

# Introduction to the Second Edition

Laws concerning environmental protection have a long history in the United Kingdom, but the last 30 years have seen an unprecedented development not just in the substantive body of environmental legislation, but also in thinking about underlying principles and institutional arrangements. To the current generation of environmental lawyers it is almost unimaginable how rapid the change in profile of the subject has been in such a comparatively short time. My own exposure to environmental law began as a newly qualified barrister working for Friends of the Earth in London in the mid-1970s, then the only UK environmental group which employed a lawyer. Legal actions before the courts at that time seemed a largely fruitless and costly activity, and most of the legal effort was focused on pressuring the government for legislative reform and using public inquiries in the planning field as a forum for exposing the inadequacies and short-sightedness of government policy in addressing longer term environmental issues. Shortly afterwards I began my first academic appointment at Imperial College, London, consciously working with environmental scientists, who then appeared to offer a more sympathetic intellectual environment than traditional law schools, where the discipline of environmental law was scarcely acknowledged. I well remember meeting at this time a fairly intimidating Law Lord of the old school (and now long deceased) who asked me my field of specialism. I naturally replied 'environmental law', only to be faced with silence and an expression that somehow combined utter incomprehension and slight distaste.

The materials in this book should at least demonstrate what a long way we have come in less than a generation. In making a selection of my publications, I have largely avoided any analyses of detailed black letter law, but focused on material dealing with major themes concerning the nature of regulation, institutional arrangements and enforcement which underlie the substantive detail of the law. A number of pieces, though, including the chapters on the Climate Change Act and the environmental integration principle in the EU Treaty, deliberately consider the relevant provisions through a fairly detailed legal lens, trying to explore what might be their real legal effect, if any. Since the first edition was published an Environment Tribunal has been set up in England and Wales, the country's first such specialist judicial body, and the Environment Agency and Natural England now have powers to serve civil sanctions under Part III of the Regulatory Enforcement and Sanctions 2008. I have therefore been able to include pieces which reflect on these developments. The courts both at European and national level continue to play a key role in developing principles and interpreting environmental legislation, and the case analysis chapters deal with some of the most important recent decisions.

Many contemporary environmental issues are global in nature and can in the long run probably only be tackled at global level. International environmental treaties have grown in number and complexity over the last 30 years, and international public law is one of the core elements of the subject. A number of international treaties, such as the Aarhus Convention, find their way into this book, and I would have liked to have included more on

international law generally. But fairly early on my academic career I decided it simply was not possible to be a specialist at all levels of environmental law. I was already well versed in national environmental law, but it was Nigel Haigh's pioneering 1984 book, *EEC Environmental Policy and Britain*, that really first made me fully aware of the significance of the European Economic Community, as it then was, to the development of environmental law. Nigel's work was largely concerned with the impact of the EEC's environmental legislation on British law and policy. I became especially interested in the influence of the European Court of Justice and, following a short secondment to the Legal Unity of DG Environment in the European Commission, the significance of the Commission's enforcement mechanisms against Member States. Much of the material included in this collection was therefore initially stimulated by UK or European Union legal and policy developments, but many of the themes considered should have more universal resonance.

Part I is concerned with major issues concerning regulatory reform, and in particular the debates on whether traditional British approaches towards constructing regulatory sanctions are best suited to contemporary needs. Part II considers challenges to current institutional arrangements, including the need for a specialised environmental court and tribunal, and the environmental implications of the major constitutional changes that have taken place in the United Kingdom in the last decade. Part III contains material that reflects on the shifting dynamics of environmental law as it copes with changing expectations of how we handle the development of new environmental standards, the opportunities of new technologies to assist enforcement and the need to develop new notions of responsibility. Part IV is a selection of reports of leading environmental cases over the last decade, illustrating how both the Court of Justice of the European Union and the higher courts in the United Kingdom have grappled with the interpretation of environmental legislation and the development of legal principle. Part V focuses on European dimensions. It starts with material relating to key principles of European Union law, such as environmental integration, free trade, consistent interpretation and subsidiarity, and how these influence and interact with the development of environmental law. It then considers the enforcement of European Union's environmental law and the unique, though by no means perfect, mechanisms that have been developed under the Treaties to ensure that Member States comply with their obligations.

The scale and scope of environmental issues which face both this country and the world are becoming ever more apparent. Law and legislation on their own cannot possibly resolve all these challenges, but will provide the bedrock for the decisions that will have to be made. As we move from handling more familiar environmental pressures to major questions of resource and energy use, the next generation of environmental lawyers will need to be even more imaginative in devising appropriate legal responses. I hope that some of the thoughts here will assist in stimulating these future debates.

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