

Environment end of year review—a look forward to 2016

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Environment analysis: Our panel of experts considers what lies ahead for environmental lawyers in 2016.

The experts

Matthew Townsend, partner in the environmental and regulatory law group at Allen & Overy

Simon Tilling, senior associate at Burges Salmon

James Burton, barrister at 39 Essex Chambers

What are your predictions for changes in environmental law and policy in 2016?

Matthew Townsend: It will be interesting to see how quickly governments act once the Paris Agreement has been ratified (the process for which should begin next April). I doubt that we'll see significant changes in policy as a result of the new deal. It will take time for European governments to determine what needs to be done. The pressure will mount though. Many countries have already made non-binding commitments to reduce greenhouse gases and these will need to be updated and improved upon as future commitments are issued. The mechanism for reporting and reviewing created under the Paris Agreement will add some pressure into this process. The commitment to keep global temperature rises to 2°C and to pursue efforts to limit warming to 1.5°C above pre-industrial levels, will also likely drive a review of existing policies and fresh measures to reduce emissions. All that said, I don't expect the carbon market to spring back to life any time soon and the lack of a robust global carbon price is, for many, a pressing problem.

We will continue to see developments in the regulation of chemicals (eg endocrine disrupters).

For the UK, we expect to see new rules on the enforcement of waste offences. The wide-ranging consultation earlier in 2015 indicated that the government is planning to introduce a variety of measures over the next year or so which will have a significant impact on operators of waste sites. The changes to the rules on operator competence and potentially on financial provision will also be important.

Simon Tilling: Air quality will be a big issue in 2016. The UK government (and most European governments) have struggled to meet EU air quality standards and the UK has been held to account by our Supreme Court. The VW emissions scandal has now put the issue centre stage with the public. It also brings product stewardship into the mainstream--as the VW debacle will show, manufacturers and importers are responsible for the environmental consequences of their products and not just the environmental impact of their production lines.

James Burton: The combination of the VW 'defeat device' emissions scandal and the apparently sudden realisation that daily air quality is a killer in this country, combined with the importance of the air quality issue to Heathrow expansion, is likely to drive air quality up the policy agenda. We can also expect to see attempts (at least) at domestic legislation flowing from COP21, partly to re-establish the UK as a leader on decarbonisation. Though these may be championed by the opposition, there is likely to be a level of cross-party support, not least for a re-commitment to the renewable/low-carbon sector, which has so far suffered a series of setbacks under the current administration. Elsewhere, natural capital and environmental offsetting will become increasingly accepted as tools to understand and unlock development potential.

How is 2016 shaping up in terms of important cases and legislative developments?

Matthew Townsend: As mentioned above, we can expect to see changes in legislation on waste in particular.

Simon Tilling: Although there are important cases and legislative developments, I think the more interesting arena in 2016 is the political one. We have the EU renegotiations and prospect of a referendum and, given the importance of the EU institutions to UK environmental law, the implications of Brexit would be significant. We also have climate change--the COP21 summit in Paris at the end of 2015 was a statement of intent from the global community but we now wait to see what materialises on the ground. Mass migration has been a major issue for Europe in 2015 and yet migration due to climate change is predicted to be of an even greater scale.

James Burton: We can expect a spate of litigation around the UK's air quality action plans, possibly linked to Heathrow expansion (or at least with an eye on it).

How will these developments affect your matters and working life?

Matthew Townsend: They're likely to keep us very busy.

Simon Tilling: Many of our clients want to be ahead of the game and future-proofed. Political uncertainty means the clients need to be adaptable and expect their legal advisors to be too. Our team commits considerable time to understanding emerging issues so that we can help our clients obtain a competitive advantage when new laws and policies are put in place. Environmental law is entrenched in UK society, whether we stay in the EU or not, but the concept of Brexit brings with it the prospect of pan-European businesses needing to comply with diverging UK and EU laws, which only increases the complexity for them. There is also the issue of increasing environmental devolution. I do a lot of work in Wales, which is blazing its own trail on environmental law. Scotland is also taking a different path to England. We see real opportunities for a truly UK-wide specialist environmental law practice with a strong EU perspective.

James Burton: It rather depends on who instructs me...

What would you like to see in 2016?

Matthew Townsend: I'd like to see a strong message from governments in response to the Paris Agreement to allow businesses on all sides and the markets to have greater certainty on carbon price signals.

I'd also like to see the government reform the plethora of environmental taxes and energy efficiency measures into a single, coherent regime that achieves the policy objectives without creating an administrative headache for clients.

Simon Tilling: I think we need a global response to climate change and I would like to see the aspirations set out in the agreement reached at COP21 in Paris deliver some tangible progress in 2016 and beyond.

James Burton: Concrete steps to make the laudable ambition of the Paris COP21 agreement a reality.

How might the expected developments in 2016 affect your business and clients?

Matthew Townsend: Clients will continue to need support on assessing the impact of changes to the EU emissions trading system and other climate-based policies on their business.

Simon Tilling: The increasing level of enforcement of product stewardship regimes such as REACH and RoHS will be a big issue for those businesses who are struggling with these complex regimes, and I expect more work on both compliance and advisory work and corporate defence work. I think enforcement undertakings will start to gain real momentum for sites operating under environmental permits. Above all, I think it will be another good year for those environmental lawyers who are prepared to be adaptable, flexible, and can offer clients real value and insight by remaining on top of this constantly evolving area of law.

James Burton: Many of my clients will now be thinking hard about offering enforcement undertakings at the point when only they know of a permit breach. I expect to see an increase in advisory work (at least) in that area and also further instructions in relation to air quality.

Interviewed by Jenny Rayner.

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