LEARNING OUTCOMES

On completion of this element, you should be able to demonstrate understanding of the content by applying what you have learnt to familiar and unfamiliar situations. In particular, you should be able to:

1. Describe the factors that have influenced the development of environmental law in the UK during the second half of the 20th century and the first part of the 21st century.

2. Describe the status and procedures for the creation of UK Acts and Regulations.

3. Describe the arrangements for implementing EC Directives in UK law.

4. Identify foreseeable changes in UK environmental law arising from proposed and draft EC Directives.
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KEY INFORMATION

- The **EPA 1990** is a framework Act that establishes the legal basis for controls over air pollution from stationary sources, waste management and disposal, litter, noise, and the statutory control of environmental nuisances.
- International environmental law comprises international agreements and customary international law - examples include the Kyoto Protocol and the Montreal Protocol.
- European law influences UK law, although the UK can make its own law as long as it does not contradict European law.

DEVELOPMENT OF PRESCRIPTIVE LEGISLATION IN RESPONSE TO ENVIRONMENTAL PROBLEMS

When the Industrial Revolution commenced in Britain and other western countries, the general presumption was that man’s activities were paramount over nature and that, in any case, the natural environment was vast and able to absorb the smoke and wastes of industry.

But as industry developed, the damaging effects of pollution could no longer be ignored. A particularly acute concern was emissions and wastes from the burgeoning chemicals industry, especially from so-called ‘alkali’ works, which produced sodium and potassium carbonate for use in glass, textile, soap and paper manufacture. Alkali works released large volumes of hydrochloric-acid fumes and solid wastes that were highly damaging to the local environment and the health of people living close by.

There were several attempts to sue the owners of alkali works for damages in the civil courts, but the problems became so widespread that the UK Parliament enacted the very first statutory environmental legislation in the form of the various ‘Alkali Acts’:

- **Alkali Act 1863**, which required the registration of processes that release acid gases, and
- **Alkali, etc. Works Regulation Act 1906**, which laid down the general requirement that an operator of a scheduled process must use best practicable means (BPM is still used in current legislation) for preventing discharges of all noxious gases.

The Alkali Acts remained a cornerstone of the environmental regulation of industrial sites in the UK right up until the 1970s.

Clean Air Acts

Another event that was highly instrumental in the introduction of statutory environmental protection laws in the UK was the so-called Great Smog of London, which lasted for 14 days in November 1952. Smog (a combination of ‘smoke’ and ‘fog’) had long been a major problem in London because of the universal use of coal for heating, but poor weather conditions made the smog particularly intense and an estimated 4,000 people are thought to have died as a result of respiratory illness caused by the poor air quality. As a result, the Clean Air Acts of 1956 and 1968 were introduced to provide controls over emissions of smoke, grit and dust into the atmosphere from a wide range of premises and activities. The requirements of these acts have since been consolidated and updated in the **Clean Air Act 1993**.

GLOSSARY

**CLEAN AIR ACTS**

Are laws that have been developed to reduce emissions of particulate matter to air. They originated from the Great Smog in 1952 in London.
Control of Pollution Act 1974
During the 1970s there was a revolution in the public’s perception of environmental risks, triggered, for example, by concerns about the fly-tipping of poisonous wastes. The Control Of Pollution Act (COPA) 1974 was a landmark piece of legislation that provided a framework for addressing all aspects of pollution, including, for the first time, controls on waste-disposal sites. Most of the provisions of COPA have been absorbed into the Environmental Protection Act 1990.

DEVELOPMENT OF ‘FRAMEWORK’ ACTS
Historically, environmental protection legislation has been made on an ad-hoc basis in relation to specific concerns, and environmental provisions have often been buried in other types of legislation. The Control of Pollution Act 1974 was the first attempt to take a more strategic approach to environmental protection legislation in the UK and this trend has continued, with environmental legislation becoming concentrated into a smaller number of major Framework Acts – for example, the Environmental Protection Act 1990.

The relationship between the Framework Acts and some of their secondary legislation is as follows.

The Environmental Protection Act 1990
The EPA 1990 contains the main bulk of provisions on air pollution from stationary sources, waste management and disposal, the integrated control of most potentially polluting processes, litter, noise, and the statutory control of environmental nuisances. It updated and pulled together many legal controls that were previously fragmented into separate Acts and Regulations. The Act also makes provision for the making of further more specific regulations; since the Act’s introduction the following Regulations have been made from it:

Examples of UK framework primary legislation include:
- The Environmental Protection Act 1990.
ACT OF PARLIAMENT

ENVIRONMENTAL PROTECTION ACT 1990

Part II

Part III

Part II A

Contaminated Land (England) Regulations 2006

Hazardous Waste (England and Wales) Regulations 2005

S.62

List of Wastes (England and Wales) Regulations 2005

Legislation Framework
The Water Resources Act 1991

Prior to development of the Water Resources Act 1991 and the Water Industry Act 1991, the following major pieces of legislation regarding water pollution were introduced:

- The Public Health Act 1848 - following a major cholera epidemic in 1830.
- The Salmon Fisheries Act 1861 - control on water pollution following a marked decline of salmon catches in rivers.
- The Rivers Pollution Prevention Act 1876 - made it an offence to pollute the waters of any stream with the solid refuse of any manufacturing process.
- The River Boards Act 1948 established 32 River Boards. These Boards were eventually consolidated into River Authorities under the Water Resources Act 1963. The River Authorities were responsible for water impoundment, licensing water abstractions, fisheries protection, river navigation and pollution control.
- The Rivers (Prevention of Pollution) Act 1951 repealed the 1876 Act. The 1951 Act introduced the offence of "causing or knowingly permitting any poisonous, noxious or polluting matter to enter a stream". The concept of discharge consents also appeared in the Act.
- The Water Act 1973 brought together all the public health functions of the local authorities relating to water and sewage and the responsibilities of the River Authorities, and placed them under the jurisdiction of ten major Water Authorities organised on a regional basis.
- The Water Act 1989 fundamentally restructured the water industry. The Water Authorities were privatised and retained control of water supply and sewage undertakings. The National Rivers Authority (NRA) – one of the predecessors of the Environment Agency – was created with responsibility for flood defence, water abstraction, impoundment licensing and pollution control.


The WRA sets out the responsibilities of the Environment Agency/Natural Resources Wales in relation to water pollution, resource management, flood defence, fisheries and, in some areas, navigation.

The abstraction of water from watercourses or groundwater is regulated under the WRA by the Environment Agency (EA)/Natural Resources Wales. For a company to abstract from controlled waters, a licence has to be obtained from the relevant body.

Many Regulations and Orders have been made from the Water Resources Act 1991, as can be seen in the following diagram.
The Water Industry Act 1991

The Water Industry Act is wide-ranging legislation, which controls many aspects of the water industry. Of particular importance is that it allows the control of trade-effluent discharges to sewers. Trade effluent is any liquid, either with or without suspended particles, which is wholly or partly produced in the course of any trade or industry carried out on a trade premises. It is possible to have ‘special category effluent’, which contains particular substances prescribed under the WIA. Certain discharges to sewers are prohibited, e.g. petroleum spirit. Prohibited discharge is an offence and prosecution is possible. Responsibility for discharge to sewers lies with the local water company.

MORE...

Laws in their original form (and revised form, in the case of most types of primary legislation) are available at the Government’s Legislation website (www.legislation.gov.uk/)
EFFECTS OF INTERNATIONAL AGREEMENTS AND TREATIES ON UK ENVIRONMENTAL LAW

International environmental law comprises the body of rules derived both from international agreements and customary international law to which sovereign states have expressly or impliedly (via state practice) consented. Other sources of international environmental law are:

- General legal principles.
- International case law.
- The written analysis and comments of eminent academics and judges.

### International conventions and protocols on the environment

<table>
<thead>
<tr>
<th>Subject</th>
<th>Convention</th>
<th>Subsidiary Protocols</th>
</tr>
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<tbody>
<tr>
<td>Climate change</td>
<td>United Nations Framework Convention on Climate Change, 1972</td>
<td>Kyoto Protocol 1997; Doha Amendment 2012</td>
</tr>
<tr>
<td>Marine pollution</td>
<td>Convention for the Protection of the Marine Environment of the North-East Atlantic (‘OSPAR Convention’), 1992</td>
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UK environmental law that is linked with international law flows mainly from the formal agreements that the UK has signed up to. These agreements are often in the form of Conventions, which are legally-binding agreements between a significant number of different states, often developed under the auspices of the United Nations. Conventions are often implemented through subsidiary Protocols. The Vienna Convention for the Protection of the Ozone Layer (1985), for example, is implemented through the various amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer, which sets the detailed timetable for phasing out production of ozone-depleting substances.
THE ROLE OF THE EUROPEAN UNION IN INFLUENCING UK LAW AND ITS DIRECT IMPACT ON ORGANISATIONS AND PEOPLE

The European Union (EU) seeks to break down economic and commercial barriers between member states. Because environmental concerns might be used as trade barriers, the EU Commission has sought to harmonise environmental protection measures across the EU. The strategic thrust of the EU’s current environmental policy is contained in the 7th Environment Action Programme, ‘Living well, within the limits of our planet’, which was adopted in November 2013 and which will guide environmental action until 2020.

The EU has historically implemented its environmental policy by setting Directives on specified issues. Directives specify the environmental objectives that must be implemented through national law by each member state. This approach allows for considerable variation in legislation across different member states on key environmental issues. Consequently, the EU is increasingly using the instrument of the Regulation when passing new environmental legislation. An EU Regulation is directly applicable law in every member state.

It is undoubtedly the case that EU policy is now the greatest single driver for the development of environmental legislation in the UK. Within the framework of EU membership, the UK may set or influence environmental law as follows:

- Provide input and debate to influence the European Commission’s programmes and the detailed content of draft Directives and Regulations.
- Set unique UK environmental law to implement the requirements of Directives.
- Enact unique UK environmental law that does not contradict any EU law and which the European Commission does not regard as a barrier to trade.

REVISION QUESTIONS


2. What is the extent of control the UK has with regard to environmental law-making?

(Suggested Answers are at the end.)

MORE...

The United Nations plays a key role in developing and administering international environmental law. Further information on the United Nations Environment Programme can be found at: www.unep.org/