

## Environmental Law Update

- A. **Air emissions and climate change:** R (on the application of ClientEarth) No. 3 v Secretary of State for Environment, Food and Rural Affairs and others [2018]
- B. **Brexit:** a green exit?
- C. **Contamination and Pollution:** Powys County Council v Price and Hardwick [2017]
- D. **Damage to property by JKW – liability issues:** Robin Waistell v Network Rail Infrastructure Limited [2017]
- E. **Energy:** Minimum Energy Efficiency Standards (MEES)



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### A Air emissions and climate change



R (on the application of ClientEarth) No. 3 v Secretary of State for Environment, Food and Rural Affairs and others [2018]  
➤ The lawfulness of the government's Air Quality Plan (AQP)

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#### The Court's decision

- The 2017 Air Quality Plan was unlawful
- Must aim to reduce air pollution as quickly as possible through enforceable measures

#### Significance

- Clear warning to the government to prioritise air quality
- Uncertainty remains



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## B Brexit



- ▶ New environmental regulator
- ▶ Potential breach of the Aarhus convention?

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## C Contamination and Pollution



Powys County Council v Price and Hardwick [2017]

- ▶ Liability under the Contaminated Land Regime (CLR)



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### CLR

- ▶ Liability for remediation is imposed on the relevant **"appropriate persons"**
  - ▶ **Class A persons:** caused or knowingly permitted the contaminating substances to be present in, on or under the land
  - ▶ **Class B persons:** the current owner or occupier of the site (regardless of whether it was aware of the contamination)

### The Court's decision

- ▶ Liability does not extend to those whose predecessor's polluted the land before the CLR came into force



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## D Damage to property by JKW



Robin Waistell v Network Rail Infrastructure Limited [2017]

- ▶ Japanese Knotweed and the emergence of "proximate nuisance"



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### The Court's Decision

- ▶ Encroachment by the JKW rhizomes is not actionable unless it causes physical damage
- ▶ JKW did interfere with the amenity value (as the properties could not be sold for their full market value)

### Significance

- ▶ Due to be heard in the Court of Appeal in June
- ▶ Emergence of "proximate nuisance"?
- ▶ Increased importance of JKW maintenance plans and property due diligence

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## E Energy



### Minimum Energy Efficiency Standards (MEES)

- ▶ From April, landlords must not renew existing tenancies or grant new tenancies if the building has less than the minimum energy performance certificate (EPC) rating of E, subject to the terms of the regulations.
- ▶ Other considerations?



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