covered by EDP
 - EDP - NE/AN Other to produce EDPs on one or more enviro effects of development in specific geographic area and will specify amount/type of development that can benefit from its cover. EDPs will have start/end dates. EDP will set out –
 - Feature seeking to protect
 - Impacts seeking to address e.g. types of development that can benefit
 - Measures to be taken
 - Amount payable
 - The obligations that don't apply to developer paying the levy
 - Monitoring

P&I Bill (2) – battle lines are drawn...

- Process for creation of EDPs - NE must notify SofS, consult and then made by SofS. 6-week window to challenge EDP, but no challenge of individual development. SofS applies overall improvement test - if the conservation measures *“are likely to be sufficient to outweigh the negative effect, caused by the environmental impact of development, on the conservation status of each identified environmental feature”*
- Controversial – OEP critical, NGOs critical e.g. –
 - “likely to be sufficient” based on assumption all measures fully implemented - very weak, subjective and lowering of standard
 - Proposed Govt amendment said to make it even weaker – “by the EDP end date, the conservation measures are likely to be sufficient to outweigh the negative effect of the EDP development” - 10yr time cap so pushes back...
 - Mitigation hierarchy side stepped – can move straight to offsite compensation without the need to demonstrate attempts to avoid/mitigate.
- Wild Justice/Landmark Chambers – Pre Action Protocol Letter to DEFRA May’25 & EU
- Government keen to push through before summer recess 25 July’25

Case law – Canals, fish and chickens

Manchester Ship Canal v United Utilities (No. 2) [2024] UKSC 22 – SC held MSCC can bring a nuisance claim against UU for pollution of the ship canal as a result of discharges from storm overflows. Case has a long history. Essentially UU saying MSCC barred from bringing a claim due to established legal principles including the 2003 HofLs Marcic case – no claim against TW for sewer flooding due to unintended releases due to flooding/lack of capacity. SC disagreed and said no such defence here opening up the prospect of nuisance claims against water companies/others for their discharges into water course – e.g. Windermere...

SofS DEFRA v Pickering Fishery Association, R (On the Application Of) & Anor [2025] EWCA Civ 378 – appeal by SofS against High Ct decision re Upper Costa Beck/Yorks – suffered pollution from a variety of sources causing decline in fish populations. Water body falls under the Humber River Basin Management Plan approved by SofS 2022. RBMP challenged on number of grounds connected to failure to provide measures to ensure water body achieves Environmental Objectives. SofS saying measures in RBMP can be generic – those challenging say needs to be specific – court agreed. Potential impact for other RBMPs and activities in those areas.

The National Farmers' Union v Herefordshire Council & Ors [2025] EWHC 536 (Admin) – NFU challenge of Herefordshire Minerals and Waste Local Plan Herefordshire – part of the plan related to agricultural waste management including waste management method statements and at least nutrient neutrality if within River Wye/Club SAC – aim was to improve water quality – is chicken manure waste? NFU said falls under exclusion in WFD and doesn't cause harm as subject to certain other controls – Farming Rules for Water – therefore not waste and so Plan went too far. Court disagreed – evidence of harm showed that the Rules had not worked therefore exemption does not apply. Extent to which can rely on other regulatory regimes if not waste to manage risks. Also wider implications for Agri sector.

Reflections

- Politics
- Water
- EU hangover and addressing issues
- Economic growth
- Difficult stuff and tough decisions

