



LLG INSIGHT ARTICLE – WEIGHTMANS

Our thanks to Simon Colvin, partner with Weightmans, for this timely thought piece...if you have comments go to our forum on the website!

2020 – the year of climate change and environmental action that wasn't...

2020 was meant to be the UK's year of climate change action. It was going to be the year in which the Environment Bill was finalised in readiness for Brexit. Glasgow was due to host COP26 - the 26th meeting of the UN Committee on Climate Change in November. Both the public and private sectors were gearing up for a year of action with the words "net zero" on everyone's lips. Then Covid-19 happened.

Covid-19 has delayed plans and initiatives relating to the climate and the environment, but it does not seem to have derailed them. The momentum that had built up seems unstoppable. The only news that can trump Covid-19 and Trump (excuse the pun!) relates to the climate and environment. Stories of wild fires in California, plastic pollution, air quality and catastrophic biodiversity loss dominate the headlines.

Talk has now turned to the "Green Recovery" and discussions are focusing on "building back better". The EU have promoted their Green Deal and the UK Government has made some efforts to make more funding available for certain "green" projects and schemes.

So what does all this mean for lawyers in local government (LLG) and why should you care?

The remainder of this article focus on –

- the key legislative and policy changes from a climate change and environmental perspective in the next 3-months that LLG need to be aware of; and
- what the climate change emergency means for LLG.

Key legislative and policy changes

These are summarised in Table 1 below and expanded upon in the rest of this section/article.

Table 1 - Speed read

1. **Environment Bill** (due to receive Royal Assent before end of December 2020)
 - a. creation of Office for Environmental Protection –
 - i. advise Government on environmental protection/enhancement
 - ii. police compliance with environmental law by public bodies
 - b. development of targets for environmental protection/enhancement
 - c. introduction of new measures in relation to –
 - i. Resources and Waste – implementing certain requirements of the Resources and Waste Strategy – such as uniform collections
 - ii. Air Quality – introducing new powers for public bodies to address air quality
 - iii. Water quality
 - iv. Nature/Biodiversity and Conservation Covenants – implementation of biodiversity net gain requirements into all planning permissions
2. **Energy White Paper and Heat Strategy** – expected to be published at the end of October 2020 – will set the scene in terms of the Government's focus in the years to come in relation to topics such as renewable energy – will we see a return for onshore wind, the greater role hydrogen can play as a fuel source, CCS projects, EVs and the overall decarbonisation of heat.

The key policy and legal developments expected in the next 3-months that will set the climate change/environmental agenda for the foreseeable future are –

- the Environment Bill;
- the Energy White Paper; and
- the Heat Strategy

The Environment Bill

The Bill will plug some of the gaps in environmental regulation arising from Brexit and also create the framework for environmental protection and enhancement in the UK for many years to come.

The Bill is currently at the committee stage in Parliament. It has been delayed as a result of Covid-19. It had been due to receive Royal Assent prior to the end of the year before Brexit, but that no longer seems likely. In conjunction with the review of

the Bill, the specific targets to be provided for under the Bill are subject to ongoing debate and discussion amongst the environmental professional community.

Part 1 of the Bill deals with -

- Environmental principles, targets and improvement plans. It essentially creates a governance framework and structure to, not just protect the environment, but also to deliver environmental improvements.
- The creation and operation of the Office for Environmental Protection (OEP) - a very significant step. The OEP will advise Government on the steps it needs to take to achieve its current 25-year Environment Plan and future plans. The OEP will also police compliance with environmental law by public bodies and will be able to hold them to account where they do not comply, both in terms of their own activities, but also in relation to their role as decision makers.

The OEP can hold public bodies to account through a new mechanism known as an Environmental Review, or through the more traditional routes of judicial/statutory review.

An environmental review is a referral to the Upper Tribunal by the OEP for review of an alleged failure to comply with environmental law.

Other parts of the Bill deal with specific policy areas –

- **Part 3 - Waste and Resources** – implements many of the proposals set out in the Resources and Waste Strategy published in December 2018. A number of these have the potential to have a significant impact on local authorities –
 - Extended producer responsibility schemes that will see producers pay the cost of managing their products at the end of life – this could mean changes to the composition of resources and waste that local authorities have to handle meaning possible contractual implications. It could also see funding streams become available from producers to enable authorities to handle specific waste streams.
 - Provides for a consistent approach to the separate collection of certain waste streams – again this could have contractual implications for authorities who are mid-way through current contractual relationships concerning waste collection and disposal. It might lead to the need to re-procure certain services for specific waste streams.
- **Part 4 – Air Quality**
 - Greater cooperation and collaboration between adjoining authorities in relation to air quality.

- The introduction of civil penalty notice powers in relation the emission of smoke in smoke control areas as well as the removal of certain defences making enforcement easier.
- **Part 5 – Water Quality**
- **Part 6 & 7 – Nature and Biodiversity**, as well as **Conservation Covenants**
 - New general condition to all planning permissions in England, which requires that a biodiversity gain plan must be submitted and approved before development can commence.
 - Extension of general duty of public authorities to have regard for the conservation of biodiversity to include “conserving and enhancing”.
 - Introduction of power to impose local land charge where there has been illegal felling of trees.
 - Ability to enter legally registrable voluntary conservation covenants to help deliver biodiversity net gain on alternatives sites if it cannot be delivered on a development site.

Energy White Paper

The delayed White Paper is expected to be published by BEIS at the end of October. It is expected that the paper will look at how energy generation and consumption in the UK can be aligned with the Government’s stated net zero ambitions. Key focus areas will be the decarbonisation of energy generation and consumption. That will mean a shift towards electrification and electricity as a primary fuel source – more electric vehicles, the possible reintroduction of onshore wind, a greater role for hydrogen, the roll out of carbon capture and storage, the use of smart grids that can rapidly respond to changing supply and demand requirements including battery technology.

The White Paper will set out the Government’s road map in these areas and give an indication of the expected legislative changes, some of which we predict will be introduced in 2021 in the run up to COP 26.

Public bodies have a key role to play in the delivery of the necessary infrastructure whether working in collaboration with energy companies, or in taking the lead in offering low cost energy solutions to their residents.

Heat Strategy

The last strategy was published by DECC back in 2012. A new version is long overdue.

The main focus of the strategy will be to look at how we can move away from using gas as a main source of heat generation and to also make buildings more efficient so they do not require as much heating.

This will require a shift towards the use of 'green' gas, ground and air source heat pumps, heat networks and other similar technologies. It is possible that the Government could also look to revise the renewable heat incentive (RHI) – an incentive scheme that looks to offset what can be the high cost of installing some of these technologies. We might see further changes to building regulations concerning the energy efficiency of buildings, alongside enhanced legislative controls from mechanisms such as the Energy Savings Opportunity Scheme and the Minimum Energy Efficiency Standards.

Concluding thought -

- The next 3-months (subject to Covid-19 and Brexit) are likely to be a period of significant change as and when the Environment Bill passes through Parliament and the Energy White Paper and Heat Strategy are published, but they should then provide some much needed certainty and structure that sets out how we are going to accelerate the journey towards net zero.
- Keep an eye out for these developments so you can consider the detail (to the extent it is different from what we have summarised) and identify any impacts on and opportunities for your organisation.

Climate Change Emergencies

Before Covid-19 arrived many local authorities had declared climate change emergencies and many other public bodies had formally recognised the existence of a climate change emergency. Client Earth and other NGOs had begun to (and continue to) hold the public sector to account in terms of their activities that can contribute to climate change and negatively impact the environment.

That scrutiny continues and public bodies need to be able to demonstrate the steps they are taking to respond to the 'emergency'.

Doing nothing is no longer an option. Climate change litigation is becoming more common. Client Earth have repeatedly held the Government to account in relation to its Clean Air plans. In the UK we have seen significant infrastructure plans and projects fail as a result of legal challenges concerning failures by decision makers to properly consider and account for climate risk. That trend is only set to continue.

LLG have a key role to play in ensuring those they work for properly manage climate change and environment risks in terms of their own activities, in their role as facilitators and also as decision makers.

LLG have a key role because many of the risks present themselves as legal risks – for example the risk of physical harm and damage (e.g. from extreme weather

events, or poor environmental conditions such as air quality) that will result in legal claims and associated liability.

Table 2 below provides some simple *Top Tips* to help LLG to engage with and to start to manage climate change and environmental risks in their organisations. Some organisations will be more sophisticated than others, but the approach below represents a good framework and check list to get you started.

Table 2 - Some simple top tips to get you started in effectively managing climate change and environmental risks include -

- **Leadership and ownership** – someone needs to take the lead – who is it going to be?
- **Internal and external stakeholder engagement** – work with others to understand the various touch points of your organisation with the climate and the environment – document these.
- **Develop a strategy** – what are you going to do and why – keep it short and concise.
- **Map out specific risks** – what specific risks have you identified and how will you mitigate these.
- **Develop targets and goals** – what are your ambitions – be realistic.
- **Set out a roadmap** – how long will it take and what are your priorities?
- **Capture data and report against targets** – data is very important – you need to benchmark and report progress.
- **Reflect and account for the above** in (i) relevant **policies and procedures**, and (ii) **decision making processes** – do not do all the hard work and then push it to one side.

The author Simon Colvin has been an environmental lawyer for over 20 years. He leads both the Environment Practice and the Energy and Utilities Sector at Weightmans LLP. In addition to being a lawyer Simon is a Fellow of IEMA and is passionate about the environment and sustainability as topic. In addition to his external roles Simon leads Weightmans own internal environment group. He has helped the firm to achieve the ISO 14001 standard for its environmental managed system and the ISO 50001 standard for its energy management systems. The firm is currently working towards the implementation of the UN Sustainable Development Goals.