

**2008 No. (W.)**

**ENVIRONMENTAL  
PROTECTION, WALES**

**The Environmental Damage  
(Prevention and Remediation)  
(Wales) Regulations 2008**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations implement Directive 2004/35/EC of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage.

They apply to damage to protected species, natural habitats, sites of special scientific interest, water and land (regulation 4).

They are enforced by the bodies specified in regulations 9 and 10.

They provide that, for certain economic activities, where there is an imminent risk of environmental damage, the responsible operator must take steps to prevent it, and if it has occurred must prevent further damage. Where damage has occurred the enforcing authority must assess the damage and identify remedial measures. It must then serve a remediation notice on the responsible operator specifying what remediation is required (Part 3).

Where environmental damage (or the imminent threat of environmental damage) is caused by the deliberate release of a genetically modified organism, the responsible operator includes the holder of the relevant deliberate release consent or authorisation (regulation 13). Where the enforcing authority proposes to serve a remediation notice on such a responsible operator, the defences of express authorisation and state of knowledge do not apply (regulation 19).

They make provision for enforcement (Part 4).

Breach of specified provisions of the Regulations is an offence punishable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or both, or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

A regulatory impact assessment has been prepared and placed on the Welsh Assembly Government's website.

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**ENVIRONMENTAL  
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**The Environmental Damage  
(Prevention and Remediation)  
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*Made* \*\*\*

*Laid before the National Assembly for Wales*  
\*\*\*

*Coming into force* \*\*\*

The Welsh Ministers, have been designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(1)</sup> in respect of the environment<sup>(2)</sup>, and make these Regulations under the powers conferred by that section as read with paragraph 1A of Schedule 2 to that Act.

The Regulations make provision for a purpose mentioned in section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for the Community instruments referred to in these Regulations to be construed as references to those instruments as amended from time to time.

**PART 1**

**Introductory provisions**

**Title, commencement and application**

**1.**—(1) The title of these Regulations is the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2008 and they come into force on [ ].

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<sup>(1)</sup> 1972 c. 68.  
<sup>(2)</sup> S. I. 2008/

(2) These regulations apply in relation to Wales and the areas specified in regulation 5.

## **Interpretation**

### **2. In these Regulations—**

“activity” means any commercial activity, whether public or private and whether or not carried out for profit, and “responsible operator” means the operator or controller of an activity;

“local authority” means a county council or a county borough council;

“natural habitats” means—

- (a) the habitats of species mentioned in Article 4(2) of, or Annex I to, Council Directive 79/409/EEC on the conservation of wild birds<sup>(1)</sup> or listed in Annex II to Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora<sup>(2)</sup>;
- (b) the natural habitats listed in Annex I of Council Directive 92/43/EEC; and
- (c) the breeding sites or resting places of the species listed in Annex IV of that Directive;

“natural resource” means—

- (a) protected species;
- (b) natural habitats;
- (c) species or habitat on a site of special scientific interest for which the site has been notified;
- (d) water; and
- (e) land;

“protected species” means the species mentioned in Article 4(2) of Directive Council 79/409/EEC or listed in Annex I thereto or listed in Annexes II and IV to Council Directive 92/43/EEC;

“services” means the functions performed by a natural resource for the benefit of another natural resource or the public.

“Wales” has the meaning given in section 158 of the Government of Wales Act 2006<sup>(3)</sup>.

## **References to Community legislation**

**3.** Reference in these Regulations to Community instruments are references to those instruments as amended from time to time.

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<sup>(1)</sup> OJ No L103, 25.4.1979, p. 1.

<sup>(2)</sup> OJ No L206, 22.7.1992, p. 7.

<sup>(3)</sup> 2006 c. 32.

### **Type of damage to which these Regulations apply**

4.—(1) These Regulations apply to environmental damage, which is damage to—

- (a) protected species or natural habitats, or in a site of special scientific interest,
- (b) water, or
- (c) land,

as specified in this regulation.

(2) Environmental damage in a site of special scientific interest or to protected species or natural habitats means damage of a kind specified in Schedule 1 if it is caused by—

- (a) an activity in Schedule 2; or
- (b) an activity where the responsible operator intended to cause such damage or was negligent as to whether such damage would be caused.

(3) Environmental damage to surface water means damage to a surface water body as described in Annex II to Council Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy<sup>(1)</sup> caused by an activity in Schedule 2 such that one of the—

- (a) biological quality elements listed in Annex V to that Directive,
- (b) the level of one of the chemicals listed in the legislation in Annex IX or a chemical listed in Annex X to that Directive, or
- (c) physicochemical quality elements (as listed in Annex V to that Directive),

is adversely affected in such a way that its value changes to a value that would result in the water being classified as a lower status than before the damage.

(4) Environmental damage to groundwater means any adverse effect on groundwater body as described in Annex II to Council Directive 2000/60/EC of the European Parliament and of the Council on its conductivity, its level (both of which are specified in Annex V to Directive 2000/60/EC of the European Parliament and of the Council) or its concentration of pollutants (as specified in that Annex and in Directive 2006/118/EC (of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration <sup>(2)</sup>) in such a way that the value changes to a value that would result in the water being classified as a lower status than before the damage caused by an activity in Schedule 2.

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<sup>(1)</sup> OJ No L327, 22.12.2000, p. 1.

<sup>(2)</sup> OJ No L373, 27.12.2006, p.19.

(5) Environmental damage to land means contamination of land by substances, preparations, organisms or micro-organisms arising out of an activity specified in Schedule 2 that results in a significant risk of adverse effects on human health.

**Areas of application**

5.—(1) The damage must be in an area specified in the following table.

**Application**

<i>Type of damage</i>	<i>Area in which these Regulations apply</i>
Damage to water	Wales and all water up to one nautical mile from the baseline
Damage in a site of special scientific interest	Wales
Damage to protected species or natural habitats	Wales The seabed of the continental shelf Anywhere other than the seabed in the renewable energy zone
Damage to land	Wales

(2) In this table—

“the baseline” means the baselines from which the breadth of the territorial sea is measured for the purposes of the Territorial Sea Act 1987(1);

“the continental shelf” means the areas designated by Order in Council under section 1(7) of the Continental Shelf Act 1964(2); and

“the renewable energy zone” means the waters superjacent to the seabed situated within the areas designated by Order in Council under section 84(4) of the Energy Act 2004(3).

(3) The areas in this table do not include areas that form part of England, Northern Ireland or Scotland or the territorial sea adjacent to the Channel Islands and the Isle of Man; and for these purposes—

(a) Scotland is as defined in section 126(1) of the Scotland Act 1998(4); and

(1) 1987 c. 49.

(2) 1964 c. 29. Areas have been designated under section 1(7) by S.I. 1987/1265, 2000/3062 and 2001/3670. Section 1(7) was amended by paragraph 1 of Schedule 3 to the Oil and Gas (Enterprise) Act 1982 (c.23).

(3) 2004 c. 20. Areas have been designated under section 84(4) by S.I. 2004/2668.

(4) 1998 c. 46.

- (b) Northern Ireland is as defined in section 98 of the Northern Ireland Act 1998(1);

### **Other legislation**

**6.**—(1) These Regulations apply without affecting any other enactment concerning damage to the environment.

(2) They are without prejudice to the right of any responsible operator to limit liability in accordance with the Merchant Shipping (Convention on Limitation of Liability for Maritime Claims) (Amendment) Order 1998(2).

### **Exemptions**

**7.**—(1) These Regulations do not apply to damage caused by an incident, event or emission that finished before the coming into force of these Regulations, or to damage caused by an incident, event or emission that occurs after that date if it derives from an activity that took place and finished before that date.

(2) They do not apply in relation to environmental damage, or imminent threat of damage, caused by—

- (a) an act of armed conflict, civil war, insurrection or hostilities;
- (b) a natural disaster, provided the responsible operator took all reasonable precautions to protect against damage being caused by such an event;
- (c) protective measures taken as a result of a natural disaster;
- (d) an incident in respect of which liability or compensation falls within the scope of—
  - (i) the International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage, or
  - (ii) the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage(3);
- (e) activities the main purpose of which is to serve national defence or international security; or
- (f) activities regulated under the Nuclear Installations Act 1965.

(3) They only apply to environmental damage or to an imminent threat of such damage caused by pollution of a diffuse character if it is possible to

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(1) 1998 c.47.

(2) S. I. 1998/1258.

(3) Both these conventions were implemented in Chapter III of the Merchant Shipping Act 1995 (1995 c. 21).

establish a causal link between the damage and the activities of individual responsible operators.

(4) They do not apply to damage caused by an emission, event or incident that took place 30 years or more before the damage.

### **Exemption from water damage**

**8.**—(1) Water damage does not include—

- (a) damage caused by a modification to the physical characteristics of a surface water body,
- (b) an alteration to the level of a body of groundwater, or
- (c) deterioration from high status to good status of a body of surface water resulting from new sustainable human development activities

if all the conditions in paragraph (2) are fulfilled.

(2) The conditions are—

- (a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;
- (b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 of the European Parliament and of the Council establishing a framework for Community action in the field of water policy<sup>(1)</sup> and the objectives are reviewed every six years;
- (c) the reasons for those modifications or alterations are of overriding public interest, or the result of the damage is outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development; and
- (d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means.

### **Enforcing authorities under the Environmental Permitting (England and Wales) Regulations 2007**

**9.**—(1) If the damage is caused by an installation, waste operation or mobile plant that requires a permit or registration under the Environmental Permitting (England and Wales) Regulations 2007 these

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<sup>(1)</sup> OJ No L327, 22.12.00, p. 1.

Regulations are enforced in accordance with this regulation.

(2) If the Environment Agency is responsible for granting the permit, they are enforced by the Environment Agency in all cases.

(3) If the local authority is responsible for granting the permit and the damage is caused on the site, they are enforced by the local authority;

(4) If the local authority is responsible for granting the permit and the damage is caused off the site they are enforced by—

- (a) the local authority if the damage is to land;
- (b) the Environment Agency if the damage is to water;
- (c) the Countryside Council for Wales if the damage is to natural habitats or protected species.

(5) In this regulation and regulation 10 “damage” includes threatened damage.

**Enforcing authorities in other cases.**

**10.**—(1) If the damage is caused by an activity that does not require a permit or registration under the Environmental Permitting (England and Wales) Regulations 2007 these Regulations are enforced in accordance with the following table.

<i>Type of environmental damage</i>	<i>Area of damage</i>	<i>Enforcing authority</i>
Damage to water—	water	Environment Agency
Damage to protected species or natural habitats—	land	Countryside Council for Wales
	water but not in the sea <sup>1</sup>	Environment Agency
	the continental shelf or in the sea up to the limit of the renewable energy zone	Secretary of State
Damage to other flora and fauna on a site of special scientific interest—		Countryside Council for Wales

<sup>1</sup> OJ No L327, 22.12.00, p.1.

<i>Type of environmental damage</i>	<i>Area of damage</i>	<i>Enforcing authority</i>
Damage to land—		Local authority

<sup>(a)</sup> “the sea” includes—

- (a) any area submerged at mean high water spring tide, and
- (b) each of the following, so far as the tide flows at mean high water spring tide—
  - (i) every estuary or arm of the sea, and
  - (ii) the waters of any channel, creek, bay or river.

(2) If there is more than one type of damage, so that there is more than one enforcing authority, they are enforced by any or all of the specified enforcing authorities.

(3) The Welsh Ministers may give directions to an enforcing authority of a general or specific character with respect to the carrying out of its functions under these Regulations; and

(4) An enforcing authority must comply with a direction given to it under these Regulations.

## PART 2

### Preventing environmental damage

#### **Preventing environmental damage**

**11.**—(1) Where there is an imminent threat of environmental damage, or an imminent threat of damage which there are reasonable grounds to believe will become environmental damage, the responsible operator must immediately—

- (a) take all practicable steps to prevent the damage, and
- (b) (unless the threat has been eliminated) notify all relevant details to the enforcement authority appearing to be the appropriate one.

(2) An officer of the enforcing authority may serve a notice on the responsible operator that—

- (a) describes the threat;
- (b) specifies the measures required to prevent the damage; and
- (c) requires the responsible person to take those measures, or measures at least equivalent to them, within the period specified in the notice.

(3) Failure to comply with paragraph (1) or a notice served under paragraph (2) is an offence.

### **Preventing further environmental damage**

**12.**—(1) Where an activity has caused environmental damage, or has caused damage where there are reasonable grounds to believe that the damage is or will become environmental damage, the responsible operator must immediately—

- (a) take all practicable steps to prevent further damage, and
- (b) notify all relevant details to the enforcement authority appearing to be the appropriate one.

(2) An officer of the enforcing authority may serve a notice on the responsible operator that—

- (a) describes the damage;
- (b) specifies the measures required to prevent further damage; and
- (c) requires the responsible person to take those measures, or measures at least equivalent to them, within the period specified in the notice.

(3) Failure to comply with paragraph (1) or a notice served under paragraph (2) is an offence.

### **Responsible operator**

**13.** For the purposes of regulations 11(2) and 12(2), as they relate to environmental damage or the imminent threat of environmental damage caused by the deliberate release of genetically modified organism, “responsible operator” includes the holder of the relevant deliberate release consent or authorisation issued under Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms<sup>(1)</sup> or under Directive 2001/18/EC of the European Parliament and of the Council<sup>(2)</sup>.

## **PART 3**

### **Remediation**

#### **Assessment of damage**

**14.** Where damage has been caused, and there are reasonable grounds for believing that it is, or may be,

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<sup>(1)</sup> OJ L 117, 8.5.1990, p.15. Directive as last amended by Commission Directive 97/35/EC of 18 June 1997 (OJ L 169, 27.6.1997, p.72).

<sup>(2)</sup> OJ L 106, 17.4.2001, p.1. Directive as last amended by Regulation (EC) 1830/2003 of the European Parliament and of the Council of 22 September 2003 (OJ L 268, 18.10.2003, p.24).

environmental damage, the enforcing authority must establish whether or not it is environmental damage.

### **Determining the responsible operator**

**15.**—(1) If the enforcing authority decides that the damage is environmental damage it must identify a responsible operator who caused the damage, and notify the responsible operator that—

- (a) the damage is environmental damage,
- (b) the damage was caused by the activity of the responsible operator, and
- (c) the enforcing authority intends to serve a remediation notice on that responsible operator.

(2) It may withdraw the notification if it is satisfied that the notification should not have been served.

(3) A person served with such notification may appeal against it to the Welsh Ministers (or, where the Welsh Ministers are the enforcing authority, a person appointed for the purpose by the Welsh Ministers) within 28 days of the notification.

(4) The grounds of appeal are—

- (a) the activity did not cause the damage;
- (b) the damage is not environmental damage;
- (c) the environmental damage is not damage to which these Regulations apply;
- (d) the environmental damage resulted from compliance with an instruction from a public authority (except an instruction relating to an emission or incident caused by the responsible operator's own activities).
- (e) the responsible operator was not at fault or negligent and that the environmental damage was caused by an emission or event expressly authorised by, and fully in accordance with the conditions of an authorisation granted in relation to an activity in Schedule 3;
- (f) the responsible operator was not at fault or negligent and the activity was not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time;
- (g) the damage was the result of an act of a third party and occurred despite the fact that the responsible operator took all appropriate safety measures.

### **Remediation notices**

**16.**—(1) If the responsible operator does not appeal against a notification within 28 days, or if the appeal is

unsuccessful, the enforcing authority must serve a remediation notice on the responsible operator.

(2) Before doing so it must consult the responsible operator and permit the responsible operator to propose remedial measures together with a time limit for doing so.

(3) In serving the notice it must take into account any remediation measures proposed by the responsible operator but the notice may contain additional or different measures from those proposed.

(4) The measures must achieve the remediation in Schedule 4.

(5) Before serving a remediation notice the enforcing authority must, so far as is practicable, consult—

- (a) anyone mentioned in regulation 20(1), and
- (b) any person on whose land the remedial measures will be carried out.

(6) The remediation notice must specify—

- (a) the damage;
- (b) the steps necessary for remediation of the damage, together with the reasons;
- (c) the period within which those steps must be taken; and
- (d) the right of appeal against the remediation notice.

(7) More than one remediation notice may be served in respect of one incident of environmental damage.

(8) Further remediation notices may be served at any time during remediation requiring further or different remediation.

(9) Failure to comply with a remediation notice is an offence.

### **Appeal against the remediation notice**

**17.**—(1) A person served with a remediation notice may appeal against it to the Welsh Ministers (or, where the Welsh Ministers are the enforcing authority, a person appointed for the purpose by the Welsh Ministers) within 28 days of service of the notice.

(2) The grounds of appeal are that measures other than those specified in the notice are more appropriate.

(3) The Welsh Ministers or the appointed person may confirm the notice, or may quash it, and must give written notification of the final decision and the reasons for it.

(4) A remediation notice need not be complied with pending determination of an appeal unless the Welsh Ministers or the appointed person directs otherwise.

## **Costs**

**18.** The responsible operator is responsible for the costs of the enforcing authority of—

- (a) assessing the damage (if the damage is environmental damage);
- (b) establishing what remediation is appropriate; and
- (c) monitoring the remediation, both during and after the work.

## **Genetically modified organisms**

**19.—(1)** If the environmental damage is caused by the release of a genetically modified organism—

- (a) the permit holder is a responsible operator (in addition to any other responsible operator) for the purposes of this Part and Part 4 of these Regulations; and
- (b) the grounds of appeal against a remediation notice in regulation 15(4)15(4)(e) and 15(4)(f) do not apply in relation to any responsible operator.

(2) In this regulation “permit holder” means the holder of the relevant deliberate release consent or authorisation issued under Directive 2001/18/EC of the European Parliament and of the Council or under Regulation (EC) 1829/2003 of the European Parliament and of the Council on genetically modified food and feed.

# **PART 4**

## **Enforcement**

### **Requests for action by interested parties**

**20.—(1)** Any person—

- (a) who is affected or likely to be affected by environmental damage;
- (b) who otherwise has a sufficient interest.

may notify the appropriate enforcing authority of any environmental damage which is being, or has been caused or of which there is an imminent threat.

(2) A notification must be accompanied by—

- (a) a statement explaining the way the notifier will be affected by the damage, or the reason that the notifier has a sufficient interest, and
- (b) sufficient information to enable the enforcing authority to identify the location and nature of the incident.

(3) The enforcing authority must consider the notification and inform the complainant as to the action, if any, which it intends to take.

(4) Before taking any decision the enforcing authority must, if practicable—

- (a) notify the responsible operator concerned of the notification and the accompanying information; and
- (b) invite that responsible operator to submit comments on them.

(5) Paragraphs (3) and (4) do not apply if—

- (a) the notifier is not likely to be affected or does not have a sufficient interest;
- (b) in the opinion of the enforcing authority the information provided does not disclose any genuine environmental damage or threat of environmental damage; or
- (c) as a result of the urgency of the situation, it is not practicable for the enforcing authority to comply with these paragraphs.

#### **Power for the enforcing authority to take steps to prevent, contain or remedy environmental damage**

**21.**—(1) The enforcing authority may itself carry out some or all work necessary under these Regulations where any person is under a duty to act in these Regulations and fails to do so, at the expense of the person under the duty.

(2) No proceedings for the recovery of costs may be commenced by the enforcing authority under this regulation after a period of 5 years has elapsed since—

- (a) the completion of the measures to which the proceedings relate, or
- (b) the identification of the responsible operator,

whichever is the later.

(3) The enforcing authority may also carry out work necessary under these Regulations if the responsible operator cannot be found, or is not required to carry out the works.

#### **Recovery of expenses in specified cases**

**22.**—(1) A responsible operator who incurs expenses under these Regulations may recover all or some of those expenses from a third party who also caused the damage.

(2) A responsible operator who incurs expenses under regulation 11 or 12 as a result of compliance with an instruction from a public authority (except an instruction relating to an emission or incident caused by the responsible operator's own activities) may recover those expenses from that authority

### **Grant of and compensation for rights of entry etc.**

**23.**—(1) Any person whose consent is required before any works required by these Regulations may be carried out must grant, or join in granting, such rights in relation to any land or waters as will enable the responsible operator, or a person acting on behalf of the responsible operator, to carry out such works.

(2) A person who grants, or joins in granting, any rights as required by paragraph (1) is entitled to compensation from the responsible operator of such amount as may be determined by the Welsh Ministers in accordance with Schedule 5.

### **Powers of authorised persons**

**24.**—(1) The powers in section 108 of the Environment Act 1995 apply in relation to these Regulations as they apply in relation to that Act, and the powers of inspectors of the Environment Agency are exercisable by authorised officers of all enforcing authorities.

(2) In addition, any person authorised by the Welsh Ministers to enforce these Regulations in relation to the sea may —

- (a) require any person to give details of any substances or articles on board a ship or marine structure, and
- (b) require any person to give information concerning any substances or articles lost from a vessel, aircraft, hovercraft or marine structure.
- (c) may require any ship to stop,
- (d) may require the attendance of any person on board a ship or marine structure,
- (e) and may require any person on board to provide assistance;
- (f) may require the master of a vessel, or the person in charge of a marine structure, to take it and its crew to the port which appears to be the nearest convenient port;
- (g) may detain a ship or marine structure by serving on the master of a vessel or the person in charge of a marine structure in charge a notice in writing stating that it is to be detained until the notice is withdrawn by the service of a further notice in writing signed by a person authorised by the Welsh Ministers.

(3) It is an offence to fail to comply with the instructions under this regulation, or to provide false or misleading information.

### **Provision of information to the enforcing authority**

25. An enforcing authority may require any person to provide relevant information in that person's possession to enable the enforcing authority to carry out its functions under these Regulations, and failure to provide such information is an offence.

### **Expenses recoverable from owner to be a charge on premises**

26.—(1) Where any expenses are recoverable under these Regulations from a person who is the owner of premises and the enforcing authority serves a notice on that person under this regulation—

- (a) the expenses carry interest, at such reasonable rate as the authority may determine, from the date of service of the notice until the whole amount is paid, and
- (b) subject to the following provisions of this section, the expenses and accrued interest are a charge on the premises.

(2) A notice served under this regulation must—

- (a) specify the amount of the expenses that the enforcing authority claims is recoverable,
- (b) state the effect of paragraph (1) and the rate of interest determined by the enforcing authority under that subsection, and
- (c) state the effect of paragraphs (4) to (6).

(3) On the date on which an enforcing authority serves a notice on a person under this regulation the authority must also serve a copy of the notice on every other person who, to the knowledge of the authority, has an interest in the premises capable of being affected by the charge.

(4) Subject to any order under paragraph (7)(b) or (c) below, the amount of any expenses specified in a notice under this regulation and the accrued interest is a charge on the premises—

- (a) as from the end of the period of twenty-one days beginning with the date of service of the notice, or
- (b) where an appeal is brought under paragraph (6) below, as from the final determination of the appeal,

until the expenses and interest are recovered.

(5) For the purposes of paragraph (4), the withdrawal of an appeal has the same effect as a final determination of the appeal.

(6) A person served with a notice or copy of a notice under this regulation may appeal against the notice to the county court within the period of 21 days beginning with the date of service.

- (7) On such an appeal the court may—
- (a) confirm the notice without modification,
  - (b) order that the notice is to have effect with the substitution of a different amount for the amount originally specified in it, or
  - (c) order that the notice is to be of no effect.

(8) An enforcing authority has, for the purpose of enforcing a charge under this section, all the same powers and remedies under the Law of Property Act 1925(1), and otherwise, as if it were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

(9) In this regulation “owner”, in relation to any premises, means a person (other than a mortgagee not in possession) who, whether in that person’s own right or as trustee for any other person, is entitled to receive the rack rent of the premises or, where the premises are not let at a rack rent, would be so entitled if they were so let.

### **Penalties**

**27.—**(1) A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or both, or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

(2) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar person of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

that person is guilty of the offence as well as the body corporate.

(3) For the purposes of paragraph (2), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

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(1) 1925 c. 20.

# SCHEDULE 1

Regulation 4

## Damage to protected species and natural habitats

### **Damage to protected species and natural habitats**

1.—(1) In the case of protected species or natural habitat (other than damage on a site of special scientific interest to which paragraph 4 applies) the damage must be such that it has a significant adverse effect on reaching or maintaining the favourable conservation status of the protected species and natural habitat taking into account—

- (a) the conservation status at the time of the damage;
- (b) the services provided by the amenities they produce;
- (c) their capacity for natural regeneration;
- (d) the number of individuals, their density or the area covered;
- (e) the role of the particular individuals or of the damaged area in relation to the species or to the habitat conservation and the rarity of the species or habitat assessed at the relevant level whether local, regional or Community-wide;
- (f) the capacity of the species for propagation, its viability or the capacity of the habitat for natural regeneration;
- (g) the capacity of the species or habitat to recover within a short time of the damage being caused to a condition which leads to its state at the time of the damage or better without any intervention other than increased protection measures.

(2) Damage to protected species and natural habitats does not include damage caused by an act expressly authorised by the relevant authorities in accordance the Conservation (Natural Habitats, etc.) Regulations 1994<sup>(1)</sup> or the Wildlife and Countryside Act 1981<sup>(2)</sup>.

### **Conservation status of habitats**

2.—(1) A habitat's conservation status is the sum of the influences acting on a natural habitat and its typical

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<sup>(1)</sup> S. I. 1994/2716.

<sup>(2)</sup> 1981 c. 69.

species that may affect its long term natural distribution, structure and functions as well as the long term survival of its typical species.

(2) Its conservation status is favourable if—

- (a) the natural range and areas covered within that natural range are stable or increasing;
- (b) the specific structure and functions which are necessary for the long term maintenance of the natural habitat exist and are likely to continue to exist for the foreseeable future; and
- (c) the conservation status of its typical species is favourable.

### **Conservation status of species**

**3.—**(1) A species' conservation status is the sum of the influences acting on the species concerned that may affect the long term distribution and abundance of its populations

(2) The conservation status is favourable if—

- (a) the population dynamics data on the species concerned indicate that it is maintaining itself on a long term basis as a viable component of its natural habitats;
- (b) the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future; and
- (c) there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long term basis.

### **Sites of special scientific interest**

**4.—**(1) In the case of a site of special scientific interest, the damage must be to—

- (a) the species or habitats for which notification under section 28 of the Wildlife and Countryside Act 1981 has been confirmed, or
- (b) protected species or natural habitats.

(2) The damage must have an adverse effect on the integrity of the site (that is, the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats or the levels of populations of the species affected).

## SCHEDULE 2

Regulation 4

### Activities causing damage

#### Operation of permitted installations

1. The operation of installations subject to permit in pursuance of Council Directive 96/61/EC concerning integrated pollution prevention and control<sup>(1)</sup> (all activities listed in Annex I to that Directive with the exception of installations or parts of installations used for research, development and testing of new products and processes).

#### Waste management operations

2.—(1) Waste management operations, including the collection, transport, recovery and disposal of waste and hazardous waste, including the supervision of such operations and after-care of disposal sites, subject to permit or registration in pursuance of Council Directive 75/442/EEC on waste<sup>(2)</sup> and Council Directive 91/689/EEC on hazardous waste<sup>(3)</sup>.

(2) The operation of landfill sites under Council Directive 1999/31/EC on the landfill of waste<sup>(4)</sup> and the operation of incineration plants under Directive 2000/76/EC of the European Parliament and of the Council on the incineration of waste<sup>(5)</sup>.

(3) This does not include the spreading of sewage sludge from urban waste water treatment plants, treated to an approved standard, for agricultural purposes.

#### Mining waste

3. The management of extractive waste under Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries<sup>(6)</sup>.

#### Discharges requiring authorisation

4.—(1) All discharges into the inland surface water that require prior authorisation in pursuance of Council Directive 76/464/EEC on pollution caused by certain

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(1) OJ No L 257, 10.10.96, p. 26.

(2) OJ No L 194, 25.7.75, p. 39.

(3) OJ No L 377, 31.12.91, p. 20.

(4) OJ No L 182, 16.7.99, p. 1

(5) OJ No L 332, 28.12.00, p. 91.

(6) OJ No L 102, 11.4.06, p. 15.

dangerous substances, discharged into the aquatic environment of the Community<sup>(1)</sup>.

(2) All discharges of substances into groundwater that require prior authorisation in pursuance of Council Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances<sup>(2)</sup>.

(3) All discharges or injections of pollutants into surface water or groundwater that require a permit, authorisation or registration under Directive 2000/60/EC of the European Parliament and of the Council of establishing a framework for Community action in the field of water policy<sup>(3)</sup>.

### **Water abstraction and impoundment**

5. Water abstraction and impoundment of water subject to prior authorisation in pursuance of Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy<sup>(4)</sup>.

### **Dangerous substances, plant protection products and biocidal products**

6. Manufacture, use, storage, processing, filling, release into the environment and onsite transport of—

- (a) dangerous substances as defined in Article 2(2) of Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous substances <sup>(5)</sup>;
- (b) dangerous preparations as defined in Article 2(2) of Directive 1999/45/EC of the European Parliament and of the Council concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations<sup>(6)</sup>;
- (c) plant protection products as defined in Article 2(1) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market<sup>(7)</sup>;
- (d) biocidal products as defined in Article 2(1)(a) of Directive 98/8/EC of the European

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<sup>(1)</sup> OJ No L 129, 18.5.76, p. 23.

<sup>(2)</sup> OJ No L 20, 26.1.80, p. 43.

<sup>(3)</sup> OJ No L327, 22.12.00, p. 1.

<sup>(4)</sup> OJ No L327, 22.12.00, p. 1.

<sup>(5)</sup> OJ No 196, 16.8.67, p. 1.

<sup>(6)</sup> OJ No L 200, 30.7.99, p. 1.

<sup>(7)</sup> OJ No L 230, 19.8.91, p. 1.

Parliament and of the Council concerning the placing of biocidal products on the market<sup>(1)</sup>.

### **Transport**

**7.** Transport by road, rail, inland waterways, sea or air of dangerous goods or polluting goods as defined in—

- (a) Annex A to Council Directive 94/55/EC on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road<sup>(2)</sup>;
- (b) the Annex to Council Directive 96/49/EC on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail<sup>(3)</sup>;
- (c) Council Directive 93/75/EEC concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods<sup>(4)</sup>.

### **Polluting substances**

**8.** The operation of installations subject to authorisation in pursuance of Council Directive 84/360/EEC on the combating of air pollution from industrial plants<sup>(5)</sup> in relation to the release into air of any of the polluting substances covered by that Directive.

### **GMOs**

**9.**—(1) — Any contained use, including transport, involving genetically modified organisms (including genetically modified micro-organisms as defined by Council Directive 90/219/EEC on the contained use of genetically modified micro-organisms<sup>(6)</sup>).

(2) Any deliberate release into the environment, transport and placing on the market of genetically modified organisms as defined by Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms<sup>(7)</sup>.

### **Transboundary shipment of waste**

**10.** Transboundary shipment of waste within, into or out of the European Community, requiring an authorisation or prohibited in the meaning of Council

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<sup>(1)</sup> OJ No L 123, 24.4.98, p. 1.

<sup>(2)</sup> OJ No L 319, 12.12.94, p. 7.

<sup>(3)</sup> OJ No L 235, 17.9.96, p. 25.

<sup>(4)</sup> OJ No L 247, 5.10.93, p. 19.

<sup>(5)</sup> OJ No L 188, 16.7.84, p. 20.

<sup>(6)</sup> OJ No L 117, 8.5.90, p. 1.

<sup>(7)</sup> OJ No L 106, 17.4.01, p. 1.

Regulation (EEC) No 259/93 on the supervision and control of shipments of waste within, into and out of the European Community(1).

## SCHEDULE 3

Regulation 15

### Permits, etc.

#### **Integrated pollution prevention and control**

1. A permit granted under the Environmental Permitting (England and Wales) Regulations 2007(2) for—

- (a) an activity listed in Annex 1 to Council Directive 96/61/EC concerning integrated pollution prevention and control(3) or
- (b) an installation required to be permitted under Council Directive 84/360/EEC on the combating of air pollution from industrial plants(4).

#### **Waste**

2.—(1) A permit or registration issued under the Environmental Permitting (England and Wales) Regulations 2007 for the recovery and disposal of waste and hazardous waste, including the supervision of such operations and after-care of disposal sites and including a registered exempt waste operation, in pursuance of Council Directive 75/442/EEC on waste(5) and Council Directive 91/689/EEC(6) on hazardous waste.

(2) A licence granted under Part I of the Food and Environment Protection Act 1985(7) issued for the purpose of those Directives.

(3) A permit for liquid waste discharges under the Water Resources Act 1991(8) for the purposes of those Directives.

(4) A permit for waste disposal under the Groundwater Regulations 1998(9) for the purposes of those Directives.

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(1) OJ No L 30, 6.2.93, p. 1.

(2) S. I. 2007/2538.

(3) OJ No L 257, 10.10.96, p. 26.

(4) OJ No L 188, 16.7.84, p. 20.

(5) OJ No L 194, 25.7.75, p. 39.

(6) OJ No L377, 31.12.91, p. 20.

(7) 1985 c. 48.

(8) 1991 c. 57.

(9) S. I. 1998/2746.

### **Landfill**

3. A permit granted under the Environmental Permitting (England and Wales) Regulations 2007 for the operation of landfill sites under Council Directive 1999/31/EC(1) on the landfill of waste.

### **Incineration plants**

4. A permit granted under the Environmental Permitting (England and Wales) Regulations 2007 for the operation of incineration plants under Directive 2000/76/EC of the European Parliament and of the Council on the incineration of waste.

### **Discharges to water**

5. A water discharge consent under the Water Resources Act 1991(2) (as amended by the Water Act 2003(3)).

### **Discharges to groundwater**

6. A groundwater authorisation under the Groundwater Regulations 1998(4).

### **Water abstraction or impoundment**

7. A water abstraction or impoundment licence under the Water Resources Act 1991 as amended by the Water Act 2003.

### **Pesticides and biocides**

8. An authorisation of a pesticide or a biocidal product under the Control of Pesticides Regulations 1986(5), the Biocidal Products Regulations 2001(6) or the Pesticides Safety Regulations 2008(7).

### **GMOs**

9.—(1) An authorisation for the contained use of genetically modified organisms under the Genetically Modified Organisms (Contained Use) Regulations 2000(8).

(2) A consent for the deliberate release of genetically modified organisms under section 111(1) of the Environmental Protection Act 1990 and the

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(1) OJ No L 182, 16.7.99, p. 1.

(2) 1991 c. 57.

(3) 2003 c. 37.

(4) S. I. 1998/2746.

(5) S. I. 1986/1510.

(6) S. I. 2001/880.

(7) S. I. 2008/

(8) S. I. 2000/2831.

## SCHEDULE 4

Regulation 16

### Remediation

#### PART 1

Remediation of damage to water or protected  
species or natural habitats

##### **Application of Part 1**

1. This Part relates to remediation of damage to water or protected species or natural habitats.

##### **Risk to human health**

2. Remediation must remove any significant risk to human health.

##### **Remediation measures**

3.—(1) The remediation measures must include primary remediation, and if the primary remediation does not return the damaged natural resources or impaired services to the state at the time the damage occurred it must also include complementary remediation.

(2) If there are interim losses of natural resources or services that occur from the date of damage occurring until remediation has achieved its full effect then the measures must include compensatory remediation, but compensatory remediation does not include financial compensation.

(3) Primary remediation is any remedial measure which returns the damaged natural resources or impaired services to, or towards, the state at the time of the damage (natural recovery is a permitted form of remediation in appropriate cases).

(4) Complementary remediation is any remedial measure taken in relation to natural resources or services to compensate for the fact that primary remediation does not result in fully restoring the damaged natural resources or impaired services.

(5) Compensatory remediation is any action taken to compensate for interim losses of natural resources or

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(1) S. I. 2002/2443.

services that occur from the date of damage occurring until primary remediation has achieved its full effect.

(6) In this paragraph “interim losses” means losses which result from the fact that the damaged natural resources or services are not able to perform their ecological functions or provide services to other natural resources or to the public until the primary or complementary measures have taken effect.

#### **Choice of remediation**

4. The remediation options must be evaluated using best available methods, and based on—

- (a) the effect of each option on public health and safety,
- (b) the cost of implementing the option,
- (c) the likelihood of success of each option,
- (d) the extent to which each option will prevent future damage, and avoid collateral damage as a result of implementing the option,
- (e) the extent to which each option benefits to each component of the natural resource or service,
- (f) the extent to which each option takes account of relevant social, economic and cultural concerns and other relevant factors specific to the locality,
- (g) the length of time it will take for the restoration of the environmental damage to be effective,
- (h) the extent to which each option achieves the restoration of site of the environmental damage, and
- (i) the geographical linkage to the damaged site.

#### **Identification of complementary and compensatory remediation**

5.—(1) If possible, complementary and compensatory remedial measures must provide natural resources or services of the same type, quality and quantity as those damaged.

(2) Where this is not possible, different natural resources or services must be provided (for example, by offsetting a reduction in the quality of natural resources or services by increasing their quantity).

(3) The competent authority may specify how complementary and compensatory remedial measures are chosen, and may include a financial assessment of the lost resource and the cost of remedial measures.

(4) If valuation of the lost resources or services is practicable, but valuation of the remedial measures cannot be made within a reasonable time or at a reasonable cost, then remedial measures whose cost is equivalent to the value of the lost resources or services may be considered.

(5) Where remedial measures are at a new site this site should be geographically linked to the damaged site.

### **Options**

6.—(1) When evaluating the different identified remedial options, primary remedial measures that do not fully restore the damaged water or protected species or natural habitat to its condition at the time of the incident or that restore it more slowly may be chosen.

(2) This decision can be taken only if the natural resources or services foregone at the primary site as a result of the decision are compensated for by increasing complementary or compensatory actions to provide a similar level of natural resources or services as are foregone by the decision.

(3) This will be the case, for example, when the equivalent natural resources or services could be provided elsewhere at a lower cost.

(4) The enforcement authority may at any time decide that no further remedial measures need be taken if—

(a) the remedial measures already taken have removed any significant threat of adversely affecting human health, water or protected species and natural habitats, and

(b) the cost of the remedial measures needed for restoration to its state before the incident would be disproportionate to the environmental benefits to be obtained.

## **PART 2**

### **Remediation of damage to land**

#### **Remediation of damage to land**

7.—(1) This Part applies in relation to damage to land.

(2) The measures must ensure, as a minimum, that the relevant contaminants are removed, controlled, contained or diminished so that the land, taking account of its lawful current use or any planning permission in existence at the time of the damage, no longer poses any significant risk of adversely affecting human health.

(3) The presence of such risks must be assessed through risk-assessment procedures taking into account the characteristic and function of the soil, the type and concentration of the harmful substances, preparations, organisms or micro-organisms, their risk and the possibility of their dispersion.

(4) Natural recovery is a permitted form of remediation in appropriate cases.

## SCHEDULE 5

Regulation 23

### Compensation

#### Compensation for grant of rights

1. This Schedule has effect—

- (a) for prescribing the period within which a person who grants, or joins in granting, any rights pursuant to regulation 23 may apply for compensation for the grant of those rights;
- (b) for prescribing the manner in which, and the person to whom, such an application may be made; and
- (c) for prescribing the manner of determining such compensation, for determining the amount of such compensation and for making supplemental provision relating to such compensation.

#### Interpretation

2. In this Schedule—

“the grantor” means the person who grants, or joins in granting, any right, and

“relevant interest” means an interest in land out of which a right has been granted or which is bound by a right granted.

#### Period for making an application

3. An application for compensation shall be made before the expiry of a period of 12 months beginning with—

- (a) the date of the grant of the rights in respect of which compensation is claimed, or
- (b) where there is an appeal against the notice in relation to which those rights were granted, the date on which the appeal is determined or withdrawn,

whichever is the later date.

### **Manner of making an application**

4.—(1) An application for compensation must be made in writing and delivered at or sent by pre-paid post to the last known address for correspondence of the person to whom the right was granted.

(2) The application must contain—

- (a) a copy of the grant of rights in respect of which the grantor is applying for compensation and of any plans attached to such grant;
- (b) a description of the exact nature of any interest in land in respect of which compensation is applied for; and
- (c) a statement of the amount of compensation applied for, distinguishing the amounts applied for under each of sub-paragraphs (a) to (e) of paragraph 5 and showing how the amount applied for under each sub-paragraph has been calculated.

### **Loss and damage for which compensation payable**

5. Compensation shall be payable for loss and damage of the following descriptions-

- (a) any depreciation in the value of any relevant interest to which the grantor is entitled which results from the grant of the right;
- (b) loss or damage, in relation to any relevant interest to which the grantor is entitled, which—
  - (i) is attributable to the grant of the right or the exercise of it;
  - (ii) does not consist of depreciation in the value of that interest; and
  - (iii) is loss or damage for which the grantor would have been entitled to compensation by way of compensation for disturbance, if that interest had been acquired compulsorily under the Acquisition of Land Act 1981<sup>(1)</sup>, in pursuance of a notice to treat served on the date on which the grant of the right was made;
- (c) damage to, or affection of, any interest in land to which the grantor is entitled which is not a relevant interest and which results from the grant of the right or from the exercise of it;
- (d) any loss or damage sustained by the grantor, other than in relation to any interest in land to which the grantor is entitled, which is

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<sup>(1)</sup> 1981 c. 67.

attributable to the grant of the right or the exercise of it; and

- (e) the amount of any valuation and legal expenses reasonably incurred by the grantor in granting the right and in the preparation of the application for and the negotiation of the amount of compensation.

### **Basis on which compensation assessed**

**6.**—(1) The rules set out in section 5 of the Land Compensation Act 1961<sup>(1)</sup> (rules for assessing compensation) have effect, so far as applicable and subject to any necessary modifications, for the purpose of assessing any compensation as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(2) Where the relevant interest in respect of which any compensation is to be assessed is subject to a mortgage—

- (a) the compensation must be assessed as if the interest were not subject to the mortgage;
- (b) no compensation is payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
- (c) any compensation payable in respect of the interest that is subject to the mortgage must be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee and shall, in either case, be applied as if it were proceeds of sale.

### **Determination of disputes**

**7.**—(1) Any question of disputed compensation must be referred to and determined by the Lands Tribunal.

(2) In relation to the determination of any such question of compensation the provisions of sections 2 and 4 of the Land Compensation Act 1961 (procedure on references to the Lands Tribunal and costs) shall apply as if—

- (a) the reference in section 2 of the Land Compensation Act 1961 to section 1 of that Act were a reference to sub-paragraph (1); and
- (b) references in section 4 of the Land Compensation Act 1961 to the acquiring authority were references to the person to whom the rights were granted.

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<sup>(1)</sup> 1961 c. 33.

*Name*

Minister for Environment, Sustainability and Housing,  
one of the Welsh Ministers

Date