



Environment, planning and regulatory news

INTERNATIONAL UN reports attempt to price environmental impact

EU Carbon taxation back on the agenda?

UK Corporate manslaughter: definitive sentencing guideline published

UK Environment Agency consults on civil penalties

INTERNATIONAL

UN reports attempt to price environmental impact

Two United Nations (UN)-commissioned reports that attempt to put a cost on pollution and other damage to the natural environment are due to be published this summer. Coming at a time when environmental lobbying by shareholders and other investors is increasing, the reports are likely to add to calls for companies to do more to understand their environmental impact, report on it and take positive steps to reduce it to avoid financial disadvantage in the future.

The first report, prepared by Trucost and ordered by the UN-backed Principles for Responsible Investment initiative and the UN Environment Programme, looks into the activities of 3,000 of the world's largest public companies and their environmental impact.

The Guardian, a UK broadsheet, recently published an article suggesting that the study found the estimated combined damage caused by the companies to be worth \$2.2 trillion (£1.4 trillion) in 2008 and that, on average, one-third of the profits of the companies would be affected if they were held financially accountable, though some companies would be much harder hit than others. The biggest single impact, accounting for more than half of the total, was emissions of greenhouse gases.

The second report, *The Economics of Ecosystems and Biodiversity* (TEEB) study – dubbed the ‘Stern for nature’ – will attempt to put a price on global environmental damage and suggest ways to prevent it. TEEB is a major

international initiative to draw attention to the global economic benefits of biodiversity, to highlight the growing costs of its loss and to draw together expertise from the fields of science, economics and policy to enable practical actions moving forward.

EU

Carbon taxation back on the agenda?

The new tax commissioner, Algirdas Šemeta, is set to table a proposal for an EU-wide carbon tax on energy use in the coming months. Mr Šemeta recently told Brussels newspaper *European Voice* that he believes there is currently the ‘right momentum’ to push for the tax.

The plan, initially proposed by Mr Šemeta's predecessor, would see a carbon dioxide element introduced into the 2003 directive on energy taxation, with the aim of providing a carbon price signal to sectors outside the EU's emissions trading scheme (ETS).

The road to implementation will not be easy – EU tax proposals require unanimity in the Council of Ministers and opposition to the introduction of such a tax has already been voiced by various member states, including the UK, which objects on sovereignty grounds.

UK

Corporate manslaughter: definitive sentencing guideline published

The Sentencing Guidelines Council has now published its definitive guideline on sentencing for organisations

convicted of corporate manslaughter or health and safety offences that cause death. The contents of the guideline are substantially the same as those published for public consultation towards the end of last year (see the [December 2009 edition](#) of Environment, planning and regulatory news).

The guideline, which sets out the principles that every court must consider when sentencing in these circumstances, is clear that fines 'must be punitive and sufficient to have an impact on the defendant'. Where organisations are found guilty of corporate manslaughter, the guideline states that the appropriate fine will seldom be less than £500,000 and may be measured in millions of pounds. For health and safety offences that cause death, the appropriate fine will seldom be less than £100,000 and may be measured in hundreds of thousands of pounds or more.

In deciding the level of fine, courts are required to consider the financial circumstances of convicted organisations on the basis that 'a wealthy defendant should pay a larger fine than a poor one'. Although the guideline states that a fixed correlation between the fine and either turnover or profits is not appropriate, a departure from advice previously issued by the Sentencing Advisory Panel, it indicates that courts should carefully consider the defendants' resources before sentencing. Convicted companies will be expected to provide published audited accounts for a three-year period, including the year of the offence.

When imposing fines, courts should not be influenced by the impact they may have on shareholders and directors, although the effect on the employment of innocent parties may be relevant, as will the provision of public services. The guideline states that putting defendants out of business may be an acceptable consequence in some 'bad cases'.

The seriousness of offences, aggravating factors, such as multiple deaths and failures to heed warnings, and mitigating factors, such as co-operation with investigators and a responsible approach to health and safety must also be assessed.

The guideline also states that publicity orders, the legislative provisions for which were brought into force on 15 February 2010, should ordinarily be imposed in cases of corporate manslaughter.

Environment Agency consults on civil penalties

Hot on the heels of the publication of a draft order bestowing the Environment Agency and Natural England with powers to impose civil sanctions under the Regulatory Enforcement and Sanctions Act 2008, the Environment Agency has launched a consultation on its proposals to implement its new powers.

Fairer and Better Environmental Enforcement: Implementing the new civil sanctions indicates that the Environment Agency proposes using the full range of civil sanctions created by the 2008 Act – from fixed monetary penalties to the issue of stop notices. An annex to the consultation indicates which civil sanction can be used for which offence.

Changes to the Agency's enforcement and sanctions policy and the related guidance are also proposed. For example, the guidance indicates that a fixed monetary penalty is most suitable for offences with minor or no direct environmental impact, such as paperwork and administration offences, and will be used sparingly. Meanwhile, a variable monetary penalty is for more serious offences and stop notices may be used where any activity is causing, or poses a significant risk of causing, serious harm to human health or the environment and where an offence is being, or is likely to be, committed.

The consultation closes on 7 May and the Environment Agency hopes to begin using its new powers from September. Natural England has yet to consult on the use of civil powers; until it does, it is unable to use them.

For further information please contact

Jonathan Isted
T +44 20 7832 7320
E jonathan.isted@freshfields.com

Sharon Long
T +44 20 7427 3019
E sharon.long@freshfields.com

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