

Environmental Law - Scottish Environment Protection Agency (SEPA) Qualified Sept 03

You and this area of the legal profession

What do you enjoy most about it?

I genuinely find this area of law to be very interesting and rarely find that any two of my working days are the same.

In terms of the law, it is very fast moving and is often very driven by developments at European and international level as opposed to just national initiatives, so as a Scots qualified lawyer, practising in this area of law exposes me to far more than just local Scots law. I also have to be aware of many scientific and technical issues that lawyers practising in other areas may not normally encounter, in order to fully understand my clients' issues and tailor my advice appropriately.

In terms of my particular job, as an in-house lawyer working for a public body I deal with not only environmental law but also issues of administrative law, human rights and criminal and civil litigation. I enjoy the fact that I have to interpret law directly and am dealing with black letter law every day but in a very real and practical context, as opposed to being a legal advisor in commercial transactions. I also really enjoy working alongside scientists, policy advisors and environmental protection officers so the dynamic of working with them and the information I learn from them is quite different from working in a private law firm.

On a personal level, I have always been genuinely interested in environmental matters, so I enjoy working in an area of law that directly affects those matters.

What would you do if you were a new graduate trying to start out in this area of the profession?

If you didn't study environmental law at university then it may be worth looking into doing a postgraduate general masters course to give you a base level of knowledge as this is quite a specialised area of law. There are very few practices in Scotland which have teams who work exclusively in this field (many combine it with planning or commercial property work) but it is a growing specialism so you may be fortunate enough to get a traineeship with one of them, and to get a seat in the environmental department. UKELA is also a useful body to join as a means of making contacts with specialists within the profession and in industry.

What are you most excited or concerned about for this area of law in the future?

In general terms the new environmental technologies coming on stream, such as tidal power and the prospect of a new power grid on the bed of the North Sea, offer exciting means of taking practical steps to tackle climate change issues. They also offer difficult legal questions in terms of regulating such technologies which had not been conceived of when the law they may fall under was drafted.

My current specialism within environmental law is waste so the recent drivers from Europe that involve finding ways to 'declassify' materials as waste – either by labelling them a by-product or determining that they have been fully recovered and have ceased to be waste – are of most interest to me. This is obviously a big plus for industry (especially in a recession) but I'll be interested to see how this pans out in practice as it could mean many materials fall outwith regulatory control so I'm concerned about the potential environmental implications. Integrating climate change factors into our waste regulatory decisions (e.g. what is the carbon impact of landfilling as opposed to building a new waste recycling plant?) will also present an interesting challenge.

What have been your biggest surprises in this field?

The sheer size of this area of law and how quickly it develops! How the seemingly simple question of 'is it waste?' can result in rooms full of highly educated legal and policy officers scratching their heads for hours. Also how impassioned people can get when debating issues of environmental law, which is quite a contrast from the area I started out practising in (commercial property).

What motivates you to continue in this area of work?

My genuine interest in environmental issues and the fact that no two days are the same means that I have never felt I was stagnating working in this field. Also the knowledge that this is a growing area of law that will never go away and that has European and international relevance.

About the work you do

What are your primary responsibilities?

Giving legal advice and guidance to various teams within SEPA on issues of waste law and the practical implementation of new legislation – including my fellow lawyers, Policy officers, and the environmental protection officers who are on the ‘front line’ – and training them on new developments as well as advising on high level enforcement action taken by SEPA and defending SEPA e.g. in appeals and judicial review actions. Providing legal support to all stages of the practical implementation process including inputting to the development of regulations, assisting in interpreting the regulations and developing regulatory policy, guidance and procedures. Liaising with government and non-governmental bodies, representing SEPA in respect of national and international legal negotiations and discussions.

How do you spend your time? (if possible try to quantify rough %s for an average week)

I find it hard to describe an ‘average’ week since I don’t think I’ve had one yet – I am based in SEPA’s East Kilbride office but regularly travel to other offices within SEPA and outwith SEPA (e.g. to Scottish and UK Government and to sister agencies’ offices). My time is spent reviewing draft policies and advising on legal risks attaching to them, answering queries on the meaning of certain legal provisions and implications for the organisation of taking one interpretative approach over another, advising on the legal risks involved in taking (or not taking) potential regulatory and enforcement action against specific operators, commenting on draft legislation from government, reviewing new policies and draft legislation from Europe.

When I worked as an environmental lawyer in private practice the majority of my time (over 70%) was spent on transactional work – i.e. dealing with clients (by which I mean both external clients and ‘internal clients’ i.e. colleagues in other departments of the firm), environmental due diligence, and drafting and negotiating the environmental parts of corporate, property and projects transactions. The remainder of my time was taken up with what we called ‘bespoke advice’, namely advising clients with particular environmental legal issues such as negotiating with regulators, interpreting new law and advising them on environmental regulatory matters affecting their business.

What prior experience is valuable to help you get into this area of law (e.g. vacation placement, volunteering with CAB etc)

Evidence of having studied environmental law, either as part of your degree or afterwards. Attendance at UKELA and other environmental law/regulatory events. Summer placement/volunteering at firms or other bodies that have an environmental department would give you a good idea of the nature of this work in practice.

What is the typical career progression for a lawyer in this field?

In private practice the career progression can be the same as with other areas of law but there is arguably greater scope to specialise at an early stage and so potentially to gain promotion as an expert within the firm more quickly. There are still relatively few genuinely dedicated or even part-time environmental lawyers in Scotland compared to in England and Wales or abroad, so there is potentially scope to grow and develop a reputation in the field with fewer competitors for the work.

Where, when and how do you suggest looking for traineeships?

In Scotland, most of the firms that have environmental law departments are the larger firms – e.g. D&W (where I used to work) so check the listed specialisms on the law society website. SEPA also has a traineeship programme, although we are only on our second trainee at present and both have been internal appointments.

About skills

What skills are most critical to success in this area?

Legislative and case law interpretation – the ability to apply your mind to new law as it is made (and to critically appraise it with a view to influencing it before it is made) without the benefit of a textbook or others' opinion to explain its meaning.

Being able to break down complicated legal concepts to explain them in laymen's terms to non-lawyers.

For working in-house, the ability to work independently, self-motivate and manage your own workload and deadlines is essential.

Of course the basic legal skills of drafting, negotiation, interpretation, reasoning, critical analysis and public speaking are all equally important in the field of environmental law as they are for all other lawyers.

How do you keep your skills current?

Lots of reading on the latest legal developments from Europe and internationally. Keeping up to date on the latest industry technical developments to try to anticipate regulatory challenges that may arise in future.

What do you read to ensure you are up to date in this area of law?

Mostly daily updates since books are often out of date by the time they are published e.g. ENDS, PLC Environment, JPEL, government briefings on parliamentary developments etc.

What professional associations do you belong to?

Law Society of Scotland (of course!) and UKELA.

Anything else?

Is there anything else you think would be helpful for anyone considering this field?

Be aware that it is a specialism which means there are fewer jobs available and although the skills you need for this job are transferable to other areas of law, it may not be so easy to switch to work in another field as it would be for other lawyers e.g. civil to criminal litigation or residential to commercial property. Having said that, I don't know of any environmental lawyers who have wanted to leave this field once they've found their way into it.