

HOUSE OF LORDS

SESSION 2001–02
34th REPORT

SELECT COMMITTEE ON
THE EUROPEAN UNION

ENVIRONMENTAL LIABILITY

WITH EVIDENCE

Ordered to be printed 23 July 2002

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS
LONDON – THE STATIONERY OFFICE LIMITED

[price]

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THIRTY-FOURTH REPORT

23 JULY 2002

By the Select Committee appointed to consider European Union documents and other matters relating to the European Union.

ORDERED TO REPORT

ENVIRONMENTAL LIABILITY

6568/02: Draft Instrument of 22 February 2002 concerning a proposal for a Directive of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage (COM(2002)17)

Introduction

1. From time to time the Committee and its Sub-Committees reinforce their scrutiny of European Union documents by taking oral evidence from Ministers, in addition to conducting correspondence, on proposals which raise particularly important policy issues. One such example is the proposed Directive on Environmental Liability.

What is Environmental Liability?

2. “Environmental liability”, a form of civil liability¹, is a means by which those who cause damage to the environment are made to pay for putting it right, consistent with the long-established “polluter pays” principle. There are a number of existing and proposed systems for imposing such liability, dealing with various situations in which damage to the environment occurs. Liability may arise even where environmental protection measures have been taken. The existence of environmental liability rules may also have a deterrent effect.

Existing arrangements in the United Kingdom

3. There are a wide range of legal systems and proposals in the United Kingdom which provide for environmental liability. These include a new regime for contaminated land; better protection for Sites of Special Scientific Interest (SSSIs); the waste management licensing system; the integrated pollution control system; and the system of works notices relating to the pollution of controlled waters. Under these regimes, action is taken in the public interest by public authorities such as local authorities or the Environment Agency. They can require damage to be put right by those responsible for it, or put the damage right themselves and then recover the costs afterwards from those responsible.

4. Some EC Directives on environmental protection have provisions to deal with environmental damage, while others do not. The common law may also be relevant. For example, those directly affected by an environmental incident might be able to sue for any personal injury or property damage they suffer. However, any compensation obtained in this way might not be used to make good the damage to the environment.

The Commission's proposals

5. The European Commission adopted in February 2002 a formal proposal for a Directive on Environmental Liability, as a follow-up to its 2000 White Paper² on the subject, though with many important differences from the latter.

6. The proposals are aimed at the prevention and remedying of environmental damage to water, land and biodiversity. The regime would be based on the principle that polluters should bear the cost of damage they cause to the environment, or of measures to prevent imminent threat of damage. They

¹ To be distinguished from criminal liability, giving rise to imprisonment or a fine.

² COM (2000) 66 final, 9 February 2000.

would do so by restoring the damaged environment directly, or taking measures to prevent imminent damage, or by reimbursing competent authorities who either restore damage or take action to prevent damage in default. Competent authorities would be responsible for enforcing the regime in the public interest, including determining restoration standards, or taking action to restore or prevent damage and recover the costs from the operator.

7. The regime would be founded on strict liability in respect of damage to land, water and biodiversity from activities regulated by specified EU legislation, and fault-based liability in respect of biodiversity damage arising from any other activity. There would be defences and exemptions from liability. It is also proposed that where there is damage for which an operator is not liable, the Member State would have subsidiary responsibility. Individuals and others who may be directly affected by actual or possible damage, and qualified entities (in particular non-Governmental Organisations) may request action by a competent authority, and seek judicial review of the authority's action or inaction.

Scrutiny by the Committee

8. When the original White Paper came forward in 2000, it was referred to Sub-Committee D (Environment, Agriculture, Public Health and Consumer Protection) for scrutiny. Because of heavy commitments at the time, including a major inquiry, the Sub-Committee decided not to examine the White Paper in detail, especially since the dossier was the subject of extensive consultation by the then Department of the Environment, Transport and the Regions with industry and other stakeholders. The document was therefore cleared, but the Sub-Committee agreed that it would revisit the subject when the Commission came forward with legislative proposals in the light of reactions to the White Paper.

9. Scrutiny of the present proposal has had to be completed against a tight timetable. When the Department for Environment, Food and Rural Affairs (DEFRA) submitted its Explanatory Memorandum of 2 April 2002 (reproduced with this Report), there remained a very narrow window within which Sub-Committee D could usefully offer an opinion—i.e. between the closing date (24 May) for responses to a consultation exercise which DEFRA had launched on 12 April, and the Environment Council's meeting of 24 June 2002, at which the Spanish Presidency had declared an intention of securing political agreement.

10. It was against this background that the Minister for the Environment, the Rt Hon Michael Meacher MP, was invited to give oral evidence to the Sub-Committee, so that the Select Committee would be in a position to offer comments in time for the Council meeting. In the event the proposals were the subject of an orientation debate only and are not expected to reach the stage of political agreement or Common Position until late in the current Danish Presidency.

The purpose of this Report

11. The UK Government now has a little more time to prepare its position and to take further into account the many comments it has received, not least from the Parliamentary Scrutiny Committees. In view of the importance of the proposals and their implications for industry in particular, the Committee considers that the Minister's evidence and its subsequent correspondence with him should now be down to the attention of the House.

12. This Report therefore comprises the text of DEFRA's Explanatory Memorandum, the transcript of the Minister's evidence and copies of related correspondence, including the Minister's response to the Committee's comments on the proposals, which concludes the process of scrutiny.

13. The Report is made for information.

APPENDIX 1

*Sub-Committee D**(Environment, Agriculture, Public Health and Consumer Protection)**Members of the Sub-Committee*

Baroness Billingham
Lord Crickhowell
Lord Christopher
Lord Dubs
Lord Fyfe of Fairfield
Baroness Maddock
Baroness Miller of Chilthorne Domer
The Countess of Mar
Lord Palmer
Earl of Selborne (Chairman)
Lord Walpole