Contents

For	reword to the Second Edition	xi
	eword to the First Edition	xiii
	roduction to the Second Edition	XV
	knowledgements	xvii
	out the Author	xix
Tal	ple of Cases	xxix
Par	rt I Regulatory Reform	1
1	Reforming Regulatory Sanctions (2007)	7
	Unexpected Alignments	7
	Reviewing Sanctions	12
	Assessing the Criminal Law	14
	Enriching the Sanctions Response	16
2	Enriching the Sanctions Response Regulatory Justice – Making Sanctions Effective (2006)	21
	Executive Summary	21
	The Role and Importance of Sanctions within the Regulatory System	27
	Underlying Principles for Regulatory Sanctions	38
	My Vision for Contemporary Sanctioning Regimes, Financial Sanctions	47
	My Vision for Contemporary Sanctioning Regin es: Non-financial Sanctions	-,
	and Alternatives for the Criminal Courts	67
	Transparency and Accountability	93
	Summary of Recommendations	104
3	Sanctions and Safeguards – The Brave New World of Environmental	
En	forcement (2013)	109
	The Regulatory Sanctions Review	109
	Criminal Law and Strict Liability Offences	111
	Extending the Range of Criminal Sanctions	114
	Unravelling the Vision	116
	Maintaining the Distinction between Sanction Responses	118
	Integrating the Standard of Proof	119
	An Independent Appeals Body	122
	European Convention on Human Rights	124
	Regulatory Governance	126
	Conclusions	130
4	Regulating in a Risky Environment (2002)	132
	Market Failure and Regulatory Prescription	133
	Economic Instruments and their Weaknesses	136
	Voluntary Agreements	140
	Scientific Risks	144
	Handling Enforcement Risks	148
	'Determine and Direct': a New Regulatory Paradigm?	150

Part II Institutional Reform and Change	153
5 The Long and Winding Road – Towards an Environmental Court in England and Wales (2013) The Core Stages The Unexpected Alignments A New Environmental Tribunal Conclusions	159 160 164 165 166
6 Modernising Environmental Justice – Regulation and the Role of an Environmental Tribunal (2003) The Report The Context The Report of the Royal Commission on Environmental Pollution The Purpose of this Study Environmental Appeals under Existing Legislation Legislative Analysis Current Numbers of Environmental Appeals Concerns about Existing Appeal Procedures Does Environmental Law Warrant a Special Jurisdiction? Judicial Reviews and Stated Cases Access to Justice and the Aarhus Convention Third Party Rights of Appeal The Human Rights Act And Access to an independent Tribunal Separating Land Use Planning and Environmental Appeals? Options for the Way Forward A New Environmental Tribunal in Practice A More Direct Enforcement Role for an Environmental Tribunal? Conclusions	169 171 173 173 175 176 180 183 185 187 190 193 194 196 197 199 202 206
7 Consistency and Effectiveness – Strengthening the New Environmental Tribunal (2011) Summary The Context Changes since 2004 Review of Regulatory Appeals Provisions under Environmental Legislation The Environment Tribunal Advantages of the Environmental Tribunal as an Appeals Body Comparative Costs of Appeals Bodies Secretary of State Appeals Appeals Held by PINS (Planning Inspectorate) Statutory Nuisances Third Party Appeals Presumptions and Priorities	207 207 209 210 211 212 213 214 216 217 217 218
8 Environmental Regulation as an Instrument of Constitutional Change (2011) The Context Public Access to Information and Participation Access to Justice	227 228 229 232

	٠	٠	٠
XX	1	1	1
21.21	•	•	-

	Reforming Regulatory Sanctions An Environmental Court The Future	237 241 245
9	Judicial Review – Proposals for Further Reform (2013) Aarhus and Access to Justice First-tier Tribunal as a Regulatory Appeals Body Environmental Judicial Reviews Upper Tribunal Handling Judicial Reviews Procedural Defects Standing Issues	246 246 247 248 250 251 252
Par	t III The Dynamics of Environmental Law	255
10	The UK Climate Change Act – Towards a Brave New Legal World? (2012) The General Long-term Duty and its Legal Significance Intermediate Carbon Budgets The Statutory Committee on Climate Change Adaptation The Courts and the Climate Change Act The Climate Change Committee and the Government – the 2011 Tensions	261 261 264 266 268 270 272
11	Weighing up the Performance: Emissions Standards & Emissions Trading (2011)	275
12	Public Consultation and GMO Policy – a Very Fri ish Experiment (2008) Engaging with Public Values The Agriculture and Biotechnology Commission The GM Debate Evaluation and Aftermath	280 280 283 285 287
13	Technology and Environmental Law Enforcement (2003) Introduction Remote Sensing in Court Technological Equipment Privacy Data Protection	289 289 290 294 296 299
14	Environmental Standards, Legitimacy and Social Justice (1999) The Rise of Environmental Standards The Current Intellectual Crisis Ways through the Quagmire	303 303 305 308
15	The Scope of Environmental Law (1996) Introduction Integrated Pollution Control Codification Integration into other Policies Affecting the Environment Integration into Policies with Remote Environmental Impact	310 310 310 312 313 317
16	Loaded Guns and Monkeys – Responsible Environmental Law (1994) Responsibility and a Pet Monkey	320 320

	Enforcement and Competing Models of Liability Science and Law Location and Participation The European Dimension Redefining the Boundaries of Responsibility	322 327 329 333 335
17	Environmental Law: Shifting Discretions and the New Formalism (1991) Introduction	340 340
	Pollution and the Legislative Framework	340
	The Environmental Protection Act 1990	342
	The Use of the Criminal Law	343
	Policy and Pollution Control	345
	European Community Influences Conclusions	347 347
10		
10	Cycle Lore (1979) Cyclists and the Law	351 351
	'Driving a Carriage' and Other Legal Conundrums	352
	Constructing a Cycleway	353
	Traffic Law Neglects the Bicycle	354
Pa	Cyclists and the Law 'Driving a Carriage' and Other Legal Conundrums Constructing a Cycleway Traffic Law Neglects the Bicycle rt IV The Courts and the Environment Court of Justice of the European Union	357
19	Court of Justice of the European Union	365
	Nature Conservation and Death by a Thousand Cuts Sweetman v An Bord Pleanala (2013)	365
	Financial Penalties for Non-implementation in Practice European Commission v Ireland (2012)	367
	Aarhus, Access to Information and the European Commission Stichting Natuur en Milieu and Pesticide Action Network Europe v European Commission (2012)	369
	When Environmental Requirements Trump Commercial Confidentiality Interseroh Strap and Metals Trading GmbH v Sonderabfall-Management- Gesellschaft Rheinland-Pfalz mbH (SAM) (2012)	371
	Strategic Environmental Assessment	373
	Inter-Environnement Bruxelles ASBL v Region de Bruxelles-Capitale (2012)	
	Aviation Emissions and International Law	375
	Air Transport Association of America and others v Secretary of State for Energy and Climate Change (2012)	,
	Biodiversity, Bees and Free Trade	376
	Re Criminal Proceedings against Bluhme (1998)	
	UK Shipping Company Loses Case against Habitat Designation R v Secretary of State for the Environment Transport and Regions ex parte First Corporate Shipping (2000)	379
	Ruling from European Court on 'Green Guarantee' Denmark v Commission (2003)	381
20	Supreme Court and House of Lords	384
	Nuisance Principles and Damages in Lieu of an Injunction	384

	Coventry v Lawrence (2014)	
	Discretion, Remedies and Breaches of EU Law	386
	Walton v The Scottish Ministers (2012)	
	Habitat Protection and Disturbance	388
	Morgan v Hampshire County Council Supreme Court (2011)	
	Statutory Successor not Liable under Contaminated Land Regime	389
	R on the application of National Grid Gas PLC (formerly Transco PLC) v	007
	Environment Agency (2007)	
	Key Ruling on Liability for Sewage Flooding	392
	Marcic v Thames Water Utilities Ltd (2004)	0,2
	Breach of EIA Directive Requires Planning Decision to be Quashed	394
	Berkeley v Secretary of State and Others (2001)	571
	House of Lords Rules on Planning and Human Rights	397
	R (Alconbury) v Secretary of State for the Environment, Transport	371
	(House of Lords) (2001)	
	Strict Liability in Water Pollution Offences	399
	Environment Agency (formerly National Rivers Authority) v Fmpress Car	377
	Company (Abertillery) Ltd (1998)	
	Company (Abertmery) Lia (1996)	
21	Court of Appeal	404
	Civil Liability in Nuisance and the Defence of Complying with a Permit	404
	Barr and others v Biffa Waste Services (2012)	
	Companies and Criminal Liability	405
	St Regis Paper Company Ltd v The Crown (2011)	
	Fire Damage and Civil Liability	407
	Stannard v Gore (2012)	
	Securing Injunctions before Damage Occurs	409
	London Borough of Islington v Elliot and Morris (2012)	
	Neighbouring Nuisance Smells	411
	Hirose Electrical UK Ltd v Peak Ingredients Ltd (2011)	
	Nature Conservation ar. i Human Rights	412
	R on the application of Fisher v English Nature (2004)	
	Waste-derived Fuels Are Not Waste	415
	R ex parte OSS Group Ltd v Environment Agency and Department of	
	Environment Food and Rural Affairs (2007)	
2	High Court	419
	Tribunals and Judicial Review	419
	R on the Application of Great Yarmouth Port Company v Marine Management	
	Organisation (2013)	
	Criminal Liability for Sewerage Escapes	421
	Thames Water Utilities and Bromley Magistrates Court (2013)	721
	Enforcement Policies and the Courts	423
	Moss and Sons Ltd v Crown Prosecution Service (2012)	143
	The Legal Status of Emission Trading Allowances	425
	Armstrong DLW GmbH v Winnington Networks (2012)	143
	Wind Farms and Mitigation Measures	427
	vinia i aimi ama miniganom measures	74/

	Hargreaves v Secretary of State for Communities and Local Government and other (2011)	
	Liability for Water Pollution Offences	429
	Express Ltd v Environment Agency (2004)	
	Standing Issues in Judicial Review	431
	R (on the application of Edwards) v Environment Agency and another (2007)	
Par	t V Europe and the Environment	435
	The Legal Duty of Environmental Integration: Commitment and Obligation or	
	orceable Right? (1998)	443
	Why A Legal Analysis?	443
	The Integration Duty in Context Is the Integration Duty Legally Rinding or Exhautery?	445 447
	Is the Integration Duty Legally Binding or Exhortary? To What Does the Duty Apply?	447
	By Whom is the Duty Owed?	449
	The Substance of the Duty: Regarding Environmental Protection Requirements	450
	The Substance of the Duty: Integration	452
	To Whom is the Integration Duty Owed?	453
	Procedure and Substance Revisited	455
24	Environmental Citizenship and the Law: Repairing the European Road (1996)	457
	Introduction	457
	Environmental Rights in Community Lav	459
	Improving Community Enforcement Mechanisms	461
	Applying the Rule of Law to the Commission	465
	Environmental and Economic Rights. The Uneven Hierarchy	467
	A New Goal for the Market?	471
	Balancing Trade Freedom with the Requirements of Sustainable Development	472
(19	Introduction	473 473
	Developing a Community Framework	475
	The Recognition of General Interests of the Community and the Member States	484
	Discrimination and the Principles of Environmental Action	486
	Necessity and Proportionality: Relating the Restriction to the Interest	487
	Acting in the Community Interest and Finding an Appropriate Legal Basis	490
	The Legal Bases Available	494
	Finding Objective Factors for Review	495
	Article 113 and the Inclusive Interpretation	496
	Articles 100 and 100a - An Inclusive Interpretation of the Market	499
	Trade-related Environmental Measures and the Uruguay Round Opinion	501
	Conclusion	502
	Subsidiarity and European Community Environmental Law (1999)	504
	Development of the Concept	504
	Subsidiarity and Justiciability	507
	Subsidiarity and Enforcement	511

27	The Enforcement of EU Environmental Law – Some Proposals for Reform	
(20	05)	513
	The Context	513
	The Present Picture	514
	Suggestions for Improvement	516
	The European Court of Justice	520
	Conclusions	521
28	The Enforcement of Community Environmental Laws: Some Critical Issues	
(19	•	523
	Introduction	523
	The Role of the Commission	524
	Formal Enforcement Procedures	526
	Black Letter Implementation	526
	Implementation in Practice - Conceptual and Practical Difficulties	529
	Information Gaps and the Complaint Procedure	533
	Some Concluding Remarks	537
29	European Moves on Environmental Enforcement (2014)	539
	Effective Penalties under EU Law	540
	Tough Administrative Penalties under EU Emissions Trading Regime	541
	Integrating Criminal and Administrative Enforcement	545
	EU Court Imposes Penalty for Weak National Enforcement System	546
30	Consistent Interpretation of EU Environmental Law (2013)	547
	Context	547
	Development in the Case Law of the CIEU	548
	The Application of the Duty	550
	The Scope of the Duty	552
	Conclusions	557
31	Underlying Themes in the Policy Process (1983)	559
	Handling the Status Quo	560
	International Ramifications	561
	Intergovernmental Effectiveness	562
	Priorities and Feasibility	563
	Alignment and Harmonisation	564
	Member States as Neighbours	565
	Conclusions	566
Ind	ex	569