

## **EXPLANATORY MEMORANDUM ON EUROPEAN COMMUNITY LEGISLATION**

### **Proposal for a Directive of the European Parliament and of the Council concerning the quality of bathing water.**

Submitted by the Department for Environment, Food and Rural Affairs, November 2002

#### **SUBJECT MATTER**

1. The Commission's proposal is for the revision of Directive 76/160/EEC concerning the quality of bathing water.
2. The main objective of the proposal is to improve public health protection from faecal pollution at bathing waters, while taking account of changes in science and technology as well as in management experience in the field of bathing water.
3. Key aspects of the Commission's proposal are the following: -
  - An obligation to meet a tighter minimum bathing water quality standard than under the existing Directive. This "good quality" standard is approximately equivalent to the non-mandatory Guideline standard in the existing Directive. In addition Member States are encouraged to strive for a new "excellent quality" standard at their beaches. This standard is twice as stringent as the "good quality" standard proposed;
  - Rationalisation and reduction of the water quality parameters to be monitored and new rules for the frequency of sampling;
  - Limited provisions to provide information about recreational waters adjacent to bathing waters;
  - Basic bathing water management measures, which are aimed at improving knowledge of risks and impacts at bathing waters; and
  - Improved provision of information for the public, including bathing water quality data and an assessment of risks and impacts.
4. The Parliamentary scrutiny history relevant to this proposal is contained in the attached Annex.

## **MINISTERIAL RESPONSIBILITY**

5. Responsibility lies with the Secretary of State for Environment, Food and Rural Affairs, Scottish Executive Ministers, and Ministers of the Welsh Assembly Government. In Northern Ireland, matters arising from this proposal would normally be the responsibility of Northern Ireland Executive Ministers. Whilst the Northern Ireland Assembly remains suspended, those responsibilities revert to the Secretary of State for Northern Ireland. The Secretaries of State for Health and Culture, Media and Sport also have an interest.

## **LEGAL AND PROCEDURAL ISSUES**

### **6 (i) Legal basis**

The proposal is based on Article 175(1) of the EC Treaty.

### **(ii) Legislative Procedure**

Co decision

### **(iii) Voting Procedure**

Qualified majority

### **(iv) Impact on UK law**

The existing Directive has been transposed in England and Wales by the Water Resources Act 1991, the Bathing Waters (Classification) Regulations 1991 and the associated directions and notices; in Scotland by the Control of Pollution Act 1974 and in regulations under the European Communities Act 1972 and in Northern Ireland by the Quality of Bathing Water Regulations (Northern Ireland) 1993 made under the European Communities Act 1972. Legislative action will be necessary to implement the revised Directive to the extent that it adds new obligations or changes existing obligations.

### **(v) Gibraltar**

The proposal is applicable to Gibraltar, as is the existing Directive.

## **EUROPEAN ECONOMIC AREA**

7 The proposal is not applicable to the EEA.

## **SUBSIDIARITY**

8 Bathing water quality is already regulated at European level under Directive 76/160/EEC. The Commission states in its Explanatory Memorandum that its proposal provides for shared and coherent responsibilities between the EU and Member States and their regions. The Government will examine whether the provisions of the proposal and amendments emerging in the course of negotiation are consistent with the principle of subsidiarity.

## **POLICY IMPLICATIONS**

9. The Government favours revision of the Bathing Water Directive in order to bring it up-to-date with scientific and technological developments and allow better targeting of resources without weakening standards of protection. The UK agreed in March 2001 to the adoption of Environment Council Conclusions welcoming the review but calling for a cost-benefit study to be carried out and a sound scientific basis to be established for the proposal. The Council also called for an emphasis on management measures to protect public health rather than on compliance with water quality standards, and stressed that regional and local differences should be taken into account in the proposal.

10. A tightening of the minimum water quality requirement to the 'good' standard proposed could entail a fall in UK compliance from 98.5% in 2002 to around 70% if additional measures are not taken – with the most significant impact on compliance in north west England and the west of Scotland. Historically, the main sources of contamination causing non-compliance have been sewage discharges and considerable improvements have been made to the standard of the sewerage infrastructure over the past decade with consequent dramatic improvements in bathing water quality. Studies suggest that while there is some scope to raise bathing water quality by action on sewage discharges, for example by raising levels of treatment and improving combined sewer overflows more remote from bathing waters, further improvements will depend largely on reducing the impact of diffuse sources of contamination in particular from agriculture during rainfall. Measures to reduce impacts from agriculture could include preventing animal access to watercourses, improvements to farm drainage systems, changes to manure spreading and grazing practices and reducing livestock numbers.

11. Poor compliance may increase risks to public health, and when coupled with adverse media coverage, may damage the image and competitiveness of seaside resorts and their component businesses. Poor compliance could also lead to adverse public reaction from bathers and watersports organisations, as well as raising the threat of infraction action.

12. The partial RIA, attached, identifies the potentially high costs of securing compliance at the relatively small number of bathing waters affected by diffuse

microbiological pollution from agriculture. While it is accepted that action required under the Nitrates and Water Framework Directives will help to reduce the problem, the Government does not consider that such action will be sufficient or early enough to solve the problem everywhere. Additional action on diffuse pollution necessary to guarantee full compliance with the minimum standards may be disproportionate. Defra's studies also suggest that achieving the proposed more stringent "excellent" water quality standards would significantly increase the areas where action would be necessary to reduce diffuse microbiological pollution.

13. The Commission has decided not to extend the scope of bathing water quality standards to recreational waters, on grounds of cost and practicability. Instead it proposes that information should only be provided on water quality at recreational waters adjacent to designated bathing waters. This is a less comprehensive regime than that desired by some water sports user groups and other stakeholders. The UK is already committed to finding ways to increase access to water for sport and informal recreation and will consider whether additional measures are required for recreational waters.

14. The Commission asserts that the proposed revision of the Bathing Water Directive will produce significant public health benefits. It bases the revised standards on methodology developed by WHO for assessing risks of gastroenteritis and respiratory tract infections which is itself based on very limited epidemiological evidence. The UK regards this evidence as inconclusive but it does recognise that the evidence is the best available and that it has gained a great deal of support internationally. Against this background of scientific uncertainty, the UK is concerned on the one hand by the emphasis in the Commission's proposal on the requirement to achieve microbiological quality standards (which are drawn from the draft WHO guidelines), but on the other hand the lack of regard for other aspects of the WHO approach such as the role of management action as a means of public health protection. Consideration needs to be given to provisions in the revised Directive which ensure a more cost effective way of providing a high level of public health protection, for example, by providing advice to bathers when temporary pollution episodes are expected and making practical use of the beach risk assessments (profiles) which Member States are required to prepare.

15. The epidemiological studies show that bathing-related illness is generally mild and does not cause increased visits to doctors, hospitals or days off work. The UK continues to assess whether protecting the public from bathing-related illness should be a high public health priority, given the nature of the risk, and the fact that gastroenteritis (stomach upset) can be contracted from many sources, of which bathing is but one factor. In addition, given the potential impact of diffuse pollution from agriculture on compliance, the Commission ought to make an assessment of the relative risks to human health from pollution from sewage and animal sources.

## **REGULATORY IMPACT ASSESSMENT (RIA)**

16. A partial RIA based on costs and benefits studies commissioned by Defra is attached. The studies covered England and Wales but the overall conclusions (with proportionate adjustments to the costs and benefits figures) would also apply to the UK. The main findings for England and Wales are:

- The benefits of reducing the risk of gastroenteritis through tighter bathing water quality standards and providing information are estimated to range from £1.1 to 1.9 billion over 25 years. These benefits should be treated with caution. They assume that the health risk reduction associated with the Commission's preferred bathing water quality standard is correct. There may also be other benefits of the revision of the Bathing Water Directive, which it has not been possible to quantify or value. Such benefits include, amongst other things, the benefits of reducing the risks to bathers of non-gastrointestinal bathing-related illnesses and environmental improvements but these are unlikely to be substantial.
- The costs of achieving the proposed tighter bathing water quality standards would be between £3.2 to 4.9 billion over 25 years. The bulk of these estimates is the costs of reducing agricultural diffuse pollution of a minority of bathing waters. There will also be costs over the same time span to the water industry (and through them to water charge payers) from further work on sewerage infrastructure. Estimates are between £80 to 131 million. The agricultural costs in particular should be treated with extreme caution – the level of costs estimated is uncertain and may change once more information on the effectiveness and cost of measures to reduce diffuse agricultural microbiological pollution becomes available.
- Substantial savings, 20-50%, of the policy costs would be possible if the revised Directive permitted full use of management measures, such as the provision of advisory notices, to protect public health during short term pollution events.
- Monitoring, management and administration costs are small compared to investment to meet water quality standards. Such costs would increase for a system of active management but although the additional costs have not been estimated, they are likely to be insignificant compared to the potential savings in investment costs.

## **FINANCIAL IMPLICATIONS**

17. The Commission has not undertaken an assessment of the total costs and benefits of a revised Bathing Water Directive. Its economic study of the revision

focussed primarily on four case studies and monitoring and administration costs. The Commission draws the broad conclusion that for most bathing water sites it will be feasible to achieve water quality standards stricter than existing ones at costs that remain below foreseen benefits. The Commission asserts that where tourism is important, benefits will be higher than costs, but in a limited number of cases, particularly where visitors to bathing sites are low, costs will be greater than benefits. This broad conclusion may well be correct for most EU bathing waters but it appears to seriously underestimate the dominant effect on costs of the proportion of waters affected by diffuse pollution as shown by the UK studies.

18. The Explanatory Memorandum states that monitoring and management costs are likely to increase in the short term, as a result of the need to increase the frequency of sampling but in the longer term they will fall below current costs as reduced monitoring is allowed following improved compliance with bathing water quality standards. The Commission claims that the requirement to produce “beach profiles” will lead to new costs of around £8 million across the EU.

19. Cost estimates for the England and Wales are presented in the RIA Section above.

## **CONSULTATION**

20. Defra is in regular contact with interested stakeholders. A consultation was held in February 2001 on the Commission’s Communication. Sixteen organisations attended, and thirteen responses were received. For more information please see the RIA. The costs and benefits studies referred to above have been published on the Defra website. Further formal consultation with UK stakeholders is planned for the near future

## **TIMETABLE**

21. At present no timetable has been set for consideration of the proposal by the European Parliament, the Environment Council or the Committee of the Regions.

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