

HOUSE OF LORDS

SESSION 2002–03  
46th REPORT

SELECT COMMITTEE ON  
THE EUROPEAN UNION

REVISION OF THE EC  
BATHING WATER DIRECTIVE

WITH EVIDENCE

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# FORTY-SIXTH REPORT

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18 NOVEMBER 2003

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

ORDERED TO REPORT

## REVISION OF THE EC BATHING WATER DIRECTIVE

13789/02 Proposal for a Directive of the European Parliament and the Council concerning the quality of bathing water (COM(02)581)

### *Introduction*

1. On 24 October 2002 the European Commission adopted a proposal for the revision of the 1976 Bathing Water Directive.<sup>1</sup> It was the Commission's second attempt to revise an increasingly outdated piece of legislation—the first attempt (in 1994)<sup>2</sup> having been abandoned in 1998.

### *Earlier attempt to revise the Bathing Water Directive*

2. The original proposals for revision came partly as a result of pressures from the United Kingdom and other Member States for greater simplification of Community environmental legislation and for more rigorous application of the principle of subsidiarity. The Commission came forward with proposals which were intended to streamline the workings of the Directive but retained the regulation of bathing water quality as a Community competence.

3. Our Committee reported twice on the previous proposals during the 1994–95 session, following inquiries by Sub-Committee C (Environment, Public Health and Education), under the chairmanship of Lord Lewis of Newnham.<sup>3</sup> In the event the proposals were dropped as a result of disagreements between Member States over the practicability of achieving of higher standards.

### *The new proposals*

4. The new proposals are acknowledged to be ambitious and likely to require significant changes in practice. They have substantial implications for investment in water quality monitoring and infrastructure investment. They raise major questions on the balance between costs and benefits.

5. The objective of the proposals is to improve protection of bathing waters from faecal pollution through improved monitoring methodologies and management approaches. The main features are as follows:

- Bathing waters must meet “good quality” status, to be determined by meeting two microbiological parameters over three preceding seasons. This is tighter than the standard set by the 1976 Directive.
- Achievement of “excellent quality” status is to be promoted. This is twice as stringent as “good quality” status.
- A reduced number of parameters would need to be measured in monitoring water quality but with increased frequency of monitoring.
- Introduction of basic bathing water management measures (which would improve knowledge of risks and impacts) and improved provision of information to the public.

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<sup>1</sup> Directive 76/160/EEC, OJ L31 (5 February 1976).

<sup>2</sup> 6177/94—Proposal for a Council Directive concerning the quality of bathing water.

<sup>3</sup> European Communities Committee, 1st Report (1994–95): *Bathing Water*, (HL Paper 6); European Communities Committee, 7th Report (1994–95): *Bathing Water Revisited*, (HL Paper 41). The Reports were debated on 18 May 1995 (HL Deb cols 684–708).

*Critique*

6. The Government's Explanatory Memorandum on the proposals notes that the Commission have not undertaken a full impact assessment of the proposals. They have based the proposed standards on methodology developed by the WHO, but that methodology is apparently itself based on limited epidemiological evidence. The Government also note that the Commission's economic evaluation is limited to four case studies, and that it overestimates the benefits compared with the findings of studies done in the UK.

7. The Government's concerns focus principally on the difficulty with which the new standards would be achieved and the costs involved in bringing about what are perceived as relatively minor benefits. It is estimated that implementation of the proposals would reduce compliance by UK bathing waters from 98.5 per cent in 2002 to around 70 per cent in the absence of compensating investment and other additional measures. One effect could be to reduce public confidence in bathing water and damage the economies of coastal resorts.

8. Nevertheless the Government support the general principle of revising the Directive. They suggest however that the WHO approach of deploying improved management measures in tandem with higher water quality standards should be explored more fully.

*Cost implications*

9. The Government believe that the main costs to the UK would lie in reducing diffuse pollution caused by agricultural run-off. They think that of an estimated £3.2–3.9 billion needed over 25 years to implement the tighter standards, the major part would be the cost of reducing diffuse agricultural pollution, concentrated at only a minority of sites. They have suggested that the Commission explore more fully the potential impacts on human health from this type of pollution. The Government do not consider the Commission's proposal to be justified on cost benefit grounds as it currently stands.

10. More generally, there is a significant divergence of view between the UK and the Commission, with the UK questioning the assessments on which the Commission has based its proposals.

*The Government's negotiating position*

11. The Government have proposed modification of the Commission's proposals in ways which would achieve the Directive's aims of simplifying and modernising monitoring procedures, but would avoid the heavy potential costs of imposing across-the-board standards. Rather than rigid enforcement of mandatory standards, the Government have argued for greater reliance on management measures to protect public health. These would allow temporary relaxation of standards where a beach manager could show prior knowledge of potential faecal contamination events and where reasonable steps had been taken to restrict their occurrence.

12. The Government's approach envisages issuing warning notices and other information to the public, to discourage bathing during episodes of enhanced pollution. For the purposes of assessing compliance with the Directive, it is suggested that samples taken during those periods which fail the test should be discounted, i.e. left out of the compliance calculation.

13. The Government's proposals are thus designed to avoid the need for expensive investment, the main purpose of which would be to avert the consequences of temporary pollution incidents (such as storm run-off) in a small number of areas. It is estimated that savings of between 20 and 50 per cent could be made on the Commission's projected costs by adopting this approach. The Government does, however, recognise, that there could be problems of accountability.

*Scrutiny by the Committee*

14. To inform their scrutiny of the proposals, Sub-Committee D (Environment, Agriculture, Public Health and Consumer Protection), whose members are listed in Appendix 1, invited the Environment Agency to submit a memorandum. This is reproduced below as written evidence. The Minister for Environment and Agri-Environment, Department for Environment, Food and Rural Affairs (Mr Elliot Morley MP), was also invited to give oral evidence. The transcript is reproduced with this Report.

15. The Committee commented on the proposals in two letters to Ministers. These are reproduced in Appendix 2, together with Mr Morley's reply of 12 November 2003.

*Opinion*

16. **Having considered the Minister's latest letter, we remain of the view that the existing cost estimates are very uncertain and that little confidence can be placed in their accuracy. There is a real possibility that the costs falling on the water industry could be much higher than present estimates. We reiterate our view that far more stringent financial appraisal and cost benefit analysis are required before the Government can safely sign up to the proposals in anything like their present form.**

17. Scrutiny of the proposals, as they currently stand, has now been completed. This Report is submitted to the House for information.

## APPENDIX 1

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

Baroness Billingham  
Lord Carter  
Lord Crickhowell  
Lord Fyfe of Fairfield  
Lord Haskins  
Lord Lewis of Newnham  
Lord Livsey of Talgarth  
Baroness Maddock  
The Countess of Mar  
Lord Palmer  
Lord Renton of Mount Harry  
Earl of Selborne (Chairman)