

Recent Developments UNITED KINGDOM

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(a) Legislation

The Pollution Prevention and Control Act 1999 and the Pollution Prevention and Control (England and Wales) Regulations (SI 2000/1973) provides for the new Integrated Pollution Prevention and Control (IPPC) system , to be introduced to industry between 2000 and 2007 and following the Directive.

Countryside and Rights of Way Act 2000 contains measures to improve public access to the open countryside including tracts of open land owned privately. It also amends the law relating to nature conservation by greatly strengthening the regulatory system for the protection for Sites of Special Scientific Interest including tougher penalties and by providing extra powers for the prosecution of wildlife crime. This is in line with the requirements of the Habitats Directive, and reflects a move from a tradition of achieving policy aims by consensus in rural areas and where farmers were given special exemptions from legal compliance being considered guardians of the environment towards a more even-handed and more regulatory approach.

(b) Litigation

Nuclear Facilities R (on the application of Friends of the Earth and another) v Secretary of State for the Environment, Food and Rural Affairs (Court of Appeal 7 December 2001)

A judicial review challenge to the Government's decision to authorize a nuclear fuel manufacture facility. The dispute centred on the interpretation of the "justification test" under Euratom Directive of 1996. In applying the test the Government had assessed future economic benefits but had applied standard economic tests in ignored capital costs which had already been sunk before the application for authorization was made. The Court of Appeal held that the test under the revised Directive applied to general classes of nuclear project rather than being site specific, and although the Court recommended that applications should be made as early as possible it felt the Government was not legally obliged to consider sunk costs.

Land Use Planning and human rights Alconbury (House of Lords 9 May 2001).

Under UK town and country planning law the vast majority of decisions to authorize developments are taken by local authorities but Central Government has a discretion to take over significant decisions for itself (about 130 a year out of 500,000). In the *Alconbury* case it was argued that the Secretary of State's role both as a policy maker and an individual decision-maker under the planning legislation was incompatible with the right under Article 6 of the European Convention on Human Rights to have rights determined by an independent and impartial tribunal. The litigation went up to the House of Lords, the highest court. The Court accepted that planning decision could involve civil rights within the meaning of the Convention, and that, although there was always a right of challenge decisions before the courts, the courts were concerned with the legality of the decision rather than a full merits appeal. Although case-law of the European Court on Human Rights had talked of an independent tribunal having "full jurisdiction" the House of Lords held that a fuller examination of the ECHR case-law revealed that full jurisdiction "does not mean full decision-making powers. It means full jurisdiction to deal with the case as the nature of the decision requires." In its view, the totality of the procedures under the planning acts, including a right to legal challenge, was consistent with convention rights.

Aircraft noise and human rights Hatton and others v United Kingdom (European Court of Human Rights, 2 October 2001)

Residents living near Heathrow airport, London successfully claimed the current policy on limited night-time flights from the airport breached their rights under Art. 8 of the Convention (respect for private and family life). The Court accepted that Art 8 rights could be interfered with on specified public policy grounds including the economic well-being of the country and the protection of the rights and freedoms of others (in this case, aircraft operators who claimed that some degree of night flights was essential). But the court held that in evaluating the economic case for night flights and the potential effects on sleep patterns of residents, the Government has failed to conduct sufficiently serious and independent research - the economic figures largely derived from industry and the scientific studies were incomplete and dated : "mere reference to the economic well-being of the country is not sufficient to outweigh the interest of others." Each of the applicants was awarded a small amount of damages (£4000) but the decision will require the Government to conduct a much more rigorous examination of the issue and may well result in a complete night time ban. The principles are likely to have wider implications for the way in which public authorities in future weigh up public against private interests.

(c) Institutional

The most significant and, in my view, retrogressive development was a restructuring of central government departments following the General Election in the summer when Labour was returned to power. The old Ministry of

Agriculture, Fisheries and Food which had long been considered to have reflected the interests of the farming and food industry and whose reputation had suffered further from its poor response to the foot and mouth crisis, was abolished. Initially the intention was to create a new ministry devoted to rural interests and food policy, but the designated Secretary of State argued for more policy areas, and at the last hour environmental policy was added to create a new Department of Environment, Food and Rural Affairs (DEFRA). Although this was presented as an opportunity for greening agriculture, many consider that the 500 or so transferred civil servants concerned with environmental policy will be overwhelmed or captured by the former agricultural civil servants who outnumber them by ten times. Six months on, the re-organizational dust has not yet settled. More significantly, the environmental policy arm has now become detached from the former Dept. of Environment, Transport and Regions which has become the Dept. of Regions, Local Government and Transport. In its own department it was at least locked into land use planning and transport issues, and there is now real concern that the environmental dimension of these policy areas will be weakened as a result. The decision was taken by the Prime Minister, and reflects his apparent tendency to view the environment as essentially an issue associated with the countryside and rural affairs.

(d) Policy Developments

Environmental policy is not currently high on the domestic British political agenda (health and education are perceived of much greater significance) and received little serious attention during the last election. The Prime Minister made his second speech on the environment during 2001, but he tends to view the environment as a countryside matter and in the grip of special interest groups who wish to hold up the modernization of Britain. In December 2001, the Dept of Regions, Local Government and Transport issued an important series of consultation papers designed to speed up decision making under the land use planning system. The papers acknowledge the importance of the environment and sustainable development but the actual proposals seemed designed to downgrade opportunities for serious objection and discussion.

In Spring of 2002 the Royal Commission on Environmental Pollution will issue a report on planning and the environment which will argue for environmental sustainability to be given much greater attention within the planning system.

The Government is carrying out a major review of the long term energy policy of the UK, led by the Prime Minister's office. The review team appear to have accepted the Royal Commission's target figure of a 60% reduction of CO2 emissions by 2050, and although there continues to strong lobbying by the nuclear industry for renewed investment in nuclear power (Britain's derives around 20% of its electricity from nuclear power stations but there has been no new build for over a decade), it appears that the review team is arguing for

massively increased investment in alternatives especially off-shore wind and wave.

In two other important policy areas, central government seems to be getting the message that all is not right with current policy. Transport policy and particularly the state of the railways following privatization is received much criticism. In September, the Government allowed the company owning the railway infrastructure to go into receivership, and proposed partial public ownership, but the Minister received little praise for the way in which he made his decision. A new report commissioned by the Prime Minister suggests all almost all comparative European benchmark for transport, Britain is failing.

A 'waste' summit was held by the Ministry in Autumn 2001 to review the direction of Britain's waste policy. There is a pretty sound regulatory structure in place, but recycling and minimization rates remain very poor, with the economics of disposal, especially by landfill, still very favourable. Local opposition towards incineration is inhibiting investment in such plant, and central government has essentially left all the difficult technical and political decision to local government. Following the summit, the Prime Minister now has a unit reviewing current strategy.