

## **A hostile environment**

### **Can SMEs find absolution for green sins?**

#### **Andy Glynn looks at some of the issues that could impact environmental liability cover in the UK following new laws**

Concern over climate change and other environmental issues are having an effect on every part of our lives and those who run businesses are no exception. Recent years have seen a raft of new laws imposed on business, aimed at reducing the environmental impact of their activities, and there are plenty more on the way. Even the Vatican has included environmental pollution as one of its new seven deadly sins.

### **New EU directives**

The Environment Agency lists 16 European environmental directives that affect UK businesses, which include the end of life vehicles directive, the waste incineration directive, the groundwater directive, the habitats directive and the landfill directive to which, in addition to implementing these into the laws of the UK, the British government has added a range of laws of its own.

As well as the quantity of new environmental laws, their emphasis has also shifted in recent years. Where, not so long ago, environmental laws were aimed regulating the environmental impact of big business, especially in the energy and construction industries, now the scope of environmental has become much wider. The emphasis has shifted from the more obviously polluting activities to mainstream business activities, meaning that the range and scope of environmental legislation affecting all sorts of companies is growing annually – and so, in tandem, are the financial risks to business of transgressing one of the new laws.

The range of activities that falls under the 'environmental' banner is surprising. Legislation governs packaging, noise, recycling and energy use, as well as those more likely suspects, such as waste management and industrial discharges. Vehicle emissions are also increasingly being targeted, most notably by the low emission zone introduced in London this year.

It can also be applied in ways that businesses might not expect and acts of omission are often regarded to be as serious as acts of commission. For example, businesses are now required to provide information on the energy efficiency and carbon emissions of their premises and the provision of energy performance certificates (EPCs) is now the responsibility of the owner of a commercial property.

Consequently, some of the environmental pickles that British companies have found themselves in during the past year included a food flavourings firm that was fined £20,000 for failing to register its food packaging activities with the Environment Agency under European waste recycling regulations, which require firms that handle more than 50 tonnes of packaging a year to register with their national authority. Another was the £6000 fine levied on a bookmaker in Cornwall for leaving rubbish sacks outside the shop overnight awaiting collection, while in Northamptonshire, a cricket club has been forced by its local council to spend £2000 on a noise survey before it will consent to the erection of new cricket nets.

The principle behind the wave of new environmental laws and regulations is 'polluter pays', apparently regardless of the economic impact that they may cause. This also means that companies can find themselves facing legal action in respect of premises, machinery or products that ceased to be their responsibility many years ago.

More legislation is on the way. New Environmental Damage Regulations (due in December) will impose new pollution incident reporting obligations on companies, and the government is formulating a new climate change bill, which will bring many medium-sized companies into the carbon trading system for the first time.

### **Number-two legal threat**

Unsurprisingly, a survey by Lloyd's of London, in conjunction with the Economist Intelligence Unit, this year found that directors of companies large and small identified environmental issues to be the second biggest legal threat they face (after data security) as governments and pressure groups increasingly turn to legal action in pursuit of their environmental objectives.

### **Legislation headache**

The other issue identified by the Lloyd's research was the difficulty faced by many companies in developing a proactive management plan to deal with their environmental liabilities. Keeping track of new environmental laws and significant court cases is a major headache for small and medium-sized enterprises (SMEs), and the penalties for falling foul of environmental laws can fall more heavily on those companies which have to keep an eye on their cashflows.

This is why First Assist has recently extended its legal expenses insurance to include cover against environmental claims, the first legal expenses insurer to do so. Perhaps the most important aspect of our legal expenses policy is the provision of a green helpline, which provides a team of lawyers who can advise on and interpret the laws and regulation and help businesses to avoid falling foul of environmental laws in the first place.

FirstAssist has long provided 'before the event' legal expenses insurance for SMEs and the extension of the policy to include cover is simply a reflection of the growing range of legal risks they face. As time has progressed, our legal expenses policy has expanded from protecting companies against employment claims to include health and safety and then taxation legal issues. Now we have added environmental ones, including prosecutions and claims in respect of emissions, energy efficiency, waste and recycling.

Our product provides legal expenses cover for companies which have a reasonable defence to their case. It also provides specific cover against legal problems arising from the new requirements on commercial property owners and landlords to provide EPCs and other information on the efficiency of and emissions from their buildings.

We do not expect to see a let-up in the range and severity of environmental penalties that businesses are subject to any time soon and we expect that our product will become increasingly valuable to our customers.

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