

Comparison of Insurance Policies in Respect of Pollution and/or Environmental Damage

Introduction

Recent case law and legislation in the UK has prompted the UK insurance market to consider at length how and where cover for environmental liability (whether related to pollution or otherwise) exists. The reality is that cover is available under different guises in several different policy forms, some of which were never really intended / designed to cover pollution / environmental damage.

The following table, and the accompanying paper, attempt to bring some clarity to this issue.

The table is designed only to provide a **broad overview** of the coverage available under the following insurance policies:

- Public Liability (PL);
- Public Liability with endorsement arising out of the Bartoline case (PL+);
- Environmental Impairment Liability (EIL); and
- Property (PROP).

For further detail, the reader is advised to consult the accompanying paper entitled “Environmental risks: insured or not?”

Please note that you should always check the terms and conditions of the individual policy. Coverage offered may differ from that indicated in the table for individual policies. For example, there are a number of variant PL+ policies available from insurers which might offer different cover to that indicated in the table.

Notes to Table

1. None of the policies provide indemnity for a criminal fine or penalty although an EIL policy will cover legal defence costs associated with a criminal action arising from a covered event.
2. For each potential loss scenario quoted below, the response given accounts for associated legal defence costs.

For example in Item 2 (EIL), where statutory liability arising from the pollution of water or soil is covered, so are associated legal defence costs. Conversely in Item 2 (PL), where statutory liability arising from the pollution of water or soil is not covered, so there is no indemnity for legal defence costs associated with this loss.

3. The table contains a number of references to ‘sudden’ and ‘gradual’ incidents. A ‘sudden’ incident is defined as a sudden, identifiable, unintended and unexpected incident which takes place in its entirety at a specific time and place during the period of insurance. A ‘gradual’ incident is defined as an incident that is not a ‘sudden’ incident.
4. From time to time, rather than stemming from activities at an insured’s site, environmental liability will stem from the insured’s off-site activities or from its products. Coverage in relation to liability of this nature may differ from that indicated in the table.
5. In completing the Property Column, the assumption has been made that such property policy covers loss arising from named perils, and that pollution has arisen as a result of a named peril. It is accepted that other forms of property insurance (for example Property All Risks) exist where the approach to pollution may differ.

Disclaimer

This table is only intended to convey general information about environmental liabilities and associated insurance coverage. It is not, and is not intended to be, a complete statement of the law relating to environmental liability and insurance. It should not be relied on or be used as a substitute for legal advice in relation to any particular set of circumstances. Accordingly, IUA, ABI, BIBA and Barlow Lyde & Gilbert LLP do not accept any liability for any loss which may arise from reliance on this table or the information it contains.



Item	Type of Liability, Loss or Cost	PL	PL+	EIL	PROP
1	Statutory liability for remediation of polluted water or soil caused by a 'sudden' incident	NO	YES	YES	NO
2	Statutory liability for remediation of polluted water or soil caused by a 'gradual' incident	NO	NO	YES	NO
3	Statutory liability for enforcement/ remediation costs incurred by regulator following 'sudden' incident	NO	YES	YES	NO
4	Statutory liability for enforcement/ remediation costs incurred by regulator following 'gradual' incident	NO	NO	YES	NO
5	Statutory liability for biodiversity damage or for 'compensatory' or 'complementary' remediation	NO	NO	YES	NO
6	Statutory liability for dealing with imminent threats of pollution or biodiversity damage	NO	NO	YES	NO
7	Tort liability for third party property damage resulting from pollution caused by a 'sudden' incident (property damage could include damage to third party's buildings, destruction of third party's fish in a fish farm or in waters subject to third party's fishing rights, damage to third party's crops, etc)	YES	YES	YES	NO
8	Tort liability for third party property damage resulting from pollution caused by a 'gradual' incident	NO	NO	YES	NO
9	First party: cost of remediation of own property due to pollution caused by a 'sudden' incident, where the remediation is not required by law	NO	NO	NO	NO
10	First party: cost of repairing damage to own buildings due to pollution caused by a 'sudden' incident (or named peril - see Note 5 above), where the work is not required by law	NO	NO	NO	YES
11	First party: cost of remediation of own property or of repairing damage to own buildings due to pollution caused by a 'gradual' incident, where the remediation or work is not required by law	NO	NO	NO	NO
12	Tort liability for injury/illness to employee caused by pollution of air, water or soil	NO	NO	NO	NO
13	Tort liability for injury/illness to third party resulting from pollution of air, water or soil caused by a 'sudden' incident	YES	YES	YES	NO
14	Tort liability for injury/illness to third party resulting from pollution of air, water or soil caused by a 'gradual' incident	NO	NO	YES	NO
15	Tort liability for damage to amenity arising from nuisance caused by a 'sudden' incident	YES	YES	YES	NO
16	Tort liability for damage to amenity arising from nuisance caused by a 'gradual' incident	NO	NO	YES	NO
17	First party costs incurred to prevent or minimise anticipated liabilities under statute or in tort.	NO	NO	YES	NO
18	First party economic loss arising out of pollution or remediation caused by a 'sudden' incident	NO	NO	YES	NO
19	First party economic loss arising out of inability to use building damaged by pollution caused by a 'sudden' incident (or named peril - see Note 5 above)	NO	NO	YES	YES
20	First party economic loss arising out of pollution or remediation caused by a 'gradual' incident	NO	NO	YES	NO
21	Tort liability for third party economic loss where there has been property damage or a nuisance arising out of pollution caused by a 'sudden' incident	YES	YES	YES	NO
22	Tort liability for third party economic loss where there has been property damage or a nuisance arising out of pollution caused by a 'gradual' incident	NO	NO	YES	NO
23	First party economic loss arising out of biodiversity damage	NO	NO	YES	NO

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