COUNTRY COMPARATIVE GUIDES 2021

The Legal 500 Country Comparative Guides

United Kingdom

ENVIRONMENT

Contributing firm

Burges Salmon

Michael Barlow

| Michael.barlow@burges-salmon.com

Stephen Lavington

| Stephen.lavington@burges-salmon.com

This country-specific Q&A provides an overview of environment laws and regulations applicable in United Kingdom.

For a full list of jurisdictional Q&As visit **legal500.com/guides**

UNITED KINGDOM
ENVIRONMENT

1. What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?

In the UK the environment is a “devolved matter”. This means that environmental laws for England are made by the UK Parliament, environmental laws for Scotland are made by the Scottish Parliament, environmental laws for Wales are made by the National Assembly for Wales and environmental laws for Northern Ireland are made by the Northern Ireland Assembly.

The main Acts of Parliament creating environmental frameworks are the Environmental Protection Act 1990 (“EPA 1990”), the Water Resources Act 1991 (“WRA 1991”), the Environment Act 1995 (“EA 1995”) and the Pollution Prevention and Control Act 1999 (“PPCA 1999”). The EPA 1990 establishes the frameworks for waste regulation, the management of contaminated land (inserted by the EA 1995), statutory nuisances and genetically modified organisms. The WRA 1991 establishes the frameworks for the regulation of water pollution and the management of water resources (including the licensing of water abstractions). The EA 1995 established the principal environmental regulators in England, Wales and Scotland. The PPCA 1999 contains wide powers for government ministers to make environmental regulations.

Most environmental legislation across the UK is now contained in regulations, such as the Environmental Permitting (England and Wales) Regulations 2016 (“EPR”), which contain the framework for regulating activities requiring an environmental permit in England and Wales. Many regulations implement the requirements of EU directives deriving from the UK’s former membership of the EU.

2. Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

England, Wales, Scotland and Northern Ireland each has its own primary environmental regulator – the Environment Agency, Natural Resources Wales, the Scottish Environment Protection Agency and the Northern Ireland Environment Agency respectively. Their principal responsibilities are the regulation of the more polluting industrial activities requiring an environmental permit and the management of water resources. Local authorities also have extensive responsibilities as environmental regulators, including the regulation of the less polluting industrial activities requiring an environmental permit, the management of contaminated land and the regulation of statutory nuisances.

Water companies regulate discharges of trade effluent into sewers under the Water Industry Act 1991 (WIA 1991).

Most breaches of environmental law in the UK are criminal offences and all environmental regulators have powers to investigate breaches and, where necessary and appropriate, take enforcement action. These powers include powers to enter premises, require the production of information, issue enforcement notices and, ultimately, prosecute offences in the criminal courts.

3. What is the framework for the environmental permitting regime in your jurisdiction?

The EPR provide for an integrated environmental permitting regime in England and Wales for activities resulting in discharges to land, air or water. Environmental permits are required for many industrial activities and most waste and water discharge activities. Lower-risk activities can be undertaken by registering an exemption. The EPR set out which activities require an environmental permit and which can be undertaken under an exemption.

Other activities requiring a permit, licence or consent include the abstraction or impoundment of water (which requires a licence under the WRA 1991) and the discharge of trade effluent to sewers (which requires a

consent under the WIA 1991).

4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

The EPR allow for most types of environmental permit to be transferred from one operator to another by permission of the regulator. Before approving any transfer, the regulator must be satisfied that the transferee is the person who will operate the facility and that it will operate the facility competently and in accordance with the conditions of the permit. Water abstraction licences can also be transferred under the WRA 1991.

Some permissions relating to water discharge, groundwater and flood risk activities cannot be transferred, in which case the outgoing operator needs to surrender its environmental permit and the incoming operator needs to make an application for a new one. Consents for discharging trade effluent into sewers also cannot be transferred, so an incoming operator needs to apply for a new consent.

5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

The EPR provide a right of appeal to an applicant against a refusal to grant an environmental permit. Any appeal is made to the Planning Inspectorate. Normally appeals are decided by a Planning Inspector, although the Secretary of State may take over a case if it is particularly important or controversial. Appeals may be dealt with by way of written representations, at a hearing or at a public inquiry.

Third parties cannot appeal to the Planning Inspectorate against a decision to grant an environmental permit to someone else, although it may be possible for a third party directly affected by such a decision to challenge it in the High Court by way of judicial review.

6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs and to what extent can EIAs be challenged?

EIAs are required for certain developments in all parts of the UK. In England, for example, for development requiring planning permission under the Town and Country Planning Act 1990 ("TCPA") the main EIA regime is implemented through the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ("EIA Regulations").

Schedule 1 of the EIA Regulations lists developments where an EIA is mandatory; Schedule 2 lists developments where an EIA may be required following a screening process.

The key stages of the EIA process are: screening (if a developer is unsure the development requiresan EIA); scoping (determination of what issues need to be considered in the environmental statement); preparation and submission of the environmental statement; consultation with relevant bodies, the public and third parties; and the decision on whether to grant planning permission.

EIA decisions made as part of the planning process can be challenged using procedures in the EIA Regulations, under the statutory appeal process under Section 288 of the Town and Country Planning Act 1990, or by way of judicial review. The appropriate route of challenge will depend on the reason for challenge and who makes the challenge.

Other types of development requiring permission under legislation other than the Town and Country Planning Act 1990 may also require an EIA, for example, nationally significant infrastructure projects requiring development consent under the Planning Act 2008.

The government has proposed a consultation on reforming the EIA following the Brexit transition period, to "front-load ecological considerations in the planning development process".

7. What is the framework for determining and allocating liability for contamination of soil and groundwater in your jurisdiction, and what are the applicable regulatory regimes?

Most contaminated sites in the UK are cleaned up ("remediated") through the planning system when they are redeveloped. Local planning authorities will normally impose conditions on any planning permission for the redevelopment of brownfield land requiring the land to be investigated and, if necessary, remediated. The developer is responsible for the remediation, regardless of who caused the contamination originally, unless it can agree contractually with another person (such as a former owner) that the other person will bear the

responsibility.

Significantly contaminated sites that are unlikely to be redeveloped in the foreseeable future can be remediated under the contaminated land regime contained in Part 2A of the EPA 1990. Local authorities are responsible for identifying such sites and the "appropriate persons" liable for their remediation. Any persons who have caused or knowingly permitted contamination (known as "Class A persons") are primarily liable for remediating it, but where no such persons can be found, then the current owners or occupiers (known as "Class B" persons") are liable for the remediation. There is a complex set of tests whereby Class A persons may be excluded from liability, for example, if they sell the land to another Class A person with sufficient information to make the new owner aware of the contamination.

8. Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive obligation to provide any investigative reports to regulatory authorities?

Most contaminated sites in the UK are cleaned up ("remediated") through the planning system when they are redeveloped. Local planning authorities will normally impose conditions on any planning permission for the redevelopment of brownfield land requiring the land to be investigated and, if necessary, remediated. The developer is responsible for the remediation, regardless of who caused the contamination originally, unless it can agree contractually with another person (such as a former owner) that the other person will bear the responsibility.

Significantly contaminated sites that are unlikely to be redeveloped in the foreseeable future can be remediated under the contaminated land regime contained in Part 2A of the EPA 1990. Local authorities are responsible for identifying such sites and the "appropriate persons" liable for their remediation. Any persons who have caused or knowingly permitted contamination (known as "Class A persons") are primarily liable for remediating it, but where no such persons can be found, then the current owners or occupiers (known as "Class B" persons") are liable for the remediation. There is complex set of tests whereby Class A persons may be excluded from liability, for example, if they sell the land to another Class A person with sufficient information to make the new owner aware of the contamination.

9. If land is found to be contaminated, or pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?

If a landowner discovers that its land is contaminated or that pollutants are migrating to neighbouring land, there is no duty to report this to a regulator, unless the site is subject to an environmental permit and the permit's conditions require pollution incidents to be reported. As mentioned above, developers may be required to provide local planning authorities with copies of site investigation reports.

10. Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?

There is no general rule of law that gives an owner of land a right of action against a previous owner in such circumstances. Any such right would have to be contained in a contract between the current and the previous owner, but that would be unusual. An owner of land might also have a claim in misrepresentation if a previous owner had misrepresented the condition of the land to it, but most sellers of land are careful not to make any representations about the condition of the land and to require buyers to rely on their own investigations.

11. What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?

The EPR are the key instrument in the waste regulatory regime. The EPR require those carrying out the disposal, recovery or recycling of waste (referred to as a "waste operation") to obtain an environmental permit (or register an exemption in the case of certain low-risk waste operations).

Businesses and households that produce waste are required to comply with various other statutory requirements depending on the source and nature of that waste. Anyone who produces or handles waste has an overarching statutory duty of care under the EPA 1990 to ensure the safe management of that waste to protect human health and the environment (see below). The legislation is supported by a statutory Code of Practice which provides guidance on how the duty can

be complied with in different circumstances.

12. Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?

Section 34 of the EPA 1990 places a duty of care on commercial and industrial waste producers requiring them to take all reasonable steps to ensure that when waste is transferred to another waste holder it is managed correctly throughout its complete journey to disposal or recovery. The accompanying Code of Practice advises businesses to:

(a) check the next waste holder is authorised to take the waste;

(b) ask the next waste holder where it is going to take the waste and check that the intended destination is authorised to accept that waste; and

(c) carry out more detailed checks if the business suspects that the waste is not being handled in line with the duty of care.

Domestic (household) waste producers are only required to take all reasonable measures available to them to ensure that their waste is transferred only to an authorised person.

No liability exists for either commercial/industrial or domestic waste producers if the duty of care is satisfied.

13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?

Certain producers have statutory obligations requiring them to contribute to the cost of managing products at the end of their product lives.

(a) Producers of packaging are required to pay a proportion of the cost of recovering and recycling their packaging under the Producer Responsibility Obligations (Packaging Waste) Regulations 2007.

(b) Producers of electrical and electronic equipment are required either to offer a free take back service for like-for-like products or pay to join a distributor takeback scheme and direct end users to take waste items to their local authority recycling centres, under the Waste Electrical and Electronic Equipment Regulations 2013.

(c) Producers of batteries are required to pay for waste battery collection, treatment, recycling and disposal under the Waste Batteries and Accumulators Regulations 2009. The mechanism for this depends on whether the batteries in question are portable, vehicle/automotive, or industrial. Portable battery producers can join a battery compliance scheme to take on these duties. Vehicle/automotive and industrial battery producers are required to take back waste batteries free of charge from users.

(d) Producers of vehicles are required to offer free take-back of their brands when they become End of Life Vehicles (“ELVs”) and must meet recovery and recycling targets in the management of those ELVs, under the End-of-life Vehicles (Producer Responsibility) Regulations 2005.

The government has decided to introduce an ‘extended producer responsibility’ regime for packaging waste in 2023. The government’s proposals for the new regime include obligating producers to pay the full net cost recovery of their packaging, adopting a single point of compliance for packaging waste recovery targets across the packaging chain, and introducing fees and incentives to encourage producers to design and use packaging that is recyclable.

14. What are the duties of owners/occupiers of premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?

The Control of Asbestos Regulations 2012 (“CAR 2012”) impose a duty to manage asbestos within “non-domestic premises” on the “dutyholder”. The definition of a dutyholder is wide and includes every person who has an obligation for the maintenance or repair of the premises. This can include owners, landlords, tenants, licensees and, potentially, managing agents of non-domestic premises. Employers are also required to manage asbestos in workplaces under the CAR 2012.

The duty to manage asbestos involves determining whether asbestos is present in a building or is likely to be present and managing any asbestos that is likely to be present by assessing the risk and having an action plan in place for managing that risk. Management includes regular monitoring, record keeping and, if necessary, the encapsulation or removal of asbestos. Details of the location and condition of asbestos should also be provided to anyone likely to disturb it and to the

emergency services.

Failure to comply with the requirements of the CAR 2012 is a criminal offence.

15. To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction? Provide a short, high-level summary of the relevant provisions.

There is no single set of environmental regulations applying to products, but disparate pieces of legislation touch on the subject. The EU's REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) Regulation 1907/2006 ("EU REACH Regulation 2006") applies to manufacturers of chemicals and manufacturers of products containing chemicals. Those chemicals must be registered with the European Chemicals Agency (and the UK's Health and Safety Executive ("HSE") after Brexit). Hazardous chemicals may be subject of authorisation and/or restriction, which may mean in practice that they cannot be used.

From 1 January 2021, following the end of the Brexit transition period, EU REACH will be replaced with 'UK REACH', an independent chemicals regulation in the British Isles. UK REACH is based on the EU REACH regime and is implemented through a series of regulations which amend the EU REACH Regulation 2006, other retained EU legislation and UK legislation. As mentioned above, the roles and responsibilities of the European Chemicals Agency will be taken on by the UK's HSE.

The EU's CLP (Classification, Labelling and Packaging) Regulation 1272/2008 ("EU CLP Regulation 2008") applies to suppliers of substances and mixtures. Certain substances and mixtures must be adequately and appropriately labelled in accordance with a set of common rules and standards, designed to protect human health and the environment.

From 1 January 2021, a new 'GB CLP' regime will replace (and largely mirror) its EU counterpart, with the UK's HSE acting as the governing authority. The government has introduced regulations that amend the EU CLP Regulation 2008, which ensures that the existing harmonised classification and labelling requirements listed in the EU CLP Regulation 2008 will be included in the UK mandatory classification and labelling list, and will therefore continue to bind UK-based suppliers. However, the UK's approach may diverge from the EU CLP regime in the future.

16. What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing requirements) in your jurisdiction?

The main energy efficiency auditing regime in the UK is the Energy Savings Opportunity Scheme ("ESOS"), introduced under the Energy Savings Opportunity Scheme Regulations 2014. The ESOS regime is a mandatory regime that requires "large undertakings" and groups of undertakings that contain a large undertaking to carry out an energy audit every 4 years and notify the appropriate regulator of their compliance. The next compliance deadline is 5 December 2023.

Owners of properties (both domestic and commercial) with the lowest energy efficiency ratings (Energy Performance Certificate ("EPC") ratings of F or G) are prohibited from granting a lease of those properties unless they have carried out all cost-effective energy efficiency improvements to increase the EPC rating to at least E, or one of a limited number of exemptions applies. The government is proposing to increase the minimum EPC rating to C or B by 2030.

17. What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?

Under the Climate Change Act 2008 the UK has committed to achieving net zero carbon emissions by 2050.

Following the end of the Brexit transition period, the UK will no longer participate in the EU Greenhouse Gas Emissions Trading Scheme ("EU ETS"). The government intends to replace the EU ETS with a UK Emissions Trading Scheme ("UK ETS") (as is provided for by The Greenhouse Gas Emissions Trading Scheme Order 2020) UK ETS will very closely follow the approach of EU ETS and is linked to the UK's net zero goals. The UK Government has expressed interest in linking UK ETS to EU ETS.

18. To what extent are environmental, social, and governance (ESG) issues a material consideration in your jurisdiction? Is ESG due diligence for transactions and ESG due diligence in supply chains

becoming mandatory or more common? To what extent are companies obliged to report on ESG matters? Has COVID-19 had any impact in relation to companies' approach to ESG in your jurisdiction?

Environmental due diligence for transactions has been standard practice in the UK for many years. ESG due diligence (also covering social and governance issues) is now becoming more widespread, and the government and regulatory bodies are taking greater action to strengthen climate-related and environmental reporting and disclosure requirements for companies.

UK companies listed on the London Stock Exchange, a stock exchange in an EEA member state, the New York Stock Exchange or Nasdaq have been required since 2008 to report on their greenhouse gas emissions in their annual directors' reports. In April 2019 these requirements were extended under the new Streamlined Energy and Carbon Reporting ("SECR") regime introduced by the Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018. The SECR regime requires additional reporting on greenhouse gas emissions, energy consumption and energy efficiency action by quoted companies, large unquoted companies and large limited liability partnerships.

In addition to the SECR requirements, the Companies Act 2006 requires most companies (subject to an exception for small companies) to prepare an annual strategic report that contains non-financial information relating to environmental matters. Large companies of a certain type (including a traded company, a banking company, an authorised insurance company, and a company carrying out insurance market activity) must set out a more detailed analysis of ESG matters in their strategic report by including a separate non-financial information statement.

The government has committed to strengthening companies' ESG reporting requirements in their annual financial reports in alignment with the recommendations of the Financial Stability Board's Task Force on Climate-related Financial Disclosures ("TCFD") on the disclosure of climate-related financial risks and opportunities. Whilst disclosure against the TCFD recommendations is currently voluntary, the government proposes to make it mandatory for certain large companies and financial institutions in the UK by 2025.

The government has also proposed to introduce mandatory ESG due diligence in supply chains. The Environment Bill 2019-21, which is currently passing through Parliament, includes clauses which aim to prevent large businesses from using illegally produced 'forest risk commodities' (such as leather, rubber, and timber), in production and trade in the UK. The provisions would also require relevant businesses to conduct due diligence to ensure that such forest risk commodities do not enter their supply chain.

It is difficult to quantify the impact of COVID-19 on ESG, especially at this relatively early stage, but it is telling that the UK government has proceeded both with its own net zero targets and related climate policy (e.g. in respect of TCFD disclosures). If the pandemic has reduced the focus on ESG this is unlikely to be a permanent development.

19. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities?

Criminal liability for breaches of environmental law attaches first and foremost to the company or individual who has committed an offence. Anyone who aids, abets, counsels or procures an offence can also be held liable under general principles of criminal law.

Where a company commits an environmental offence, criminal penalties may be imposed on the directors of the company by virtue of some specific statutory provisions. This applies, for example, to offences under the EPR committed with their consent, connivance or attributable to their neglect.

Criminal liability may be imposed on third parties by virtue of some specific statutory provisions. For example, third parties will be criminally liable for offences under the EPR where they have caused or knowingly permitted the offence.

There are no specific provisions for criminal liability for shareholders, parent companies or entities who have lent money to the company, although the general rules about third party liability apply equally to them as to others.

20. To what extent can: (a) a buyer assume any pre-acquisition environmental

liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in your jurisdiction?

On a share sale, any environmental liabilities of the company being sold will remain with the company, so a buyer will inherit those liabilities. If the buyer wants to protect itself against those liabilities, it will have to seek alternative protection, such as an indemnity from the seller, a purchase price retention or environmental insurance. It should be noted, however, that as a general rule the courts in the UK will not enforce indemnities against criminal fines, for public policy reasons.

On an asset sale, any environmental liabilities relating to the seller's period of ownership of the assets will normally remain with the seller, so a buyer will not inherit those liabilities. However, some environmental liabilities, in particular liability for contaminated land under Part 2A of the EPA 1990 (see above), can be transferred by contract.

21. What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?

The size of the transaction and the activities of the target business or property will usually dictate the level of environmental due diligence carried out. It is standard practice for some degree of environmental due diligence to be carried out in transactions in the UK, even a basic desktop search on the purchase of a low-risk property. On more complex transactions where the target business or property presents a greater environmental risk, more detailed environmental due diligence will usually be carried out. This may include intrusive soil and groundwater investigations carried out by environmental consultants.

In corporate transactions (but less commonly in property transactions) buyers will seek environmental warranties and representations to elicit information from the seller about matters such as compliance with environmental laws, enforcement action or litigation, and the condition of properties, so that the buyer can assess the environmental risks. If the seller cannot give the warranties/representations, it will have to disclose information against them to avoid breaching them.

22. What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is environmental insurance regularly obtained in practice?

Environmental insurance is generally available in the UK. It is relatively expensive, so its use is generally limited to transactions where there is disagreement between the buyer and the seller over which of them should bear the environmental risks. The most common type of environmental insurance policy is environmental impairment liability ("EIL") insurance. An EIL policy will typically cover liability for remediation under Part 2A of the EPA 1990 (see above), contractual liability under a sale and purchase agreement, liability for damage to third party property arising from the migration of contamination and liability for third party bodily injury arising from historic contamination.

Where construction works are being carried out, contractors pollution liability insurance may be taken out to provide cover for contractors, site owners and developers against both releases of new pollution and the exacerbation/mobilisation of historic contamination.

23. To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?

Regulators hold public registers of environmental information, including information about environmental permits, with details of associated breaches and enforcement actions. Much of this information is publicly accessible online. Otherwise, any person can submit a request for environmental information to a regulator under the Environmental Information Regulations 2004 ("EIR 2004") (see below).

24. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to parties that request it?

The EIR 2004 require public authorities and bodies controlled by public authorities to provide the public with access to the environmental information that they hold. A request can be made to the authority in writing or verbally and the person making the request does not need to provide a reason for making the request. The

applicant can be charged a fee for the information, but the fee must be reasonable. Any request must be processed within 20 working days of receipt by the authority, but an extension up to 40 working days is permitted where the request is complex or the volume of the information is large. There are a number of exemptions to the duty on public authorities to provide environmental information, such as where the information is commercially confidential, but the information must still be disclosed if disclosure is considered to be in the public interest.

Individuals and companies also have a general right of access to information held by public authorities under the Freedom of Information Act 2000, but this excludes any environmental information covered by the EIR 2004.

25. What impact, if any, has COVID-19 had in relation to environmental regulations and enforcement in your jurisdiction?

COVID-19 has presented many challenges for environmental compliance and enforcement across the UK, and environmental regulators across the jurisdiction have responded in various ways. The key responses from the Environment Agency are set out below.

The immediate response from the Environment Agency was to protect its workforce and adapt its role in a time of reduced staff numbers. To this end, it announced that it would narrow its focus to certain key areas, including major pollution incidents and flooding, maintaining certain assets and supporting the emergency services, and reduce site visits and inspections.

Acknowledging the difficulty of compliance due to COVID-19, the Environment Agency temporarily relaxed certain normal regulatory requirements (e.g. monitoring and reporting), and took a moderated approach to enforcement. These changes have been captured through guidance notes and 'regulatory positon statements' ("COVID-19 RPS"). Each COVID-19 RPS is time-limited and includes conditions that must be complied with.

A number of the COVID-19 RPSs relax regulations to provide for specific scenarios associated with COVID-19, for example, to allow for waste from cleaning people or places infected or potentially infected with COVID-19 to be safely stored and treated at a healthcare waste management facility.

26. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are there any material proposals for significant updates or reforms in the near future?

The government has introduced the Environment Bill 2019-21 to establish a new framework for environmental governance following the UK's departure from the EU. One of the Bill's main functions is to enshrine environmental principles into domestic law and create a new body called the "Office for Environmental Protection", whose role will be to hold public authorities in England to account over environmental standards after Brexit. The Scottish Government and Welsh Assembly Government are also considering environmental governance arrangements in their jurisdictions after Brexit.

Other parts of the Bill cover:

(a) waste and resource efficiency measures, covering extended producer responsibility, a consistent approach to recycling (including waste separation requirements), tackling waste crime, deposit return schemes and charges for specified single use plastic items;

(b) measures to improve air quality, including enhanced powers for local authorities to tackle emissions and powers for the government to mandate recalls of vehicles which do not meet relevant legal emissions standards;

(c) requirements for water companies to work together to meet current and future demand for water and ensure the maintenance of water supplies; and

(d) the introduction of mandatory biodiversity protections into the planning system and a framework for "conservation covenants" (voluntary, long-term, legally binding private agreements between landowners and responsible bodies to conserve natural or heritage features of land).

Following the end of the Brexit transition period, a framework of retained EU law will replace EU-derived environmental law in the UK (pursuant to the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020). The government has enacted various statutory instruments, legislation and regulations which amend existing environmental law to address deficiencies of retained EU law resulting from UK's departure from the EU.

The shape of certain areas of UK environmental law, following the transition period, will depend on the outcome of negotiations concerning the future

relationship of the UK and the EU (e.g. REACH and EU ETS (see above)). At the time of writing, negotiations have not yet concluded.

Contributors

Michael Barlow Michael.barlow@burges-salmon.com

Stephen Lavington Stephen.lavington@burges-salmon.com