

WEDNESDAY 15 OCTOBER 2003

Present:

Billingham, B
Crickhowell, L
Haskins, L
Lewis of Newnham, L
Livsey of Talgarth, L
Palmer, L
Renton of Mount Harry, L
Selborne E. (Chairman)

MR ELLIOT MORLEY, a Member of the House of Commons, Minister for Environment and Agri-Environment, Department for Environment, Food and Rural Affairs, examined.

Chairman

1. Minister, thank you very much for joining us. You know that we have been holding under scrutiny the proposed revision of the Bathing Water Directive. We had the benefit of Michael Meacher's evidence a year or so ago when he was the Minister responsible. Thank you very much for agreeing to bring us up to date. We hope that as a result of this evidence session we will be able to clear this document from scrutiny but we would value enormously first of all hearing from you just how far we have got with the negotiations in Council and to what extent the concerns expressed in your Department's Explanatory Memorandum of 25 November have been addressed, including those arising from the partial Regulatory Impact Assessment.

(*Mr Morley*) Certainly, Chairman. I am very happy to do that for you. Where we are at the present time is that the Directive has been through the European Parliament's Environment Committee and in the process of the deliberations one of the issues which were of concern to us was the issue of the peaks when you get run-off in relation to rain and how that can be stored for readings. The need to have some flexibility in the way that you approach this was addressed by the Environment Committee in the way that we wanted, so that was quite encouraging. It goes to the Plenary Session this month in the European Parliament. It may well be that there will be some disagreements in the Plenary Session which will put the European Parliament at odds with the Council and we will have to see what comes out of that. I think it is for that reason that it was hoped to be on the agenda of the October Environment Council, but that is not going to be the case now. The Italian Presidency would like to have it on the agenda for the December Environment Council but that very much depends on how much disagreement there is in relation to the views of the European Parliament and the views of the Council. One of the areas of disagreement is the issue of recreational waters, for example, which is currently not included within the Directive. Some people would want the standards applying to recreational waters. That might be one which is a difficult one.

2. Can you give us some indication as to where you are coming from on the recreational water issue?

A. We believe that the Directive should apply to bathing waters only. It would be very difficult to administer in relation to recreational waters and we believe that there may be other ways of ensuring standards in relation to recreational waters without all the problems of the Directive.

Lord Lewis of Newnham

3. If you look at the definition that is given in Article 3 it states that bathing water refers to waters in which bathing is not prohibited and is “traditionally practised by a large number of bathers”. What does it mean by “a large number”? When we looked at this in 1994 we found that there were no inland waters whatsoever in this country which were classified as bathing waters, whereas in Luxembourg I think they had 48. I am talking about data for 1994 so that is probably quite out of date.

A. Luxembourg is a bit short on coastline, that is for sure. We do have a number of inland bathing waters which are classified, not a very large number but they are ones which are popular with swimmers and, quite understandably so, we want to apply the standards in the Directive. You do touch upon an issue which, to be frank, has not been fully resolved about the definition of “bathing waters” which is very vague in the Directive in terms of “a large number of bathers”. It is not helpful, shall we say. We have approached this on the basis of bathing waters which are generally popular within our own country. We have also consulted with bodies like the British Canoe Union and Surfers Against Sewage, particularly in areas which they regard as popular as well. We have tried to take a pragmatic approach in terms of our own designation, and of course we do want all our coastline to be high standard, so we are aiming to try to get to the best standards that we can irrespective of this particular Directive in relation to water quality. We have made very good progress in this, Chairman. In terms of the current Directive, we are round about 98 per cent compliant which is pretty good. We have come a long way since the Directive was originally introduced. Of course, this new Directive does bring in new standards that we are having to meet but we want it to be in a reasonable way. Our main concern, which we believe is shared by other countries, is that it can be disproportionate if you have to meet the standard at all times when you may have quite limited periods of heavy rainfall that can alter the readings, particularly because of animal manure, for example, mainly diffuse pollution from agriculture. That might last only for a short time and we think that we can deal with that by notices to give people information because we do not want to hide this. However, to guarantee that you can meet the standard all the time in all weather conditions could cost very large sums of money without a great gain. That is the issue of concern for us.

4. One of my problems there simply is that the testing procedures you have very often are not instantaneous, so if you have had heavy rain you could not say immediately that the water would be polluted. You would have to take the sample away and do the tests. Those tests could take, if I understand it correctly, certainly of the order of hours, if not days.

A. It is true that there is a time involved in relation to the tests which are applied. However, we know from experience that when you get certain weather conditions, because of sampling taken at that time you know what your samples are going to be and you know that when you may have a high number of coliforms because of the particular weather conditions. It will be sampled then but, because of the knowledge and experience that the Environment Agency and local authorities who do this have, you can predict quite reasonably that there may be a problem. As soon as we get the actual readings what we would like to do is make them available for the public.

Lord Crickhowell

5. Perhaps the Minister could give us a little more detail on this “recreational” as opposed to bathing point. I spent a large part of the early part of my life sailing and rowing on the Thames and sometimes fell in. That is bad luck; that is clearly not a bathing water. When I was Chairman of the National Rivers Authority we always had particular difficulty with international canoeing events because canoeists do spend a very large part of their time under or in the water. I can see a case for saying that they should be defined as bathing because they are probably ingesting more water than a normal bather would. Do we have a distinction between water sport location, where you would expect someone like a canoeist to be under

the water quite a lot of the time, and somewhere where you would not normally expect to be, like falling out of your sailing boat into the Thames?

A. I understand the point you make. It is a difficult one in the sense that at the moment the Directive only applies to bathing water and not to recreational water. We have, of course, consulted bodies like the British Canoe Union who understand this and in fact they have not asked for the Directive to be extended to recreational waters. Canoes in particular use a wide range of water courses, canals and rivers which vary in quality, but it means that there is a large opportunity for people to pursue their sport or activity. Of course, if you were very rigid in relation to the standards you might be ruling out some waters for that, so it is a question of getting that balance right. There are some internal waters which are very popular for water sports and I think that that is a consideration that we must take into account in relation to the kinds of quality standards that there are in those areas. We can address those in terms of our own commitments without the rigidity of the Directive applying.

Lord Renton of Mount Harry

6. You used the word “pragmatic” when describing your approach. I wondered whether the Government considered that tightening of the minimum water quality requirements for this proposed “good” standard was justified by current assessments of the health risks that are associated with public bathing?

A. That is a very good question as well because if you wanted to be very analytical it might be hard to justify it on our current scientific knowledge of the health risks, because the view is that the health risk in our bathing waters is very low. There has been some research done. Ironically, we have done more research into this than any other country in terms of the health risks of bathing waters and what effect they can have on people. The World Health Organisation have taken some of our research and they have presented this to make the argument for higher standards in relation to bathing water. However, we have concerns that the research was based on a very small sample; it was only four beaches. If you really wanted to be accurate about it in terms of the strict scientific justification it is not strong, shall we say. However, having said that, we do want good standards and there is the precautionary principle. We believe that as long as we have the flexibility in relation to the short-term peaks, which is a potential problem, then we can apply this Directive and make it work.

Lord Haskins

7. The European Parliament is looking at all this. I have two questions: (a) what do you think is likely to be the outcome of their consideration? And (b) some UK members of the Environment Committee have expressed concerns. Does the Government share those concerns?

A. We have contacted the UK members of the Environment Committee. As far as I am aware we are in agreement in relation to the Government position and that of our UK MEPs. In terms of the outcome, I think it is likely that the European Parliament will press this further than the Council would like to go. It is probably likely that they will press it further than we would find easy to support because of the problems and the extra costs for small benefits and taking away the flexibility I mentioned in relation to the short-term risks.

8. Where is that pressure coming from?

A. It is understandable, I guess, that if you have MEPs from different countries, and of course you have various pressure groups who are arguing for the very best standards of quality (and we all want the very best standards of quality), it is easy to vote for it when you are not the one who has to deliver it.

Baroness Billingham

9. Would it be fair to say in that respect that this is not going to be a political decision in the way that it normally is in the hemicycle of the European Parliament but, as is so often the case on an issue like this, it becomes a north-south view and you will find that the northern

states will come down with a bigger green lobby in favour of stiffening the Directive, whereas the southern Member States might well be more liberal in that respect?

A. Actually, it seems to be the other way round.

10. I am surprised.

A. The northern states are united in the need to have some flexibility in how it is applied because we all face the same problems. We all have periods of heavy rainfall. We all have issues of diffuse pollution. Most of us have tackled the point source pollution. We have certainly made very good progress with this within our own country, so the kinds of issues of concern to us in the UK are very much of concern to northern European states. The southern European states have not been quite so vociferous on this. I am not saying that they have not got the same problems.

Lord Haskins

11. They have a bigger problem in the Mediterranean.

A. I would have thought so, as a matter of fact.

Lord Lewis of Newnham

12. But there is a difference and that simply is that you have got decent water that you can see through and it is not sand being circulated all the time as, say, in the North Sea waters. You also have got good UV light to destroy bacteria.

A. The UV light certainly makes a big difference because coliforms will not last long in hot Mediterranean countries where you have got the very strong UV light. They die very quickly; that is very true.

Lord Crickhowell

13. Can I get on to the whole question of economic appraisal and costs? I start with an anxiety. I happened to be the person ultimately responsible for enforcement of the Regulations during the great peak of previous effort under the National Rivers Authority. We had massive investment, as you know, because we moved from having only long sea outfalls to having even longer ones combined with full treatment. This created massive problems because the costs were enormous; the costs for water were politically extremely sensitive and the economic regulator took a rather different view from the environmental regulator. We had our battles which eventually had to be resolved. It was a very sensitive subject. At the moment on the cost side we frankly do not seem to know. There is an estimate given for the water companies. I suspect that it is probably on the low side and that there is the possibility that it will move higher. Very substantial costs are being considered and talked about but are not known and are highly dubious in relation to diffuse run-off. The benefits, as you say, may all be practical and make sense if you can be really flexible. I had more cattle and milk producers in my constituency than almost any other constituency in the British Isles; I also had probably rather more bathing beaches than almost any other constituency and the idea that they were all being polluted significantly by the cows I think is absurd. I suppose there were moments in heavy rain but if you have got your flexibility that is very helpful. The truth is that we do not have a real appraisal at the moment of what is going to be involved and what it is going to cost. All I recall from my time in those seven years is that this was absolute dynamite stuff politically, highly sensitive and caused great financial difficulties. If the agricultural industry were to be landed with the substantial costs now that really would be very serious indeed. We really need to know. There is one other concern on which we do not know the answer. The Environment Agency point out that it is going to add very considerably to their costs, the new monitoring and so on. In another context this Committee, meeting this morning, was expressing concern about the funding for new commitments for the Environment Agency. Once again we need to know, I think, before we get to rubber stamp what we are letting ourselves in for. Do we really have any idea?

A. We have an idea and you will have seen the figures in the Regulatory Impact Assessment. It is fair to say that they are really a very broad assessment. I would not wish to pretend otherwise. The more work we do on this the better, and we do have a research programme at the present time in Scotland looking at diffuse pollution and the impact on bathing water and that will be very helpful in terms of giving us a better idea of what the cost implications will be. We are funding research and developments to try and give us a more accurate prediction. I suspect that the impact on the water and sewage companies, although it will not be zero, because of the work that has gone in over the years will probably be relatively limited, but again one cannot say absolutely and I would not say either that there are no cost implications. It is probably more of an implication in relation to diffuse pollution. It is difficult to get some idea of the cost implications on this. One of the issues is of course the storage of manures, good agricultural practice, making sure that applies, and we also have implications on the Water Framework Directive, so what we do on controlling diffuse pollution will also help us meet that Directive.

The Committee suspended from 4.01pm to 4.08pm for a division in the House

Lord Crickhowell

14. I have one final question on economic appraisal. The response previously was that until we knew what was going to come out of Europe there was no point in trying to do a more detailed and final regulatory impact assessment. For all the uncertainties it does seem to me rather important that we get as much information as we can, so that we are not wasting money on the wrong priorities, and that we have some idea of what the eventual outcomes might be. Is it the intention of the Government to have as full and adequate an assessment as it can get before we go to the final stage?

A. Yes, it is. We are trying to improve our assessments and our predictions. For example, we have done some work on what it would mean if we did not get the flexibility in relation to the monitoring. That would certainly add up to two billion pounds in relation to the costs, so we have an idea of what we are talking about, what we are trying to get, that kind of flexibility, because we do not believe they will get two billion pounds' worth of benefits for that kind of money.

Lord Lewis of Newnham

15. Minister, can I first of all say that I was involved in the discussion of the 1976 Directive when proposals for revision came up in 1994. As you know, the 1994 proposals did not go through, so I am rather concerned that at least something goes through now because—no matter what we say—1976 was a long time ago and practice, as you have rightly said, has changed enormously. May I say that I also think that the reduction of test measurements from 19 parameters down to four is very realistic. Before that some of the measures we were taking were quite extreme and unnecessary. One of the things we did concentrate on, however, was the sampling situation. If you look at the Commission's annex 5, which lays down the sampling procedure, I would agree with the present suggestion of a uniformity in handling of the samples because, as you were saying earlier, UV light and things like that can make such a difference. The method of analysis is now going to become uniform, if I understand it correctly, which I think is a very essential point, particularly on the biological side of the analysis. I think also one has to accept the fact that at the end of the day the analysis is no more than a snapshot view of that particular situation. One of the things that worries me slightly is the method of taking the sample. This is one of the points that we did discuss in our 1994 report and it seems to have been completely excluded from the particular discussion here. It became very clear that different results occur if you take a sample at, say, the surface and then a foot down. In the earlier report the suggestion was that you waded out to waist depth and took a sample 12 inches below the surface. In fact, the adviser we had, Professor David Kay from Leeds, had done work to show that for the

gradient on going down into the water there was a large variation in the amounts of material particularly of biological sensitivity that was obtained. The depth factor is very important. It does beg the other question that if at different depths there are very significant differences in the amount of biological materials, how do we go about deciding what is the correct value and on what basis do we make a decision as to when something is or is not dangerous and exceeds the limits?

A. I think the most important thing is that there is a protocol in relation to the testing criteria which applies to all countries. Like you, I think that is a great step forward because we all need to be doing the same kind of sampling in the same sort of way. There is an ISO standard for testing. I do not think all the details have been resolved in relation to the criteria for the test apart from when it is resolved it will apply to all. If there is an ISO standard that would seem to me to be a very good basis on the standardised approach and that might be one which the Commission might like to think about.

16. I am a chemist by trade and the one thing I did discover very early on is that if you do not correctly sample the material it does not matter how sophisticated your subsequent analysis is, it is meaningless, and so the critical point in all this is that initial sample; it is important that you get that right. This is not even addressed in this particular proposal.

A. It has not been addressed yet but it is the intention, I understand, for the Commission to give that guidance. I agree with the points you make; you are absolutely right.

Chairman

17. Perhaps I can move on to other areas of concern which are still on the agenda, as you have already indicated. You will recollect that we asked the Environment Agency for a memorandum and they listed in the summary certain aspects which they welcomed and remaining areas of concern. These were the current proposals for laboratory protocols, quality standards associated with these protocols, the statistical basis for assessing compliance, and they were worried about the lack of consideration of sustainable development. I do not know if there is anything further you would wish to add on any of those aspects or indeed any other areas of concern you would like to flag up.

A. No. I have seen the Environment Agency's submission and I think that they make very reasonable points. I am not sure about the one about sustainable development in relation to the increase in energy consumption by the water industry because they are focusing on the sewage companies and, given the investment that has gone in, and as I was saying earlier on, I think there is probably likely to be more emphasis on diffuse pollution. Generally speaking, I think their areas of concern are definitely reasonable and these are the kinds of things that we want to see addressed in the detail of the Directive when it is finally agreed.

Lord Lewis of Newnham

18. When we talk about diffuse pollution we have got two problems. One is the nitrate contamination of land and one is the possibility of some form of biological pollution associated with sewage or slurry from animal waste. What methods are you using or are people contemplating using to restrict this? It seems to me that that would be extremely sensitive to things like the topology and the geology of the area and things of this particular nature.

A. You are absolutely right. Let us take the issue of nitrates. There are nitrates, there are phosphates, and there is an element of pesticides as well, and there is faecal matter, bacteriological matter, as well. We are addressing the nitrates by the nitrate vulnerable zones. Within the nitrate vulnerable zones there are regulations that farmers must follow. They are based on codes of good agricultural practice. There are standards in relation to slurry storage in particular, which also deals with some of the problems of faecal contamination and issues of farm drainage and the designs and how it is applied. In some cases within the nitrate vulnerable zones there is a possibility of grants for some of this design as well. There is guidance being given to farmers in relation to dealing with these particular issues. We also

have a research programme looking at ways of minimising some of the diffusion problems in relation to stocking densities, grazing on slopes, issues like that, although it is quite hard to make a big difference because you really have to de-stock to a very large extent to make a big impact and it is probably unrealistic at that level of de-stocking. It is probably a combination of good practice, good water management and drainage and good storage in relation to slurry.

Lord Palmer

19. Is there a very quick distinction you can make between recreational and bathing waters, particularly in view of what Lord Crickhowell says about canoeists probably drinking far more water than bathers?

A. The bathing water definition, as we discussed earlier on, is simply an area of water used by a large number of bathers.

20. And recreational?

A. I am not altogether sure there is a definition of recreational water.

21. It is such a lovely expression, "recreational water".

A. I am glad to say that I am joined by my officials, Joe Bonsall and Emily Thompson. This is a wonderful definition. Apparently recreational water involves a water where someone is engaged in being propelled across it in some kind of mechanical device.

Lord Lewis of Newnham

22. With the express purpose of not going under the water?

A. I presume so.

Lord Palmer

23. What conclusions have emerged from the further consultation with stakeholders foreshadowed in the Explanatory Memorandum?

A. In relation to the continued consultation we have had with stakeholders, the Government's general approach has broad support, both from the recreational users and the NGOs but also from the water companies and agriculture because again it is back to trying to take a pragmatic approach. We do want high standards. We are very proud of the fact that the bathing water quality, our coastal water and river water quality, has dramatically improved in recent years. We have made really good progress in this and I think that is a matter of pride and a tribute to the very many people who have been involved in this over the years in improving our water quality in this country. We have done well on this. We want to apply this Directive. We want to apply it properly, but we also want to apply it in a pragmatic way. In terms of the response and the consultation that we have had from the different groups, there is broad agreement on the approach.

Lord Crickhowell

24. Have you in particular had any representations from the seaside resort authorities and associated businesses that are directly affected by designation of the Blue Flag and so on? The suggestion is that we can see a fall from over 98 per cent, in which we rightly took pleasure (at least for a time), to perhaps 70 per cent. That sounds to me politically extremely sensitive. The Environment Agency says that it will be important to explain the relative risks to people and what action is involved; they express anxiety that they may come under pressure and, if there are not proper definitions, legal challenge, so this is a sensitive area. Is there any special consideration being given to the possible change in our ability to produce high standards from the most sensitive bathing beaches?

A. Yes, we have had representations from the coastal authorities and you are quite right: they are of course very concerned about their Blue Flag designation, which has increased over the years as the water quality has improved. They are very worried about what the application of the Directive might do in relation to the change in standards. Our assessment, however, is that the worst case scenario will be about 20 per cent decline. Things have moved on a bit and of course standards have continued to rise and that should be set against the fact

that we had an increase in Blue Flag beaches of 26 per cent last year, so even if it went down 20 per cent we would still have a six per cent net gain. We may be able to mitigate this further, and again it depends on how we apply the Directive in its final shape and form, and in particular if we have this flexibility in relation to the sampling where you may have the odd poor sample for the reasons that I know you all understand.

Chairman

25. Is it going to be down to the Environment Agency ultimately to have to face local authorities who feel aggrieved or for whom infraction proceedings might be necessary?

A. Yes.

26. The Environment Agency clearly would wish to try and be involved in the technical committees which must be going on all the time to determine protocols and the like. It was a point which arose in a different context where we were looking at waste legislation. The Environment Agency reported on the concordat with Defra which made it more transparent as to how the two different branches of Government could influence the technical detail. Do you detect any concern from the Environment Agency about their ability to influence the negotiations in this respect?

A. We keep in very close touch with the Environment Agency in relation to the application of Directives of this type, which has major implications for them, as you will appreciate. Yes, they are concerned to the extent that there are financial implications to them. We understand that. If they have additional responsibilities then those are issues that we must resolve with the Environment Agency in relation to the spending rounds which are to come.

Lord Crickhowell

27. But it is not just a question of the spending round. The point the Chairman was making, and certainly we were making in the context of our discussion this morning, is that what is vital when one gets to the final stage of this process is the technical drafting and the detail which emerges in the protocols. Certainly it was our concern in the days of the NRA, and clearly is still the concern of the Environment Agency, that they should be part of that process, because they are technically skilled and they are going to have to implement it. I thought that the idea of the concordat was to make sure that they were up front in Brussels or wherever these meetings take place. The question we are asking is whether this is actively happening and whether the Agency is part of the process?

A. I can certainly assure you that they are part of the process and they are involved at all the stages because, of course, you are quite right: they do have expertise which is very valuable and we value their opinion and it is important that we approach this together.

Lord Lewis of Newnham

28. The actual figures on which the Department's assessment is based, for instance, for *E.coli* and various other things – what is the basis for those figures?

A. The basis is the sampling which is carried out by the Environment Agency.

29. And who suggested the figures in the proposed standards?

A. They come from the Commission.

30. Did you ask the Commission how they arrived at those figures?

A. Yes. We have raised these issues with the Commission. As I mentioned to you, we have some concerns about some of the statistics and the statistical base on which they are applied, not least because a lot of the research is being done by us.

Chairman

31. I think that is a very relevant note of caution that you introduce. Those are all the questions we have. Is there anything further you want to add, Minister?

A. Just for the record, Chairman, because Lord Palmer asked me for the definition of “recreational waters”, I have got the full definition which I had better give to you to make sure that I am not misleading anybody. The full definition of “other recreational activities”

and “recreational waters” includes those activities where devices are used to move across the water involving a meaningful risk of swallowing water, such as surfing, windsurfing and kayaking.

Chairman: That gives Lord Palmer all he needs to know. Can I thank you very much indeed for joining us this afternoon.