EU Law and the environment

(by Roger Spiller for Green Ixworth)

In the legislation enabling Brexit, (The Retained EU Law – REUL) most pieces of EU regulation were simply transferred into UK as they were. Therefore environmental law in the UK is as it was before Brexit. This law sets minimum standards for UK courts to implement. In September the late Brexit Secretary Lord Frost said that the UK Government would be introducing legislation to change the arrangement so the UK Government would decide whether and how the UK courts should follow European interpretation.

The principle of “proportionality” is a European concept which inflicts punishment for breaking the law based on the seriousness of the impact on society. In the UK traditionally we have used the principle of “reasonableness”, which is much more “understanding” of the guilty persons' reasons for breaking the law. Before EU regulation the principle used in UK environmental legislation was BATNEEC (Best Available Technology Not Entailing Excessive Cost), where the last bit rules. This is what has held up the recent attempts to enforce even the existing regulations on water quality, ie. the water companies cannot afford it. Why not?

For most of them the profit they make is immediately distributed to shareholders. Even that profit does not reflect reality, as before it is calculated they have huge borrowings obtained owners to buy the Water Companies in the first place, borrowings often from parts of the new ownership and at interest rates of up to **18%.** Just a tiny fraction above the going rate. Since privatisation the principle followed is that expenditure should come direct from the customer by increasing prices, so protecting profitability. Government is wary of further increasing prices so we have poor enforcement of even inadequate regulations. The Environment Agency estimates that the target of getting 75% of the rivers into their near-natural state would take about 200 years at the present rate of progress.

Currently only the Supreme Court and the Court of Appeal can dis-apply a decision of the European Court of Justice, a power used sparingly used so far. Frost also said the Government wanted to give lower courts the right to dis-apply, which will probably mean more ECJ decisions will be rejected, and this may precipitate more opportunistic litigation by companies.

Much of the REUL is primary legislation meaning it would take an Act of Parliament to change any part of it voted on by both houses. It seems the government wants to change the REUL, so that it becomes solely a series of Regulations which can be changed by government with a simple vote of the House without amendment, with rarely any debate and often at short notice.

So much for guarantees of protecting even our not well regulated environment when “we took back control”.