

Climate Change, Sea Level Rise, Erosion and Flooding: Altered Expectations – a Role for Insurance?

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Insurance against loss in coastal/other vulnerable areas?





Environmental law research: roles (1) and challenges (2)

(1) 'Legal research' roles (general)

- 'black-letter' (internal/coherence/focus on 'the law')
- 'socio-legal' (working in practice/impacts)
- 'policy-based' (resolving dilemmas/functionality)

(2) 'Environmental' challenges (specific)

- Inter-disciplinarity (addressing complexities/uncertainties)
- Policy dynamics (states of flux/fast-moving regulatory environment)
- Fragmentation (destabilising principles/overlapping governance domains)
- Jurisdictional multiplicity (systemic bases for law's applications)

Background: ecological management in coastal zones?

- Legal regimes operating mostly at odds with ecological realities?
- The reconsideration of 'hard' coastal defences
- What territory is defensible over the next 100 years?
- Legal implications: human rights challenges?
- Regulatory reform: Flood and Coastal Management Act
- A Flood & Coastal Erosion Management Strategy for Wales ...

WAG consultation on a national strategy (2010-11)

The four overarching principles:

- Reducing impacts on individuals/communities/businesses from flooding and coastal erosion
- Raising awareness, engaging people in response to such risk
- Providing effective/sustained response to flood/erosion events
- Prioritising investment in the most at risk communities

Public responses noted by WAG (March 2011)

- information sought on other potential consequences of flooding and coastal erosion including falling property values, reduced access to insurance, possibility that some communities would become unsustainable, relocation issues
- How are 'most at risk' communities to be defined? Relevance of 'numbers of people and properties as a key indication of risk'? (WAG: 'the systems will retain flexibility to allow for local decisions')

Sustainability of reliance on indemnity insurance?

Status quo:

- Public-private negotiation and 'Statement of Principles'
- A general availability (to 2013) with caveats and exceptions

(Continuing) Benefits:

- Broad advantages of risk pooling
- Relatively low-cost
- Widespread take-up
- Adverse selection minimised

Threats to viability of reliance on insurance market

Insurers' role of 'making risky behaviour feasible'?

- New uncertainties, exacerbated by climate change
- Cover not guaranteed (case by case basis) in any event
- Legacy of under-investment/incoming spending cuts
- Much of eroding coastline uninsurable
- Risk-based approaches and increasing disaggregation
- Rising premiums, more restrictive terms, withdrawal of cover

Alternatives

- **Replace the private sector by the state: state scheme (US)**
- **State as insurer of last resort: compulsory surcharges and state backed reinsurance (France)**
- **Pooling of special risks, targeted levies, and state underwriting in last resort ('Pool Re' analogy, re terrorist damage)**
- **Mandatory insurance**
[nb: legal and practical obstacles]

Conclusions (and legal implications)

- **Already take-up deficiencies, likely exacerbation**
- **Increasingly unaffordable/unobtainable at certain locations**
- **Rights of affected individuals and communities**
- **Issues of legitimate expectation, reasonable investment timeframes, inequitable burdens**
- **Value of insurance industry: capacity for ‘creative loss-prevention solutions’ (adaptation, resilience)?**

... **Role of state agencies**

Conclusions (policy/law responses?)

From consultation on a national strategy (June-October 2010):

- In the longer-term ... ‘If those affected do not have insurance, the financial consequences of flooding can be catastrophic’ (para 50)
- Risk management measures ... (examples include) ... ‘ensuring accessibility to insurance for those at flood risk’
- Reducing the impacts ... by 2015 WAG will have ... ‘worked with the ABI to ensure that affordable insurance is available to those at risk’

A postscript ...

