



## Implementing the Environmental Liability Directive in the UK

### Q&A for MPs, MSPs and AMs

January 2007

#### **What is the Environmental Liability Directive and why is it relevant now?**

The Environmental Liability Directive (ELD) was agreed in April 2004 and has to be implemented by April 2007. The Government has published a consultation about how it plans to do this which runs until February 16<sup>th</sup> 2007. The Government's plans are very weak and exclude most wildlife species recognised as requiring protection and over 3,000 sites of special scientific interest. The Government can go further than the very basic provisions of the Directive, but does not intend to do so.

#### **What are the aims of the ELD?**

The ELD is intended to implement the 'polluter pays' principle. The thinking behind the 'polluter pays' principle is that by making businesses financially and legally accountable for any environmental damage they cause, they will be more cautious about what they do. It should prevent environmental harm and, if that does not work, the costs of putting things right should be borne by those causing the damage.

#### **Which activities are covered under the ELD?**

The ELD applies to business-related activities. It gives 'strict' liability for harm to biodiversity, water and land, arising from a list of regulated activities considered potentially hazardous including:

- Genetically modified organisms
- Waste disposal and release of pollutants to water and air
- Water abstraction

It also gives 'fault-based' liability for harm to biodiversity only from any other activity, such as fisheries or forestry.

#### **What action has to be taken if damage arises?**

The business or person causing the damage would have to undertake (and pay for):

- preventive action without delay
- immediate clean up and control
- long-term remedial action

#### **Is all biodiversity given protection under the ELD?**

No. The ELD says that EU member states must include all habitats and species with European protection under the Habitats and Birds Directives. Member states can also include nationally protected biodiversity within the scope, but the Government does not want to do this

#### **What does this mean for UK biodiversity?**

Responses to parliamentary questions have revealed that under the Government's plans, the following key species and habitats would be excluded:

- 3,000 SSSIs in England alone. Around two thousand four hundred of these are biological SSSIs, covering around 22% of the land area of biological SSSIs, and around 900 are geological SSSIs. A list of SSSIs for English constituencies that will not be covered by the Government's proposals can be found at [www.genewatch.org](http://www.genewatch.org).
- 375 UK Biodiversity Action Plan species (79% of species covered by UK BAP action plans). In Scotland, 233 of the 278 UK BAP species found there would be excluded. Notable species excluded are:

- the water vole, the red squirrel, and the brown hare ;
- the cirl bunting, corn bunting, tree sparrow, bullfinch, the black grouse; and
- many butterflies and moths.

A full list is available [www.genewatch.org](http://www.genewatch.org).

#### **Is all land damage covered under the ELD?**

No. The ELD covers damage to land if this poses a risk to human health but not for the environment. The Government does not intend to widen the scope.

#### **Is all water given protection under the ELD?**

No. The ELD has to be applied to all water bodies and catchment areas over a certain size as laid down in the Water Framework Directive. However, this will exclude streams and ponds that are ecologically important.

#### **What does strict liability mean?**

Strict liability should mean that the business causing the damage does not have to be proven to be negligent to be required to pay for remediation. However, the Government wants to allow two defences to avoid such financial costs:

- the permit defence – if an operation has been licensed and it was being followed;
- the 'state of the art' defence – if the scientific and technical knowledge at the time of the activity did not predict that harm would arise.

These two defences effectively make the liability fault-based, not strict. The Welsh Assembly Government does not want to allow these defences for GMOs.

#### **What are the economic consequences of the ELD?**

The Government's own cost benefit analysis shows benefits to the treasury from the implementation of the basic ELD of over £3million per annum. This increases by £2million per annum if all SSSIs are included and the permit defence is not allowed.

#### **What needs to be done?**

The discussion about the ELD has been highly technical, focussed on business interests and had little public debate. It is important that MPs, MSPs and AMs make an input to the consultation process. Key improvements needed are:

- inclusion of all SSSIs and Biodiversity Action Plan species
- no permit or state of the art defences to be allowed
- streams, ponds and environmental damage to land to be included
- liability rules for GMOs to be stringent to address public concern

#### **How can I input to the consultation?**

By visiting one of the following web sites and making a submission:

- <http://www.defra.gov.uk/corporate/consult/env-liability> – for England and Northern Ireland
- <http://new.wales.gov.uk/consultations/currentconsultation/envandcouncurrcons/1000780/?lang=en> – for Wales
- <http://www.scotland.gov.uk/Publications/2007/01/04155835/0> – for Scotland

**For more information, especially on GMOs and environmental liability, visit the GeneWatch UK web site: [www.genewatch.org](http://www.genewatch.org)**

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