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Spring 2008

Introduction

We trust that you will enjoy reading this spring 2008 edition of the Environment Bulletin and that you will find it helpful. Once again, there have been a number of new sets of regulations and initiatives directed to the government’s policy relating to climate change. DCLG has published a planning policy statement on the subject and there have been modifications to the climate change levy procedures. We have also reported on the new chemicals controls (REACH) and the modifications to the regulations on ozone depleting substances.

Scheme changes to emissions trading are also dealt with. Proposals for replacement of the much criticised planning gain supplement are heralded in a consultation exercise, in waste management we deal with changes to the WEEE regulations and with new provisions to control the incidence of waste on construction sites. Finally, we draw attention to the new regulations and guidance for environmental permitting, where from April 2008 there will be a coming together of the IPC and waste control regulatory processes.

Town & Country Planning

New Policy Statement on Climate Change

Climate change remains very much in the news and government initiatives in this area are proving frequent. On 17 December 2007 DCLG published a planning policy statement: Planning and Climate Change. The document is intended as a supplement to PPS1 on sustainable development. The supplement seeks to place climate change at the centre of planning policy and all levels of government are required to incorporate such policies within spatial strategies and development documents, as well as in the operation of development control. After rehearsing the expectation of more radical weather resulting from climate change, the supplement deals with the proper approach to integration into regional and local strategies and in the monitoring and review of policies. Among the issues dealt with are the decentralised and renewable or low carbon energy provision, the provision of transport other than by private car, infrastructure capacity including schools, hospitals, water, sewerage and waste management provision and flood risks.

The supplement can be seen as a significant component of government policy for the control of particularly urban development, notably housing. As such, it deserves close assessment. Please contact the Environment Land UK and Natural Resources Group if you require any further assistance.

For the Climate Change Levy (Amendment) Regulations 2007 see the Environment Policy section.

Planning Disputes and the Fair Application of Time Limits

Statutory rules relating to the handling of disputes in planning matters, whether by inquiry, hearing or written representations, invariably impose strict time limits. To the frequent irritation of some practitioners, the inflexibility of the Planning Inspectorate in insisting on these time limits has often provided for unnecessary difficulties. Problems arose recently in the case of Cummings v Weymouth & Portland DC (2007) EWHC 1601. The case concerned a dispute about a housing allocation in the district council’s local plan. The issue before the inquiry was thought by the complainant to relate solely to the landscape of competing sites. As required by the Inspector, the complainant lodged his evidence about landscaping in accordance with the timetables. However, the rebuttal produced
by the local authority showed that there was also a dispute about drainage. There was no time to prepare and submit further evidence within the timetable and, in fact, such evidence was handed to the parties on the morning of the hearing. As happens in these cases, the Inspector refused to entertain that evidence. The matter was referred to the High Court. The Court concluded that the Inspector had not exercised his discretion fairly as to whether to admit the claimant’s evidence. Whilst the Judge made clear that he had considerable sympathy with an Inspector who wished to press on with his inquiry, nonetheless the rules of natural justice did demand that the claimant had an adequate opportunity of answering the issues raised as to drainage by the local authority. The Inspector had a discretion and the Court held that he had failed properly to exercise this. Accordingly, the local plan was quashed.

“...Government’s decision to abandon the Planning Gain Supplement.”

Practitioners will see this as a useful case which many will feel challenges what has been seen as a rather inflexible approach by the Planning Inspectorate in bearing down too harshly on late production of evidence. The Court gave no comfort to those who had no special reason for lateness but nonetheless gave a stronger emphasis to fairness in the decision.

Planning Gain Supplement Abolished, Cil Proposed

Much to the relief of the majority of the development and property sector, the Chancellor’s October pre budget statement confirmed the Government’s decision to abandon the Planning Gain Supplement. The development and property sector had strongly objected on a number of grounds, mainly to do with the likely complexity and inflexibility of the approach.

In place of the PGS the Government intends to bring forward a new statutory planning charge or community infrastructure levy (“CIL”) along the following lines:

- all residential and commercial property development will be subject to the charge, but there will be thresholds;
- the charge may be imposed in addition to anything agreed under section 106 obligations, but will be based on a costed assessment of the infrastructure needs of the development in question;
- the charge will include contributions to sub-regional and regional infrastructure costs;
- policies will need to be tested by the development plan process, particularly to avoid there being a drag on new development and amounts of new housing.

It is difficult to see how the new proposal is significantly different from PGS. Much detailed consultation is now required and no doubt more will be revealed. We shall report further as the Government extends its consultation process.

Greater London - New Planning Powers For The Mayor

Certain additional planning provisions applying to Greater London were brought into force on 16 January 2008 by The Greater London Authority Act 2007 (Commencement No. 2) Order 2008. Likely to be the most significant provision is that to be found in section 31 of the Act. This provision relates to developments of “potential strategic importance” in London. The term is yet to be defined (by the Secretary of State by order or direction) but in these cases there will be requirements in respect of any application for planning permission or to modify an existing permission. The Mayor of London may direct that he is to be the local planning authority for the purposes of determining the application. The existing local planning authority, i.e. the London Borough, will thereafter have only the opportunity to express views in relation to the application and, if necessary, to be heard on the matters which concern them. In cases where the Mayor has taken on the responsibility for the application he will also determine any related
applications, such as those for listed building consent or hazardous substances approval. Likewise, the Mayor will be responsible for setting planning obligations under section 106 of the Town and Planning Act 1990, although enforcement of these provisions is apparently to be shared by both the Mayor and the London Borough in question.

Competing Development Proposals - Court Of Appeal Case

The recently reported case of Sainsburys Supermarket Limited v First Secretary of State (2007) EWCA Civ 1083 serves as a useful reminder of the proper approach of planning authorities in those circumstances where competing planning proposals are submitted for the same site. Sainsburys, who were not the original applicant for planning permission, objected to the proposal on the ground that a better scheme was available. The Secretary of State had overturned his inspector’s recommendation to refuse the application. Sainsburys then applied to the High Court for the quashing of the permission on the ground that the Secretary of State had unlawfully failed to have regard to the alternative designs of the building. In quashing the appeal decision, the High Court Judge had been critical of the Secretary of State in inaccurately representing the inspector’s views about the alternative proposal. That decision was then taken to the Court of Appeal by the Secretary of State and the developer.

In giving judgment, the Court of Appeal concluded that the Secretary of State had not been in error and had given adequate reasons for deciding to grant permission, nor had he failed to take account of relevant policies. The Court of Appeal confirmed that there was nothing inherently illogical or unlawful in the decision maker’s concluding that a scheme was acceptable, even though a better scheme could be devised. The important principle of planning law was that permission should not be refused, despite a better alternative design, if the original design was still acceptable in planning terms and satisfied development plan and other policies. However, the Court did make clear that a comparison of schemes was a material consideration and the decision maker was entitled to choose the better one. However, he was not required to reject the worse one if nonetheless it was satisfactory.

The case represents a useful reminder of one of the basic principles of planning law, that a permission should not be refused if there are no good reasons for doing so.

Council Members’ Duties and Bias - Judgment Reversed

We reported on this High Court decision in the Autumn 2007 edition of the bulletin. The facts of the case were that the local authority had approved the construction of a National Grid development. However Ms Ware had applied for judicial review of the decision on the grounds of procedural irregularities. Her application was supported and the decision was quashed. The main basis was that four councillors had been found by the Judge to have been under a misapprehension of law and had not voted because they had been wrongly advised by their officers that their earlier participation in the consultation process might have disqualified them from the vote.

The matter was referred to the Court of Appeal by the Council - see Neath Port Talbot CBC v Ware (2007) EWCA Civ 1359. Even though the validity of planning permission was no longer at issue, nonetheless guidance was sought on the proper approach of councillors in these circumstances. The Court of Appeal found in favour of the County Borough Council and quashed the decision of the High Court Judge. Two principles emerged:

• the relevant evidence of the four councillors had been that they were left to make their own decisions and to exercise their own judgment in relation to the National Grid planning application. There was no pressure to abstain and to that extent the Judge had misunderstood advice given to the four.

• it was important for the Court to identify the evidence and to clarify precisely what advice had been given by the officer.

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Changes to Trans-Frontier Shipment Regulations

DEFRA has recently announced what is described as better protection for developing countries against receiving unwanted waste from “wealthier nations”. The UN Basel Convention on trans-boundary movements of waste and their disposal is the framework which controls import and export of wastes. The EU’s obligations are set out in the Waste Shipment Regulation 1013/2006/EC, revised by the Green List Regulation 1418/2007 which came into effect on 18 December 2007. The overall effect is to make illegal the export of waste for disposal (although recycling can be lawful).

The Trans-Frontier Shipment of Waste (Amendment) Regulations 2008 SI 2008 No. 9 come into force on 5 February 2008 and amend similarly named regulations of 2007. In effect the amending regulations are a tidying up exercise in that they create an offence for failure to comply with the European procedures for prior written notification and consent to the export of certain wastes for recovery for non-OECD countries. Offences are also created for failure to comply with European requirements that such waste shall be sent to facilities duly authorised in the country of destination.

Waste from sewage treatment

- House of Lords’ judgment

In our Winter 2006/7 Bulletin we reported on the Court of Appeal case of United Utilities Water plc v Environment Agency. The case concerned various issues, including the question whether the discard of sewage treatment sludge to agricultural land as a fertilizer required a permit under the Pollution Prevention and Control (England and Wales) Regulations 2000. Among many arguments before the Court of Appeal was the suggestion that because the final discard was remote from the sludge treatment itself, a permit was required. Unfortunately, the Court of Appeal had declined to decide on this issue. The matter therefore proceeded on further appeal, at the instance of the company. Judgment in the House of Lords has recently been issued - see United Utilities Water plc v Environment Agency (2007) UK HL41. The case concerned 3 plants where there was partial treatment of non-hazardous waste water which was reduced to a sludge, thickened and digested and then sent by pipeline to a further processing plant. About a third of the sludge was disposed of by incineration or landfill whilst two thirds was recovered, mainly by being spread on agricultural land as fertiliser. The House of Lords was asked to consider whether a permit was needed when the final production and discarding of the end product took place in a different installation.

Changes to WEEE Regulations


In the main the new regulations are technical but the following matters are of interest:

- a late application to register a producer is required to be processed by the relevant authority either within 28 days of the application or by the end of the year preceding the start of the relevant compliance period;
- record keeping provisions are amended;
- a new Regulation 40A allows WEEE from private households to be lodged with a producer compliant scheme system, free of charge;
- regulation 50 is amended to enable the appropriate authority to suspend or cancel approval of an authorised treatment facility or exporter where the operator has knowingly or recklessly supplied misleading information;
- enforcement provisions in regulations 70 and 72 are strengthened.
The House of Lords concluded that the 3 plants did carry out activities requiring a permit. There was no rational explanation for any exclusion from the requirement for that permit simply on the ground that the final product was produced separately. The regulations did not suggest that an alternative venue for part of the production meant that a permit should not extend to the entire processing and discarding exercise. The appeal was therefore dismissed.

Whilst this is an important and influential judgment, it appears to be concluded specifically on the facts, albeit that these are frequently encountered. At first sight, the conclusion does not chime well with other cases where it has been successfully claimed that a by-product from an IPPC process loses its categorisation as waste and therefore falls out of the scope of the controlling legislation. The principles are complicated and our Environment Land Use and Natural Resources Group will be happy to advise further.

Tree Preservation and Nuisance - Judgment Quashed

In the Winter 2006 edition of the bulletin we reported on the case of Perrin and Ramage v Northampton Borough Council and others. The case concerned an oak tree subject to a tree preservation order which was causing damage to an adjoining property. The claimant made application to the council for the removal of the tree. Following refusal the matter went on appeal to the Secretary of State but this was dismissed on the grounds that although the tree appeared to be causing subsidence, it should not be felled since it had high amenity value and there were alternative engineering solutions, such as underpinning. The claimants then tried a slightly different tack, seeking a declaration from the High Court that it was necessary to cut down the tree to prevent and/or abate the nuisance caused by root encroachment. The law makes clear that whilst a tree the subject of a preservation order may not normally be cut down without the consent of the local authority there are various exceptions, particularly “so far as may be necessary for the prevention or abatement of a nuisance”.

The High Court sided with the claimants, concluding that the availability of an alternative engineering solution to remedy the damage was irrelevant. This judgment was the subject of an appeal to the Court of Appeal and the High Court’s decision was reversed. The Court concluded that the correct test for determining whether works may be carried out to a tree protected by an order did require a broader approach than that adopted by the High Court. The words “so far as necessary” was to be read as meaning “if and so far as is necessary”. The judgment confirms what has been common practice in cases of this sort. The planning authority is required to carefully assess whether the exemption applies and to take into account all possible alternative solutions to the nuisance problem. See Perrin and Ramage v Northampton BC and other [2007] EWCA Civ 1353.

Valid Planning Applications - New Guidance

It is the Government’s intention to amend the Town & Country Planning (General Development Procedure) Order 1995 so that from 6 April 2008 there will be a mandatory use of a standard planning application form and specific information requirements. To support the change in the Regulations the final guidance, known as “The Validation of Planning Applications: Guidance for Local Planning Authorities” replaces earlier guidance which has existed since March 2005. Among the matters dealt with by the new guidance are:

- planning authorities will be required to specify the information needed which will include the completed application form, the correct fee (where appropriate), ownership certificates, agricultural holdings certificate, design and access statement (as necessary), all plans necessary to describe the application and any necessary environment statement.
- local authorities will be required to adopt local lists of required information and to keep these under review. The matters the subject of the local list include any necessary supply of affordable housing statements, air quality assessments, economic and environmental statements, flood risk assessment, heritage statement, transport assessment and travel plans, tree surveys.

The guidance does not seem to introduce any startling new requirements but at least developers will now have a reasonable degree of certainty as to the comprehensiveness of their planning applications.
Environmental Policy

Noise Maps Progress

The European Noise Directive 2002/49/EC is intended to provide a common basis for tackling noise problems across the European Union. One of the obligations of member states is to prepare “strategic noise maps” in respect of major roads, railways, airports and large urban areas. The maps are intended to be used to assess the extent of noise disturbance. The noise maps for England were identified in regulations published last year (see our Spring 2007 Edition). Now the Environmental Noise (Identification of Noise Sources) (Wales) Regulations 2007 SI 2007 No. 3519 have come into force with effect from 9 January 2008. The list of noise sites in Wales is quite limited, at least at this stage. Certain major roads and railways appear on the maps, along with the Cardiff and Swansea/Neath/Port Talbot urban areas. No Welsh airport meets the criteria set down in the directive.

With the preparation of the noise maps, the directive requires that the relevant governments must create action plans to reduce noise to acceptable levels and then to maintain those levels.

Coincidentally, DEFRA published on 18 December 2007 a list of airports in England which are the subject of noise maps. There are 18 airports noted, including the 5 London international sites along with a range of provincial airports where there are international movements. The starting point in each case is 50,000 movements per year, excluding light aircraft training flights.

Climate Change Levy Provisions Modified

The Climate Change Levy (General) (Amendment) Regulations 2007 SI 2007 No. 2903 amend the regulations of similar name made in 2001 and:

- abolish the levy’s half rate supplies in respect of certain groups;
- integrate reduced rate supplies into the existing system for other levy reliefs;
- abolish the requirement for energy suppliers to obtain a certificate claiming levy reliefs before time of supply;
- abolish the requirement for certifying authorities to disregard figures received after a prescribed time as part of the certification process for electricity from renewable sources and combined heat and power stations.


For further information please contact the Planning and Environment Group.

Persistent or Organic Pollutants - New Regulations

EU Regulation No. 850/2004 on persistent organic pollutants prohibits the production, use, import, export and marketing of various substances listed in the UN Commission for Europe Convention on long range trans-boundary air pollution and the Stockholm Convention. In compliance with the Regulation, the government has now brought into force the Persistent Organic Pollutants Regulations 2007 SI 2007 No. 3106. The Regulations came into force on 3 December 2007. They enforce the EU provisions and designate, for England and Wales, the Environment Agency as the enforcing authority. With certain provisions for derogation in respect of the use of certain methods of disposal of waste, the Regulations enforce provisions in respect of the production, marketing and use of specified substances, their stockpiling and certain waste management activities. Persistent organic pollutants include dioxins, PCBs and similar substances.

REACH - New Chemicals Controls

A new EU chemicals policy has seen the light of day following a lengthy period of lobbying and debate. As a regulation, REACH (which stands for the Registration, Evaluation and Authorisation of Chemicals) has applied in all EU member states from 1 June 2007 and is directly enforceable without the need for implementation at the national level.
REACH will affect a wide range of products including automobiles, paints, detergents, plastics, electronics and clothing. It will impose new obligations on manufacturers, importers and downstream users of chemicals requiring risk assessment and registration of chemicals and, in some cases, authorisation for use. REACH will result in some chemicals being banned. The obligation to disclose information about these chemicals could lead to confidentiality concerns for some manufacturers. Likewise, there are potential EC competition issues associated with joint registration. All those involved in the supply chain will have to consider carefully the terms and provisions of their contracts in order to document rights and responsibilities between respective members of the supply chain. Those of particular importance are where chemicals or products containing chemicals are exported to the EU from elsewhere.

A more comprehensive Alert has been produced by our Environment Land Use and Natural Resources Group and a copy of this may be accessed from http://www.klgates.com/newsstand/Detail.aspx?publication=4263. In the event that you require any further help or information please do not hesitate to contact a member of the group.

Ozone Depleting Substances - Regulations Amended

Amendments to provisions on ozone depleting substances were brought into force on 15 February 2008. The Environmental Protection (Controls on Ozone Depleting Substances) (Amendment) Regulations 2008 SI 2008 No. 91 amend similarly named regulations of 2002. As the name implies the provisions of the 2002 Regulations exercised control over substances which have a deleterious effect on the ozone layer and were required following the EU approval of Regulation No. 2037/2000 on substances that deplete the ozone layer. The main changes brought about by the 2008 Regulations are as follows:-

• offshore installations, mainly within UK territorial waters, are now brought within control;

• the Secretary of State is to be the competent authority for enforcement purposes in respect of offshore installations and his powers are set out in the new regulations. In particular, there will be powers to require the disposal of substances, products and equipment imported, placed on the market or exported in contravention of the EU Regulation;

• there are further enforcement powers and provisions for offences.

The Ozone Depleting Substances (Qualifications) (Amendment) Regulations 2008 SI 2008 No. 97 also came into force on 15 February 2008. These simply amend the minimum qualifications in the previous regulations of 2006, in relation to the decommissioning of fire protection systems and fire extinguishers.

Radioactive Contaminated Land - Modifying Regulations

The control of radioactive contaminated land, whilst based on Part 2A of the Environmental Protection Act 1990, is nonetheless subject to modification to take into account the special characteristics of such contamination. Regulations relating to radioactive contaminated land were approved in 2005 and 2006. Now the Radioactive Contaminated Land (Modification of Enactments) (England) (Amendment) Regulations 2007 SI 2007 No. 3245 provide for further changes. The Regulations came into force on 10 December 2007. The main changes are:-

• the 2006 Regulations dealing with civil liability for damage to land are modified so as to apply to all radioactivity, not just that relating to nuclear installations. Thus the Civil Liability Provisions now make all radioactivity the subject of a single regime;

• the Contaminated Land (England) Regulations 2006 are amended to provide for a new ground of appeal against a remediation notice, whereby it can be maintained that the enforcing authority itself has power to do what is appropriate by way of remediation;

• obligations laying down basic safety standards for the protection of health of workers and general public against the dangers arising from ionising radiation are brought into force.

Launch of Low Emission Zone in London

The much heralded London Low Emission Zone was launched by the Mayor Ken Livingstone on 4 February 2008. It immediately affects most diesel engined lorries, coaches and buses. Cars and motor cycles are not affected. The Zone is introduced by virtue of the Greater London Low Emission Zone Charging Order 2006, as modified, and from the above date all diesel engined lorries weighing more than 12 tonnes will be required to meet strict emissions standards. With effect from 7 July 2008 vehicles over 3.5 tonnes, buses and coaches will have to comply. Any which do not meet the required standard are required to pay a daily charge of £200 to drive within Greater London. Failure to pay incurs a penalty of £500, doubling if not paid within 14 days. The charges will not apply where the standard Euro III for particulate matter is complied with. It is intended to impose higher standards for lorries, buses and coaches, at Euro IV, from January 2012.

Operators of vehicles not meeting these specified emissions standards may comply with the scheme in other ways, for example by achieving a certificate that the engine meets the standard, by fitting approved abatement equipment, providing a different engine or converting to gas propulsion.

The Low Emission Zone covers most of Greater London, i.e. a larger area than the subject of the Congestion Zone Charge. However the Zone does not include the M25, even where it is within the boundary.

For further more detailed information please contact the Planning and Environment group.

Emissions Trading - Scheme Changes

Mainly technical modifications to the greenhouse gas emissions trading scheme were brought into force on 31 December 2007. The Regulations are consequential upon changes in the emissions trading scheme introduced by the UK’s National Allocation Plan in respect of Phase II of the scheme. They are to be found in the Greenhouse Gas Emissions Trading Scheme (Amendment No. 2) Regulations 2007 SI 2007 No. 3433.
and are an amendment of the similarly named Regulations of 2005. They are in the context of European Directive 2003/87/EC establishing the scheme for European Greenhouse Gas Emission Allowance Trading. The 2003 Directive amended 96/61/EC, the original emissions trading directive. Included in the new Regulations are a new system and process for operators of installations that are late in applying for an allocation under the 2005 Regulations.

**Dangerous Substances Regulations Amended Again**

In our Autumn 2007 bulletin we drew attention to changes to the dangerous substances requirements. The purpose of the Controls on Dangerous Substances and Preparations (Amendment) (No. 2) Regulations 2007 SI 2007 No. 3438 is to introduce a new schedule 1 to be read with the original regulations of 2006 and to replace that in the 2007 amendment regulations (No. 1). The schedule is in the form of a series of columns dealing with individual substances or preparations, the appropriate European Directive and the restrictions which relate to those individual substances or preparations. These restrictions concern marketing, types of use, placing on the market etc. For further information please contact the Planning and Environment group.

**Sewerage Undertakers - New Case**

The 2003 House of Lords case of Marcic -v- Thames Water Utilities Limited established that the common law of nuisance eg from water flooding from a sewer, could not impose liabilities on a sewerage undertaker where there was inconsistency with the statutory provisions of the Industry Act 1991. However, this still leaves open the right of plaintiffs to claim against a sewerage authority on the basis of negligence. The matter came before the High Court recently in the case of Dobson and Others -v- Thames Water Utilities Limited (2007) EWHC 2021. Neighbours of a sewage treatment works claimed that Thames Water had been negligent in allowing odours and mosquitoes to accumulate and the company was in breach of the Human Rights Convention. The case only concerned the preliminary issue as to whether the claimants were entitled to pursue their case on the grounds raised. The High Court Judge decided that they were entitled to proceed and that the limits in the Marcic case did not extend to the circumstances where negligence was alleged. It will be interesting to see whether Thames Water will challenge the preliminary conclusion, alternatively the outcome of the substantive claim.

For further information and advice please contact the Planning and Environment group.

**Environmental Permitting - New Regulations And Guidance**

A new system of licensing/permitting has now been established by the Environmental Permitting (England and Wales) Regulations 2007 SI 2007 No. 3538. The Regulations come into force on 6 April 2008. As such they replace the system of waste management licensing under Part II of the Environmental Protection Act 1990 and the permit system now to be found in the Pollution Prevention and Control (England and Wales) Regulations 2000. The overall aim has been to simplify and consolidate what hitherto have been separate systems of control. The Regulations run to some 126 pages and it remains to be seen whether in fact simplification is achieved. The system of regulation will be largely recognisable to those who have been used to the parallel systems that have now existed for more than 15 years. The new provisions deal with:

- the basis for the grant of an environmental permit, its variation, transfer, revocation and surrender and the rules relating to all of these activities;
• enforcement and defences;
• public registers;
• powers and functions of the regulator.

Comprehensive guidance, “Environmental permitting - core guidance” has been published by Defra along with a range of other guidance including a general manual (GGM) for local authorities. In simple terms most waste operations and major processes will continue to be regulated by the Environment Agency, whilst the lesser operations will be dealt with by environmental health authorities.

The Regulations provide transitional arrangements so that existing permits and licences will continue without the need for fresh applications. In effect there will be automatic transition to the new type of permit and there are special rules where on the date of the new regime there are outstanding applications to transfer, surrender, vary or modify permits or licences. There is freedom for the regulator to replace environmental permits with a single permit covering the same facilities.

Construction Waste Plan - New Regulations

Being mindful of the potential for waste management improvements on construction sites, the Secretary of State has recently approved the Site Waste Management Plans Regulations 2008 SI 2008 No. 314. They come into force on 6 April 2008.

The Regulations require any person intending to carry out a construction project worth more than £300,000 to prepare a site waste management plan. The Regulations will not normally apply to a project requiring an integrated pollution control permit as a part A installation. The Regulations require the management plan to:

• identify the client, the principal contractor and the person who prepared it;
• describe the construction work proposed, the location of the site and the estimated cost of the project;
• record the efforts made to minimise the quantity of waste produced, describe waste types expected to be produced and the quantity of each and identify the action proposed for each type, usually choosing re-use, recycling, recovery or disposal;
• contain a declaration that the client and the principal contractor (who is responsible for the plan) will take all reasonable steps to ensure that waste is dealt with in accordance with the duty of care provisions of the Environmental Protection Act and that materials will be handled efficiently.

Site waste management plans will be required to be kept updated but there are more stringent requirements where the project is of a value more than £500,000. The plan is required to be kept at the site and maintained for 2 years after the project is completed. The principal contractor is obliged to make sure that all persons on the site, including subcontractors, are aware of the arrangements for site waste management while the client is generally responsible to ensure that the principal contractor is in compliance with the regulations. Penalties (including fixed penalties) attend any failure to comply.
Government’s New Water Strategy Launched

DEFRA has recently published, “Future Water: the Government’s Water Strategy for England”. Included in the strategy’s proposals are:

- plans to reduce water usage to 120 litres per person per day by 2030 from the current level of about 150 litres, using efficient technology metering and tariffs;

- a review of the role of metering and the current system of water charging;

- a review of surface water drainage, including the introduction of management plans to clarify drainage responsibilities;

- proposals to reduce water pollution by controlling contaminants at source. Such contaminants may well include phosphates in washing products;

- action to deal with specific sources of pollution through the use of river basin management plans, particularly tackling agricultural and urban area run-off.

DIY Flood Defence - No Defence

As the risk and incidence of flooding appears to be on the increase so the recent unreported case of Environment Agency v Afshin Payravi represents a useful guide and warning to land owners who try to protect their property.

The facts were that Mr Payravi’s property adjoined a watercourse. In order to protect his property he had built a flood defence 2 metres high along his boundary with the watercourse. The consequence was that while he had increased the flood protection for himself and his property he had increased the risk to neighbouring properties. The defendant had apparently not appreciated that since the watercourse was a “main river” it was subject to a by-law that any works within 8 metres needed the prior written consent of the Environment Agency. No consent had been applied for and the Agency’s requirement to remove the structure had not been complied with. A prosecution ensued and fine and costs of £3,500 were imposed along with an order to remove the obstruction.

We would advise that where landowners wish to protect their property from flood they should first find out whether the watercourse in question is a “main river”. If necessary they must ensure that an application for permission is obtained from the Agency where any protection works are within 8 metres of the main river. The flood protection advice of the Agency may need to be revisited. Landowners are encouraged toward self-help, including boarding up of window and door openings and sandbagging of airbricks. The legal obligations of landowners where main rivers are concerned may need to be reviewed in the light of this case.
Stiles and The Handicapped

Section 69(1) of the Countryside and Rights of Way Act 2000 requires competent authorities to have regard to the needs of persons with mobility problems when exercising their powers in relation to the erection or improvement of stiles. The provision came into force on 1 October 2007.

The Secretary of State is expected to issue guidance concerning this duty. In the main, authorities will be encouraged to enter into agreements with land owners or other occupiers of land to replace or alter existing stiles and other lawful obstructions on footpaths and bridleways to make them safer or more convenient for the handicapped. The section contemplates that the authority may themselves do the work, with contribution from the land owner etc. Maintenance of the revised structures may also be the subject of any agreement.
Relax While You Write

Nanotechnology - the science of the super small - seems to be all pervading. The journal “Nanonow” reports that a Japanese stationery company has recently introduced pencils in whose lead sweet smells have been trapped in nanobubbles. As you write your life story various flavours are released, designed to enhance mental capacity.

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Econut

Relax While You Write

Nanotechnology - the science of the super small - seems to be all pervading. The journal “Nanonow” reports that a Japanese stationery company has recently introduced pencils in whose lead sweet smells have been trapped in nanobubbles. As you write your life story various flavours are released, designed to enhance mental capacity.