



## **Environmental Liability Directive 2004/35/Ce**

This Directive came into force in April 2004 and is required to be transposed into national law by 30 April 2007. The Directive can be accessed through the Defra website [www.defra.gov.uk](http://www.defra.gov.uk) which also contains a very useful résumé of existing UK liability regimes.

The Directive is aimed at the prevention and remedying of environmental damage - specifically, damage to habitats and species protected by EC law, damage to water resources, and land contamination which presents a threat to human health. It will apply only to damage from incidents occurring after it comes into force. The Directive, which does not cover "traditional damage" (that is, economic loss, personal injury and property damage), has the following characteristics:

- It is based on the polluter pays principle, i.e. polluters should bear the cost of remediating the damage they cause to the environment, or of measures to prevent imminent threat of damage.
- Polluters would meet their liability by remediating the damaged environment directly, or by taking measures to prevent imminent damage, or by reimbursing competent authorities who, in default, remediate the damage or take action to prevent damage.
- Competent authorities would be responsible for enforcing the regime in the public interest, including determining remediation standards, or taking action to remediate or prevent damage and recover the costs from the operator.
- Strict liability would apply in respect of damage to land, water and biodiversity from activities regulated by specified EU legislation; fault-based liability would apply in respect of biodiversity damage from any other activity.
- Defences would exist for damage caused by an act of armed conflict, natural phenomenon, or from compliance with a permit, and emissions



which at the time they were authorised were not considered to be harmful according to the best available scientific and technical knowledge.

- Where an operator is not liable, the Member State would have subsidiary responsibility for remediating that damage.
  - Individuals and others who may be directly affected by actual or possible damage, and qualified entities (non-Governmental Organisations) may request action by a competent authority, and seek judicial review of the authority's action or inaction.
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