The Judicial Review & Courts Bill and the Environment
Briefing for report stage on 25.01.22

Executive summary

- Judicial Review is an important tool for securing remedies for unlawful decisions which will or could harm the environment.
- Clause 1 of the Judicial Review Bill introduces changes to JR that could make it impossible for claimants to secure effective remedies for unlawful decisions.
- Such weakened remedies will result in environmental harms and will undermine the UK's compliance with its international obligations under the UNECE Aarhus Convention on environmental rights, to which it is a Party.
- The changes would also have a chilling effect on JR cases across the board, weakening a key check on executive power.
- We **strongly support amendment 23, which would delete clause 1.** We also **support amendments 1 and 4** which would ameliorate the worst impacts of the clause.

Background

Proposals to undermine the process of Judicial Review (JR) have profound implications for the environment. As with other spheres of civil society, the environmental sector relies on judicial review to check the potential abuse of executive power. The important role judicial review plays in a democratic society has been concisely set out by Lord Hoffman, formerly a Law Lord:

''The principles of judicial review give effect to the rule of law. They ensure that administrative decisions will be taken rationally, in accordance with a fair procedure and within the powers conferred by Parliament.''[1]

This check on the power of the executive has prevented unlawfulness that would have inflicted a heavy and often irreversible cost on nature, human health and the UK's zero carbon efforts – a list of recent significant environmental cases can be found in the appendix to this briefing.

Clause of 1 of the Bill introduces changes that will reduce the effectiveness of JR as a mechanism to prevent unlawful environmental harms. The clause directs courts towards granting two new remedies that differ markedly from the discretionary power to quash (strike down) orders currently enjoyed by judges. ***Suspended Quashing Orders (SQOs)*** only take effect at a certain point in the future (subsection 1(a)). It isn't entirely clear how ***Prospective Quashing Orders (PQOs)*** are intended to operate, but it would appear they would only have a forward-looking effect (subsection 1(b)).

[1] https://publications.parliament.uk/pa/ld200001/ldjudgmt/jd010509/alcon-3.htm#:~:text=The%20principles%20of%20judicial%20review,the%20limits%20of%20judicial%20review

Clause 1 will reduce the effectiveness of JR

The clause tilts consideration towards decision makers

Clause 1(8) directs the court to consider a series of factors in JR cases where a suspended and prospective order may apply (as set out below, this is likely to be the case in a significant number of JRs). These proposals require the court to consider a range or factors that are entirely unrelated to the lawfulness of the decision and appear intended to undermine the effectiveness of the remedy for the claimant.

These factors are set out in subsection 8 and requires courts to consider:

- The need for good administration. This would render inconvenience to decision makers a material consideration for JR courts, even though this is an executive, rather than a legal, factor. This move away from legal facts to political considerations is concerning, as is the difficulty encountered when trying to define 'good administration' (as what the claimant perceives to be good administration will differ from the defendant). It is unfair to the claimant, when unlawfulness has been found, that the court may be reluctant to grant a remedy because it may prejudice whatever the defendant contends good administration to be.

- The interests or expectations of persons who would benefit from the quashing of the impugned act and the interests or expectations of persons who have relied on the impugned act. The loose wording of 'persons' would include third parties so, for example, developers who will benefit from the granting of an unlawful planning permission or polluters who stand to benefit from the granting of an unlawful permit. It clearly offends the rule of law to allow an unlawful act or decision to stand simply because the interests of third parties would be prejudiced. These requirements also force the court to balance the competing interests of claimants and third parties, having found illegality. This is an entirely inappropriate thing to ask the court to do. It would also be very difficult to subsequently challenge that decision by way of JR unless it could be shown to have reached the high hurdle of irrationality.

- Any action taken or proposed to be taken, or undertaking given, by a person with responsibility in connection with the decision being considered by the court. Requiring consideration of actions taken, or proposed by persons with responsibility for the impugned act, opens the door to political commitment distracting the court from the legal facts of the case. The role of the court is to examine whether a decision is lawful or unlawful, irrespective of political considerations. The idea that "no one is above the law" underpins democracy and is the essence of the rule of law. It is particularly concerning to see this factor highlighted again in subsection 10, as a factor the court must take into 'particular' account.

Giving legal weight to these non-legal factors, especially political commitments, would build in a marked structural sympathy for defendants and third parties in the JR landscape.

This tilting of consideration towards the interests of public bodies and third parties (even though their actions have been found to be unlawful) is followed by direction to suspended and prospective quashing orders which offer weaker remedy to the claimant. Subsection 9 directs the court to consider whether "*adequate redress in relation to the relevant defect*" would be provided by a suspended and/or prospective order, giving particular regard to factor 8f (''*any action taken, or proposed to be taken, or undertaking given, by a person with responsibility in connection with the impugned act*''). If a suspended and/or prospective order would ''*appear*'' to provide adequate remedy, the court ''*must*'' then grant one ''*unless it sees good reason not to do so*''.[2]

The adequate redress bar is a low one. It concerns only the defect, not the effectiveness of a suspended or prospective quashing order as a remedy for the claimant. The specified requirement to consider any action or undertaking from the decision makers lowers the bar still further – the addition of a political commitment to resolve the defect to a prospective or suspended quashing order could tip an inadequate redress into a (just) adequate one.

As Andy Slaughter MP highlighted at committee stage of the bill, the direction of courts towards this lowest of bars means that: ''*The new default position will be that where a court issues a quashing order, it must suspend it, or limit any retrospective effect, unless there is a good reason not to.*''[3]

Mr Slaughter also responded to the suggestion made by the Minister at Committee that the clause simply provided judges with new tool, clarifying that: ''*If we give someone a new type of order, we could say, "That has given them a wider range of options". If we constrain how they can use those orders or we give them orders that they have not sought, however, it has exactly the opposite effect.*''

This analysis is shared by members of the Joint Committee on Human Rights, whose legislative scrutiny of the Bill concluded that:

''*A presumption in favour of quashing orders with suspended or prospective-only effects is unnecessary and undermines the remedial flexibility that the former Lord Chancellor claimed was the ultimate goal of the Bill at the time of its introduction… While generally a judge would remain free to choose whether to make a suspended and/or prospective-only quashing order, the Bill does nevertheless make them compulsory in certain circumstances. In this way, Clause 1 appears to be an attempt to weight the scales in favour of the defendant public authority over the claimant.*'' [4]

As a result, the Committee recommend that:

[2] Text of clause 1 of the bill https://publications.parliament.uk/pa/bills/cbill/58-02/0198/210198.pdf
[3] https://hansard.parliament.uk/Commons/2021-11-04/debates/bf58047e-0b3f-4644-9b19-f81e21a6e5aa/JudicialReviewAndCourtsBill(ThirdSitting)
[4] https://committees.parliament.uk/publications/8105/documents/83261/default/ p12

''The Government should remove the requirement that judges make quashing orders with suspended or prospective-only effects where they would provide adequate redress and there is not a good reason not to, as this amounts to an unnecessary, albeit low level, intrusion into judicial remedial discretion.''

We agree with the Joint Committee on Human Rights. Subsections 8 and 9 constrain how courts are to use prospective and suspended quashing orders, in a manner that will effectively require their use in a large number of cases, infringing on judicial discretion to benefit of defendant public authorities.

Suspended and prospective quashing orders are weaker remedies

The combined consequence of the directions in subsections 8 and 9 will be to require the issuing of many suspended and prospective quashing orders, where standard quashing orders would have been issued previously.

A standard quashing order quashes the decision found to be unlawful, meaning it has no continuing effect and has never had any effect from the moment it was made.

In contrast, suspended quashing orders would allow unlawful decisions to stand until quashed by court order at a future date. This allows for continuing effect – for consequences of the unlawful decision to continue happening between the JR outcome and the date the suspended quashing order comes into effect. There is no upper limit to this time period, opening up the possibility of consequences from an unlawful decision being allowed to continue for a significant length of time.

Prospective quashing orders would allow the past use of an unlawful decision to be deemed valid. As set out by Mr Slaughter at Committee this has the potential to create perverse and unjust outcomes:

''The imposition of a prospective-only remedy would result in halting only the future effects of an unlawful decision or secondary legislative provision, with its previous effect being treated as if it had been valid. This creates a situation in which two otherwise identical cases are treated entirely differently depending on whether they were affected before or after a court judgment. Those who were impacted by the unlawful decision before the judgment would have been just as wronged as those impacted after, but would not have recourse to any remedy. This means that an individual claimant bringing a case may help to overturn an unjust decision, but would not improve their own situation.''

The delayed action and reduced scope of redress respectively provided by suspended and prospective quashing orders amount to weaker remedies compared to the standard quashing orders they will often replace (as a result of the directions contained in subsections 8 and 9). The new orders will result in less disruptive outcomes for decision makers and third parties, but reduced justice for claimants.

The need for the new orders, particularly prospective quashing orders, is not clear. Judges already have the option to find a decision unlawful but to refrain from requiring its complete revocation, through issuing a declaration. As the Public Law Project stated in their response to the consultation that preceded the bill:

''Courts have used declaratory relief in a way that minimises the disruption of quashing but still secures justice for the claimant. We are unconvinced that suspended quashing orders would in practice be any better at securing relief for successful claimants than a declaration would in most challenges to statutory instruments. Again, this is why it is important that the decision as to the most appropriate remedy in each case should be left to judicial discretion''.[5]

The creation and direction of courts to use suspended and prospective quashing orders is an unnecessary action, that will reduce the effectiveness of JR for the public.

The reduced effectiveness of JR will have significant adverse impacts

Sustained environmental damage

Suspended and prospective quashing orders offer delayed and forward-only remedies. Such remedies could allow environmentally damaging activities to continue in the period between a contested decision and the taking effect of a suspended or prospective-only quashing order.

Impacts resulting from the continuation of environmentally damaging activities during these periods could be considerable. An illustration of this can be found in the case *R. (on the application of Preston) v Cumbria CC [2019] EWHC 1362 (Admin)*.[6] A local planning authority's decision permitting the installation of a temporary sewage outfall and extending the period for which it would be permitted was rendered unlawful by its failure to obtain a screening opinion under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, and an "appropriate assessment" under the Conservation of Habitats and Species Regulations 2017 for the newly located polluting discharge. Permission was therefore quashed.

However, if clause 1 of the bill had been in force and a suspended quashing order applied in the case, there could have been a (potentially significant) period of time between a finding of unlawfulness and the taking effect of the quashing order. Throughout this period, the outfall would have been allowed to continue discharging sewage into the local river system. Every month of continued sewage discharge would have been an extra month of harmful impact on fragile freshwater habitats, and on the health of river users.

Prospective quashing orders could have a similar effect, although it is presently unclear how exactly they are intended to work, especially in the planning sphere.[7] Given their forward-only nature, there is clearly potential for them to fail to prevent potential adverse and irreversible harms to the environment.

[5] https://publiclawproject.org.uk/content/uploads/2021/04/210429-PLP-JR-consultation-response.pdf
[6] https://www.bailii.org/ew/cases/EWHC/Admin/2019/1362.html
[7] https://greenallianceblog.org.uk/2021/10/14/the-judicial-review-and-courts-bill-threatens-to-deter-challenges-to-unlawful-environmental-decisions/ See also https://www.wcl.org.uk/a-threat-to-environmental-justice.asp

Contravention of the Aarhus Convention

The UK is a Party to the UNECE Aarhus Convention, the objective of which is to secure both substantive and procedural environmental rights. Article 9(4) of the Aarhus Convention provides that legal review mechanisms shall *'provide adequate and effective remedies, including injunctive relief as appropriate and be fair, equitable, timely and not prohibitively expensive'*. [8]

The imposition of a suspended quashing order, and the consequent lengthy delay between finding a decision unlawful and remedy is unlikely to be considered timely. Similarly, the imposition of a prospective quashing order and the consequent protraction of the cause for JR (the continuation of an unlawful decision with environmental impacts) is unlikely to be considered fair to the claimant – and neither outcome constitutes an effective remedy for the claimant.

UK compliance with the Convention is already patchy.[9] Clause 1 of the JR bill will make it even more difficult for the UK to claw its way back to compliance. The UK's standing in the world is defined by its respect for the rule of law and the independence of its judiciary. Clause 1 and its wide divergence from Aarhus will undermine such standing.

A chilling effect on JR cases

Claimants need advance certainty around the effectiveness of the legal remedies a court will make, before bringing a case. As currently drafted, clause 1 would undermine this certainty, introducing the possibility (through suspended and prospective quashing orders) that the decision could be found unlawful, but the remedy denied or delayed and harmful consequences allowed to continue. As observed by the Joint Committee on Human Rights in their report on the Bill:

''The effect of Clause 1 would be that, after having to finance their claim, prove standing, pass the preliminary permission stage, and successfully argue that a public authority has acted unlawfully, claimants could be faced with a presumption that the remedy they receive would be suspended or made prospective-only, and of no benefit to them at all.''[10]

Claimants faced with this potential outcome will be significantly less likely to invest time and money overcoming the considerable JR hurdles, for fear of wasted effort and expense. The knowledge that winning might not actually prevent the damage that prompted litigation could prevent many potential claimants from starting proceedings.

It is important to highlight that this chilling effect on the ability of people and organisations to bring JRs will have a democratic impact. In the words of David Davis MP:

[8] https://unece.org/environment-policy/public-participation/aarhus-convention/introduction
[9] https://www.wcl.org.uk/docs/assets/uploads/ELUK_Statement_Seventh_MoP_FINAL.pdf
[10] https://committees.parliament.uk/publications/8105/documents/83261/default/ p11

"Judicial review is a cornerstone of British democracy. It empowers everyday people to challenge decisions made by public bodies. Whether it be central government or local authorities, rule makers are held accountable by ordinary people. This is a small, but important, check on the balance of powers in our democracy." [11]

In making it more difficult for claimants to mount and meaningfully win JR cases, the Government risks weakening this check on executive power. The consequences of this will be felt across civil society. In highlighting the environmental impact of clause 1, we echo concerns from a range of other sectors, including human rights advocates like Liberty[12] and legal professional bodies such as the Law Society.[13]

Tabled amendments for Report

We **strongly support amendment 23**[14], which would delete clause 1 from the bill. This deletion is necessary as the provisions of the clause tilt JR considerations in favour of decision makers, directing the courts to apply prospective and suspended quashing orders which fail to provide effective remedy for claimants. This will lead to a weakening in the effectiveness of JR as a pivotal check on the abuse of executive power, the potential continuation of harmful environmental consequences and further contravention of the requirements of the Aarhus Convention.

We also support the following amendments, which serve to ameliorate the worst impacts of clause 1:

Amendment 1 (and amendments 2 and 3, which are consequential on amendment 1)**:** The deletion of subsection 1(b), as proposed by these amendments, would remove provision for prospective quashing orders. This is prudent, given that the nature and scope of prospective quashing orders are far from clear, and would appear to open the door to unjust outcomes, where claimants overturn a decision but receive no remedy for the consequences of that unlawful decision. The Independent Review of Administrative Law[15] (that preceded the bill) did not recommend prospective quashing orders and the rationale for their inclusion in the bill has not been established.

Amendment 4: The deletion of subsection 9, as proposed by this amendment, would remove the direction to courts to grant a suspended and/or prospective quashing order if it appears to offer adequate redress and there appears to be no reason not to. This subsection needs to be removed, as it creates a statutory presumption that judges will only exercise their powers regarding remedies in certain circumstances. Such a statutory presumption infringes judicial discretion.

Amendment 27: The replacement of 'must' with 'may' significantly improves subsection 8, changing

[11] https://www.theguardian.com/commentisfree/2021/oct/25/judicial-review-peoples-right-fight-government-destroy-courts-undemocratic
[12] https://www.libertyhumanrights.org.uk/wp-content/uploads/2019/12/Libertys-briefing-on-the-Judicial-Review-and-Courts-Bill-second-reading-HoC-1.pdf
[13] https://www.lawsociety.org.uk/topics/human-rights/parliamentary-briefing-judicial-review-and-courts-bill-house-of-commons-second-reading
[14] https://publications.parliament.uk/pa/bills/cbill/58-02/0198/amend/judicial_review_rm_rep_0120.pdf
[15] https://www.gov.uk/government/groups/independent-review-of-administrative-law

the requirement on courts to consider irrelevant factors (likely not to favour the claimant) into an option to do so. This preserves judicial discretion and allows factors irrelevant to law, such as political commitments and good administration, not to be considered if the court so decides. **Amendment 28** provides helpful clarification as to the political commitment factor, as does **amendment 29** for good administration.

Amendment 25: This amendment would enhance subsection 9, replacing the current unspecified 'adequate redress' test for granting a suspended or prospective order with a clearer 'effective remedy for the claimant' test. This will provide reassurance for claimants that a remedy will be meaningful, helping to prevent a chilling effect on the bringing of JR cases. The introduction of the term 'effective remedy' will also help to uphold the UK's responsibilities under the Aarhus Convention.

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Wildlife and Countryside Link (Link) is the largest environment coalition in England, bringing together 65 organisations to protect nature and animals. Link's Legal Strategy Group works to improve law to better protect the natural environment.

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Appendix – Significant environmental JR cases

The below list, originally compiled for Link's submission to Independent Review of Administrative Law[16] which preceded the bill, presents recent JR cases that resulted in the overturning of unlawful decisions and the avoidance of further environmental harm. These cases illustrate the important role the current JR system plays in overturning unlawful decisions and preventing harm to the environment. This role will be weakened by clause 1 of the bill.

1. R (on the application of FoE Ltd) v Secretary of State for Transport [2020] EWCA Civ 214; [2019] EWHC 1070 (Admin)

The designation of the Airport National Policy Statement approving of expansion at Heathrow Airport was ruled unlawful for failure to consider the Paris Agreement and the full climate impacts of airport expansion, breaching sustainable development duties under s10 of the Planning Act 2008 (including on the basis of being irrational), and also the Strategic Environmental Assessment Directive. The decision was also found to be irrational. This ruling was later overturned by the Supreme Court.

2. R (ClientEarth) v Secretary of State for the Environment, Food and Rural Affairs [2015] UKSC 28

Directive 2008/50 established legal limits for the concentration of harmful nitrogen dioxide pollution in ambient air, with the purpose of protecting human health. After the compliance deadline passed in 2010, the UK reported breaches in 40 of its 43 reporting zones. In 2011, ClientEarth launched legal action against the Secretary of State with respect to its failure to comply with the limit values, as well as its failure to put adequate plans in place to tackle ongoing exceedances. Both the High Court ([2011] EWHC 3623 (Admin)) and the Court of Appeal ([2012] EWCA Civ 897) recognised the Secretary of State's failure to secure compliance, but considered that enforcement was not a matter for the domestic courts and neither Court was willing to grant a substantive remedy. After appeal to the Supreme Court, and following a reference to the Court of Justice of the European Union, in April 2015 ClientEarth secured a mandatory order requiring the Secretary of State to prepare new compliant air quality plans by 31 December 2015, with the Court stressing that the Government "should be left in no doubt as to the need for immediate action to address this issue". This led to updated plans which, whilst inadequate (see below), included commitment from the Government to introduce Clean Air Zones in five of the most polluted cities in the country.

R (ClientEarth (No.2)) v Secretary of State for the Environment, Food and Rural Affairs [2016] EWHC 2740

Pursuant to the order from the Supreme Court in R (ClientEarth) v Secretary of State for the Environment, Food and Rural Affairs [2015] UKSC 28 (see above), the Government published an air quality plan in December 2015 to address illegal levels of nitrogen dioxide air pollution across the UK. ClientEarth successfully challenged the lawfulness of that plan. The Court held that the Secretary of

[16] https://www.wcl.org.uk/docs/assets/uploads/Link_submission_to_IRAL_20.10.20.pdf

State had failed to satisfy a key legislative requirement under Article 23 of Directive 2008/50 to ensure that the period of exceedance of the relevant limit value is kept "as short as possible", as they had employed overly optimistic assumptions when modelling the extent of likely future non-compliance, and had modelled only 5-yearly intervals when determining the target date for compliance. The Court declared the 2015 plan unlawful and issued a mandatory order requiring that the Secretary of State draw up a new plan by 31 July 2017. This led to the publication of a plan that, whilst still inadequate (see below), more accurately identified the extent and likely persistence of illegal pollution levels across the country and included an increased programme of central government spending on measures to reduce pollution.

R (ClientEarth (No.3)) v Secretary of State for the Environment, Food and Rural Affairs and others [2018] EWHC 315 (Admin)

The Government's court-ordered 2017 air quality plan was accompanied by formal directions to 28 local authorities, requiring each to identify local pollution reduction measures to tackle exceedances in their respective areas in the shortest possible time. ClientEarth successfully challenged the lawfulness of this plan, on the basis that it (a) failed to address illegal levels of pollution in 45 additional local authority areas in England which had not been mandated by ministers to take action, and (b) failed to include a compliant plan for Wales. In February 2018, the High Court declared the plan
unlawful, and ordered that the Secretary of State publish a supplemental plan by 5 October 2018 to account for these additional English local authorities. The Welsh Ministers separately undertook to the Court to publish a supplementary Welsh air quality plan by 31 July 2018. The resulting plans have led to the adoption of/commitment to additional local pollution reduction measures in these areas, including Clean Air Zones, bus upgrades, active travel infrastructure and speed limit restrictions.

3. RSPB and others v Secretary of State for Justice [2017] EWHC 2309 (Admin)

Following the Government's decision to proceed with a number of reforms to the Aarhus costs rules in November 2016, the RSPB, Friends of the Earth and ClientEarth issued proceedings against the Secretary of State for Justice. The case secured a number of amendments to the Civil Procedure Rules, largely around securing early costs protection for claimants, including requirements that applications to vary the default cap must be made at the earliest opportunity (Acknowledgement of Service) unless there has been a significant change in the Claimant's financial position following the issuing of proceedings, clarification regarding the level of information to be provided in a financial statement when applying for JR and a requirement that any hearings into financial means must be held in private.

4. R. (on the application of FoE Ltd) v Department of the Environment [2017] NICA 41; [2016] NIQB 91

This was a successful challenge to the decision not to issue a stop notice for unlicensed sand dredging of the bed of Lough Neagh, a protected nature site. The case clarified the correct interpretation and application of the precautionary principle under the Habitat's Directive and Environmental Impact

Directive regimes in the UK.

5. Fish Legal v Information Commissioner & Ors and another case [2015] UKUT 0052 (AAC)

This case clarified that private water and sewage companies were public authorities for the purposes of the Environmental Information Regulations 2004. Prior to this case, the Upper Tribunal had decided that privatised water companies were outside the EIR regime in Smartsource Drainage & Water Reports Ltd v Information Commissioner [2010] UKUT 415 (AAC). However, the UT revisited the issue in this case and referred the matter to the CJEU for a preliminary ruling (Fish Legal & Emily Shirley v The Information Commissioner, United Utilities, Yorkshire Water and Southern Water C -279/12). The CJEU gave guidance on when the EIR are applicable but declined to consider the facts of the Fish Legal case and so the matter was left for the UT. The UT subsequently held that the water companies were public authorities because they exercise 'special powers', including the power to promote bye-laws which create criminal offences, and the power to enter private land without permission.

6. Dover District Council v CPRE Kent [2017] UKSC 79

This case concerned a proposed development of 155 hectares of land in an Area of Outstanding Natural Beauty (AONB) to the west of Dover. The Officer's Report recommended a reduction in the number of houses from 521 to 365 (thus sparing some 2 hectares of particularly sensitive landscape) but the Planning Committee approved the original proposal for 521 houses and gave no reasons for doing so. The Supreme Court (Lord Carnwath giving judgment) contained a full account of where statutory planning law requires the giving of reasons. The Court held that there was a duty to give reasons in development involving EIA development (supported by Article 6(9) of the Aarhus Convention).

7. Stephenson v Secretary of State for Housing and Communities and Local Government [2019] EWHC 519 (Admin)

NGO Talk Fracking challenged the inclusion in the revised National Planning Policy Framework ("NPPF") of a paragraph (209a) that directed Minerals Planning Authorities to recognise the benefits of fracking (and other on-shore oil and gas development), including its role in supporting the transition to a low-carbon economy, and to put in place policies to facilitate it. The Court held that the Government had purported to consult on the merits of fracking policy when adopting the revised NPPF. It was therefore material to consider scientific evidence, including the effects on climate change, and the government had failed to do so and had consulted unlawfully. Paragraph 209a was therefore removed from the NPPF.

8. CHEM Trust v Secretary of State for the Environment, Food & Rural Affairs (CO/2390/2019)

In June 2019, CHEM Trust sent a Pre-Action Protocol letter to the DEFRA Secretary of State, pointing out that the proposed post-Brexit Statutory Instrument for chemicals and pesticides failed to include the most controversial part of the EU's pesticides law, the ban on endocrine (hormone) disrupting

chemicals, which would enter into force in the event of a no-deal Brexit. On receiving the letter, the Government claimed there had been a "drafting error", withdrew the SI and re-laid a new SI with the requisite text inserted.

9. R. (on the application of FoE Ltd) v SoS for Energy and Climate Change [2012] EWCA Civ 28; [2011] EWHC 3575 (Admin)

This case prevented the Secretary of State from retrospectively removing feed-in tariffs for solar energy and undermining the growing small-scale solar industry. It was correctly argued that the Secretary of State did not have the necessary power to modify the tariff rate proposed under the 2008 Energy Act, with retrospective effect.

10. Greenpeace v. Secretary of State for Trade and Industry [2007] EWHC 311

In this case, Greenpeace challenged the Government's decision in the Energy Review Report 2006 (The Energy Challenge) to support nuclear new build as part of the UK's future energy-generating mix. Greenpeace argued that the Government's had promised in the 2003 Energy White Paper, "Our energy future – creating a low carbon economy" to carry out full public consultation on the issue before it decided whether or not to change its declared policy position not to support nuclear new build. The High Court gave Greenpeace declaratory relief that their legitimate expectation had been frustrated and that the procedure followed was unfair, such that the decision to support nuclear new build was unlawful.

11. Friends of the Earth, re Application for JR [2006] NIQB 48

Successful challenge to a failure to comply with the Urban Waste Water Directive and the Urban Waste Water Treatment Regulations (Northern Ireland) 1995. If unchallenged it would have allowed sub-standard sewerage treatment connections that endangered the environment and public health without any consideration for the attainment of the necessary standards set out in law.