MODERNISING ENVIRONMENTAL JUSTICE

Regulation and the Role of an Environmental Tribunal

Professor Richard Macrory C.B.E.

with

Michael Woods LLM, Solicitor

Centre for Law and the Environment
Faculty of Laws, University College London

"Procedures have grown up haphazardly with no apparent underlying principle, and we consider they fail to provide a system appropriate for contemporary needs. We recommend the establishment of Environmental Tribunals to handle appeals under environmental legislation other than the town and country planning system."

ROYAL COMMISSION ON ENVIRONMENTAL POLLUTION

23rd REPORT 'ENVIRONMENTAL PLANNING' 2002

"We express our conviction that the deficiency in the knowledge, relevant skills and information in regard to environmental law is one of the principal causes that contribute to the lack of effective implementation, development and enforcement of environmental law."

JOHANNESBURG GLOBAL JUDGES SYMPOSIUM 2002

"In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention."

AARHUS CONVENTION 1998

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ISBN No 0-905955-01-3

Published by

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FOREWORD

In the 19th century, the problems of industrial development and crowded urban housing forced the United Kingdom to take the lead in evolving laws to control pollution. Statutes such as the Alkali Act 1863 and the Public Health Act 1875 were innovative, if not always successful, models of their kind. Piecemeal development of statute and common law over the next 100 years left us (in this, as in many other areas of the law) with a workable but confusing legacy of regulatory controls and legal remedies, without any obvious common theme. Today the picture is clearer, under the influence of European legislation over the last 25 years, and the statutory revolution initiated by the Environmental Protection Act 1990. The law, however imperfectly, reflects the principle that the 'environment' is an integrated whole, requiring an integrated scheme of regulatory protection.

Nevertheless, our court and tribunal structures have a lot of catching up to do. The tables included in this report show a perplexing division of appellate responsibilities between courts (civil and criminal), tribunals and administrative agencies. There is no logic other than that of history. In my 1989 report on planning enforcement, I identified this division of roles as a serious obstacle to efficient remedies. Since then, there has been a lively and continuing debate on the merits of an environmental court or tribunal, informed by a major study for the DETR by Professor Malcolm Grant in 1999. However, opponents and the uncommitted (including Government) have been able to point to lack of clarity or consensus as to the preferred form or responsibilities of such a body.

The present report is therefore doubly welcome. First, it arises out of an initiative of the Department for Environment, Food and Rural Affairs. Although this involves no commitment by the Department to implement the recommendations in the report, it gives an encouraging impetus for future work. Secondly, the report provides a practical and workable 'road-map' for the development of a new Environmental Tribunal structure. The authors show how (if we concentrate for the moment on the regulatory and civil aspects of public environmental law), we can devise a structure which would be manageable and economical, and would build on the best features of existing practice. Such a structure would also fit well into the proposed new scheme for tribunals, following the Leggatt Report. At the same time, it leaves us free to sharpen the teeth provided by the criminal courts, through improved management and training within the new unified criminal court system.

The project also has important international aspects. The Aarhus Convention has committed us to ensuring that access to justice in environmental disputes is real and affordable. In Europe the complexity of environmental law, and the pressure for public involvement, will only increase. More widely, the Johannesburg Statement of Principles represented a unique affirmation of the role of the law, properly enforced at all levels, in achieving sustainable development. The United Kingdom, with its close legal links to Europe, the USA and the Commonwealth, could again lead the way. But to do so, we need to get our own house in order, and to establish the 'environment' as firmly in our legal structures as it is now in our laws.

Lord Justice Carnwath
Royal Courts of Justice
London
June 2003

PREFACE

This six month research project was commissioned by the Department for Environment, Food and Rural Affairs, and thanks are due to Jayne Boys and Rachel Solomon Williams of the Department's Sustainable Development Unit with whom we maintained close liaison during the study.

A large number of individuals and organisations provided valuable input to the study, and details are provided in Appendix F. In particular, the members of the Steering Board, who served in their individual capacity, provided invaluable strategic advice and constructive criticism throughout the development of the research. In addition, we were able to call upon the experience and insights of a wider Advisory Panel who also served in their individual capacity. We hope they find much of the analysis to be sound but we do not expect them to feel obliged to endorse all the recommendations.

Michael Woods worked as a Senior Research Fellow on the project. Researchers are often the unsung heroes of this type of exercise, but he is to be congratulated on the drive and dedication he brought to the research.

The 23rd Report of the Royal Commission on Environmental Pollution, which included a recommendation to establish a specialist environmental tribunal system in this country, provided a starting point for the research. I was a member of the Royal Commission during that study, but the research has taken the arguments and analysis considerably further than was possible in the Commission's much broader review. I am also currently a Board Member of the Environment Agency, but the research was carried out in my academic capacity, and the analysis is not intended to represent any collective view of the Agency.

Richard Macrory
Faculty of Laws, University College London
June 2003

KEY MESSAGES OF THE STUDY

1. This study is concerned with modernising the ways in which we handle environmental regulation. It stems from a recent recommendation of the Royal Commission on Environmental Pollution that a specialist environmental tribunal system be set up to consolidate and rationalise a range of environmental appeal mechanisms which are currently distributed amongst an array of different courts and other bodies.

2. The right of applicants for planning permission to appeal to the Secretary of State is a familiar and developed feature of our land-use planning system. Land-use planning appeals are handled (and most cases now decided by) the Planning Inspectorate. Similar rights of appeal have been built into many existing environmental laws, ranging from waste management licensing to the service of statutory nuisance abatement notices. But the institutions that determine such appeals are many and varied. This study has examined over 50 different appeal provisions in contemporary environmental legislation, with appeal bodies ranging from the Secretary of State and the Planning Inspectorate under delegated powers, to the Magistrates' Courts, County Courts and the High Court. There are also examples where the applicant has no right to question a regulatory decision other than by way of judicial review.

3. The system that has developed is complex, and not one easily intelligible to direct users, let alone the general public. It lacks any underlying coherence, and fails to reflect contemporary developments in environmental law. The system's haphazard nature can only be explained by the fact that as new environmental regulatory requirements have been introduced, decisions as to the choice of appeal route have been made on a pragmatic basis from a diversity of existing bodies which were not originally established for such purposes.

4. Pragmatism can often be a virtue. But evidence from existing users of the system (including regulatory bodies suggests unease with the current arrangements. It is questionable whether local Magistrates' Courts are the best fora for handling technically complex appeals brought by trade and industry under statutory nuisance provisions, and even more so, appeals under the emerging contaminated land regime. The Planning Inspectorate appears to be coping effectively with the relatively small number of environmental appeals that it now handles, but there are concerns about how it deals with difficult legal issues, the accessibility of its decision letters, and the fact that it is not a suitable forum for providing authoritative decisions on environmental appeals which can then be used as more general guidance for the better application of environmental regulation. There are also glaring gaps in the existing legislation where no appeal route is provided.

5. The study has also considered pressures on existing judicial review procedures. An examination of over 50 case files over the past three years has indicated that judicial review applications concerning environmental decisions are brought as much by industry as by members of the public or environmental organisations, and are frequently merits driven rather than concerned with purely legal grounds. Failure to tackle the existing weaknesses and gaps in appeal mechanisms will only increase the pressure on judicial review as a default appeal route to which it is not best suited.

6. One way forward is based on the adaptation of current arrangements, and the study identifies a number of possible improvements which could be made to existing institutions. This includes the transfer of contaminated land remediation notice appeals to the Lands Tribunal, and the strengthening of legal and environmental expertise within the Planning Inspectorate.

7. However, this is likely to be very much a second-best solution. A key concern is whether such a 'pick and match' approach can be sustained in the light of future demands. On the horizon there is a range of new and challenging sets of environmental requirements, often involving smarter regulatory concepts than more traditional approaches – examples include end of life vehicles, carbon dioxide emissions trading, agricultural waste and environmental liability to name but a few. An appeals system based on a specialised tribunal, bringing heightened legal authority and coherence to the system, would significantly improve confidence in future environmental regulation for direct users, the regulatory authorities, and the general public.

8. The need for a specialised jurisdiction is reflected in the distinctive characteristics of contemporary environmental law, and it is possible to identify a core environmental jurisdiction that could fall within a new Environmental Tribunal system. Estimates of the current numbers of environmental regulatory appeals being made indicate that that they could be transferred to a single Environmental Tribunal operating along similar lines to the current Lands Tribunal, with establishment costs of under £2M. This would provide a secure basis for any extension of jurisdiction to meet future requirements. Such a tribunal would fall within the new unified Tribunals Service, and benefit from being associated with the Government's reform programme for tribunals.

9. The need for a new institutional framework is all the more pressing given the changing context of the role of environmental regulatory appeals. The Aarhus Convention, in particular, promotes the concept of a more active environmental citizenship, and introduces a new concept of environmental justice. This includes the right to legal review mechanisms for members of the public and non-governmental organisations that are fair, equitable, timely and not prohibitively expensive. An Environmental Tribunal is likely to provide a more appropriate basis for meeting the aspirations of Aarhus than relying on current procedures.

10. The model of the Environmental Tribunal considered in this study is more modest than earlier proposals for a 'one-stop' environmental court or a land and environment tribunal. Yet it is also one that offers a manageable and viable solution, with a core structure that could be established without undue cost or administrative upheaval. Regulatory appeal mechanisms are only one element of our system for delivering and implementing environmental law, but they play a vital role, and their potential benefits have been largely ignored to date. A new appeal body in the form of such an Environmental Tribunal would bring greater coherence and authority to the development of the legal and policy dimensions of environmental regulation, and would make a significant contribution to our justice system.

1. The context

1.1 Environmental law has grown rapidly in its scope and content in this country over the last two decades. It is a subject that is being continually developed to face new environmental challenges. Much effort is currently being focused on ensuring that the design of modern environmental regulation is proportionate, intelligible for the user, and effective in achieving beneficial outcomes. This study, though, is not concerned with the substantive content of regulation - it is equally important that we have in place the most appropriate legal machinery to resolve environmental disputes in a way that is fair, attracts public confidence, and provides an authoritative and coherent approach to environmental law and policy. This led us to concentrate on certain key aspects of the current arrangements for administering and implementing environmental regulation.

1.2 This challenge of institutional design is not unique to the United Kingdom. Other countries have developed or are thinking about new legal machinery for handling the interpretation and application of environmental law. In this country, various models for change have been proposed during the last decade or so. The 1989 Carnwath Report on Enforcing Planning Control argued the need to review the jurisdictions of the various courts and tribunals dealing with different aspects of what might be called 'environmental protection' (including planning), and saw merit in combining them in a single jurisdiction.[i] In his 1991 Garner Lecture 'Are the Judiciary Environmentally Myopic?', Lord Woolf spoke of the benefits of a specialist tribunal with a general responsibility for overseeing and enforcing safeguards provided for the protection of the environment.[ii] Professor Malcolm Grant's major study on Environmental Courts, commissioned by the Government and published in 2000[iii], identified six alternative models, ranging from a planning appeals tribunal to an environmental court as a new division of the High Court. But at the time, the Government was not convinced of the need for change, and were particularly concerned about the institutional upheaval involved in introducing such models. In the Parliamentary debate on the issue, the Government Minister noted the apparent lack of consensus on the types of environmental issues that might be included in a new jurisdiction, as well as the diversity of courts that could currently deal with what might be described as environmental disputes[iv]. Any significant institutional change was also considered premature prior to the outcome of major reviews of the criminal and tribunal systems then being undertaken.

1.3 More recently, there has been much increased international discussion and cooperation amongst the judiciary in the search for new approaches to environmental law and the mechanisms for delivering effective results. In August 2002, senior members of the judiciary from sixty countries met at the Global Judges Symposium as part of the Johannesburg World Summit. They affirmed the Johannesburg Principles on the Role of Law and Sustainable Development[v], stressing the vital role of the judiciary and environmental law in the enhancement of the public interest in a healthy and secure environment. This has been followed by meetings of the judiciary in London last year, and most recently in Rome in May 2003, where the establishment of a European Judicial Forum was confirmed. Key substantial issues identified at the Rome meeting for further work included:

- the pros and cons of establishing specialist environmental courts or tribunals.
- the ability of citizens to obtain access to the courts to further enhance the effective implementation, compliance with, and enforcement of environmental laws.
- consideration of environmental scientific evidence and the fashioning of appropriate remedies, including restoration of the environment.

2. The report of the Royal Commission on Environmental Pollution

2.1 The most recent significant UK study dealing with these issues, and which provides the context for this report, was the 23rd Report of the Royal Commission on Environmental Pollution (RCEP), entitled *Environmental Planning* and published in 2002.[vi] Much of the RCEP's study was concerned with improving strategic planning for the environment, but it also included recommendations dealing with current institutional arrangements for handling planning and environmental disputes.

2.2 Following the recent establishment of the Administrative Court, the RCEP did not consider that there now exists a compelling case for creating a specialist environmental division of the High Court to handle environmental judicial reviews. It was of the view that criminal environmental offences were probably still best handled by ordinary criminal courts, though it recommended improved training for magistrates. The RCEP also recognised that in respect of applicants for planning permission, we have a well-developed system of appeal procedures under the town and country planning legislation as handled by the Planning Inspectorate.

2.3 But when the RCEP examined current arrangements for dealing with environmental appeals outside the planning system, such as appeals against the refusal of a waste management licence, or the service of a statutory nuisance abatement notice, it concluded that the present system lacked consistency and coherence, both as to whether there are any rights of appeal on merits, and as to which forum decides such appeals. It therefore recommended the establishment of a new environmental tribunal system to consolidate and rationalise the handling of such appeals. Although the RCEP recognised that there might be merit in bringing all environmental appeals under the jurisdiction of the Planning Inspectorate, it considered that it would be preferable to establish a specialist environmental tribunal system in order to provide a more visible focus for the development and application of environmental law and policy, and to avoid environmental appeals being treated as a sub-set of the much greater number of planning appeals.

3. The purpose of this study

3.1 The aim of this project has been to test the merits of the RCEP proposal in greater detail, and to provide more extensive underlying data to allow a rigorous analysis of some of the important questions that need to be addressed if the proposal is to be taken forward:

- how coherent is the present system for appeals?
- are there concerns with how current arrangements operate in practice, and could these be met by incremental adaptation rather than a new tribunal system?
- will the current arrangements be able to handle the new environmental legislation on the horizon?
- would there be a viable jurisdiction for an Environmental Tribunal?
- what would be the likely workload, and what are the costs and benefits involved?
- what are the current pressures on judicial review procedures, and to what extent could these be addressed by a new Environmental Tribunal?
- would a specialist Environmental Tribunal improve confidence in the application and enforcement of environmental law?
- would such a Tribunal contribute towards meeting the aspirations of active environmental citizenship underlying the Aarhus Convention?

3.2 The research also needs to be seen in the context of wider concerns about the current effectiveness of environmental law, including the adequacy of criminal penalties and enforcement mechanisms. The RCEP model did not envisage an environmental tribunal system directly handling criminal cases, which would remain as now with the criminal courts. We will argue that a coherent regulatory appeals system is in any event an important element for the more effective enforcement of environmental regulation, but we also consider later in the report the extent to which

an Environmental Tribunal system might take on more overt enforcement functions.

3.3 The current regulatory arrangements now need to be tested against the provisions of the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. The Convention (which is in the process of implementation within the European Community) promotes the concept of an active environmental citizenship to ensure sustainable and environmentally sound development, including public participation, transparency, and accessible and effective judicial mechanisms. Governments are required to establish and maintain *"a clear, transparent and consistent framework"* to implement the Convention's requirements. We have to consider the extent to which a new Environmental Tribunal system might contribute to fulfilling both the letter and spirit of Aarhus.

3.4 Our study should also be viewed in the context of the Government's current reform programme for tribunals, following the 2001 Leggatt Report, *Tribunals for Users*[vii]. The Government has recently announced its intention to create a unified Tribunals Service responsible to the Lord Chancellor as part of its wider agenda for reforming the country's legal systems and public services. Current plans envisage the establishment of such a service in incremental stages, and a White Paper should be published later this year. The Leggatt Report was largely concerned with existing tribunals rather than the creation of new jurisdictions, but contains a valuable set of principles against which changes to the current system of environmental appeal procedures can be judged. It is clearly important that any proposals for change are consistent with the proposed reforms of the tribunals system as a whole.

3.5 This report is focused on the legislation and appeals procedures in England and Wales only. Nevertheless, we suspect that many of the underlying concerns and the arguments for change will be of relevance to Scotland and Northern Ireland as well.

4. Environmental appeals under existing legislation

4.1 A key part of the research has been to establish in more detail the range of what might legitimately be described as environmental appeals provided for in existing legislation, as well as the current numbers of such appeals taking place. The types of appeals that we have considered fall into two broad categories:

(i) appeals against the refusal of a licence/permit (or against conditions imposed in a licence/permit) required under environmental legislation

(ii) appeals against some form of notice served under environmental legislation requiring remedial action or the cessation of activities

4.2 We describe these as 'regulatory appeals' in part to distinguish them from judicial review applications. The appeals are distinct from legal actions between private parties such as private nuisance actions, but are concerned with resolving disputes between the citizen (whether an individual or a company) and the state (in the form of central government, a specialised agency, or local government). This is described in the Leggatt Report as the typical jurisdiction of most tribunals. One distinction, though, from the range of work carried out by many existing tribunals is that the majority of regulatory decisions in environmental law that might be subject to appeal are likely to involve companies and businesses rather than private individuals. Statutory nuisances are an exception where many appeals, such as those relating to noise nuisance or housing conditions, involve domestic premises. Importantly, where such rights of 'regulatory appeal' exist, they currently rest with the person or business immediately affected (i.e. the licence applicant or the person served with the notice), and other members of the public have no general right of appeal other than by way of judicial review, and subject to normal standing requirements. The question of whether third party rights of appeal should be introduced within an Environmental Tribunal system is considered more fully later in this study.

4.3 Where grounds of appeal are provided in the legislation, they are typically very broad, covering both the factual merits of the original decision, procedural questions, and questions of law. In other cases, appeals are effectively based on the right to a *de novo* decision. Regulatory appeals are therefore in effect full merits appeals, often involving questions of fact and law, and should be treated as distinct from judicial review applications where more restricted grounds of review apply - though we consider later in the study the extent to which judicial review procedures in environmental matters are in practice being used a default merits appeal route.

4.4 The regulatory appeals that we have described are concerned with resolving disputes concerning the validity of the action of a governmental body rather than the prosecution of environmental offences. We discuss further on in the report whether any Environmental Tribunal system could usefully incorporate enforcement functions in addition to determining regulatory appeals, but in any event there is an intimate connection between a regulatory appeals system and environmental enforcement. Non-compliance with an environmental licence or permit, or with notices such as those served under statutory nuisance or contaminated land legislation, is generally deemed to be a criminal offence, and under contemporary environmental legislation there are now few 'stand-alone' environmental criminal offences, i.e. nearly all such offences are at least indirectly connected with the type of licence or notice handled by the environmental regulators as described above. A regulatory appeals system which can deliver effective, consistent, and authoritative rulings on the interpretation and application of regulatory requirements can therefore be seen as an essential building block - though not the only one - in ensuring improved compliance with, and the enforcement of environmental legislation.

4.5 The Government's agenda for the reform of public services emphasises the need for modern, user-focused services, and any critique of the current arrangements for handling environmental appeals should be seen from the perspective of the user. The direct users of the current appeal system are the individuals or companies who are subject to environmental regulation and would legitimately expect the opportunity to question the factual and legal basis of administrative decisions directly affecting them. But in the environmental field there are also other interests involved whose perspectives need to be taken into account, and might best be described as 'indirect' users. They include:

- bodies responsible for implementing environmental regulation who should be able to rely on an appeals system that delivers decisions with consistency and authority, even where individual decisions are made against them (e.g. the Environment Agency and English Nature)

- members of the public who are indirectly affected by environmental decisions taken by regulatory bodies (e.g. owner/occupiers in the vicinity of a proposed landfill site). Whilst the main impact of administrative decisions in fields such as social security entitlement or immigration is likely to be on the individual seeking entitlement, the environmental field is distinctive in that decisions taken by regulatory bodies may also have real or perceived impacts on the health and physical environment enjoyed by a wide group of third parties

- companies seeking to comply with regulatory requirements who do not necessarily wish to exercise rights of appeal, but need to be assured that where competitors do appeal, decisions are made fairly and consistently.

- the general public, who have a stake in a system that delivers effective environmental outcomes in a manner in which they can have confidence.

5. Legislative analysis

5.1 We have conducted a systematic analysis of legislation to determine the extent of current appeal provisions and their decision fora. Determining the boundaries of 'environmental' legislation with precision is always a question of judgement, but we have excluded from the analysis at one end of the spectrum, town and country planning and transport legislation, legislation broadly concerned with amenity questions (such as tree preservation orders or hedgerow appeals), valuation appeals and the type of land dispute that falls within the jurisdiction of the Lands Tribunal; and at the other end, we exclude health and safety, and similar workplace controls.

5.2 We do not claim this to be a complete exercise, nor that all such appeals should necessarily be handled by a single Tribunal system. Nevertheless, Appendix A lists over 50 different appeal routes under specialised environmental legislation that fall within these parameters. Broadly, we can categorise the different routes of appeal under the following headings:

(a) appeals to local Magistrates' Courts (mainly in respect of notices served by local authorities under statutory nuisance and contaminated land provisions)

(b) appeals to the Secretary of State but formally delegated to the Planning Inspectorate (mainly Integrated Pollution and Prevention Control (IPPC) consents, waste management licences, and water discharge consents, plus contaminated land notices for 'special' sites designated by the Environment Agency)

(c) appeals to the Secretary of State which are handled by the Planning Inspectorate but with the final decision resting with the Secretary of State

(d) appeals to the Secretary of State where no specific procedure may yet have been identified

(e) appeals to the High Court on merits grounds (a rag-bag set of provisions, often dealing with off-shore activities)

(f) miscellaneous appeals to a variety of other courts and tribunals (including, for instance, the County Court in respect of charging notices served under the contaminated land regime)

(g) cases where no right of merits appeal is provided under the legislation (typically where the initial decision is made by the Secretary of State such as on GMO licences; in some cases the procedures allow for further representations to be made on proposed decisions, but otherwise it is necessary to use judicial review as a default means of appeal)

(h) the use of arbitration (as introduced in respect of decisions by the Secretary of State under recent voluntary agreements concerning carbon emission reductions to avoid the likelihood of judicial review)

5.3 The only existing appeal route against the refusal by a public body to release environmental information under the Environmental Information Regulations has to date been by way of judicial review. A Consultation Paper was issued by Government in November 2002, proposing an appeal route in respect of environmental information to the new Information Commissioner with a further right of appeal to the Information Tribunal established under the Freedom of Information Act 2000. Against this background, we do not consider this area of law further in the report.

5.4 The pattern of appeal routes clearly presents a complex picture and one not easily intelligible to the expert, let alone the ordinary citizen. Even within some discrete regimes, such as contaminated land, there is more than one appeal body involved. It is not easy to discern any underlying principles that determine the choice of appeal forum, though some rationale can be identified in particular cases. Statutory nuisance provisions, for example, were based on structures originating in nineteenth century Public Health legislation and were already locked into the Magistrates' Courts system before appeal provisions against notices were introduced (first for noise nuisances in 1974 and then for other statutory nuisances in 1990). Statutory nuisance

abatement notice appeals may be argued to involve the need for local knowledge where magistrates are considered to have expertise. The new contaminated land provisions were modelled on the statutory nuisance provisions, justifying the choice of Magistrates' Courts rather than any other forum for dealing with appeals in respect of local authority sites. IPPC and waste management consents are usually associated with land based projects which perhaps explains the choice of the Planning Inspectorate as the body for handling appeals. Three examples of key legislative appeal mechanisms are provided in Box 1.

BOX 1 – Examples of Key Legislative Appeal Mechanisms

WASTE

Waste management on land in the UK is regulated under Part II of the Environmental Protection Act 1990 and related regulations, in order to comply with the EC Waste Framework Directive.

This legislation set up a waste management licensing system to cover the keeping, treatment and disposal of controlled waste, under the supervision of the Environment Agency.

There is a right of appeal to the Secretary of State in relation to decisions by the Environment Agency on licence applications, including their transfer or surrender. This right of appeal is available to the applicant, the holder or a proposed transferee of a licence. The appeals can take the form of a hearing or written representations, and are delegated to the Planning Inspectorate. Such delegation is normally carried out as the need arises, by way of a formal letter with legally binding effect.

The Government is currently consulting on the proposed End of Life Vehicles (Storage and Treatment)(England and Wales) Regulations 2003, which will implement (in part) the EC End of Life Vehicles Directive. These Regulations will require some operators of sites who currently comply with the waste management licensing system, to obtain a permit if they wish to continue to undertake recovery activities on end-of-life vehicles before existing pollutants have been removed. A right of appeal would be available against decisions taken by the Environment Agency to the Secretary of State, or her appointee.

CONTAMINATED LAND

The new contaminated land regime is covered by Section 78A of the Environmental Protection Act 1990 (introduced by the Environment Act 1995) and related regulations.

Local authorities are under a duty to inspect their areas in order to identify contaminated sites so that remediation can be addressed. The local authority is then to serve a remediation notice on those parties it considers should be responsible for carrying out the remediation. This will mainly be the person who 'caused or knowingly permitted' the contamination to take place, but if such a person cannot be found, then liability may rest with the current owner or occupier. The local authority will need to allocate liability where a number of parties have contributed to the contamination. Local authorities also have default powers to carry out remediation work and then recover their costs. If a site is more seriously contaminated, then it will be designated a 'special' site, in which case, the Environment Agency takes responsibility for addressing the remediation process.

Parties served with a remediation notice have a right of appeal. If the notice was served by a local authority the appeal will be heard by the local Magistrates' Court. If the notice was served by the Environment Agency then the appeal is to the Secretary of State. Such appeals can take the form of a hearing or written representations, and are currently delegated to the Planning Inspectorate.

In addition, there is a right of appeal to the County Court in respect of a charging notice served by a local authority in order to recover its costs in carrying out remediation work itself. There is also a right of appeal to the Secretary of State regarding a determination by an authority to hold confidential information relating to the affairs of an individual or business on a public register for contaminated sites.

GENETICALLY MODIFIED ORGANISMS

The deliberate release and contained use of Genetically Modified Organisms (GMOs) are controlled under separate legislation designed to implement relevant EC requirements.

Under the new Genetically Modified Organisms (Deliberate Release) Regulations 2002, the Secretary of State can authorise the release of GMOs into the environment. Applications for commercial releases need a collective decision by all the EC Member States, but decisions on releases for certain research purposes can be taken by the Secretary of State without the same level of EC involvement. Such decisions are handled by Defra officials in practice, based on EC consultations, expert advice and any public representations. However, no formal right of appeal is provided in the Regulations, and applicants would have to use judicial review to challenge the decision.

The Genetically Modified Organisms (Contained Use) Regulations 2000 cover the use of GMOs in laboratory and similar conditions where there is a barrier to contact with the public. Applications for authorisations are processed by the Health and Safety Executive, and decisions are made by the Secretary of State and the Health and Safety Executive acting jointly. There is a right of appeal available to the Secretary of State.

5.5 Nevertheless, one must suspect that as new environmental requirements have been introduced, choices as to appeal routes have been made on a pragmatic basis from the array of existing fora, leading to the haphazard nature of the present arrangements. A senior judge told us: *"Some environmental legislation is extraordinarily deficient in terms of the sufficiency or availability of appeal mechanisms…but pressures from the Human Rights Act and for third parties rights will change this…"* Complexity in itself is not necessarily a justification for change, but a drawback of the current disparate structure is that it may inhibit consistent approaches to resolving environmental appeals, and the development of environmental decision-making that will attract both business and public confidence. An effective appeals system is equally important for the confidence of those public bodies charged with the responsibility for delivering environmental regulation, and as we have noted, is closely linked to more effective criminal enforcement.

5.6 In addition, we need a system that will meet future environmental regulatory requirements. This need is particularly driven by developments in the European Community (EC), and Box 2 provides a selective list of anticipated EC legislation, requiring transposition into UK law, much of which will require new appeal procedures. Looking to the future, a key policy choice has to be taken as to whether it is preferable to continue to make pragmatic choices as to appeal routes on an ad hoc basis by loading the variety of existing institutions with new responsibilities, or if it would be better to establish a more specialised Environmental Tribunal system with the expertise and capability to handle both current and future requirements.

BOX 2 – Selected new and anticipated EC legislation

STATUS	ISSUE	TYPE OF MEASURE	PURPOSE
Adopted	**Emissions Ceilings**	Directive	Sets national emissions ceilings for SO2, NOx, VOCs and NH3 to be reached by 2010, requiring the extension of air pollution controls through IPPC to ammonia emissions from agriculture and in particular the dairy sector
Adopted	**Waste Electrical & Electronic Equipment (WEEE)**	Directive	Requires that producers (manufacturers, sellers, distributors) will be responsible for financing the collection, treatment, recovery and disposal of WEEE from private households which are deposited at collection facilities (and from non-households from 2005)
Adopted	**Restriction of Hazardous Substances in Electrical and Electronic Equipment (ROHS)**	Directive	Restricts the use of certain hazardous substances in the manufacturing of new electrical and electronic equipment
Adopted	**End of Life Vehicles (ELVs)**	Directive	Requires that producers reduce the use of hazardous substances and increase the quantity of recycled materials in the manufacture of vehicles and (from 2007) pay the costs of free take-back of zero or negative value vehicles to authorised treatment facilities
Adopted	**Water**	Framework Directive	Requires that all inland and coastal waters reach "good status" by 2015 by establishing a river basin district structure within which environmental objectives will be set, including ecological targets for surface waters
Pending	**IPPC**	Possible amending Directive	Possible general review and revision of IPPC to expand its scope by applying the Directive to industrial activities not currently subject to IPPC; may also amend the energy efficiency provisions in light of the proposed Directive on emissions trading
Pending	**Emissions Trading**	Directive	To prepare for a single EC greenhouse gas emissions trading regime by 2005
Pending	**EU Chemicals Policy**	Proposed Regulation	To create a single regulatory system for existing and new chemical substances
Pending	**Environmental Liability**	Directive	Proposes a harmonised European civil liability regime
Pending	**Traceability of Genetically Modified Organisms (GMOs) & Products Derived from GMOs, & Labelling of GMOs**	Amending Directive	To provide a framework for the traceability of GMOs & food & feed produce from GMOs, with the objective of facilitating accurate labelling, environmental monitoring and the withdrawal of products
Pending	**Packaging Waste Targets**	Amending Directive	To fix new targets for recovering and recycling packaging waste to be achieved by 2006
Pending	**Mining Waste**	Measure to be proposed	To regulate the handling and storage of hazardous waste arising from mining
Pending	**Battery & Accumulator Waste**	Amending Directive	To cover the disposal, recycling & collection of batteries as well as the the banning of nickel/cadmium in certain types of batteries

n.b. this list is indicative only

6. Current numbers of environmental appeals

6.1 Our research has also explored the numbers of environmental appeals currently taking place under the environmental legislation identified above. There are no comprehensive statistics maintained by Government, which is perhaps not surprising given the variety of routes that exist. We would recommend at the very least that Government pays greater attention in the future to monitoring the number of environmental appeals being made on a more systematic and complete basis than is currently the case. Details of the figures we have been able to acquire are contained in Appendices B and C, and are focused on statutory nuisance appeals heard in Magistrates' Courts and those environmental appeals handled by the Planning Inspectorate. For other appeals such as those to the County Court or the more specialised routes to the High Court, we suspect that the numbers are small, or that in some instances appeal rights have not yet been exercised.

6.2 For statistical purposes, the Planning Inspectorate includes hedgerow appeals under its category of 'environmental appeals', but as indicated we have excluded them from our list of environmental regulatory appeals as being more akin to land-use planning and amenity issues. In the twelve month period between April 2002 and March 2003, the number of environmental appeals as we have defined them received by the Planning Inspectorate was 233, with the vast majority (211) relating to water discharge consents. Other categories of appeals included: waste management regulation (8); Integrated Pollution Control and Air Pollution Control under Part I of the Environmental Protection Act 1990 (8); water abstraction (3); and anti-pollution works in respect of water (3)[viii]. During this twelve month period, 68 appeals were withdrawn or turned away as invalid or out of time, and there were 8 decisions issued. There is also a very large backlog of appeals relating to water discharge consents (755), and our understanding is that these are either still the subject of negotiation between the parties and the regulatory authority, or have been held up pending policy advice being provided by the Department for Environment, Food and Rural Affairs (Defra).

6.3 For contaminated land, the procedures are insufficiently mature to predict the typical numbers of appeals that might be made. For 'special' sites handled by the Environment Agency, 13 sites had been designated by the end of 2002 with a target set of 80 sites by 2007. To date 47 sites have been designated by local authorities, but information on predicted numbers is still difficult to obtain. One leading expert on the subject whom we interviewed, predicted a growing number of appeals, rising to around 100 a year in ten year's time, mainly in respect of local authority notices.

6.4 For statutory nuisance appeals, there are no current comprehensive statistics available on a national basis. With the assistance of the Chartered Institute of Environmental Health, we have therefore surveyed all local authorities in England and Wales, and the response rate has been sufficient to form a general picture of overall numbers. Details of the survey are provided in Appendix B. There is clearly a variable picture across the country with some local authorities having no appeals, whilst others experience considerable numbers. From the returns we estimate that around 14,700 statutory nuisance notices are issued each year, with about 3000 being served on trade and industry. There appear to be around 1000 appeals made each year to Magistrates' Courts. Many of these are likely to involve domestic noise nuisances or housing repairs, but we estimate that around 135 are made by trade and industry.

6.5 Compared to land-use planning appeals (running at around 14,000 year) the total number of environmental regulatory appeals currently being made is therefore not large. Such a workload is clearly much less than that undertaken by the first tier tribunals such as the Appeals Service or the Immigration Appellate Authorities, but is comparable to some of the smaller, specialised tribunals. The Lands Tribunal, for example, which acts both as a first tier and appellate body, disposes of around 600 cases a year. Assuming at least the inclusion of the environmental appeals currently handled by the Planning Inspectorate, contaminated land remediation notice appeals and those statutory

nuisance abatement notice appeals involving trade and industry, we estimate that under current legislation an Environmental Tribunal system could be handling a comparable figure to the Lands Tribunal, at around 500 appeals a year. This does not take into account future legislative requirements or the possible incorporation of some form of third party right of appeal. These numbers do not undermine the case for an Environmental Tribunal, but instead can be seen as a positive advantage when considering the costs and benefits of establishing a new discrete Tribunal. We would also note that:

- small numbers of appeals may indicate unease with or under-use of current procedures; for example, we were informed by one expert on the new contaminated land procedures that there was likely to be a reluctance amongst local authorities to make full use of the remediation notice powers because of unease with the capacity of local magistrates to handle such appeals.

- there remain significant 'gaps' under present environmental legislation where there are no rights of regulatory appeal other than by way of judicial review. We discuss the pressures on judicial review in section 9 below, and the extent to which this has become a surrogate means of merits appeal.

- the need for an effective and efficient appeal procedure is likely to increase as environmental requirements assume more public significance.

- those regulatory appeals which do take place are very often technically complex and therefore more time consuming.

- there is also a clear advantage in anticipating the future climate of environmental law resulting from European and international requirements. This is particularly significant in the context of the implementation of the Aarhus Convention which introduces the concept of *"equitable, timely, and not prohibitively expensive"* appeal procedures for members of the public and environmental organisations in respect to specified licensing procedures (as discussed further in section 10 below). Scale as well as substance is also significant. For example, IPPC licensing requirements are being extended to around 1600 pig and poultry operations; new permitting will be required for around 2500 sites as a result of the End of Life Vehicles Directive; and the extension of waste legislation to cover agricultural waste is likely to require around 8500 new licences, together with waste exemptions extending to 170,000 farms [ix].

6.6 A concern with previous proposals for combined planning and environmental courts or tribunals was that the major institutional upheaval involved would outweigh the advantages that might flow from the proposals. The more focused model of an Environmental Tribunal system being considered here would require the transfer of appeal functions from the existing bodies identified above, but given the numbers involved, this should not cause significant disruption to those institutions. The size and costs involved are likely to be comparable to those for the Lands Tribunal. We consider in more detail, in section 15 below, a possible model and the likely costs involved. Even though there will be cost savings from reducing the pressure on existing appeal bodies, establishing a new Tribunal system is unlikely to be wholly cost neutral. However, it is clear from the existing numbers of appeals that we are talking of a manageable institution and one that can develop focus and coherence in a key area of public policy. It would also provide greater confidence in anticipating future environmental regulatory requirements. The policy gains from such a discrete initiative may be hard to quantify but could be very large.

7. Concerns about existing appeal procedures

7.1 Within the project time-scale, research on the quality of existing procedures has been necessarily limited, and largely confined to interviews with a number of senior members of the judiciary, experienced environmental law practitioners representing users of the system, and policy makers and officers in regulatory bodies with experience of the current system. Our survey of local authorities also invited comments on the quality of the present arrangements. These reflections are therefore bound to be somewhat impressionistic, but valuable insights have nevertheless emerged.

7.2 There does appear to be concern at the ability of lay magistrates to handle highly technical issues such as the definition of 'Best Practicable Means' (BPM) in statutory nuisance appeals involving trade and industry. Again, in relation to statutory nuisances, there are worries that appeal procedures are often used by trade and industry as a delaying tactic, and that appeals take too long to come to court (nine months was quoted as a typical figure). Appeals appear to be given a lower priority by court administrators by being reserved for infrequent 'local authority' days. A senior environmental health officer also commented that, *"cases take a long time because appeals are treated no differently by the courts to prosecutions."* Many environmental health officers do appear to favour the improved decision-making which an Environmental Tribunal might bring, but would not wish to see the loss of local knowledge in such decision-making. There is clearly a tension in environmental adjudication between the need for local fact finding and the need for expertise in handling technical issues. It may be possible to distinguish between more technically complex issues (such as BPM) and more straightforward environmental issues (such as neighbourhood noise nuisance) when considering whether there would be benefit in transferring jurisdiction for statutory nuisances appeals to a specialised tribunal.

7.3 Our interviews have also indicated a real concern as to whether current arrangements will deliver an effective appeals system in respect of remediation notices served under the contaminated land regime introduced by the Environment Act 1995. As detailed in Box 1, appeals for local authority sites will be made to local Magistrates' Courts, and current regulations specify 19 separate grounds of appeal, often involving highly complex issues of both a technical and economic nature. Appeals for the smaller number of 'special' sites identified by the Environment Agency are made to the Secretary of State and will be handled by the Planning Inspectorate. As mentioned above, this system was largely based on the model for statutory nuisance procedures, which justified the use of the Magistrates' Courts for appeals in respect of local authority sites, but as the writers of the leading guide to the legislation have noted: *"It must be questioned whether the Magistrates' Court is a suitable forum for resolving such appeals, and whether the civil procedures in the Magistrates' Court are adequate for the purpose. It also seems strange that there should be two entirely different modes and forms of appeal for ordinary remediation notices and for those relating to special sites."*[x]. A key objective in introducing the new contaminated regime was to increase the consistency of approach taken by different authorities, and there is understandable concern that the current appeal routes will undermine that goal. As one of the leading experts in the area told us: *"Consistency in judgement is the key to transparency in the contaminated land regime."*

7.4 We should stress that our analysis of environmental appeals currently heard in Magistrates' Courts is not intended to detract from the integrity or commitment of individual magistrates, or to question their concern to ensure the effective application of environmental law. Rather, it raises questions as to whether it is the best use of their time and the qualities they can bring to the justice system, if they are required to handle the sorts of issues involved in these types of environmental appeals.

7.5 We have noted that in addition to the more familiar land-use planning appeals, the Planning Inspectorate now handle a range of environmental appeals on behalf of the Secretary of State. These are mainly concerned with pollution related licences dealt with by the Environmental Agency. The Planning

Inspectorate will also be responsible for appeals under the contaminated land regime relating to 'special' sites. A leading barrister with experience of environmental appeals handled by the Planning Inspectorate commented favourably on their approach and expertise: *"The strengths of the Planning Inspectorate are individual technical expertise, good legal awareness, good procedures, and flexibility"*. However, he noted that difficult points of law could be a problem, and that greater use of legal expertise within the Planning Inspectorate would be valuable if the current system were continued, but also appreciated the wider advantages of bringing environmental matters into one forum by way of rationalisation. At present, our understanding is that where necessary, the Planning Inspectorate seeks legal advice on environmental law issues from the Government. Another leading environmental solicitor noted that the Planning Inspectorate *"does seem to be a default appeal forum for environmental matters but it is not the right place as the Inspectors are not generally legally trained"*. He also questioned whether the Planning Inspectorate was the right forum for environmental appeals because of the distinctive nature of the legal and technical issues often involved: *"Environmental regulation is different from planning control as the former often focuses on whether active harm is being caused."*

7.6 Officials from regulatory bodies who had experienced environmental appeals handled by the Planning Inspectorate were reasonably favourable about the procedures, though there was concern that Inspectors may have problems in understanding specialist areas of the law, for example IPPC/PPC or concepts such as 'Best Available Techniques'. As one noted: *"In an ideal world, I would like there to be a specialist appeal body, but one could also improve the panel of environmentally trained Inspectors"*. There was also concern at the difficulty in accessing decision letters from the Planning Inspectorate: *"PINS is opaque or worse when it comes to accessing decision letters, though my experience of appeal hearings is relatively favourable."* Regret was also expressed that individual decisions of the Planning Inspectorate do not have sufficient gravitas to be used as general guidance in the application of regulation: *"Proper reporting of cases is needed and PINS decisions don't carry the proper weight."*

7.7 Even if within their individual jurisdictions, the current arrangements for appeals were considered satisfactory by existing users – and the comments we have received suggest some distinct unease in certain areas - this fails to meet what are probably the more important deficiencies. There are significant gaps in the system where no appeal routes lie other than by way of judicial review, and there is a need to ensure an adequate and coherent basis for appeal mechanisms under future environmental regulation. The Aarhus Convention will require a framework that is clear, transparent and consistent, and review mechanisms for citizens that are fair, equitable, timely, and not prohibitively expensive. The current haphazard structure is based on a piecemeal and old fashioned approach towards the application of legislation concerning the environment, and fails to reflect the need for greater expertise and consistency brought about by the special characteristics of environmental law which are now emerging. As one leading solicitor commented: *"Trade and industry want consistency of approach even if the decision-makers are therefore tougher on them."* We consider the nature of these special features of environmental law in the following section.

8. Does environmental law warrant a special jurisdiction?

8.1 We have identified a broad range of appeals which can be described as environmental, but to warrant the establishment of a single form of tribunal to handle most or all of them, we need to establish whether there are sufficiently special features of environmental law which would justify such an approach. We feel it is possible to identify a number of distinctive elements:

(i) evidential and judgmental issues involving complex technical/scientific questions, usually of a quite different sort to those found in planning/amenity type decisions. The nature of the science involved in many environmental and public health questions (such as pathways of exposure to pollutants, or effects of chemicals on human health) is often characterised by inherent uncertainties distinct from those found in disciplines such as engineering or surveying. As the RCEP pointed out in its 21st Report, *Setting Environmental Standards*: "*In a scientific assessment of an environmental issue there are bound to be limitations and uncertainties associated with the data at each stage.*" [xi]

(ii) a challenging legislative and policy base, which as demonstrated above, is rapidly developing.

(iii) the overlapping of remedies (civil and criminal) as well as interests (public and private). We have pointed out how the validity of licences and regulatory notices in environmental law are critically connected with the subsequent enforcement of environmental standards under criminal law. In relation to the interests involved, one environmental lawyer told us: "*Environmental law is qualitatively different from other areas of the law in terms of the values and interests that are engaged - many of which are not properly represented.*"

(iv) a powerful and increasing body of EC legislation and a growing number of interpretative judgments of the European Court of Justice (notably in areas such as IPPC, waste management, water pollution, genetically modified organisms and habitats protection). The density of the European Community policy and legislative background in the environmental field is far greater than, say, in town and country planning (with the exception of environmental assessment requirements) or health and safety. Not all regulatory appeals in the environmental field will explicitly raise issues of EC law, but those charged with the responsibility of determining such appeals are likely to need to be fully familiar with this dimension and the underlying policy objectives of the legislation.

(v) a substantial body of international environmental treaties and law covering issues such as trade in endangered species, pollution of marine waters, transnational shipments of hazardous waste and climate change. The intensity of this international dimension, which influences the content and interpretation of both EC and national environmental law, is again of a quite different scale to that found in planning or health and safety law.

(vi) the development of certain fundamental environmental principles such as the precautionary approach, polluter-pays, prevention at source, and procedural transparency. The extent to which these are yet binding legal principles and how they are to be put into practice is still being developed, but they have now entered the common language of environmental law and policy.

(vi) the emergence of principles concerning third party access to environmental justice, and the requirement under the Aarhus Convention for review procedures that are timely and not prohibitively expensive. These aspects are discussed further in section 10 below, but are now a significant backdrop to thinking about structures that will meet future public expectations.

(vii) the emergence of the overarching principle of sustainable development which underpins contemporary policy approaches. This is not a straightforward concept and is subject to differing interpretations, but it is a policy dimension that increasingly requires appreciation by those handling environmental law disputes.

8.2 Technical and legal complexity is not in itself a compelling reason for a special jurisdiction, and can be found in other areas of the law. Some of the above features will be more apparent in certain applications of environmental law than others, and they may not be of equal significance in any particular decision. But it is the combination of all these factors which is of particular importance.

9. Judicial reviews and stated cases

9.1 One of the arguments made by the RCEP was that in the absence of a specialised tribunal, there was likely to be increased pressure on the judicial review system as a surrogate means of undertaking merits appeals, both by third parties and those directly affected. Conversely, the creation of a more specialised and comprehensive tribunal appeal system could reduce the pressure on the higher courts handling such judicial review cases.

9.2 To test this argument in more detail, we have examined the judicial review applications and stated cases heard by the High Court involving environmental legislation over the past 3 years. We excluded town and country planning cases, and in particular those involving environmental assessment. There is inevitably some difficulty in categorising cases, but the overall numbers were in the order of 60-70 environmental judicial review applications and 25 stated cases arising over the 3 year period. The number of judicial reviews in 2001 was slightly higher than 2002, but we believe this was caused by a 'spike' of cases concerning foot and mouth controls, and overall the trend does appear to be upwards. It can therefore be predicted that under current legislation an average of some 25-30 environmental judicial review applications per year will arise. Further details of these figures are provided in Appendix D.

9.3. We examined in detail some 55 case files from the last three years, and it is apparent that, despite the publicity given to a number of high profile cases brought by environmental groups, the current system is as much driven by companies and industry. The applicants were companies or industries in 28 cases, while in 22 cases the applicants were individuals and environmental or similar associations. For related reasons, only in a minority of cases was legal aid involved, with reference being made to the Legal Services Commission in the files for only four cases. The decision-makers being challenged included Government Departments in 27 cases and the Environment Agency in 16 cases. The average time for cases to reach a full hearing in court was six months from the date of lodgement to

a final court order, and the average duration of the main hearing before court was 1.3 days. This does not take into account the time spent in pre-hearing procedures, nor judicial time spent in making decisions solely on written material and affidavits.

9.4 Only four out of the 55 environmental judicial reviews examined were successful. 18 cases were dismissed, 13 withdrawn, and leave for judicial review refused in 12 cases. The remaining cases were still outstanding at the time of examination. This seems to be consistent with the views of the RCEP, as well as the judges and lawyers whom we interviewed, who indicated that judicial review applications in environmental cases frequently appear to be merits driven, with a tendency to build cases on the permitted but restrictive grounds for judicial review. Our own examination of the files suggested that around two thirds were essentially merits-driven i.e. seeking a substantial rehearing of the facts. It also appears clear from the figures that only a small minority of judicial reviews followed a previous merits appeal. In 36 out of the 55 files examined, there had been no previous appeal, mainly because there was no merits appeal route available (as will have been the case for most of the 22 actions brought by third parties), or in a small number of exceptional cases, where leave was granted despite the non-exercise of an appeal right.

9.5 The overall picture of current judicial reviews in the environmental field suggests that a considerable amount of judicial time in the High Court is being spent on handling applications which are largely merits driven; the numbers of environmental judicial reviews are increasing steadily (though not dramatically); and that the users are as much regulated businesses as individuals and other third parties.

9.6 The picture is a little different for the stated cases from Magistrates' Courts, in relation to which we examined 22 case files from the past three years. Sixteen of these cases followed on a criminal prosecution, and the remaining six related to the service of notices. Companies brought half of the cases, with the other half brought by individuals or local authorities. Just over half the cases related to statutory nuisance provisions. The average length of time to complete the proceedings was around the same as for judicial review (5 months), but the average length of the hearing in open court considerably less, at around two and a half hours. However, the 'success' rate was considerably higher with the applicant succeeding in half the cases. This may support the comments in section 7 regarding the suitability of Magistrates' Courts for handling more complicated environmental issues.

9.7 It is less straightforward to predict the extent to which improvements to the current regulatory appeals system might reduce the number of applications for judicial review. Unless third parties have some access to a merits appeal route, third party judicial reviews will continue, though these do not represent the majority of current environmental judicial review applications. On the other hand, should a first-tier appeal body in the form of an Environmental Tribunal have both specialised environmental legal and technical expertise, then the decisions it takes should be manifestly more legally and technically sound, thereby reducing the likelihood of applications for judicial review. In a recent case concerning a Social Security appeal [xii], the Court of Appeal noted that where a tribunal structure is sufficiently expert to be able to take an independent and robust view, the Court could afford to be circumspect in entertaining further appeals. This case concerned statutory appeal rights rather that judicial review, but a similar approach is likely to be taken.

9.8 For similar reasons, if regulatory appeal rights to an Environmental Tribunal were provided where none exist at present other than by way of judicial review, this must also be predicted to reduce the pressure on the judicial system. There is the example of environmental information rights where the only current appeal route against the refusal by public bodies to disclose information is by way of judicial review. The proposal for the Information Commissioner/ Tribunal to handle such disputes

would fill a significant gap in the availability of an appropriate appeal mechanism. Furthermore, if an effective first-tier appeals structure were created, it would become more legitimate to build in stronger filter procedures whereby leave for judicial review against the decision of a regulating body would not be granted unless the right of appeal to the first-tier appeal body had already been exercised. This is consistent with the views of the Law Commission and the Leggatt Report [xiii], and from the judicial review files we examined, it was rare for leave to be granted unless an available appeal right had previously been exercised.

9.9 For stated cases from the Magistrates' Courts, the majority related to criminal matters, and unless this jurisdiction were changed, the current numbers are likely to continue. It could be suggested that provision be made in relation to these cases for obtaining advisory opinions from a specialist Environmental Tribunal, this being in effect what the High Court does at present in many cases. We could also expect that the decisions of a specialised Environmental Tribunal dealing with a novel policy point or a set of new environmental regulations, would contain sufficiently authoritative guidance and be sufficiently publicised to be of value to fora such as the Magistrates' Courts and the County Courts, so reducing the number of stated cases where the substantive meaning of the legislation is at issue.

9.10 One of the attractions of creating a specialised first-tier Environmental Tribunal is that it could now be integrated into the Government's proposals for modernising the tribunal system following on the Leggatt Report. One of the recommendations of the Leggatt Report was for a unified tribunal appeal system, which would replace judicial review to the High Court as a route of appeal against tribunal decisions. Our understanding is that the Government intends to create such a unified appellate body, possibly on a divisional basis. As noted in the Leggatt report, "*The aim of the new Appellate Division will be to develop by its general expertise and the selective identification of binding precedents, a coherent approach to the law. In this, although operating with greater procedural flexibility and informality than may be found in the High Court, as well as being considerably cheaper to approach, it will be comparable in authority to the High Court so far as tribunals are concerned.*" [xiv]

9.11 The Leggatt report also recognised that it would be valuable if the proposed Appellate Division had first-tier jurisdiction in particularly complex cases, in much the same way that the Lands Tribunal has a mixture of first instance and appellate cases. We could see this model working well for environmental appeals. Where, for example, an appeal concerned the interpretation of provisions of new environmental regulations or the application of a novel or controversial policy, a rapid decision of the Appellate Division would be of value to all users of the system.

10. Access to Justice and the Aarhus Convention

10.1 The Aarhus Convention has been signed by the United Kingdom and is currently awaiting ratification by the European Community. It contains important principles concerning public participation and access to justice. The key provisions on access to justice are detailed in Box 3. In relation to rights of access to environmental information (which largely reflect the provisions of the existing EC Directive on the subject), the Convention guarantees that members of the public who claim to have been refused information by a public authority should have access both to court review procedures, and a free or inexpensive expeditious procedure for reconsideration of the matter by a public authority or review by an independent and impartial body other than a court of law. As we have noted in paragraph 5.3 above, under existing legislation concerning environmental information, review procedures have previously only been possible by judicial review, but if introduced, the proposals by the Government to integrate environmental information appeals procedures into those provided under the Freedom of Information Act should now meet these concerns.

BOX 3 – The Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters

The Aarhus Convention was adopted on 25 June 1998 in the Danish city of Aarhus (Århus) by the UN Economic Commission for Europe, and entered into force on 30 October 2001 following its ratification by sufficient member state Parties.

Considered to be the most forward thinking international treaty on public participation yet completed, it places obligations on the member state Parties to ensure the availability in their national law of procedural rights for the public based on the three 'pillars' described in the Convention's title.

Key provisions of the Convention relating to access to justice are as follows:

Article 1 Objective
In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision making, and access to justice in environmental matters in accordance with the provisions of this Convention.

Article 3 General Provisions
1. Each Party shall take the necessary legislative, regulatory and other measures…to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.

Article 9 Access to Justice
1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under Article 4 [dealing with Access to Information] has been ignored, wrongly refused…or otherwise not dealt with in accordance with…that Article, has access to a review procedure before a court of law or other independent and impartial body established by law.

2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned: (a) having a sufficient interest…have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6 [dealing with Public Participation in Decisions on Specific Activities] and, where so provided for under national law…of other relevant provisions of the Convention.

3. In addition…each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

4. In addition…the procedures referred to in paras 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.

In order for the European Community (and therefore the UK) to be able to ratify the Convention, amending legislation has been and will be adopted to ensure the consistency of the EC environmental regulatory framework with the provisions of the Convention. The Government will also have to amend existing UK legislation in various respects.

A replacement Directive on public access to information has been adopted and a new Directive has been proposed on public participation in respect of the drawing up of certain plans and programmes. A consultation process has also been commenced by the European Commission for a Directive on access to justice.

10.2 The Aarhus Convention also guarantees the right of public participation in a range of consent procedures for projects specified in the Convention, which largely follow those currently the subject of mandatory environmental assessment under EC legislation. Article 9 of the Convention also requires that members of the public *"with sufficient interest"* should have access to a review procedure before a court of law or other independent body *"to challenge the substantive and procedural legality"* of the consent related decisions covered by the Convention. What constitutes sufficient interest is to be determined with the objective of giving the public concerned wide access to justice. Non-governmental organisations promoting environmental protection and meeting any requirements under national law are deemed to have such an interest.

10.3 The grounds for such rights of appeal are confined to *"the substantive and procedural legality"* of the decision in question, and the drafting is clearly rather narrower than the full review procedure required under the Convention for environmental information. The present view of Government is that this phrase is consistent with the grounds for review currently provided in this country by judicial review. There are, though, other views that while the Aarhus Convention may not provide third parties with a full merits appeal, the phrase *"substantive and procedural illegality"* implies a rather more intense scrutiny than that traditionally provided for by judicial review. Whatever the answer on this point, the Convention also provides that the review procedures provided must be *"fair, equitable, timely, and not prohibitively expensive"*, and there have to be concerns whether existing judicial review procedures can meet all these criteria. One experienced environmental lawyer told us that the potential costs of judicial review and the risk of uncapped adverse cost orders appeared to prevent many cases being commenced. Under the Convention, Governments must also provide public information on access to administrative and review procedures, and consider appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice. The European Community is itself a party to the Convention and a proposed Directive on access to justice will implement the Convention with respect to areas covered by EC environmental legislation. The draft Directive would require such review procedures to be *"expeditious"* and *"not prohibitively expensive"*.

10.4 The longer-term significance of the Aarhus Convention is that it explicitly introduces new concepts of access to justice in environmental decision-making, and the need for inexpensive review procedures to be made available to members of the public and environmental organisations. As one environmental lawyer suggested to us, the Convention is based on establishing a system *"rooted in broad and deep citizen participation and access to justice"*. As such it is quite different from the more familiar regulatory appeal models which have been largely developed to provide protection to the interests of applicants or those directly subject to regulation. Governments are required to publicise the legal remedies that are available, and without any change to current structures, existing pressures on judicial review procedures are therefore only likely to grow. There may also be benefit in making regulatory changes in order to enhance compliance with the spirit of Aarhus rather than allow the United Kingdom to rest on what was characterised to us as *"the lowest common denominator interpretation"* of the strict letter of the Convention.

10.5 In the past, members of the public or environmental organisations unable to afford the costs involved in legal challenges have often made use of the complaint procedure to the European Commission when possible breaches of EC law are raised. This quasi-administrative procedure can lead to investigations by the Commission, and possible enforcement action by the Commission before the European Court of Justice. There is a heavy administrative burden involved and a backlog of cases, especially where the non-application of Community law is raised (rather than claims that formal transposition into national law is defective). The Commission may in future require that all national legal remedies are exhausted before

considering such a complaint, this being more in line with the practice of the European Commission on Human Rights, and arguably consistent with the principle of subsidiarity. The number of environmental complaints received by the Commission varies tremendously from Member State to Member State, though the United Kingdom has consistently produced some of the highest numbers. The comparative figures probably reveal less about the extent of compliance than they do about the accessibility of national dispute mechanisms and the strength of non-governmental organisations[XV]. But any introduction of a principle of exhaustion of national remedies within Commission procedures, suggests that there be will be even greater pressure on existing national procedures (especially those of judicial review), and therefore strengthens the case for developing new approaches. Against this background, we consider in the next section, whether there is case for introducing some form of third party right of appeal within the current environmental regulatory system.

11. Third party rights of appeal

11.1 The RCEP considered that there was a strong case for a specialised environmental tribunal system, whatever the position on third party rights of appeal. Nonetheless, it went on to recommend that in the interests of public confidence, the concept of third party rights of appeal should be introduced in both planning and environmental decision-making. The Government has to date rejected the implementation of third party rights of appeal within the land-use planning system, and it is not the purpose of the study to revisit this particular issue.

11.2 However, the question of third party appeals in the context of environmental rather than planning regulation has received rather less examination. Whatever the position in town and country planning legislation, there are a number of distinctive special features in the environmental field which suggest that the issue should be addressed seriously:

- a key argument of the Government in rejecting third party rights of appeal in planning matters is that the public have the opportunity to participate in the land-use plan-making process, and that community based involvement should be revitalised and encouraged in that arena. In relation to the sort of environmental decision-making to which third party rights of appeal might be applied (such as GMO or IPPC licensing) there is generally no equivalent and developed plan-making context involving the public. The selective introduction of such third party rights into environmental decision-making would therefore not undermine the Government's preferred approach to land-use planning.

- a second important argument against the introduction of third party rights of appeal within the planning system is that the majority of decisions are made by elected local authority members who are directly accountable to the local electorate. But in contrast to land-use planning, many of the key decisions in contemporary environmental regulation are

made by the specialist agencies of Government, such as the Environment Agency or English Nature. In relation to decisions made by such bodies, the arguments concerning the direct local political accountability of the decision-maker are less compelling.

- as noted in section 10 above, in relation to permitting decisions for a large number of specified projects, the Aarhus Convention and the EC implementing legislation will require review procedures for members of the public and non-governmental bodies that are fair, equitable, timely, and not prohibitively expensive. As we will discuss below, the Convention may provide a workable basis for a 'filtered' appeals system.

11.3 These factors suggest that the question of third party rights of appeal should be seriously addressed in the context of environmental regulation and a possible Environment Tribunal system. As one senior environmental lawyer commented to us: "*The Rubicon has been crossed in relation to third party rights of appeal but standing still needs to be addressed.*"

11.4 The RCEP acknowledged that, even with the use of strict time-limits for making appeals, the introduction of third party rights of appeal could increase the time and cost of procedures, but concluded this was a price worth paying for improved public confidence and ensuring that environmental considerations are given their proper weight. We would also expect that a specialist Environmental Tribunal would have the ability to act speedily and effectively to handle such appeals, including the use of flexible procedures and mediation techniques where appropriate.

11.5 The RCEP also recognised that the introduction of wholly unrestricted merits based rights of third party appeal was unlikely to be practicable, and that filtering mechanisms should be developed. In relation to town and country planning, the Government considered these would be difficult to devise with any precision, but for environmental regulation, the provisions of the Aarhus Convention may now provide an effective basis. Third party appeals could be restricted to members of the public and non-governmental organisations as defined in the Convention; confined to licensing procedures relating to projects defined in the Convention; and made only on grounds of substantive or procedural illegality as prescribed in the Convention. These grounds, as we noted in section 10 above, may require rather closer scrutiny than those traditionally applied in judicial review, but certainly should not raise the spectre of a full merits review by third parties across the board.

12. The Human Rights Act and access to an independent tribunal

12.1 Following the entry into force of the Human Rights Act 1998, many commentators considered that the introduction of a more comprehensive system of independent tribunals deciding merits appeals would be a legal precondition for both planning and environmental regulation in order to satisfy the requirements of Article 6 of the European Convention on Human Rights. This requires that that in the determination of civil rights, *"everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."*

12.2 There has now been a fair amount of case-law, both nationally and before the European Court of Human Rights, testing the application of Article 6 in the context of the type of regulatory procedures considered in this report. See for example *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] 2 WLR 1389 (on the role of the Secretary of State in planning decisions); *R (Aggregate Industries UK Ltd) v English Nature* [2002] EWHC 908 (regarding the designation of Sites of Special Scientific Interest by English Nature); *R v Rhondda Cynon Taff CBC* [2002] Env. LR 15 and *Bryan v United Kingdom* [1995] 21 EHRR 342 (considering the function of Planning Inspectors and judicial review).

12.3 The generous interpretation of what is meant by *"civil rights"* developed by the European Court of Human Rights (and now adopted by the British courts) implies that in most of the areas of environmental regulation considered in this report, civil rights (within the meaning of the Convention) will be engaged in respect of applicants for licences or permits, or those served with enforcement notices or similar requirements. Rather less clear as yet, is the extent to which third parties indirectly affected by such decisions can be said to have their civil rights determined by such decisions.

12.4 The legislative analysis in Appendix A indicates that in certain areas of environmental law, full rights of merits appeal against a decision of a governmental body are available to what is clearly an independent court such as a Magistrates' Court. It is also clear from the case-law that an appellate body such as the Planning Inspectorate or the Secretary of State does not in itself represent the independent court or tribunal required by Article 6. However, the courts have established that, even where any appeal to a court is restricted to legal grounds or judicial review, this can still be sufficient to satisfy Article 6 by looking at the procedures as a whole (the composite approach) and by considering the nature of the decision at hand. Essentially, the more that an administrative decision involves the exercise of discretion against a policy background, the less it is necessary that appellate procedures before a court or tribunal are required to stray beyond judicial review grounds to incorporate a full merits review. As Lord Hoffman noted recently in *Begum v London Borough of Tower Hamlets* [2003] UKHL 5: *"The question is whether, consistently with the rule of law and constitutional propriety, the relevant decision-making powers may be entrusted to administrators."*

12.5 We cannot be sure that all of the existing environmental appeal routes outlined in Appendix A satisfy Article 6 requirements, and certainly the establishment of an Environmental Tribunal handling merits appeals would guarantee a better degree of certainty of compliance. But it does now seem reasonably clear from the case-law that in many areas, a fully independent review tribunal is not absolutely essential to ensure compliance with Article 6. The need to introduce an Environmental Tribunal has therefore to be justified by reasons other than securing compliance with the European Convention.

12.6 We should note, however, that the approach being taken in the current case-law, which essentially preserves the remedy of judicial review, may put greater pressures on those procedures. Some of the recent Human Rights case-law hints that where judicial review is the only independent appellate remedy, courts may be justified in exercising a rather more intense scrutiny than has traditionally been the approach in judicial review. Our study of recent environmental judicial review cases indicates the

extent to which the process is already being driven by the desire to achieve merits reviews. In this context, an Environmental Tribunal may provide a more appropriate forum for handling such issues.

13. Separating land use planning and environmental appeals?

13.1 The model of the environmental tribunals proposed by the RCEP envisaged that (initially at any rate) the proposed tribunals should handle only environmental regulatory appeals, whilst town and country planning appeals would remain within the well-established jurisdiction of the Planning Inspectorate. On the surface this appears to run counter to much of the thrust of the RCEP critique, which was about ensuring a greater connection between land-use and environmental planning. However, the main concerns in this respect were addressed more at the strategic planning level than the handling of individual permissions and licences.

13.2 At present, a number of appeal procedures mainly in the field of pollution control (IPCC, water discharge consents, etc.) are in practice handled by the Planning Inspectorate, and transferring that jurisdiction to a separate Environmental Tribunal might inhibit a closer integration of land-use planning and environment regulation. For some years, there have been calls for the 'twin tracking' of planning application and environmental licence procedures, but in practice this has proved very difficult to achieve. The political accountability and the application of political policy in decision making inherent in the planning system is also seen by some as a positive factor which might be lost in a more independent tribunal structure. We also recognise that, especially since the introduction of environmental assessment procedures within the town and country planning system, environmental factors are now an integral element of many land-use planning decisions.

13.3 Based on this recognition of the close connection between land-use planning and environmental protection, a combined planning and environmental tribunal (one of the models in the original Grant report) may still be an attractive option. Alternatively, more environmental appeals could be transferred to the Planning Inspectorate (as has happened with IPPC and other pollution related consents) in effect transforming the body into a Planning and Environmental Inspectorate. But there remain compelling arguments in favour of a

specialist Environmental Tribunal dealing solely with the type of environmental appeals identified in Appendix A:

- as indicated in section 5 above, there are a number of distinctive features in environmental law, the combination of which calls for special treatment; these features are not so apparent in land-use planning.

- although the Planning Inspectorate at present handles a number of environmental appeals, the total number and range of environmental regulatory appeals that currently exist and are likely to arise under environmental legislation in the future will be much greater; a full-scale transfer of jurisdiction to the Planning Inspectorate would therefore require the development of additional legal and new types of specialist technical expertise. Given other current pressures on the Planning Inspectorate and its focus on land development issues, the extension of their jurisdiction to cover all such appeals may not be attractive.

- whilst the Planning Inspectorate may handle discrete environmental appeals effectively at present, it is less suited than a specialised tribunal to provide authoritative decisions which can serve as guidance on the meaning and application of regulatory requirements. A specialised tribunal could assist the development of environmental law and policy in a way that is beneficial to both business and public interests.

- as the RCEP report indicated, the most significant challenge for securing improved integration in land-use planning and environmental policy lies not in the area of individual planning or regulatory decisions but in the area of strategic plan and policy making which provides the context for discrete decisions.

- environmental considerations are so pervasive that drawing a line for jurisdictional purposes is never perfect, but for practical purposes the core land-use planning remit of the Planning Inspectorate does provide a useful and practical line of demarcation.

- the major administrative upheaval which would be involved in setting up a new Planning and Environmental Tribunal might simply outweigh any policy advantages to be gained; conversely, we have identified a number of real gains which could be achieved by establishing a dedicated Environmental Tribunal system operating within the proposed new Tribunals Service.

14. Options for the way forward

14.1 Our research has identified the complex and haphazard array of appeal routes that exist in contemporary environmental legislation; particular problem areas; and the possible advantages to be gained from a more coherent approach. Based on our research and findings, there appear to be a number of key options:

14.2 *Carry on with the current system*

Undertaking no change at all would not meet some of the specific problems with current arrangements identified in this report. Pressures on judicial review as a default appeal route will continue. As a senior judge noted to us: *"Unless something is done now the pressures will manifest themselves through third party claims especially in the High Court"*. Magistrates' Courts will have to contend with the complex contaminated land regime. The Planning Inspectorate will have to accommodate an increasingly complicated environmental jurisdiction driven by new legislation at the EC and international levels. Difficulties will be faced in adapting to new requirements for access to environmental justice, leading to increased public discontent with the system.

14.3 *Incrementally adapt and improve existing structures*

Improvements could certainly be made to the current arrangements to meet some of the problems identified in our research. We can identify a number of steps that might be appropriate, though this is by no means a complete list:

- the Planning Inspectorate could ensure the availability of greater legal and specialist technical expertise for handling its existing environmental appeals.

- the Planning Inspectorate could do more to ensure that key environmental appeal decisions are readily accessible and given wider publicity.

- existing 'gaps' in the range of appeal mechanisms could be filled, so reducing the dependence on judicial review as a 'surrogate' means of appeal.

- contaminated land appeals could be transferred from the Magistrates' Courts and the Planning Inspectorate to the Lands Tribunal, which might be considered a more appropriate body to develop the particular expertise necessary to handle these issues.

- the greater use of District Judges in Magistrates' Courts for handling the more complex statutory nuisance appeals could be formalised; where there is no District Judge in an area, clerks to the justices could be encouraged to apply for one.

- further specialised training and advice for magistrates in the application of environmental law could be provided, perhaps along the lines of the *"Costing the Earth"* toolkit recently produced by the Magistrates' Association and the Environmental Law Foundation to assist sentencing practice in environmental cases.

- ways of reducing the costs involved in judicial review procedures could be considered.

14.4 Nevertheless, there remain drawbacks to this incremental approach. Whilst it might improve arrangements for existing appeals, it fails to provide a secure basis to properly meet future demands. This more limited and ad hoc approach would sacrifice the opportunity to develop more coherent approaches towards the interpretation and application of environmental law and policy in what is a rapidly developing field. As new environmental requirements were implemented, decisions would still be needed each time as to the most appropriate forum for handling new appeals, by choosing from the existing array of bodies. The development of new and more flexible procedures for handling access to justice issues would also be more difficult to achieve within existing structures.

14.5 *Establish a specialised Environmental Tribunal within the proposed unified Tribunals System*

As the Leggatt report has noted, tribunals combining both legal and specialist expertise and an understanding of underlying policy issues, can be particularly effective in dealing with the mixture of fact and law which is often required to review decisions taken by administrative or regulatory authorities.

14.6 Although the RCEP envisaged a system of part-time tribunals operating on a regional basis, our research indicates that in order to meet the current levels of environmental appeals being made, it would be more feasible to establish a single Environmental Tribunal, operating in a similar way to the Lands Tribunal. The Lands Tribunal has a single President, three expert members and a legally qualified member, and disposes of nearly 600 cases a year, this being equivalent in number to the environmental regulatory appeals currently being made. Although based in London, the Lands Tribunal sits outside London where this is more convenient to the parties, and we understand that in practice almost half its cases are heard in this way, normally sitting in local courts.[xvi] We would expect a single Environmental Tribunal to have a similar flexibility of approach, hearing cases out of London where appropriate. Interlocutory matters or appeals raising more straightforward technical issues might be dealt with by the non-lawyer specialist members, leaving appeals raising more complex legal issues or new regulatory requirements to be heard by the full Tribunal. Again this is in line with the practice of the Lands Tribunal, where we understand about half of the cases are handled in this way [xvii]. Operating within the proposed new unified Tribunal Service, appeals from such an Environmental Tribunal would be made to the Tribunals Appellate Division rather than by way of judicial review.

14.7 Unlike the Lands Tribunal, though, an Environmental Tribunal would not need to be a court of record with a status equivalent to the High Court. It would not handle private party disputes, nor would we envisage it handling appeals from other tribunals or judicial bodies

14.8 Through its incorporation within the Government's proposed unified Tribunal Service, the new Environmental Tribunal would benefit from being associated with the general modernisation programme now under way. We would expect the Tribunal to develop procedures that are fair, economic, proportionate and speedy, and to make the fullest use of modern case management systems and information technology. The use of alternative dispute resolution procedures, including mediation and arbitration, would be encouraged and adopted within its procedures where appropriate.

14.9 This new way of handling environmental appeals would also benefit from being grounded in the Government's key objectives for delivering an improved tribunal system:

- *to provide the user with a focused modern service in line with the Government's agenda for the reform of public services*
- *to ensure better information for and support to users*
- *to encourage common standards of service and deliver all the efficiencies and economies to be gained from bringing services together*
- *to allow the findings of tribunals to be a positive voice in the reviewing and shaping of policy and standards of administrative decision-making*

15. A new Environmental Tribunal in practice

15.1 If the model of a single Environmental Tribunal were adopted, its precise jurisdiction must ultimately be a matter for Government. The core initial jurisdiction could involve the transfer of appeal functions from existing bodies covering the majority of regulatory environmental appeals currently being made, and might consist of:

- appeals relating to decisions of specialised environmental agencies, such as the Environment Agency and English Nature
- appeals in respect of industrial processes regulated by local authorities
- appeals in respect of the contaminated land regime
- appeals in respect of statutory nuisance abatement notices involving trade and industry

15.2 We see attractions in appeals relating to abatement notices served in respect of domestic premises (such as noise nuisances) remaining with local Magistrates' Courts, but perhaps with the greater use of District Judges where appeals raise difficult technical or evidential issues. Current legislation provides for special grounds of appeal in respect of notices served on trade and industry and includes the use of 'Best Practicable Means', a concept involving expert technical judgment. We feel that statutory nuisance appeals involving trade and industry would be a sensible part of the jurisdiction for the Environmental Tribunal. Criminal offences for non-compliance with such notices would remain with the Magistrates' Courts. We note that the current legislation also provides trade and industry with a special defence of 'Best Practicable Means' to such criminal prosecution. Given that an appeal on these grounds can already be made against a notice, we feel that the opportunity should be taken to remove what appears to be anomalous duplication. Magistrates dealing with non-compliance with a valid notice would then able to focus on the determination of fact.

15.3 As the Environmental Tribunal developed experience and reputation, the opportunity could then be taken to transfer further existing appeals in order to clear up anomalies under existing legislation, and reduce the pressure on judicial review. The Tribunal would also provide the natural forum for appeals arising under future environmental legislation. Examples include proposed EC legislation concerning environmental liability and emissions trading. Where there is discretion as to whether to establish appeal mechanisms for such new legislation, the principles contained in the Leggatt Report are valuable: *"Where any legislation establishes a statutory scheme involving decisions by an arm of Government, the responsible minister should explicitly consider whether a right of appeal is required, on the basis that there should be strong specific arguments if an appeal route is not to be created, and that a tribunal route, rather than redress to the courts, should be the normal option in the interests of accessibility."* [xviii]

15.4 Our model for the Environmental Tribunal envisages that the Planning Inspectorate would continue to handle appeals under planning legislation, and we recognise that there would need to be close liaison between the two institutions. Under current procedures, a considerable number of planning judicial reviews are concerned with the interpretation and application of environmental assessment requirements in relation to development projects, a subject underpinned by the EC legislation and case-law. The opportunity could be taken to transfer jurisdiction relating to the legal challenges concerning environmental assessment to the new Environmental Tribunal.

15.5 Environmental appeals often raise both legal and policy issues, and as with many other existing tribunals, we would expect the Environmental Tribunal to be fully conversant with relevant policy dimensions and to apply them in their decisions. We would hope that Government would have sufficient confidence in the Tribunal to allow it to determine the vast majority of individual appeals, including those of a controversial nature. Nevertheless, there

may be cases of such significance that the Government would wish to retain the right of final decision along the lines of recovered jurisdiction in planning appeals. We see it as perfectly feasible that such a mechanism could be applied to the Environmental Tribunal, provided suitable guidelines were issued and cases kept to a minimum. In such cases, the Environmental Tribunal would in effect be making a recommendation to Government rather than exercising the final decision.

15.6 We also recognise that the operation of an Environmental Tribunal may encourage Government to publish more developed statements on environmental policy objectives, to provide a more explicit policy context for the decision-making role of the Tribunal, as has happened in the town and country planning field. We feel this would be a positive development, and is in line with recommendations of the RCEP in its 23rd Report on this subject. We would also anticipate that the Environmental Tribunal would be allowed to make direct references to the European Court of Justice under Art 234 (formerly Art 177) in appropriate cases.

15.7 We have argued that serious attention should be paid to the question of introducing some form of third party right in relation to environmental appeals, both as a matter of principle, and in order to be more consistent with the concept of environmental citizenship and access to justice implied by the Aarhus Convention. Such appeals would fall within the jurisdiction of the Environment Tribunal. But we would emphasise that there is a good case for such a Tribunal even within the confines of current procedures, and we would be reluctant to see any initiative become stalled or delayed because of the issue of third party rights. In any event, we would expect the Tribunal to adopt sufficiently flexible rules of procedure and approach to incorporate the views of third parties where appropriate.

15.8 Appendix E provides more details of the possible costs and benefits involved in establishing such an Environmental Tribunal. As to the direct costs of establishment, based on the initial lines we have suggested, the costs of the Lands Tribunal are calculated in the background papers to the Leggatt Report at £1.25 M a year, and this provides a useful benchmark given that we are thinking of a comparable case-load and size. If the Environmental Tribunal's jurisdiction were extended with the introduction of appeals under new environmental legislation, the costs would be likely to be neutral since they would otherwise have to be borne by other appeal bodies.

15.9 We have listed in Appendix E some of the direct cost-savings that are likely to result, though we leave it to others to quantify these in detailed financial terms if that is possible or indeed necessary. In respect of Governmental costs, these include, for example, a reduction of the current work-load of the Planning Inspectorate and Magistrates' Courts; reduced pressure on High Court and Court of Appeal time in handling judicial reviews; and the freeing up of Governmental time currently taken up in advising the Planning Inspectorate on environmental law and policy issues. We would also expect that the coherence and authority the Tribunal would bring to the current system would be of direct benefit to the regulatory bodies concerned with the implementation and enforcement of environmental law. As we have indicated, the overall public policy gains from this proposal, in terms of increased public confidence and improved environmental outcomes, are likely to be considerable, though difficult to quantify in straightforward financial terms.

15.10 Two case-studies may give a better idea of how the Tribunal might operate in practice:

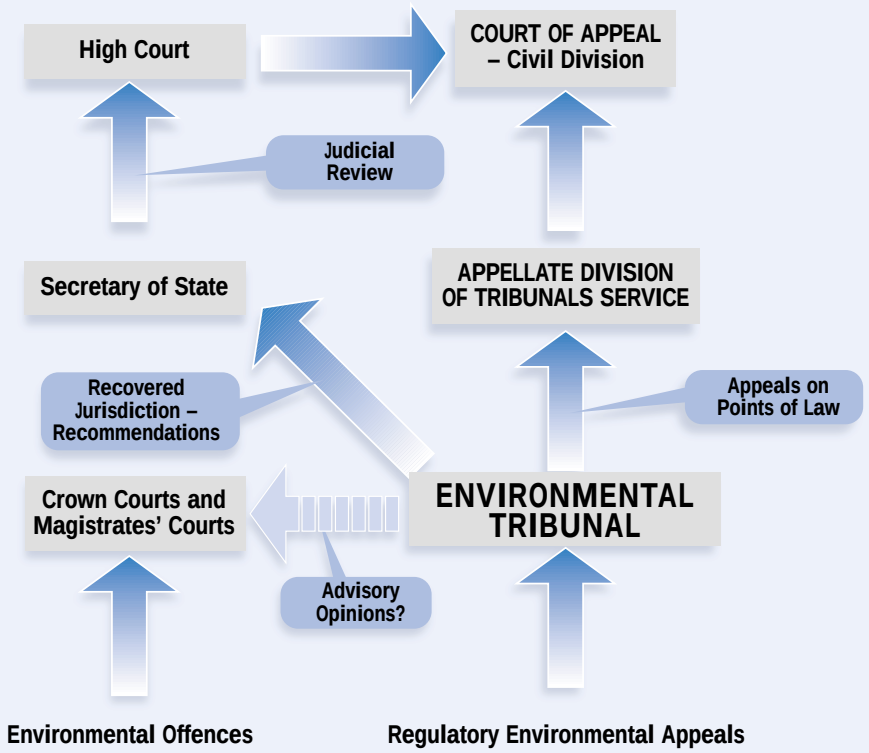
A Ltd operate a foundry works in an urban area. Following complaints of noise and dust pollution from local residents, the local authority serve a statutory nuisance notice under Part III of the Environmental Protection Act 1990. A Ltd appeal against the notice on the grounds that they are operating the 'Best Practicable Means' in respect of the noise and dust. The appeal is made to the Environmental Tribunal rather than the local Magistrates'

Court. The Tribunal operates an up-to-date case management system, and the local authority request that because of a history of poor compliance, and a suspicion that this is a holding appeal to allow operations to continue, the matter is dealt with expeditiously. The case papers indicate that the issues are largely technical rather than legal, and the case is assigned to a specialist member of the Tribunal rather than the full Tribunal. The appeal is heard in the local area, and with the cooperation of the parties, informal procedures are adopted. The validity of the notice is upheld by the Tribunal. A Ltd later fail to comply with the notice, and the prosecution for non-compliance is heard before the local Magistrates' Court. The defence of 'Best Practicable Means' is no longer available, and the court is concerned only with the assessing the factual evidence of non-compliance.

B Ltd operate an industrial site requiring a licence from the Environment Agency under new Pollution Prevention and Control Regulations recently introduced under an EC amending Directive. B Ltd appeal against licence conditions imposed by the Agency, and the appeal is heard by the Environmental Tribunal (rather than the Planning Inspectorate as now). The case raises new legal and policy issues, and is one of the first of its kind under the new Regulations. The case is therefore heard in London before the full Tribunal. Because of the distinctive features of the case, the Tribunal permits an intervener representation by a non-governmental organisation with a track record of interest in the area. In making its decision in favour of the Agency, the Tribunal takes the opportunity of providing more general guidance on the interpretation and application of the regulations against the policy background. The analysis in the Tribunal's determination is sufficiently legally watertight and convincing to deter any judicial review application or appeal to the Appeals Division of the Tribunal Service. The decision of the Tribunal is immediately posted on the Tribunal's website, which is regularly accessed by the regulatory bodies, trade associations, non-governmental bodies and interested members of the public. As a result of the decision, a number of similar pending appeals by other industries are withdrawn.

15.11 The position in which the Environmental Tribunal might fit into the existing court structure is shown in Box 4.

BOX 4 – The Environmental Tribunal in Relation to the Current System



16. A more direct enforcement role for an Environmental Tribunal?

16.1 This report has largely been confined to considering the role of an Environmental Tribunal system in handling environmental regulatory appeals. On this model, the hearing of criminal environmental cases and the application of penalties to ensure compliance with environmental law would remain with the ordinary criminal courts. We are aware of current concerns over the effectiveness of current environmental enforcement regimes, and various initiatives have already been made to improve training and sentencing practice in the criminal courts. Specific research projects have recently been commissioned by Defra on enforcement and sentencing in the criminal courts in relation to environmental offences, and it would be inappropriate to anticipate their outcomes.

16.2 We need to recognise, however, that the model of an Environmental Tribunal handling regulatory appeals, though perhaps not as ambitious as earlier conceptions of a 'one-stop' specialist environmental court, is still likely to have a beneficial impact on ensuring the more effective application and enforcement of environmental regulation. Licences and enforcement notices of the type identified in this report form the core basis of contemporary environmental law. We would expect the specialist Environmental Tribunal to develop the capacity to issue authoritative interpretations and rulings on environmental law, especially where new, complex regulations are involved, and this will again assist the application of environmental regulation in the context of criminal law.

16.3 Nevertheless, there are arguments that were an Environmental Tribunal system established, its remit could be extended to include some form of criminal enforcement function. It is beyond the scope of this research to explore this issue in detail, but we raise three areas for future consideration.

16.4 Administrative or civil penalties: There is growing interest in the possible value of the imposition of civil financial penalties as an additional enforcement tool to criminal prosecution. In this country civil penalties have not previously been used in the field of environmental law, and instead the traditional use of strict liability criminal offences as the final sanction prevails. In British law, the use of civil penalties is more familiar in areas of fiscal regulation such as competition and tax. For example under Section 36 of the Competition Act 1998, the Director General of Competition may impose a penalty on an undertaking which has intentionally or negligently infringed key competition provisions, up to a maximum of 10% of the undertaking's turnover, this being recoverable as a civil debt. Appeals may be made to a specialist tribunal with a further appeal to the Court of Appeal.

16.5 More recently, some of the policy advantages of civil penalties were spelt out in Parliament when the Occupational Pensions Regulatory Authority (OPRA) was given power to impose civil penalties under the Occupational Pension Schemes (Penalties) Regulations 2000. According to the Minister of State (Mr Jeff Rooker): "*OPRA could operate more quickly and effectively if it had power to impose civil penalties, as it would not always have to resort to criminal penalties which are extremely onerous as they must be enforced under the Police and Criminal Evidence Act… Criminal sanctions should be used only in open-and-shut cases of fraudulent activity.*" [xix]

16.6 Criminal sanctions could remain for the most serious environmental cases, but greater use of civil penalties might be a method for unravelling concerns about the low level of criminal fines currently imposed for many environmental offences, since the level of a civil penalty can be more directly related to economic advantages gained by non-compliance. The system could be uncoupled from the constraints clearly still felt in criminal courts (despite efforts being made to increase the level of fines), where magistrates and judges are conscious of the need to ensure that levels of fines are not totally out of step with those imposed for other criminal offences. Magistrates and judges may also sense that punitive sanctions are less appropriate for strict liability offences where no intention or recklessness is involved.

16.7 Civil penalties are familiar as a modern enforcement tool for environmental law in other countries. In the United States, for example, most Federal environmental statutes authorise the Environmental Protection Agency to apply civil administrative penalties against industries that fail to comply with legal requirements, and these are assessed against published rules of practice. Appeals against such penalties can be made to the courts, while criminal offences are reserved for the most serious violators. In 1999, the US Environmental Protection Agency recovered $166.7 million in civil penalties, compared to $61.6 million in criminal fines. Germany has a developed system of administrative offences (*Ordnungwidrigkeiten*) where financial sanctions are considered distinct from criminal fines, and where appeals against such sanctions are made to administrative tribunals rather than criminal courts[xx]. To take one example in the environmental field, the German Federal Emission Control Act dealing with industrial air emissions provides for an administrative offence leading to a fine for failure to comply with operator requirements under the Act, while criminal offences are provided under the Criminal Code for more serious failures which are likely to injure human health, animals, plants or other objects of value.

16.8 The question of the introduction of civil penalties in the context of environmental enforcement was beyond the precise terms of reference of this study, and we have therefore not considered, for example, whether it would be appropriate to confine their use to certain specialist authorities such as the Environment Agency. We recognise that in Europe, the requirements of the Human Rights Act on potential criminal liability may also need to be incorporated into their application, reducing some of the procedural flexibility. However, there do appear to be attractions in using civil penalties, and we hope that the Government will consider the issue further. If the power to impose civil penalties was introduced, the Environmental Tribunal could play a central role in their development and consistent application. The standard model of a penalty system enables the enforcement agency to impose a penalty for non-compliance with regulatory requirements, and allows a right of appeal against the assessment. In other fields of law, where civil penalties are used, tribunals operate as the first-tier appellate body, and the Environmental Tribunal rather than a conventional criminal or civil court, would be the more appropriate body for hearing appeals against the imposition of such penalties.

16.9 Criminal enforcement: In addition to its powers to determine environmental appeals, the jurisdiction of the Environmental Tribunal could be extended to handling designated criminal environmental offences. The Tribunal might, for example, deal with environmental offences currently considered in Magistrates' Courts, leaving the Crown Courts, as now, to handle the most serious cases. This is a more radical approach, and would require a more elaborate system than the single Tribunal we have proposed. Again it is an issue that was beyond the particular terms of reference of this report, but we considered it should at least be raised.

16.10 A combined civil and criminal jurisdiction would acknowledge that many of the distinctive characteristics of environmental law identified in this report are arguably also relevant to the application and interpretation of criminal environmental offences. The specialist Tribunal would bring a deeper appreciation of the environmental policy background and the significance of regulatory compliance than is often possible in ordinary criminal courts. It could also command greater confidence from those charged with enforcement responsibilities, as well as providing greater assurance to the majority of industries and individuals who comply with environmental requirements, that transgressors are being treated in an effective and consistent manner.

16.11 Some models of environmental court in other countries include a criminal jurisdiction. The New South Wales Land and Environment Court, for example, hears certain criminal cases, though this aspect of their work has not been without controversy. The drawback of including a criminal

jurisdiction is that criminal law of necessity involves greater procedural formality, different evidential requirements and the incorporation of specific safeguards for the defendant. It is less clear whether the model of Environmental Tribunal, which we are recommending, could readily handle these distinctive requirements of the criminal process.

16.12 Other judicial enforcement powers: If a more direct enforcement role were considered appropriate for the Environmental Tribunal, it would be necessary to address the assignment of powers such as the award of injunctions, interlocutory relief, and other similar judicial remedies. In this context, the Aarhus Convention requires that procedures concerning the rights of appeal by the public and non-governmental organisations shall provide *"adequate and effective remedies, including injunctive relief as appropriate."* We also note that the Stop Now Orders (EC Directive) Regulations 2001 have introduced new powers for enforcement bodies to apply to the courts for a 'Stop Now' orders to speed up action against businesses which breach a number of existing consumer protection laws. If such powers were extended to environmental regulation, the Environmental Tribunal might provide the most appropriate forum for handling them.

17. Conclusions

17.1 The current system of environmental appeals is haphazard and lacks coherence. It reflects an outmoded approach to environmental law, and is unlikely to provide a sound basis for handling future regulatory demands in a convincing manner. Existing structures could continue to be adapted as has been done in the past, but we see considerable benefits in establishing a new system based initially on a single Environmental Tribunal. The costs and administrative changes involved in setting up such a Tribunal to handle the majority of existing appeals would be modest compared to the policy gains to be made. Such a Tribunal would bring a greater consistency of approach to the application and interpretation of environmental law and policy. The improvements in authority and specialist knowledge would also foster increased confidence in those subject to environmental regulation, the regulatory authorities, and the general public. For these reasons, even without any direct enforcement functions, the Environmental Tribunal would substantially improve the application of environmental regulation.

17.2 Operating within the proposed Tribunals System, the Environmental Tribunal would have the flexibility to develop innovative and cost-effective approaches in the resolution of disputes, as well as greater inherent capacity to adapt to the developing principles on access to environmental justice. Incorporating rights of appeal for concerned members of the public or non-governmental organisations, based on grounds of substantive and procedural illegality as defined in the Aarhus Convention, would be consistent with the vision of the Convention, and provide a more cost-effective appeal route than judicial review procedures. Both in Europe and internationally, it would mark the United Kingdom as a leader in the design and practice of modern environmental governance.

17.3 The functions and jurisdiction of the Environmental Tribunal considered in this study are rather more modest than some of the earlier proposals for environmental courts or land use and environmental tribunals. We do not claim its introduction would resolve all the challenges involved in delivering effective and modern environmental regulation, but it does appear to offer an attractive and viable model which fits well with the current reform agenda for public services. The Environmental Tribunal would lead to the better application of current environmental law and policy, a more secure basis for addressing future challenges, increased public confidence in how we handle environmental regulation, and the improved environmental outcomes which should follow.

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i Robert Carnwath QC, *Enforcing Planning Control*, published by the Department of the Environment, April 1989

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iii M.Grant, Department of the Environment Transport and the Regions (UK), Environmental Court Project Final Report (2000)

iv House of Lords Hansard 9th October 2000

v The full text of the Johannesburg Principles is reproduced in Journal of Environmental Law (2003) Vol 15, No. 1

vi Royal Commission on Environmental Pollution 23rd Report *Environmental Planning* Cm 5459, 2002, Stationery Office, London

vii *Tribunals for Users – One System, One Service – Report of the Review of Tribunals* by Sir Andrew Leggatt, March 2001, Stationery Office, London

viii Source, Planning Inspectorate

ix Source, Environment Agency

x Tromans and Turrall-Clarke *Contaminated Land – The New Regime*, 2000 Sweet and Maxwell, London

xi Royal Commission on Environmental Pollution, 21st Report *Setting Environmental Standards* Cm 4053, 1998, Stationery Office, London

xii *Cooke v Secretary of State for Social Security* [2001] EWCA Civ 734

xiii Leggatt Report, para 6.29

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xv Macrory and Purdy '*The Enforcement of EC environmental law against Member States*' in Holder (ed) The Impact of EC Environmental Law in the United Kingdom, 1997, Wiley, Chichester

xvi Source, Lands Tribunal

xvii Source, Lands Tribunal

xviii Leggatt Report, 1.13

xix House of Commons, Standing Committee on Delegated Legislation, 8 March 2000

xx A. Ogus and C. Abbot '*Sanctions for Pollution: Do We Have the Right Regime?*', Journal of Environmental Law, Vol 14, Issue 3, pages 283-298

APPENDIX A

APPEAL ROUTES UNDER CURRENT ENVIRONMENTAL LEGISLATION

A desktop review of relevant legislation was carried out in order to check:

- the nature/type of each environmental appeal mechanism
- the identity of the body which makes the original decision which is then subject to appeal
- the identity of the appellant
- the forum in which the appeal is heard
- the grounds of appeal
- an assessment of whether the appeal mechanism allows a hearing of the factual merits of the case

The scope of the legislation covered by this review was based on a practical demarcation which excluded planning/highways/compulsory purchase/amenity type matters, as well as health and safety/work place type matters, broadly along the lines of the following:

Included:

- Agriculture
- Air Pollution
- Contaminated Land
- Genetically Modified Organisms
- Habitat Protection
- Industry Regulation (incl. Integrated Pollution Control; Integrated Pollution Prevention and Control: waste; radioactive substances)
- Statutory Nuisance (incl. noise)
- Water

Excluded:

- Civil Liability
- Criminal Liability
- Town and Country Planning
- Compulsory Purchase
- Environmental Impact Assessment
- Listed Buildings and Ancient Monuments
- Transport (incl. Highways and Roads; Transport and Works Act)
- Building Regulations
- Miscellaneous Land Use (incl. forestry; mines and quarries; hedgerows; tree preservation orders)

Due to the nature of environmental legislation, there is inevitably some overlap between topics, and different appeal routes were allocated according to the general heading in which they seemed to fall. The data was compiled to indicate general patterns and procedures, by covering the main pieces of environmental legislation as well as a few less prominent examples. The exercise should not therefore be considered to be a comprehensive statement of all environmental appeal mechanisms available in England and Wales, but rather as a general picture of the current position.

As appeals in respect of access to environmental information may soon be dealt with by the Information Commissioner and Information Tribunal, this topic has been excluded.

The comments on the existence or otherwise of merits based appeal mechanisms were based on an assessment of the subject matter of each piece of legislation and whether the appeal mechanism appeared to allow the relevant appeal forum to reconsider the facts of the case rather than more limited legal or technical grounds of review.

The data obtained has been compiled in the two tables which follow. The first table provides relatively full details of each appeal mechanism covered by the review, under the topic headings listed above. The second table shows a summary of each of these entries listed under the type of forum which deals with the appeal:

INDEX	LEGISLATION	APPEAL PROVISIONS	DECISION-MAKING BODY	APPELLANT	APPEAL FORUM	GROUNDS OF APPEAL	APPEAL ON MERITS?
AGRICULTURE							
1	SI No. 2614; **Nitrate Vulnerable Zones (Additional Designations) (England) (No. 2) Regulations 2002** covering the protection of waters against pollution caused by nitrates from agricultural sources	Appeals re. the designation of nitrate vulnerable zones (Regs 4 and 5)	SoS appointee	Any person whose land is included in a designated nitrate vulnerable zone	SoS appointed appeals panel (incl. public hearing)	Factual error in designation	NO
2	SI No. 888; **Protection of Water Against Agricultural Nitrate Pollution (England and Wales) Regulations 1996** including the designation of NVZs and the implementation of action programmes		SoS		NONE	N/A	NO
3	SI No. 1729; **Nitrate Sensitive Areas Regulations 1994** covering applications for financial aid by farmers for land affected by NVZs	Undertakings, monitoring, variation and withdrawal and recovery of aid (Reg 15)	SoS	Only by applicant farmer in respect of withdrawal and recovery of aid	SoS (by appointee per hearing)	Not specified	YES
4	SI No. 324; **Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991** requiring persons with custody or control of a crop being made into silage, livestock slurry or certain fuel oil to carry out works and take precautions and other steps for preventing pollution of waters which are controlled waters for the purposes of Part III of the **Water Act 1989**	The service of notices and related appeals (Reg 10)	EA SoS	Recipient of notice	SoS (by appointee per hearing)	Not specified	YES

INDEX	LEGISLATION	APPEAL PROVISIONS	DECISION-MAKING BODY	APPELLANT	APPEAL FORUM	GROUNDS OF APPEAL	APPEAL ON MERITS?
AGRICULTURE (cont.)							
5	SI No. 1013; **Nitrate Sensitive Areas (Designation) Order 1990** designating nitrate sensitive areas including provisions in relation to applications, agreements, monitoring of compliance, payments and recovery of payments	The determination by arbitration of: **(1)** any question arising under an agreement, and **(2)** of a dispute as to the economic optimum (Article 8)	SoS	Farmer	**(1)** A single arbitrator, to be agreed between the parties or, in default of agreement, to be appointed by the President of the Royal Institution of Chartered Surveyors **(2)** by agreement between the parties or, in the absence of such agreement, by a person appointed by the Chairman of the Regional Panel constituted by the Minister for the area in which the land is situated	**(1)** Compliance with agreement **(2)** economic optimum	NO?
6	SI No. 646; **Animal By-Products Order 1999** covering the disposal of high and low risk animal by-products including waste intended for feeding to pigs and poultry	Appeals against any notices or approvals of premises and equipment	SoS	Applicant for approval or person on whom a notice has been served	NONE	Not specified	NO
7	SI No. 843; **TSE (England) Regulations 2002** making provision for the for the prevention, control and eradication of certain transmissible spongiform encephalopathies	Appeals re.**(1)** applications for approvals of premises and the suspension and withdrawal of approvals relating to the production of fishmeal for feeding to farmed animals other than ruminants and the production of dicalcium phosphate and hydrolysed protein for feeding to farmed animals other than ruminants (Reg 21) and **(2)** the licensing of premises for the use of specified risk material (Reg 62)	**(1)** SoS **(2)** EA	**(1)** Person to whom the decision notice is given **(2)** the occupier of the premises	To the person or tribunal specified in the notice	Not specified	YES
8	SI No. 1202; **Action Programme for Nitrate Vulnerable Zones (England and Wales) Regulations 1998** establishing an action programme for nitrate vulnerable zones which were designated by the **Protection of Water against Agricultural Nitrate Pollution (England and Wales) Regulations 1996** (SI 1996/888)	Appeals against notices requiring remedial action where there is, or has been, a contravention of the requirement to ensure the action programme is implemented (Reg 5)	EA	A person served with a notice	SoS (by appointee per hearing or written reps)	Not specified	YES

INDEX	LEGISLATION	APPEAL PROVISIONS	DECISION-MAKING BODY	APPELLANT	APPEAL FORUM	GROUNDS OF APPEAL	APPEAL ON MERITS?
AIR POLLUTION							
9	**Clean Air Act 1993** (c. 11)	**(1)** Applications for approval of arrestment plant for new non-domestic furnaces and for burning solid fuel in other cases (Sections 6,8 and 9) **(2)** applications for approval of height of chimneys of furnaces (Section 15) **(3)** approval of chimneys part of the erection or extension of a building outside Greater London or in an outer London borough, other than a building used or to be used as a residence, a shop or an office (Section 16) **(4)** the revocation and variation of Smoke Control Area orders (Section 18) **(5)** power of local authority to require adaptation of fireplaces in private dwellings (Section 24) **(6)** notices requiring information about air pollution (Section 36) **(7)** exemption for purposes of investigations and research (Section 45)	Local authority	**(1)** A person who (a) has made such an application to a local authority; or (b) is interested in a building with respect to which such an application has been made **(2)** the applicant **(3)** any person interested in the building **(4,5)** not specified **(6)** person served with notice or any other person having an interest in the premises to which the notice relates **(7)** person who has applied to the local authority for an exemption	**(1,2,3,6,7)** SoS **(4)** SoS - delegated to PINS; **(5)** the provisions of Part XII of the Public Health Act 1936 (presumed Magistrates Court)	**(1,2,3,4,5,7)** Not specified; **(6)** (a) information required by the notice would (i) prejudice to an unreasonable degree some private interest by disclosing information about a trade secret; or (ii) be contrary to the public interest; or (b) on the grounds that the information required by the notice is not immed-iately available and cannot readily be collected or obtained by the recipient of the notice without incurring undue expenditure for the purpose	YES (except 6)
10	**Environment Act 1995** (c. 25) Part IV Air Quality including the designation of air quality management areas and action plans by local authorities		Local authority		NONE		NO
11	SI No. 1091; **Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001**	Enforcement and appeals re. operating permits to operate combustion installations, including their variation and the provision of information (Reg 17)	SoS	Any applicant for a permit or any operator aggrieved by a decision	High Court	Not specified	YES?
12	SI No. 3107; **Motor Fuel (Composition and Content) Regulations 1999**, covering leaded petrol permits generally	Appeals re. certain exemptions (Reg 16)	SoS	The applicant or the permit holder	SoS	Not specified	YES

INDEX	LEGISLATION	APPEAL PROVISIONS	DECISION-MAKING BODY	APPELLANT	APPEAL FORUM	GROUNDS OF APPEAL	APPEAL ON MERITS?
CONTAMINATED LAND							
13	**Environmental Protection Act 1990** as amended by the **Environment Act 1995** (c. 25) Part II and SI No. 227 and the **Contaminated Land (England) Regulations 2000 (as amended)**	Appeals re. **(1,2)** the identification and notification of contaminated land and special sites, and the service of remediation notices (Section 78L) **(3)** the service of charging notices (Section 78P) and **(4)** confidential information relating to the affairs of any individual or business held on registers (Section 78T)	Local authorities (in conjunction with the EA re. the designation of special sites leading to EA being enforcing authority)	**(1)** The local authority or the EA in the event of disagreement regarding the designation of a special site **(2)** person on whom a remediation notice is served **(3)** person served with charging notice **(4)** person notified of determination re. confidential information	**(1)** SoS **(2)** if it was served by a local authority, to the Magistrates Court ; if it was served by the EA, to the SoS (by appointee per local inquiry or public hearing - delegated to PINS) **(3)** County Court **(4)** SoS (by appointee per delegation/private hearing)	The extensive grounds of appeal against a remediation notice under section 78L are detailed at Reg 7; otherwise unspecified	YES
GENETICALLY MODIFIED ORGANISMS							
14	**Environmental Protection Act 1990** Part VI and SI No. 2443; **Genetically Modified Organisms (Deliberate Release) Regulations 2002**, covering the control of the deliberate release into the environment and the marketing of genetically modified organisms by means of the imposition of a requirement to obtain consent for those activities, prohibition notices and mandatory public consultation		SoS		NONE		NO
15	SI No. 2831; **Genetically Modified Organisms (Contained Use) Regulations 2000** protecting persons and the environment from risks arising from activities involving the contained use of genetically modified micro-organisms and protecting persons from risks arising from activities involving the contained use of genetically modified organisms which are not micro-organisms	Appeals re. certain decisions of the competent authority, a request for information or an instruction given by the Health and Safety Executive (Reg 29)	SoS (for EC purposes), the Minister of Agriculture, Fisheries and Food (now Defra) and the Health and Safety Executive, acting jointly	Any person who is aggrieved	SoS	Not specified	YES

INDEX	LEGISLATION	APPEAL PROVISIONS	DECISION-MAKING BODY	APPELLANT	APPEAL FORUM	GROUNDS OF APPEAL	APPEAL ON MERITS?
HABITAT PROTECTION							
16	SI No. 1754; **Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001**, on the conservation of wild birds, in relation to oil and gas activities carried out wholly or partly on the UK continental shelf	**(1)** The obtaining of consent for geological surveys **(2)** the review of directions and a right of appeal to a court against any such direction by the SoS in order to reduce or eliminate adverse effects on relevant sites, or deterioration or disturbance of certain natural habitats or species (Regs 8 and 9)	SoS	**(1)** The applicant for the consent **(2)** the person on whom the direction has been served	**(1)** NONE **(2)** review by the SoS and then the High Court	**(2)** Not specified	MIXED
17	**Wildlife and Countryside Act 1981** as amended by the **Countryside and Rights of Way Act 2000**: Part III and Schedule 9	**(1)** The designation of SSSIs including the notification of owners/occupiers and the local planning authority but with no formal right of appeal **(2)** applications for consent for operations not covered by the TCPA **(3)** the notification of management schemes for comment **(4)** the service of a management notice **(5)** the designation of Ramsar sites	English Nature	**(1)** The owner and/or occupier **(2)** owner or occupier refused a consent or aggrieved by conditions or by the modification of a consent or by the withdrawal of a consent **(3)** the owner and/or occupier; **(4)** the recipient of the management notice including any owner and/or occupier **(5)** the owner and/or occupier who has received notice of the designation	**(1,3,5)** NONE **(2)** by the SoS or appointee (including possible inquiry) **(4)** the SoS (including possible public or private hearing or local inquiry)	**(2)** Not specified; **(4)** not specified but can include that some other owner or occupier of the land should take all or any of the measures specified in the management notice, or should pay all or part of their costs	MIXED
18	SI No. 2716; **Conservation (Natural Habitats, &c.) Regulations 1994**	**(1)** The selection, registration and notification of sites to be protected ("European sites") **(2)** the control of damaging operations **(3)** the withdrawal or modification of existing consents **(4)** special nature conservation orders and related applications for consent for likely significant operations including appeals (Reg 24) **(5)** the designation and management of European Marine Sites	**(1,2,3,5)** Nature Conservancy Council (NCC) **(4)** SoS in consultation with NCC	**(1)** the public and owner/occupiers **(2)** applicant for NCC consent for potentially damaging operations (PDOs) **(3)** the consent holder **(4)** applicant for consent if refused **(5)** the public	**(1,2,3,5)** NONE **(4)** SoS	**(4)** SoS being satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest including of a social or economic nature except where the site hosts a priority natural habitat type or a priority species when the reasons must be either relate to human health, public safety or beneficial consequences of primary importance to the environment, or other reasons which in the opinion of the European Commission are imperative reasons of overriding public interest (and subject to compensatory measures to ensure the overall coherence of Natura 2000)	NO

INDEX	LEGISLATION	APPEAL PROVISIONS	DECISION-MAKING BODY	APPELLANT	APPEAL FORUM	GROUNDS OF APPEAL	APPEAL ON MERITS?
INDUSTRY REGULATION (incl. COMAH; IPC; IPPC; LAPC; WASTE)							
19	**Radioactive Substances Act 1993** (c. 12) and **Radioactive Substances (Appeals) Regulations 1990** relating to use of radioactive material	Appeals against certain decisions including applications for registration or for an authorisation, or a decision to impose any limitation or condition on or to vary, cancel or revoke such a registration or authorisation (Sections 24,26 and 27)	Chief Inspector	The person directly concerned by the decision	SoS (by appointee at hearing or by written reps - delegated to PINS)	Not specified	YES
20	SI No. 743; **Control of Major Accident Hazards Regulations 1999** covering the control of major accident hazards involving dangerous substances	**(1)** The duty on the operator of an establishment to take all measures necessary to prevent major accidents and limit their consequences for persons and the environment (Reg 4) **(2)** the approval of operator safety reports (Reg 7) **(3)** the provision of information to the public by the operator (Reg 14) **(4)** enforcement provisions including prohibition notices (Reg 18)	The Health and Safety Executive and the EA acting jointly	**(1,3)** The public **(2,4)** the operator	**(1,2,3)** NONE **(4)** Section 24 of the 1974 Act (appeal against improvement or prohibition notice) and regulation 8(4)(b) of, and Schedule 4 to, the Employment Tribunals (Constitution and Rules of Procedure) Regulations 1993 apply in relation to a notice served under this regulation as they apply in relation to a prohibition notice served under section 22 of that Act	**(4)** Not specified	MIXED
21	**Pollution Prevention and Control Act 1999** and SI 2000 No. 1973; **Pollution Prevention and Control (England and Wales) Regulations 2000** setting out a pollution control regime for the purpose of implementing the IPPC Directive and for regulating other environmentally polluting activities not covered by the Directive (including the determination of BAT)	**(1)** Refusal of the grant of a permit under Reg 10 **(2)** refusal of the variation of the conditions of a permit under Reg 17(2) **(3)** the conditions attached to a permit following an application under Reg 10 or by a variation notice following an application under Reg 17(2) **(4)** refusal of an application under Reg 18(1) for a regulator to effect the transfer of a permit or the conditions attached to such a transfer **(5)** refusal of an application under Reg 19(2) to surrender a permit or the conditions attached to such surrender **(6)** a variation notice (other than following an application under Reg 17(2)), or a revocation notice, an enforcement notice or a suspension notice	EA or local authority	**(1)** The person who has been refused the grant of a permit **(2)** the person who has been refused the variation of the conditions of a permit **(3)** the person who is aggrieved by the conditions attached to his permit **(4)** the person whose application has been refused or who is aggrieved by the conditions attached to his permit to take account of such a transfer **(5)** the person whose application has been refused, or who is aggrieved by the conditions attached to his permit to take account of the surrender **(6)** the person on whom a variation notice is served or on whom a revocation notice, an enforcement notice or a suspension notice is served	SoS (by appointee per public or private hearing or by written reps)	Not specified	YES

INDEX	LEGISLATION	APPEAL PROVISIONS	DECISION-MAKING BODY	APPELLANT	APPEAL FORUM	GROUNDS OF APPEAL	APPEAL ON MERITS?
INDUSTRY REGULATION (cont.)							
22	**Environmental Protection Act 1990** (c. 43) and SI No. 507; **Environmental Protection (Applications, Appeals and Registers) Regulations 1991**, SI No. 1056; **Waste Management Licensing Regulations 1994**; SI No. 351; **Waste Management (Miscellaneous Provisions) Regulations 1997**	Appeals relating to authorisation, licensing and enforcement for IPPC/LAPC and Waste (Sections 15 and 43)	EA/local authorities	**(1)** A person who has been refused the grant of an authorisation, who is aggrieved by the conditions attached, who has been refused a variation of an authorisation, whose authorisation has been revoked or on whom a variation notice, an enforcement notice or a prohibition notice has been served **(2)** the applicant for the licence, the holder or former holder of it or the proposed transferee	SoS (by appointee per hearing or written reps - delegated to PINS)	Not specified	YES
23	**Radioactive Substances Act 1993** and SI No. 3031; **Transfrontier Shipment of Radioactive Waste Regulations 1993**	Appeals re. the authorisation and approval for the shipment of radioactive waste (Reg 17)	Chief Inspector	The applicant	SoS (by appointee per hearing or written reps)	Not specified	YES
24	SI No. 648; **Producer Responsibility Obligations (Packaging Waste) Regulations 1997** imposing on producers obligations to recover and recycle packaging waste, and related obligations, in order to attain the targets in article 6(1) of Directive 94/62/EC	Appeals against the refusal or cancellation of registration of operator schemes	EA	The operator of a scheme	SoS (by appointee per hearing or written reps)	Not specified	YES
25	**Control of Pollution (Amendment) Act 1989** (c. 14) covering the transport of controlled waste	Appeals re the registration of carriers and related matters(Section 4)	Waste disposal authority	Applicant for registration or registered carrier	SoS (by appointee per hearing or written reps - delegated to PINS)	Not specified	YES
26	SI No. 880; **Biocidal Products Regulations 2001** enabling applications to be made for agreement at Community level that an active substance can be used in a biocidal product	Right of appeal re. the authorisation and registration for the the placing on the market and use of biocidal products (Reg 36 and Schedule 10)	SoS and Defra acting jointly	A person aggrieved by a decision	SoS (by appointee per public/private hearing or by written reps)	Not specified	YES
27	**Waste and Emissions Trading Bill** [HL] covering the allocation of landfill allowances, including power to enable public access to information registers		SoS		NONE		NO

INDEX	LEGISLATION	APPEAL PROVISIONS	DECISION-MAKING BODY	APPELLANT	APPEAL FORUM	GROUNDS OF APPEAL	APPEAL ON MERITS?
INDUSTRY REGULATION (cont.)							
28	Draft SI; **Landfill (England and Wales) Regulations 2002** setting out a pollution control regime for landfills including site closure notices (amending the Pollution Prevention and Control (England and Wales) Regulations 2000)	Appeals against closure notices (Reg 16)	EA	Recipient of notice	SoS (by appointee per hearing or written reps - delegated to PINS)	Not specified	YES
MARINE							
29	**Merchant Shipping Act 1995** (c. 21) and SI 2002 No. 1861; **Offshore Installations (Emergency Pollution Control) Regulations 2002**, including provision to prevent and reduce pollution and the risk of pollution following an accident involving a ship or an offshore installation respectively	Appeals re. the service of directions and related compensation for unreasonable loss (Sections 137-140)	SoS	Person served with direction	Admiralty jurisdiction of the High Court	Action taken was not reasonably necessary to prevent or reduce oil pollution, or risk of oil pollution; or was such that the good it did or was likely to do was disproportionately less than the expense incurred, or damage suffered, as a result of the action	YES
30	SI No. 1355; **Offshore Chemicals Regulations 2002** providing a regime for the purpose of implementing the OSPAR Decision (2000/2) on a Harmonised Mandatory Control System for the Use and Reduction of the Discharge of Offshore Chemicals in relation to offshore activities	Appeals re. the granting, review and revocation of permits and related notices	SoS	Any operator aggrieved by a decision of the SoS	High Court	Not specified	YES
STATUTORY NUISANCES							
31	**Environmental Protection Act 1990** (c. 43) Part III, **Noise and Statutory Nuisance Act 1993** (c. 40) and SI No. 2644 **Statutory Nuisance (Appeals) Regulations 1995** relating to statutory nuisances	Appeals against abatement notices (Sections 80 and 80A)	Local authorities	Person served with the notice (also on the complaint of any person on the ground that he is aggrieved by the existence of a statutory nuisance)	Magistrates Court	As detailed in the regulations including unreasonableness and informality of notice; also a defence for industry to prove that the best practicable means were used to prevent, or to counteract the effects of the nuisance in certain cases	YES

INDEX	LEGISLATION	APPEAL PROVISIONS	DECISION-MAKING BODY	APPELLANT	APPEAL FORUM	GROUNDS OF APPEAL	APPEAL ON MERITS?
STATUTORY NUISANCES (cont.)							
32	**Control of Pollution Act 1974** specifying acceptable methods for the construction of sites and the confirmation of noise abatement zones	Appeals re. **(1)** notices specifying how work should be carried out (Section 60) **(2)** conditions imposed in a prior consent (Section 61) **(3)** confirmation of noise abatement orders (Schedule 3)	Local authority	**(1)** Person served with the notice **(2)** consent holder **(3)** anyone affected by the order	**(1,2)** Magistrates Court **(3)** SoS	**(1)** Not specified **(2)** (a) that any condition is not justified by the terms of Section 61; (b) that there has been some informality in connection with the consent; (c) that the requirements of any relevant condition are unreasonable or are unnecessary; (d) that any of the times within which the requirements of any condition are to be complied with are not reasonably sufficient for the purpose **(3)** not specified	YES
WATER							
33	SI No. 2746; **Groundwater Regulations 1998** preventing the direct or indirect discharge of list I substances to groundwater and to control pollution resulting from the direct or indirect discharge of list II substances	Appeals re. authorisations and notices (Reg 20)	EA	An applicant for an authorisation or the recipient of a notice	SoS (by appointee per hearing or written reps)	Not specified	YES

INDEX	LEGISLATION	APPEAL PROVISIONS	DECISION-MAKING BODY	APPELLANT	APPEAL FORUM	GROUNDS OF APPEAL	APPEAL ON MERITS?
WATER (cont.)							
34	**Water Resources Act 1991** (c. 57) (as amended by the Environment Act 1995); and SI No. 2971 the **Control of Pollution (Applications, Appeals and Registers) Regulations 1996**, making general provision in respect of water pollution	Including appeals re. **(1)** conservation notices with respect to borings not requiring licences (Section 31) **(2)** applications for licenses for abstraction or impounding works (Sections 41and 43) **(3)** the modification of such licences (section 54) **(4)** the making of ordinary and emergency drought orders (Sections 73 - 75 and Schedule 8) **(5)** applications for drought permits by water undertakers (Section 79A and Schedule 8) **(6)** applications for discharge consents and variations (Section 91) **(7)** appeals against enforcement notices under Part II of the Act (Section 91(1)(h)) **(8)** notices requiring the taking of precautions against pollution (Section 92) **(9)** consents required re. Water Protection Zones and Nitrate Sensitive Areas (Section 96) **(10)** the making and terms of agreements for special charges in respect of spray irrigation (Section 129) **(11)** resolutions requiring contributions from internal drainage boards (Section 140) **(12)** works agreements (Section 158) **(13)** notices requiring anti-pollution works and operations (Section 161C) **(14)** compulsory works orders for the EA (Section 168 and Schedule 19) **(15)** information to be entered into pollution control registers which the EA has determined is not commercially confidential (Section 191B) **(16)** byelaw-making powers of the EA (Section 210 and Schedule 26) **(17)** called-in applications for discharge consents (Schedule 10) **(18)** byelaws for regulating the use of inland waters (Schedules 25 and 26)	All EA; except **(4,14)** SoS on application of EA, and **(17)** SoS	**(1)** The recipient of a conservation notice **(2)** the applicant **(3)** the holder of the licence **(4,5)** any objector to the order **(6)** the applicant or discharge consent holder **(7)** the recipient of the enforcement notice **(8)** the recipient of the notice **(9,10)** the applicant **(11)** an internal drainage board aggrieved by a resolution of the EA determining the amount of any contribution; or a council of any county or London borough aggrieved that the amount of the contribution required to be made by an internal drainage board is inadequate **(12,13,14,15,16,18)** person/party affected **(17)** the applicant or the EA	**(1,2,3)** SoS (by appointee per hearing or written reps - delegated to PINS); then High Court (Section 69) **(4,5,6,7,8,9)** SoS (by appointee per hearing or written reps - delegated to PINS) **(10)** SoS; then High Court (as per Section 69) **(11)** the relevant Minister (per inquiry) **(12,13,14)** SoS - delegated to PINS **(15,16,17,18)** SoS (by appointee per public/private hearing - delegated to PINS)	**(1)** That the measures required by the conservation notice are not reasonable or would interfere with the protection of the underground works in question **(2,3)** not specified for SoS; re High Court, if the decision of the SoS is not within the powers of the Act; or requirements of, or of any regulations made under Part II of Chapter II of the Act which are applicable to the appeal or reference have not been complied with **(4,5,6,7,8,9)** not specified **(10)** not specified; then as above for High Court **(11,12,13,14,15,16,17, 18)** not specified	YES
35	SI No.1999/1006; **Anti-Pollution Works Regulations 1999** prescribing the contents of anti-pollution works notices served under section 161A of the Water Resources Act 1991	Appeals against such notices (Reg 3)	EA	The recipient of a notice	SoS (by appointee per public/private hearing or written reps)	Not specified	YES

INDEX	LEGISLATION	APPEAL PROVISIONS	DECISION-MAKING BODY	APPELLANT	APPEAL FORUM	GROUNDS OF APPEAL	APPEAL ON MERITS?
WATER (cont.)							
36	**Water Industry Act 1991** (c. 56) covering the regulation of undertakers, water supply and sewerage services	Appeals/review re. **(1)** the determination of requests for non-domestic water supplies (Section 56 and Schedule 5) **(2)** orders by the SoS in respect of duties of undertakers as respects constancy and pressure **(3)** the confirmation of private supply notices (Section 81) **(4)** the adoption of sewers and disposal works (Section 105) **(5)** requirements that proposed drains or sewers be constructed so as to form part of general system (Section 112) **(6)** applications for consent for the discharge of trade effluent into public sewers (Section 122) **(7)** applications for consent for the discharge of special category effluent (Section 123) **(8)** the variation of consents (Section 126) **(9)** consents and agreements relating to special category effluent (Sections 127 and 130) **(10)** references and reviews relating to special category effluent (Section 132) **(11)** statements of case on appeal re (7) and (9) above **(12)** the making of byelaws with respect to undertakers' waterways and land (Section 157 and Scheule 10) **(13)** power to carry out surveys and to search for water (Section 169 and Schedule 6)	All sewerage undertaker; except **(2 and 10)** SoS and **(3)** local authorities	**(1)** Person who made the request **(2)** the Director General of Water Services or a water undertaker **(3)** the local authority or any person who has made representations or objections with respect to the notice or any proposed direction **(4)** an owner of any sewer or sewage disposal works aggrieved by the proposal of a sewerage undertaker to make or not make a declaration regarding adoption or a person constructing or proposing to construct a drain or sewer or any sewage disposal regarding a decsion on an application for adoption **(5)** any person on whom requirements are imposed **(6,7)** any person aggrieved by the decision of a sewerage undertaker on an application for consent **(8)** the owner or occupier of any trade premises affected by a variation decision **(9,11)** the owner or occupier of any trade premises for the time being authorised by virtue of a consent or a party to any agreement **(10)** the sewerage undertaker or the owner or the occupier of the trade premises in question **(12)** any affected person	All SoS (by appointee per local inquiry per Section 215 - delegated to PINS); except **(1,6,7,8)** the Director General of Water Services, and **(11)** statements of case on appeal re. **(7)** and **(9)** to the High Court	Not specified; only questions of law for High Court	YES (except 6)
37	SI 2001 No. 2954; **Control of Pollution (Oil Storage) (England) Regulations 2001** requiring persons having custody or control of oil to carry out certain works and take certain precautions and other steps for preventing pollution of any waters which are controlled waters for the purposes of Part III of the Water Resources Act 1991	Appeals against notices served under transitional provisions (Section 8)	EA	Person served with a notice	SoS (by appointee per public/private hearing or written reps)	Not specified	YES

APPENDIX A

LEGISLATION	MERITS?
SECRETARY OF STATE	
Nitrate Vulnerable Zones (Additional Designations) (England) (No. 2) Regulations 2002 re the designation of nitrate vulnerable zones (Regs 4 and 5)	**NO**
Nitrate Sensitive Areas Regulations 1994 covering applications for financial aid by farmers for land affected by NVZs, undertakings, monitoring, variation and withdrawal and recovery of aid	**YES**
Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991 requiring persons with custody or control of a crop being made into silage, livestock slurry or certain fuel oil to carry out works and take precautions and other steps for preventing pollution of waters which are controlled waters for the purposes of Part III of the **Water Act 1989** and the service of notices and related appeals	**YES**
Action Programme for Nitrate Vulnerable Zones (England and Wales) Regulations 1998 establishing an action programme for nitrate vulnerable zones which were designated by the **Protection of Water against Agricultural Nitrate Pollution (England and Wales) Regulations 1996** including appeals against notices requiring remedial action where there is, or has been, a contravention of the requirement to ensure the action programme is implemented	**YES**
Clean Air Act 1993 including (1) applications for approval of arrestment plant for new non-domestic furnaces and for burning solid fuel in other cases; (2) applications for approval of height of chimneys of furnaces; (3) approval of chimneys part of the erection or extension of a building outside Greater London or in an outer London borough, other than a building used or to be used as a residence, a shop or an office; (6) notices requiring information about air pollution; (7) exemption for purposes of investigations and research	**YES (except 6)**
Motor Fuel (Composition and Content) Regulations 1999, covering leaded petrol permits generally including appeals re. certain exemptions	**YES**
Genetically Modified Organisms (Contained Use) Regulations 2000 including appeals re. certain decisions of the competent authority, a request for information or an instruction given by the Health and Safety Executive	**YES**
Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 including the review of directions and a right of appeal to a court against directions by the SoS in order to reduce or eliminate adverse effects on relevant sites, or deterioration or disturbance of certain natural habitats or species	**YES**
Wildlife and Countryside Act 1981 as amended by the **Countryside and Rights of Way Act 2000**: Part III and Schedule 9 including (2) applications for consent for operations not covered by the TCPA; (4) the service of management notices	**YES**
Conservation (Natural Habitats, &c.) Regulations 1994 including (4) special nature conservation orders and related applications for consent for likely significant operations including appeals	**NO**
Biocidal Products Regulations 2001 enabling applications to be made for agreement at European Community level that an active substance can be used in a biocidal product including right of appeal re. the authorisation and registration for the the placing on the market and use of biocidal products	**YES**
Environmental Protection Act 1990 as amended by the **Environment Act 1995** and the **Contaminated Land (England) Regulations 2000**; including appeals re. (1) the identification and notification of contaminated land and special sites and (4) confidential information relating to the affairs of any individual or business held on registers	**YES**
Pollution Prevention and Control (England and Wales) Regulations 2000 including (3) the exclusion of commercially confidential information from registers	**YES**
Control of Pollution (Applications, Appeals and Registers) Regulations 1996; appeals in relation to information to be entered into pollution control registers which the EA has determined is not commercially confidential	**YES?**
Radioactive Substances Act 1993 and **Radioactive Substances (Appeals) Regulations 1990**; appeals against decisions on applications for registration or for an authorisation, or a decision to impose any limitation or condition on or to vary, cancel or revoke such a registration or authorisation	**YES**
Pollution Prevention and Control Act 1999 and **Pollution Prevention and Control (England and Wales) Regulations 2000** setting out a pollution control regime for the purpose of implementing the IPPC Directive and for regulating other environmentally polluting activities not covered by the Directive (including the determination of BAT)	**YES**
Radioactive Substances Act 1993 and the **Transfrontier Shipment of Radioactive Waste Regulations 1993** including appeals re. the authorisation and approval for the shipment of radioactive waste	**YES**

APPENDIX A

LEGISLATION	MERITS?
SECRETARY OF STATE (cont.)	
Producer Responsibility Obligations (Packaging Waste) Regulations 1997; appeals against the refusal or cancellation of registration of operator schemes	YES
Groundwater Regulations 1998 preventing the direct or indirect discharge of list I substances to groundwater and to control pollution resulting from the direct or indirect discharge of list II substances including appeals re. authorisations and notices	YES
Water Resources Act 1991 (as amended by the **Environment Act 1995**); and the **Control of Pollution (Applications, Appeals and Registers) Regulations 1996**, including (10) the making and terms of agreements for special charges in respect of spray irrigation	YES
Anti-Pollution Works Regulations 1999; appeals against anti-pollution works notices served under Section 161A of the Water Resources Act 1991	YES
Control of Pollution (Oil Storage) (England) Regulations 2001 covering controlled waters for the purposes of Part III of the Water Resources Act 1991 including appeals against notices served under transitional provisions	YES
Control of Pollution Act 1974 covering the confirmation of noise abatement zones	YES
PINS (DELEGATED BY SECRETARY OF STATE)	
Clean Air Act 1993 including (4) the revocation and variation of Smoke Control Area orders	YES
Environmental Protection Act 1990 as amended by the **Environment Act 1995** and the **Contaminated Land (England) Regulations 2000**; the service of remediation notices by the EA	YES
Environmental Protection Act 1990; and the **Waste Management Licensing Regulations 1994**; authorisation and licensing of IPPC, LAPC and waste.	YES
Control of Pollution (Amendment) Act 1989 covering the transport of controlled waste including appeals re. the registration of carriers and related matters	YES
Water Resources Act 1991 (as amended by the **Environment Act 1995**); and the **Control of Pollution (Applications, Appeals and Registers) Regulations 1996**, making general provision in respect of water pollution including applications and notices (1-18; except 10)	YES
Water Industry Act 1991 covering the regulation of undertakers, water supply and sewerage services including applications (1-13; except 1,6,7,8)	YES
Landfill (England and Wales) Regulations 2002 setting out a pollution control regime for landfills including site closure notices	YES
HIGH COURT	
Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001 including enforcement and appeals re. operating permits to operate combustion installations, including their variation and the provision of information	YES?
Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 including the review of directions and a right of appeal to a court against directions by the SoS in order to reduce or eliminate adverse effects on relevant sites, or deterioration or disturbance of certain natural habitats or species	YES
Merchant Shipping Act 1995 and the **Offshore Installations (Emergency Pollution Control) Regulations 2002**, including provision to prevent and reduce pollution following an accident involving a ship or an offshore installation with appeals re the service of directions and related compensation	YES
Offshore Chemicals Regulations 2002; appeals re. the granting, review and revocation of permits and related notices	YES
Water Resources Act 1991 (as amended by the **Environment Act 1995**); and the **Control of Pollution (Applications, Appeals and Registers) Regulations 1996**, including (1) conservation notices with respect to borings not requiring licences (2) applications for licences for abstraction or impounding works (3) the modification of such licences (10) the making and terms of agreements for special charges in respect of spray irrigation	YES
Water Industry Act 1991 including statements of case on appeal re. (7) applications for consent for the discharge of special category effluent and (9) consents and agreements relating to special category effluent	YES
MAGISTRATES' COURTS	
Clean Air Act 1993 including (5) the power of local authorities to require adaptation of fireplaces in private dwellings	YES
Environmental Protection Act 1990 as amended by the **Environment Act 1995** and the **Contaminated Land (England) Regulations 2000**; the service of remediation notices by a local authority	YES
Environmental Protection Act 1990 Part III, Noise and Statutory Nuisance Act 1993 and **Statutory Nuisance (Appeals) Regulations 1995** including appeals against abatement notices	YES
Control of Pollution Act 1974 specifying acceptable methods for the construction of sites	YES

APPENDIX A

LEGISLATION	MERITS?
MISCELLANEOUS	
Nitrate Sensitive Areas (Designation) Order 1990 designating nitrate sensitive areas including provisions in relation to applications, agreements, monitoring of compliance, payments and recovery of payments including the determination by arbitration of (1) any question arising under an agreement and (2) of a dispute as to the economic optimum (*a single arbitrator/person appointed by the Chairman of the Regional Panel*)	**NO?**
Environmental Protection Act 1990 as amended by the **Environment Act 1995** and the **Contaminated Land (England) Regulations 2000**; the service of charging notices (*the County Court*)	**YES**
Control of Major Accident Hazards Regulations 1999 including (4) enforcement provisions/prohibition notices (*Employment Tribunal*)	**YES**
Water Industry Act 1991 including (1) the determination of requests for non-domestic water supplies (6) applications for consent for the discharge of trade effluent into public sewers (7) applications for consent for the discharge of special category effluent (8) the variation of consents *(the Director General of Water Services*)	**YES (except 6)**
TSE (England) Regulations 2002 covering appeals re. applications for approvals, approvals and licensing of premises and the suspension and withdrawal of approvals/licences (*person or tribunal specified*)	**YES**
NONE	
Protection of Water Against Agricultural Nitrate Pollution (England and Wales) Regulations 1996 including the designation of NVZs and the implementation of action programmes	**NO**
Environment Act 1995 Part IV Air Quality including the designation of air quality management areas and action plans by local authorities	**NO**
Environmental Protection Act 1990 Part VI and **Genetically Modified Organisms (Deliberate Release) Regulations 2002**, covering the control of the deliberate release into the environment and the marketing of genetically modified organisms by means of the imposition of a requirement to obtain consent for those activities, prohibition notices and mandatory public consultation	**NO**
Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, on the conservation of wild birds, in relation to oil and gas activities carried out wholly or partly on the UK continental shelf including the obtaining of consent for geological surveys	**NO**
Wildlife and Countryside Act 1981 as amended by the **Countryside and Rights of Way Act 2000**: Part III and Schedule 9 including (1) the designation of SSSIs including the notification of owners/occupiers and the local planning authority but with no formal right of appeal (3) the notification of management schemes for comment (5) the designation of Ramsar sites	**NO**
Conservation (Natural Habitats, &c.) Regulations 1994 including (1) the selection, registration and notification of sites to be protected ("European sites") (2) the control of damaging operations (3) the withdrawal or modification of existing consents, and (5) the designation and management of European Marine Sites	**NO**
Waste and Emissions Trading Bill [HL] covering the allocation of landfill allowances	**NO**
Control of Major Accident Hazards Regulations 1999 including (1) the duty on the operator of an establishment to take all measures necessary to prevent major accidents and limit their consequences for persons and the environment (2) the approval of operator safety reports	**NO**
Animal By-Products Order 1999 covering the disposal of high and low risk animal by-products including waste intended for feeding to pigs and poultry	**NO**

APPENDIX B

QUESTIONNAIRE RESULTS FROM ENVIRONMENTAL HEALTH OFFICERS

This element of the research was carried out with the assistance of the Chartered Institute of Environmental Health (CIEH), in order to obtain indicative quantitative and qualitative data on the existing appeal mechanism for appeals against abatement notices served by local authorities under Section 79(1)(a-ga) of the Environmental Protection Act 1990, which are heard by Magistrates' Courts.

The questionnaire was prepared in conjunction with the CIEH, which then arranged for it to be circulated in mid-March 2003 to the Senior Environmental Health Officers at approximately 350 local authorities throughout England and Wales (including District Councils, City Councils, Metropolitan Borough Councils, London Borough Councils and Local Port Authorities).

The questionnaire included questions requesting responses on:

- the numbers of notices served, and the numbers of appeals;
- the time taken in court, the proportion of cases involving more complex issues (such as Best Practicable Means) and views on how these were handled by magistrates;
- the anticipated benefits and disbenefits which the proposed Environmental Tribunal might bring.

Some 86 local authorities responded with completed questionnaires, ranging from large urban authorities with greater experience of industry related nuisances, to smaller rural authorities with more limited experience of using abatement notices. This represents a percentage return of almost 25%, and the results were scaled up (x 4) to in order to assess the likely position on a jurisdiction wide basis.

The data was requested in a format that did not require a detailed review of files, but instead allowed a choice to be made from a selection of broadly set responses, in order to facilitate a larger response rate but still allow a general picture to emerge of patterns within the appeal system. Given that the number of responses only represented a proportion of the total population surveyed, the results have been used in the report only to allow general indicative conclusions to be drawn.

The data obtained from the questionnaires was compiled in a database, the key results of which are as follows:

(1) *Average total number of abatement notices served each year in England and Wales under Section 79(1)(a)-(ga) of the Environmental Protection Act 1990:* 14,700

(2) *Average number of these abatement notices served each year on trade or businesses:* 3000

(3) *Number of total abatement notices resulting in appeals being made to the Magistrates' Courts each year:* 1000

(4) *Number of total abatement notices resulting in appeals being made to the Magistrates Courts each year by trade or businesses:* 135

(5) *Average length of time of court hearings for appeals made by trade and industry:* 0.88 days (= an estimated 120 days per year if all appeals proceed to a hearing)

(6) *Number of appeals made by trade and industry each year where technical issues (e.g. BPM or noise levels) were more significant than legal/procedural issues (e.g. defective notices or the interpretation of legislation):* 45

APPENDIX B

(7) *Extent to which the manner in which the magistrates handled such technical issues extended the length of the hearing:* substantially – 5%; moderately – 60%; minimally – 30%

(8) *Extent to which the manner in which the magistrates handled such technical issues undermined the decision finally taken:* substantially – 5%; moderately – 30%; minimally – 60%

(9) *Ranked order of importance of the possible benefits of having appeals relating to abatement notices dealt with in specialised environmental tribunals:*

1. better quality of decision making (100)
2. better quality of environmental regulation (82)
3. more time efficient than criminal courts (65)
4. more cost effective than criminal courts (51)
5. more user friendly than criminal courts (49)
6. no comment (10)
7. none (7)
8. other (1)

(10) *Ranked order of importance of the possible disbenefits of having appeals relating to abatement notices dealt with in specialised environmental tribunals:*

1. more complex system (100)
2. upheaval due to institutional change (88)
3. less local knowledge on the part of the decision maker (82)
4. absence of lay decision making (76)
5. none (16)
6. no comment (14)
7. other (7)

Certain assumptions were used in analysing the data received:

- Calculations based on responses to questions 1-4 and 6 assumed normal or uniform distribution of responses within each response bracket
- Calculations based on responses to question 5 assumed the average of those replying 'more than one day' was 2 days; and the average of those replying 'less than half a day' was one-quarter of a day
- The estimated totals within the sample populations for questions 2-6 were based on applying weighted average proportions to the relevant estimated total notices/appeals
- The estimated totals for England and Wales reflected a pro rata scaling up of sample results, based on the questionnaire response rate out of the total population of local authorities
- Rankings in questions 9 and 10 were calculated as an index capturing the number and ranking of votes for each option; the rankings for 'other', 'none' and 'no comment' were based on the number of people responding and an assumed median ranking

(A copy of the database providing the detailed results will be available online at the research project webpage)

APPENDIX C

PLANNING INSPECTORATE ENVIRONMENTAL APPEALS

In order to assess the nature and extent of the environmental jurisdiction currently handled by the Planning Inspectorate (PINS) we held discussions with their Chief Executive and then liaised with relevant officials who were able to supply more detailed data and information.

PINS deals with a range of regulatory environmental appeals most of which are covered in the database in Appendix A, and which can be broadly described as covering four main areas:

- Pollution controls
- Waste management licensing
- Water and sewerage controls
- Others (including contaminated land, hazardous substances and hedgerows)

Although for statistical purposes PINS includes hedgerow appeals under their category of 'environmental appeals', we have excluded them from our analysis on the basis that they are more akin to land use planning/amenity issues.

We understand from our discussions with PINS that the recruitment of Inspectors is demand driven, and that several have been actively employed with a background in environmental issues. However, all Inspectors are required to deal with a proportion of planning appeals due to the comparatively small numbers of environmental appeals received, and this approach is not expected to change in the near future. New appeals are allocated according to a range of factors including: when they were received, their subject matter, their anticipated duration and the availability of suitably qualified Inspectors. There is no formal panel of environmental Inspectors as such, and each Inspector has his/her own particular specialism. Out of a total number of some 431 Inspectors, approximately 52 are able to deal with different types of environmental appeal.

PINS has no published data on how long environmental appeals take to process or how long any hearings take. Targets for processing validly submitted appeals are pursued in the same fashion as for planning appeals (16 weeks for written representations; 30 weeks for hearings; and 30 weeks for inquiries), but due to the backlog of cases discussed below, these cases are dealt with in practice within an average of 24, 40 and 50 weeks respectively (although figures are variable). Whilst the time allocated to appeals varies according to the procedure used and their complexity (especially for inquiries), for written representations it is usually 2.25 days and for hearings it is 4 days (including the writing of decision letters).

The numbers of environmental appeals processed during the years 1999/2000; 2000/2001; 2001/2002 and 2002/2003 were examined and the following represent the key figures:

Average number of appeals received annually: total – 275 (of which: pollution - 14; waste - 18; water - 243; other – negligible; equating to 5; 7; and 88% of the total)

Average number of appeals withdrawn or turned away annually: total – 89 (of which: pollution - 11; waste - 11; water - 67; other – negligible; equating to 12; 12; and 75% of the total)

Average number of decisions issued annually: total – 20 (of which: pollution - 5; waste - 5; water - 10; other – negligible; equating to 25; 25; and 50% of the total)

The current PINS Business and Corporate Plan states that the forecasted intake of environmental cases (including hedgerow appeals) for 2002/2003 was 225.

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The marked drop in the flow through of numbers from appeals received to decisions issued, relates to the large backlog of certain types of appeal which has arisen over the last few years. In particular, a high number of water discharge consent appeals (under Section 91 of the Water Resources Act) are 'automatically' held in abeyance as soon as received by PINS. Applicants submit these appeals to avoid the expiry of relevant time limits for doing so, but the appeals cannot proceed to determination because decisions on particular policy issues are awaited from Defra. Once a particular policy decision is made, the relevant cases will then either be withdrawn or proceed to determination. However, some appeals are held in abeyance awaiting more than one policy decision, and can therefore take a considerable amount of time to be determined or withdrawn. As this process is ongoing, it is therefore difficult to gauge what proportion of these appeals have been or will be withdrawn, rather than determined. There are currently some 755 undetermined appeals for water discharge consents.

PINS does not carry out any explicit mediation role for environmental appeals, as unlike planning appeals, jurisdiction is retained by the regulating authority, allowing the authority to continue negotiations with a view to having the appeal withdrawn. However, case management is undertaken through the setting of time limits for appeal submissions etc..

APPENDIX D

ENVIRONMENTAL JUDICIAL REVIEW APPLICATIONS AND STATED CASES

This element of the research was carried out at the Administrative Court Office in the Royal Courts of Justice, in order to consider the current numbers and nature of judicial review applications and stated cases being made to the High Court in relation to environmental issues.

A Personal Access Agreement (PAA) was obtained from the Lord Chancellor's Department permitting access to relevant court files. These case files can be referenced under individual 'CO/' numbers according to the year of lodgement of the application, and also under a range of topics.

Case files were examined for judicial review applications and stated cases lodged in the years 2000, 2001 and 2002 under those topics which appeared to best relate to environmental matters, being:

- Agriculture and Fisheries
- Animals
- Pollution
- Public Health
- Public Utilities
- Statutory Nuisance

Case files under other topic headings relating, for example, to planning and highway matters, were not examined in detail given the remit for the research. However, a search was undertaken on the Administrative Court intranet in order to trace case files which would be relevant to the research but which were listed under such other topics because of the overlap of issues. Given the time constraints and other factors involved, a relatively small number of relevant case files will not have been traced or examined, but this is not considered to affect the general findings of the research in a substantial way.

Those case files which were relevant to the research were examined in detail by considering the content of the application claim form, acknowledgements of service, court orders and judgements, and other court papers and correspondence held on the files. The aim of this process was to obtain a range of data relating to:

- the type of parties involved
- the nature of the dispute
- the decision taken
- the duration of the proceedings
- the duration of any hearing
- the use of legal aid
- an assessment of whether the application was 'merits' based
- an assessment of whether the appeal followed on or was made in the absence of a prior appeal
- an assessment of whether the appeal would have been suitable for consideration by the proposed Environmental Tribunal

Whilst some of this data (i.e. the names of parties etc.) was obviously clear cut, estimates had to be made in respect of other data (i.e. the duration of proceedings etc.), and summaries made of other information which could not be covered in detail (e.g. the decisions taken).

It was also necessary in making the assessment of whether an application had been 'merits' based or would have been suitable for consideration by the proposed Environmental Tribunal, to reach a view based on the researcher's professional experience of such matters. A key element of this assessment was to consider from the papers whether the grounds of

APPENDIX D

appeal appeared to be restricted to strict legal or procedural points indicating a more limited purpose on the part of the applicant; as compared with the use of grounds of appeal and the submission of more wide ranging evidence and arguments in a manner which suggested a desire to have the facts behind and reasoning of a decision more comprehensively reconsidered.

In relation to the stated cases, an assessment was also made as to whether each case was criminal or civil based, this being dependent on whether the stated case had been lodged following on proceedings involving a criminal prosecution.

The data obtained from the case files was then compiled in a database from which the following key indicative results have been drawn:

Judicial Review Data

Number of cases: 2000 – 13; 2001 – 23; 2002 – 19: Total 55; average per year: 18

Claimants: companies/firms - 28; individuals/associations/NGOs - 22; other – 5

Decision makers: Environment Agency – 16; Secretary of State for Environment, Food and Rural Affairs or other Government Department – 27; Magistrates' Courts – 6; other - 6

Types of cases: Magistrates' Court matters – 8; licensing – 18; designation of areas etc – 6; other – 23; of which 34 were assessed as being 'merits' based and 21 were not

Outcomes: permission refused – 12; dismissed – 18; withdrawn – 13; allowed – 4; ongoing/other – 8; with costs awards generally following success

Duration of proceedings: an average of approximately 6 months from date of lodgement to final court order

Duration of hearings: an average of approximately 1.3 days for the main hearing (n.b. this does not take account of other procedural hearings; judicial preparation time; or time spent on making decisions based only on written evidence)

Legal Aid: reference was made to applications to the Legal Services Commission in 4 cases; and reference was made to conditional fee arrangements in 1 case

Follow on appeal or default: applications following a previous appeal – 11; applications where no previous appeal – 36; neither applicable (usually Magistrates' Courts) – 8

Suitable for Environmental Tribunal: Yes – 34; No – 20; N/A – 1

APPENDIX D

Stated Case Data

Number of cases: total – 22; including criminal – 16; civil – 6

Claimants: companies/firms – 11; individuals or a local authority – 11

Decision makers: Environment Agency – 5; RSPCA/MAFF – 2; local authorities – 15

Types of cases: abatement notices – 12 (of which 7 were noise related); others – 10 (including 4 related to waste/water pollution and 6 related to animals/plants); of which 4 were assessed as being 'merits' based

Outcomes: dismissed – 8; allowed – 11; N/A - 3

Duration of proceedings: an average of approximately 5 months

Duration of hearings: an average of approximately 2.5 hours

Legal Aid: reference was made to applications to the Legal Services Commission in 2 cases

Follow on appeal or default: N/A

Suitable for Environmental Tribunal: Yes – 10; No - 12

(A copy of the database providing the detailed results will be available online at the research project webpage)

APPENDIX E

COSTS AND BENEFITS OF AN ENVIRONMENTAL TRIBUNAL

Establishment Costs

The research indicates that in order to handle the majority of current regulatory appeals under core existing environmental legislation, a single Tribunal, comparable in size to the Lands Tribunal, would be appropriate. This would provide the basis on which to build future extensions of jurisdiction to accommodate new environmental legislation or the review procedure requirements of the Aarhus Convention. The figures for establishment costs are necessarily provided in a broad brush manner, but are based on the detailed data on staffing and costs of the Lands Tribunal and other Tribunals, as published as part of the Leggatt Report in 2001.

Members' salaries and expenses (1 full time President, 3 expert members, 2 part-time legal members, 1 part time expert member):	£600,000
Staff salaries and expenses (1 Registrar, 1 x Span 6, 4.4 x Span 4, 7 x Span 3 (AO), 1 x Span 1):	£350,000
Accommodation:	£475,000
System Administration	£250,000
Training:	£40,000
TOTAL:	£1,715,000

Benefits

The figures for the average length of hearings of current types of environmental cases are derived from the survey of Environmental Health Officers carried out for this research project, information received from the Planning Inspectorate, and information obtained from an examination of case files in the Administrative Court Office.

A) Released time for courts and other bodies resulting from the transfer of existing jurisdictions to the new Environmental Tribunal:

(i) Magistrates' Courts:

Statutory nuisance abatement notice appeals by trade and industry: between 120 - 240 days a year

(assuming 135 appeals a year based on an average hearing time of 0.88 days; the lower figure assumes that half the appeals are withdrawn before a hearing; the ratio of hearing days to days involved in procedural hearings and court preparation time etc. assumed to be 1:1)

Contaminated land notice appeals: around 90 days a year in five years time

(assuming 50 appeals a year in five years time based on an average hearing time of 0.88 days, with the ratio of hearing days to days involved in procedural hearings and court preparation time etc. assumed to be 1:1)

(ii) Planning Inspectorate: around 135 days a year

(assuming 50 appeals a year proceeding to determination; based on written submissions (75%) at an average of 2.25 days and inquiries/hearings (25%) at an average of 4 days, including preparation and decision writing time; but the figures do not take into account the current backlog of environmental appeals)

(iii) High Court dealing with judicial review and stated cases:

For the reasons stated in the Report, we would expect that the establishment of an Environmental Tribunal would lead to a reduction in the current numbers of environmental judicial reviews, and also environmental stated cases if Environmental Tribunal decisions were available in advisory form to the lower criminal courts.

Judicial review: around 70 days a year

(assuming 25 cases a year at an average of 1.3 days for hearings plus a 1:1 ratio assumption for court preparation and judgment writing)

Stated cases: around 15 days a year

(assuming 15 cases a year at an average of 2.5 hours for hearings plus a 1:1 ratio assumption for court preparation and judgment writing)

B) Wider benefits:

The report indicates a range of benefits, in terms of both efficiency and wider public policy gains, which could flow from the establishment of an Environment Tribunal. We do not attempt to quantify these in financial terms, but highlight a number of the more significant benefits:

- the availability of an established forum for handling regulatory appeals under forthcoming environmental legislation
- enhanced handling of technical evidence, environmental science and risk issues, and legal concepts in environmental legislation
- improved understanding of the policy context of individual decisions
- reduced burden on the resources of regulatory bodies in avoiding protracted proceedings
- greater legal certainty and reduced costs for operators through improved decision-making
- reduced public costs in legal aid funding through greater confidence of the Legal Services Commission in the robustness of the original decision subject to appeal
- improved development of a more coherent environmental jurisprudence through wider accessibility and the greater weight of Tribunal decisions
- a sounder basis for addressing access to environmental justice concerns and meeting the requirements of the Aarhus Convention
- improved public confidence in the quality of the regulatory system in achieving environmentally beneficial outcomes

APPENDIX F
CONDUCT OF THE STUDY

The study was conducted by the Centre for Law and the Environment, Faculty of Laws, University College London, between December 2002 and June 2003, and funded by the Department for Environment, Food, and Rural Affairs (Defra).

A Steering Board was set up to provide advice on the overall conduct of the study. We were also able to call upon advice and input from members of a wider Advisory Panel. Members of both the Steering Board and the Advisory Panel served in their individuals capacities

Steering Board

Lord Justice Carnwath
Dinah Nichols CB, formerly Director General Environment, Defra
Ric Navarro, Head of Legal Services, Environment Agency

Advisory Panel

Maria Adebowale, Capacity Global
Janet Asherson, Confederation of British Industries
George Bartlett, President, Lands Tribunal
Paul Bowden, Freshfields Bruckhaus Deringer
Dan Brennan QC, Matrix Chambers
Nigel Cadbury, District Court Judge
Pamela Castle, former Chair, United Kingdom Environmental Law Association
Professor Malcolm Grant CBE, Cambridge University
Carol Hatton, WWF
Phil Michaels, Friends of the Earth
Howard Price, Chartered Institute of Environmental Health
Paul Stookes, Environmental Law Foundation
Stephen Tromans, Barrister
Niall Watson, WWF

Further advice or information during the course of the study was provided by the following individuals:

Rod Baker and Alison Down, Planning Inspectorate
Judith Bernstein and Kevin Westall, Lord Chancellor's Department
Mr Justice Maurice Kay
James Kennedy, Freshfields Bruckhaus Deringer
Lynne Knapman and Sue Smith, Administrative Court Office, Royal Courts of Justice
Judith Lowe, Independent Consultant
Duncan Mitchell, Nick Webb, Peter Kellet, Simon Marsden and Caroline Blatch, Environment Agency
The Hon Justice Mahla H Pearlman, President, Land and Environment Court, New South Wales
Nick Powell, Head of Public Protection, Dudley Metropolitan Borough Council
Jonathan Robinson, Tim Jewell and Chris Dodwell, Defra Legal Services
Katrine Sporle, Chief Executive, Planning Inspectorate
Colin Stutt and Catherine Max, Legal Services Commission
Mr Justice Sullivan
Gavin Tringham, Head of Environmental Protection, Birmingham City Council
Andrew Waite and Tim Smith, Berwin Leighton Paisner
All the Environmental Health Officers who responded to the questionnaire

Further practical assistance and technical support was provided by:

Bob Finch, PIMS Digital
Professor Hazel Genn, UCL
Ian Havercroft and Richard Pitkethly, UCL
Lisa Penfold, UCL
Ray Purdy and Helen Ghosh, UCL
Ian Roy, Design Sensation Ltd.
Caroline Webb

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The **Centre for Law and the Environment** was established in 2000 within the Faculty of Laws, University College London, and provides a focus for the Faculty's teaching and research in international, European Community and national aspects of environmental law. Recent research work has included European Community transposition studies (European Commission), the legal implications of carbon sequestration (Tyndall Foundation) and legal issues in the use of remote sensing (British National Space Centre). Further details of the Centre can be found at its website – **www.ucl.ac.uk/laws/environment**.

Professor Richard Macrory CBE is a barrister and Professor of Environmental Law at UCL. He is a board member of the Environment Agency and a Vice President of the National Society of Clean Air. In 2003, he retires from the Royal Commission on Environmental Pollution on which he has served as a member since 1991. Professor Macrory has been a specialist adviser to select committees in both the House of Commons and the House of Lords.

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Further copies of this study can be downloaded from the research project's website – **www.ucl.ac.uk/laws/environment**.