GLOBAL WARMING - THE MANAGEMENT OF COASTAL FLOODING: LEGAL EVOLUTION IN THE UK *

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* Optou-se pela publicação da apresentação em power point realizada pelo autor, uma vez que não dispomos da versão em texto.
Nota Curricular

Andrew joined Berwin Leighton Paisner LLP in 1993. He is Co-ordinator of the Environment Group and became a Partner in 1996.

Andrew is widely experienced in Environmental Law, with a substantial practice in the area of contaminated land, waste management, water, noise, pollution control law and climate change issues.

He is:

- Vice President (and formerly President) of the European Environmental Law Association;
- Co-founder of the UK Environmental Law Association and Secretary 1986-90; and
- former Regional Vice Chair for Western Europe of IUCN’s Commission on Environmental Law 2001-05.

On behalf of EELA and the IUCN Commission on Environmental Law Andrew organised the first meeting of European judges on Environmental Law in 2002 which resulted in the formation of the European Judges Forum on the Environment.

Andrew is a member of several other prestigious environmental bodies, including the International Court of Environmental Arbitration and Conciliation and the International Council of Environmental Law. He is an officer of the American Bar Association’s Section on Nature Resources Energy and Environmental Law and Assistant Editor of Natural Resources and Environment, and Chairman of the CBI’s ad hoc working party on environmental liability.

Andrew is editor of Butterworths Environmental Handbook 3rd edition, 2001; co-author of Environmental Law in Property Transactions 3rd edition, Tottel 2009; and author of a number of articles on environmental law topics. He is regularly invited to speak at conferences in the UK and abroad.
Abstract

This presentation considers problems of coastal flooding and erosion and how the management of these problems has changed from flood prevention to a recognition that coastal flooding and erosion is inevitable. The problem therefore has to be managed and we have to consider also the new challenges of nature conservation requirements and global warming.

A number of legal tools are available in managing these problems: duties and powers matched by rights or the absence of rights. Duties matched by rights fall on persons both in the private and public sectors. However, public sector powers are the most important in practice.

There is no duty on landowners to protect their land against the sea (subject to certain duties which are arise through prescription, custom, tenure covenant etc.)

The “common enemy” rule also allows owners to protect their own land against the sea even if that results in flooding on neighbouring lands. However, a landowner cannot release flood water from his land onto that of a neighbour.

Every landowner has a right of support from the land of his neighbour. This leads to a “measured” duty to take reasonable steps to prevent foreseeable erosion which could affect the land of neighbours. However, the duty does not extend to cases where the extent and speed of erosion was not foreseeable: Holbeck Hall Hotel v Scarborough Borough Council [2000] QB 836.

The coastal zone is protected from works by private persons in that number of different consents are required before any work can take place.

Although there is an ancient duty on the Crown to protect the country against incursions from the sea, modern legislation relies mainly on powers rather than duties for the purposes of coastal protection and flood defence.

The principle protection statute is the Coast Protection Act 1949 which provide a power for coastal authorities to carry out coast protection work. Flood defence is carried out separately by the Environment Agency under powers in the Water Resources Act 1991.

In recent years, it has been recognised that more flexibility is required and that it is necessary in some cases to provide for a managed retreat against incursions from the sea. The Climate Change Act 2008 also recognises the need for adaption to global warming.

In recognition of the problems, new legislation is proposed. The draft Flood and Water Management Bill provides that the Environment Agency will have full strategic and operational control over flood management and coastal erosion
although there will be a continued operational role for local authorities. It is notable that there will be general powers for the Environment Agency and local authorities to carry out structural or environmental work to deal with risks of flooding and coastal erosion. They will also have powers to carry out work which may cause flooding or coastal erosion. This provides a measure of flexibility and recognition that the policy of prevention by itself is not sufficient.
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Problem of coastal flooding

Ancient problem

New challenges:
- nature conservation
- global warming

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Technical approaches

- Flood prevention
- Flood management

Legal approaches

Duties

Powers

Rights

No Rights
Legal approaches

PRIVATE

Duties

Rights

PUBLIC

Duties

Rights

Flood prevention

Private Law

* Right but no duty for landowner to protect his land against sea

* Exception – duty on coastal landowners e.g. prescription, custom, tenure, covenant

* common – enemy rule
Liability for Flooding Common – enemy rule

Liability for Flooding Common enemy rule
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Flood Prevention Private Law

* Liability to neighbours for destroying natural barrier to sea

* Duty of support
  - Holbeck Hall Hotel v Scarborough Borough Council

Holbeck Hall Landslide from the air
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Flood Prevention
Private Law

* Duty of Support
  - measured duty – applies if hazard is known or ought to be known
  - duty to take reasonable steps
  - applicable to gradual foreseeable erosion
  - managed retreat?

Flood defences

* Works by private persons

* various licences are required
Position of public authorities

* duty on Crown to protect against the sea

* duty may pass to successor authorities
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Public authorities

* Coast protection
* Flood defence
* Reliance on powers

Coast Protection Act 1949

* Power for coastal local authorities to carry out coast protection work
* Minister decides on proposal
* Compulsory purchase powers
* ‘Works scheme’ – payment of charges by people benefited
Flood defence

Work by Regional Flood Defence Committee who carry out flood defence function of Environment Agency

New Approach

*Flexibility
*Managed retreat
*Adaptation
*Draft Flood and Water Management Bill
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Draft Flood and Water Management Bill

* EA will have full strategic and operational control over flood management and coastal erosion
* Advisory role of Regional Flood and Coastal Committees
* Continued operational role for local authorities

Draft Flood and Water Management Bill

* General power for EA to carry out structural or environmental work to deal with risks of flooding and coastal erosion
* Local authorities’ power to carry out flood defence and coastal erosion protection work
* EA and local authority power to carry out work which may cause flooding or coastal erosion with national strategy
Draft Flood and Water Management Bill

- Flood risk management
- Flood maps
- Designated things – cannot be altered, removed or replaced without consent

Liability of authorities

- No liability for undertaking work under a power
- Liability if action of authority makes matters worse than if no action taken
Lessons

* Adaption to global warming
* Management (not only prevention)
* Powers for authorities
* Duties (?)
* Rights and duties of private parties

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This document provides a general summary only and is not intended to be comprehensive. Specific legal advice should always be sought in relation to the particular facts of a given situation.