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STATUTORY RULES OF NORTHERN IRELAND

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**2009 No. 252**

**ENVIRONMENTAL PROTECTION**

**The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009**

*Made* - - - - *29th June 2009*  
*Coming into operation* *24th July 2009*

The Department of the Environment, being a department designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(1)</sup> in relation to measures relating to the environment, acting in exercise of the powers conferred upon it by that section, makes the following Regulations:

These 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 Department of the Environment 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**

**Citation and commencement**

1. These Regulations may be cited as the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009 and come into operation on 24th July 2009.

**Commencement Information**

**II** Reg. 1 in operation at 24.7.2009, see [reg. 1](#)

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>(2)</sup> applies to these Regulations as it applies to an Act of the Northern Ireland Assembly.

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(1) 1972 c.68  
(2) 1954 c.33 (N.I.)

## (2) In these Regulations—

“activity” means any economic activity, whether public or private and whether or not carried out for profit;

“area of special scientific interest” means an area declared under Article 28(1) of the Environment (Northern Ireland) Order 2002(3);

“damage” means a measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly;

“groundwater” means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil;

“imminent threat of damage” means a sufficient likelihood that environmental damage will occur in the near future;

“marine installation” means any artificial island, installation, platform or other artificial structure at sea, other than a pipeline or a vessel;

“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(4) or listed in Annex II to Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(5);
- (b) the natural habitats listed in Annex I to Council Directive 92/43/EEC; and
- (c) the breeding sites or resting places of the species listed in Annex IV to that Directive;

“natural resource” means—

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

“operator” means any natural or legal, private or public person who operates or controls the activity by means of delegated authority or otherwise and includes the holder of a permit or authorisation for such an activity;

“Planning Appeals Commission” means the Planning Appeals Commission established under Article 110 of the Planning (Northern Ireland) Order 1991(6);

“protected species” means the species mentioned in Article 4(2) of Council Directive 79/409/EEC or listed in Annex I to that Directive 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;

“vessel” means—

- (a) hovercraft, and
- (b) any other craft capable of travelling on, in or under water, whether or not self-propelled.

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(3) S.I. 2002/3153 (N.I. 7)

(4) O.J. No. L103, 25.4.79, p.1 (as last amended by Council Directive 2008/102/EC, O.J. No. L323, 3.12.08, p.31)

(5) O.J. No. L206, 22.7.92, p.7 (as last amended by Council Directive 2006/105/EC, O.J. No. L363, 20.12.06, p.368)

(6) S.I. 1991/1220 (N.I. 11)

(3) Unless otherwise defined in these Regulations, expressions used in 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(7) have the same meaning in these Regulations.

#### Commencement Information

**I2** Reg. 2 in operation at 24.7.2009, see [reg. 1](#)

#### Meaning of “environmental damage”

3.—(1) Subject to regulations 5, 6 and 7, these Regulations apply to environmental damage to—

- (a) protected species or natural habitats, or an area of special scientific interest;
- (b) surface water or groundwater; or
- (c) land.

(2) Environmental damage to protected species or natural habitats or an area of special scientific interest 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 operator was at fault or was negligent as to whether such damage would be caused.

(3) Environmental damage to surface water means damage to a body of surface water classified as such pursuant to 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(8) caused by an activity in Schedule 2 such that one of the—

- (a) biological quality elements listed in Annex V to that Directive;
- (b) 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 consistent with the water being classified as a lower status than before the damage (whether or not the body of water is, in fact, reclassified).

(4) Environmental damage to groundwater means any adverse effect on a body of groundwater as described in Annex II to Directive 2000/60/EC on—

- (a) its conductivity or its level (both of which are specified in Annex V to Directive 2000/60/EC); or
- (b) 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(9))

in such a way that the value changes to a value consistent with the water being classified as a lower status than before the damage caused by an activity in Schedule 2 (whether or not the body of water is, in fact, reclassified).

(7) O.J. No. L143, 30.4.04, p.56 (as amended by Directive 2006/21/EC, O.J. No. L102, 11.4.06, p.15)

(8) O.J. No. L327, 22.12.00, p.1 (as last amended by Directive 2008/105/EC of the European Parliament and of the Council, O.J. No. L348, 24.12.08, p.84)

(9) O.J. No. L372, 27.12.06, p.19

**Status:** Point in time view as at 24/07/2009.

**Changes to legislation:** There are currently no known outstanding effects for the The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009. (See end of Document for details)

(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.

(6) This regulation extends to the foreshore, sea bed and subsoil and their natural resources.

#### Commencement Information

**I3** Reg. 3 in operation at 24.7.2009, see [reg. 1](#)

#### Other legislation

**4.** Nothing in these Regulations shall be construed so as to affect the right of an operator to limit liability in accordance with the Convention on Limitation of Liability for Maritime Claims 1976<sup>(10)</sup>.

#### Commencement Information

**I4** Reg. 4 in operation at 24.7.2009, see [reg. 1](#)

#### Exceptions

**5.** These Regulations shall not apply in relation to environmental damage, or imminent threat of damage, caused by—

- (a) an act of terrorism, armed conflict, civil war, insurrection or hostilities;
- (b) an exceptional natural phenomenon, provided the operator took all reasonable precautions to protect against damage being caused by such an event;
- (c) activities, the sole purpose of which is to protect from natural phenomena;
- (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<sup>(11)</sup>;
  - (ii) the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage<sup>(a)</sup>; or
  - (iii) the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001<sup>(12)</sup>;
- (e) activities, the main purpose of which is to serve national defence or international security;
- (f) radioactivity from an activity covered by the Treaty establishing the European Atomic Energy Community or caused by an incident or activity in respect of which liability or compensation falls within the scope of the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and the Brussels Supplementary Convention of 31 January 1963;
- (g) pollution of a diffuse character if it is not possible to establish a causal link between the damage and the activities of individual operators; or
- (h) damage caused in the course of commercial sea fishing if all legislation relating to that fishing was complied with.

<sup>(10)</sup> The Convention is set out in Schedule 7 to the Merchant Shipping Act 1995 (1995 c. 21)

<sup>(11)</sup> This Convention was implemented in Chapter III of the Merchant Shipping Act 1995 (1995 c. 21)

<sup>(12)</sup> Implemented in the United Kingdom by [S.I. 2006/1244](#)

**Commencement Information**

**I5** Reg. 5 in operation at 24.7.2009, see [reg. 1](#)

**Temporal application**

6. These Regulations shall not apply to—
- (a) damage caused by an incident, event or emission that finished before the coming into operation of these Regulations;
  - (b) damage or imminent threat of 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; or
  - (c) damage caused by an emission, event or incident that took place 30 years or more before the damage.

**Commencement Information**

**I6** Reg. 6 in operation at 24.7.2009, see [reg. 1](#)

**Exception from environmental damage to surface water or groundwater**

- 7.—(1) Environmental damage to water does not include—
- (a) damage caused by a new modification to the physical characteristics of a body of surface water;
  - (b) an alteration to the level of a body of groundwater pursuant to Directive [2000/60/EC](#); or
  - (c) deterioration from high status to good status of a body of surface water resulting from new sustainable human development activities pursuant to that Directive,

if all the conditions specified 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 the modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 of Directive [2000/60/EC](#) and the objectives are reviewed every six years;
  - (c) the reasons for the 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 the modifications or alterations of the body of water cannot for reasons of technical feasibility or disproportionate cost be achieved by other means.

**Commencement Information**

**I7** Reg. 7 in operation at 24.7.2009, see [reg. 1](#)

*Status: Point in time view as at 24/07/2009.*

*Changes to legislation: There are currently no known outstanding effects for the The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009. (See end of Document for details)*

## Enforcing authority

8. These Regulations shall be enforced by the Department of the Environment.

### Commencement Information

**18** Reg. 8 in operation at 24.7.2009, see [reg. 1](#)

## PART 2

### Preventing environmental damage

#### Preventing environmental damage

9.—(1) An operator of an activity that creates an imminent threat of environmental damage, or an imminent threat of damage which there are reasonable grounds to believe will become environmental damage, shall immediately—

- (a) take all necessary steps to prevent the damage; and
- (b) in any case where the threat has not been dispelled despite the preventative measures taken, inform the enforcing authority of all relevant details.

(2) The enforcing authority may assess the threat and may serve a notice on the operator that—

- (a) describes the threat;
- (b) specifies the measures required to prevent the damage; and
- (c) requires the operator 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.

### Commencement Information

**19** Reg. 9 in operation at 24.7.2009, see [reg. 1](#)

#### Preventing further environmental damage

10.—(1) An operator of an activity that has caused environmental damage, or has caused damage where there are reasonable grounds to believe that the damage is or will become environmental damage, shall immediately—

- (a) take all necessary steps to prevent further damage, and
- (b) inform the enforcing authority of all relevant details.

(2) The enforcing authority may assess the damage and may serve a notice on the operator that—

- (a) describes the damage;
- (b) requires the operator to provide additional information on any damage that has occurred;
- (c) specifies the measures required to prevent further damage; and
- (d) requires the operator 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.

**Commencement Information**

**I10** Reg. 10 in operation at 24.7.2009, see [reg. 1](#)

**Action by the enforcing authority**

**11.** Any duty in this Part on the operator of an activity may be carried out by the enforcing authority instead of the operator—

- (a) in an emergency;
- (b) if the operator cannot be ascertained;
- (c) if the operator fails to comply with a notice; or
- (d) if the operator is not required to bear the costs under these Regulations.

**Commencement Information**

**I11** Reg. 11 in operation at 24.7.2009, see [reg. 1](#)

**Costs**

**12.—(1)** An operator is liable for any reasonable costs incurred by the enforcing authority in taking any reasonable action to discharge any duty under regulation 11.

**(2)** An operator is also liable for the reasonable costs incurred by the enforcing authority in preparing any notice under this Part, or in monitoring compliance with such notice.

**Commencement Information**

**I12** Reg. 12 in operation at 24.7.2009, see [reg. 1](#)

**Following instructions from a public authority**

**13.** When an operator acts in accordance with the instructions of a public authority, and as a result causes or threatens to cause environmental damage, and accordingly is obliged to take action under regulations 9 or 10, or if the enforcing authority takes action under regulation 11, then, unless the instruction related to an emission or incident caused by the operator's own activities, the operator or the enforcing authority may recover the costs of actions under those Regulations from that public authority.

**Commencement Information**

**I13** Reg. 13 in operation at 24.7.2009, see [reg. 1](#)

## PART 3

### Remediation

#### Assessment of damage

14. Where the enforcing authority becomes aware that damage has occurred and there are reasonable grounds for believing that it is, or may be, environmental damage, the enforcing authority shall establish whether or not it is environmental damage.

#### Commencement Information

**I14** Reg. 14 in operation at 24.7.2009, see [reg. 1](#)

#### Determining liability to remediate

15.—(1) If the enforcing authority decides that the damage is environmental damage it shall identify an operator of any activity that caused or contributed to the damage and notify the operator that—

- (a) the damage is environmental damage;
- (b) the damage was caused or contributed to by the activity of the operator;
- (c) the operator shall, within a time specified by the enforcing authority, submit proposals, including time limits, for measures that will achieve the remediation of the environmental damage in accordance with Schedule 4.

(2) The enforcing authority may withdraw the notification if it is satisfied that the notification should not have been served or that an appeal under regulation 16 is likely to succeed.

#### Commencement Information

**I15** Reg. 15 in operation at 24.7.2009, see [reg. 1](#)

#### Appeals against liability to remediate

16.—(1) Subject to regulation 19, an operator served with a notification under 15(1) may appeal it to the Planning Appeals Commission within 28 days of the date of the notification.

(2) The grounds of appeal are—

- (a) the operator's activity did not cause or contribute to the damage;
- (b) the enforcing authority has acted unreasonably in deciding that the damage is environmental damage;
- (c) 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 operator's own activities);
- (d) the operator was not at fault or negligent and 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;
- (e) the operator was not at fault or negligent and the environmental damage was caused by an emission or activity or any manner of using a product in the course of an activity that the operator demonstrates was not considered likely to cause environmental damage



according to the state of scientific and technical knowledge at the time when the emission was released or the activity took place; or

- (f) the environmental damage was the result of an act of a third party and occurred despite the fact that the operator took all appropriate safety measures.

#### Commencement Information

**I16** Reg. 16 in operation at 24.7.2009, see [reg. 1](#)

#### Remediation notices

**17.**—(1) Once it receives the proposals from the person liable for remediation (or, if a proposal is not received within the specified time limit, at any time after the time limit has expired), the enforcing authority shall, so far as is practicable, consult—

- (a) anyone who has notified under regulation 22, and
- (b) any person on whose land the remedial measures will be carried out,

and may consult any other person appearing to be necessary.

(2) Following consultation the enforcing authority shall serve on the operator a remediation notice that specifies—

- (a) the damage;
- (b) the measures necessary for remediation of the damage, together with the reasons;
- (c) the period within which those measures shall be taken;
- (d) any additional monitoring or investigative measures that the operator shall carry out during remediation; and
- (e) the right of appeal against the remediation notice.

(3) Further remediation notices may be served at any time during remediation or, if remediation has not been achieved, at the end of the remediation period, requiring further or different remediation.

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

#### Commencement Information

**I17** Reg. 17 in operation at 24.7.2009, see [reg. 1](#)

#### Appeal against the remediation notice

**18.**—(1) Subject to regulation 19 the operator may appeal against a notice under regulation 17(2) or 17(3) to the Planning Appeals Commission on the grounds that the contents of the remediation notice are unreasonable.

(2) Where an appeal is brought under paragraph (1), the bringing of the appeal shall have the effect of suspending the requirements of the remediation notice unless the Planning Appeals Commission directs otherwise.

#### Commencement Information

**I18** Reg. 18 in operation at 24.7.2009, see [reg. 1](#)

## Appeals generally

**19.—(1)** A person who wishes to appeal to the Planning Appeals Commission under regulations 16 or 18 shall give to the Planning Appeals Commission written notice of the appeal together with a statement of the grounds of appeal and the Planning Appeals Commission shall as soon as is reasonably practicable send to the enforcing authority a copy of that notice together with the statement of the grounds of appeal.

(2) An appellant may withdraw an appeal by notifying the Planning Appeals Commission and the Planning Appeals Commission shall as soon as is reasonably practicable notify the enforcing authority.

(3) Notice of appeal in accordance with paragraph (1) shall be given before the expiry of the period of 28 days beginning with the date of the notification under regulation 15(1) or the period of 28 days beginning with the date of the remediation notice under regulation 17(2) or 17(3).

(4) Paragraphs (1), (2) and (3) do not apply to any proposals made by the operator and contained in the remediation notice.

(5) The Planning Appeals Commission shall determine the appeal and paragraphs (1), (3), (4) and (5) of Article 111 of the Planning (Northern Ireland) Order 1991(**13**) shall apply in relation to the determination of the appeal as they apply in relation to determination of an appeal under that Order.

(6) The Planning Appeals Commission shall give written reasons for its decision.

(7) The Planning Appeals Commission shall determine the process for determining appeals taking into account any requests of either party to the appeal.

(8) An appeal shall be accompanied by a fee as specified in regulation 17(1) of the Planning (Fees) Regulations (Northern Ireland) 1995(**14**) as if it were an appeal under Article 127(1)(c) of the Planning (Northern Ireland) Order 1991.

### Commencement Information

**119** Reg. 19 in operation at 24.7.2009, see [reg. 1](#)

## Actions by the enforcing authority

**20.** Once it has established that, in its opinion, damage is environmental damage, the enforcing authority may carry out any reasonable works—

- (a) at any time if an operator cannot be identified (if an operator is subsequently identified the operator shall bear the costs of the work);
- (b) if an operator fails to comply with a remediation notice, whether or not an appeal is pending;
- (c) if the operator is not required to remediate under these Regulations.

### Commencement Information

**120** Reg. 20 in operation at 24.7.2009, see [reg. 1](#)

## Costs

**21.—(1)** The operator is responsible for the costs of the enforcing authority of—

(13) S.I. 1991/1220 (N.I. 11)

(14) S.R. 1995 No. 78

- (a) assessing whether the damage is environmental damage;
  - (b) establishing who is the operator;
  - (c) establishing what remediation is appropriate (including consultation); and
  - (d) monitoring the remediation, both during and after the work.
- (2) The operator is liable for the costs of the enforcing authority for any action taken under regulation 20 unless the operator was not liable for the action taken or an appeal is successful.
- (3) Costs include administrative, legal and enforcement costs and costs of data collection.

**Commencement Information**

**I21** Reg. 21 in operation at 24.7.2009, see [reg. 1](#)

## PART 4

### Enforcement

#### Requests for action by interested parties

**22.**—(1) Any person—

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

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

(2) A notification under paragraph (1) shall be accompanied by—

- (a) a statement outlining the way the notifier is, or may be, affected by the damage; or
- (b) a statement outlining the sufficient interest of the notifier; and
- (c) sufficient information to enable the enforcing authority to identify the location and nature of the incident; and
- (d) any information in the possession of the notifier which would assist the enforcing authority in identifying the operator.

(3) The enforcing authority shall consider the notification, make a decision as to what action, if any, it intends to take and inform the notifier of that decision.

(4) Before making any decision in accordance with paragraph (3) the enforcing authority shall, if practicable—

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

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

- (a) in the opinion of the enforcing authority, 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 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 those paragraphs.

**Status:** Point in time view as at 24/07/2009.

**Changes to legislation:** There are currently no known outstanding effects for the The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009. (See end of Document for details)

(6) For the purposes of this regulation, a person shall be deemed to have a sufficient interest if they are a member of a body or organisation, or the body or organisation itself, whose aims or objectives relate to the promotion of—

- (a) environmental health;
- (b) environmental protection;
- (c) public health; or
- (d) activities, including recreational activities, likely to be affected by the damage.

**Commencement Information**

**I22** Reg. 22 in operation at 24.7.2009, see [reg. 1](#)

**Proceedings for costs by the enforcing authority**

**23.** No proceedings for the recovery of costs may be commenced by the enforcing authority 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 operator liable to carry out the measures,

whichever is later.

**Commencement Information**

**I23** Reg. 23 in operation at 24.7.2009, see [reg. 1](#)

**Recovery of costs from other persons**

**24.** An operator who incurs costs under these Regulations may recover all or some of those costs from any third party who also caused or contributed to the damage.

**Commencement Information**

**I24** Reg. 24 in operation at 24.7.2009, see [reg. 1](#)

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

**25.—(1)** Any person whose consent is required before any works required by these Regulations may be carried out shall grant, or join in granting, such rights in relation to any land or water as will enable the operator, or a person acting on behalf of the 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 operator of such amount as may be determined in accordance with Schedule 5.

**Commencement Information**

**I25** Reg. 25 in operation at 24.7.2009, see [reg. 1](#)

## Powers of authorised persons

26.—(1) An “authorised person” means a person who is authorised in writing by the enforcing authority for the purposes of this regulation.

(2) An authorised person may, on production of an authority under paragraph (1), exercise any of the powers specified in paragraph (3) for the purpose of discharging one or more of the functions conferred or imposed on the enforcing authority by these Regulations.

(3) The powers of an authorised person are—

- (a) to enter at any time any land where there is reason to believe it is necessary to enter;
- (b) on entering any land by virtue of sub-paragraph (a)—
  - (i) to be accompanied by any other person including, if the authorised person has reasonable cause to apprehend any serious obstruction, a constable; and
  - (ii) to take any equipment or materials required for any purpose for which the power of entry is being exercised;
- (c) to make such examination and investigation as may in any circumstances be necessary;
- (d) as regards any land subject to power of entry, to direct that that land or any part of it, or anything in it, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (e) to take such measurements and photographs and make such recordings as may in any circumstances be necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (f) to take samples, or cause samples to be taken, of any articles or substances found in or on any land or of the air in the vicinity of the land;
- (g) in the case of any article or substance found in or on any land subject to power of entry, being an article or substance which appears to have caused or to be likely to cause damage to the environment, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);
- (h) in the case of any such article or substance as is mentioned in sub-paragraph (g), to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
  - (i) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which is necessary under that sub-paragraph;
  - (ii) to ensure that it is not tampered with before examination of it is completed;
  - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations or in any other proceedings relating to a notification or notice under these Regulations;
- (j) to remove any living or dead species found in or on any land and to cause any such species to be photographed, examined or subjected to testing as necessary by suitably qualified persons but not so as to injure it or destroy it unless destruction is necessary in the interests of its welfare;
- (k) in the case of the removal of any living species to cause it to be treated by suitably qualified persons so as to protect its health and welfare;
- (l) to require any person whom there is reasonable cause to believe capable of giving any information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such

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questions as the authorised person thinks fit to ask and to sign a declaration of the truth of such answers;

- (m) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which it is necessary to see for the purposes of an examination or investigation under sub-paragraph (c), and to inspect and take copies of, or of any entry in, the records;
- (n) to require any person to afford such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred by this regulation.

(4) No answer given by a person in pursuance of a requirement imposed under paragraph (3)(l) shall be admissible in evidence against that person in any proceedings.

(5) The powers which are conferred under paragraphs (2) and (3) extend to all areas to which these Regulations apply.

(6) The powers which under paragraphs (2) and (3) are conferred in relation to any land for the purpose of enabling the enforcing authority to determine whether any provision of these Regulations is being, or has been, complied with shall include power, in order to obtain the information on which that determination may be made—

- (a) to carry out experimental borings or other works on that land; and
- (b) to install, keep or maintain monitoring and other apparatus there.

(7) In any case where it is proposed to enter any land used for residential purposes, or to take heavy equipment on to any land which is to be entered, any entry by virtue of this regulation shall only be effected either—

- (a) with the consent of a person who is in occupation of that land; or
- (b) under the authority of a warrant.

(8) Where an authorised person proposes to enter any land and—

- (a) entry has been refused and there are reasonable grounds to apprehend that the use of force may be necessary to effect entry; or
- (b) it is apprehended on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry,

any entry on to that land by virtue of this regulation shall only be effected under the authority of a warrant.

(9) Any reference in this regulation to land shall be construed so as to include a reference to the foreshore, sea bed and subsoil and their natural resources and territorial waters adjacent to Northern Ireland.

(10) An authorised person enforcing these Regulations in relation to the territorial waters adjacent to Northern Ireland may, at any time, board and inspect a vessel or marine installation.

(11) For the purposes of exercising any power conferred by paragraph (2), the authorised person may require a vessel or marine installation—

- (a) to stop; or
- (b) to do anything else that will facilitate the boarding of that or any other vessel or marine installation.

(12) An authorised person who has boarded a vessel or marine installation may, for the purposes of disembarking from the vessel or installation, require that or any other vessel or marine installation—

- (a) to stop; or

(b) to do anything else that will enable the authorised person, and any person accompanying the authorised person, to disembark from the vessel or installation.

(13) An authorised person may require any person on board a vessel or marine installation to afford such facilities and assistance with respect to matters under that person's control as the authorised person considers would facilitate the exercise of any power conferred by this regulation.

(14) Failure to comply with instructions given under this regulation or providing false or misleading information or obstructing an authorised person in performing any duty under these Regulations is an offence.

(15) Nothing in this regulation shall be taken to compel the production by any person of a document which would on grounds of legal professional privilege be entitled to be withheld on an order for discovery in an action in the High Court.

**Commencement Information**

**I26** Reg. 26 in operation at 24.7.2009, see [reg. 1](#)

**Provision of information to the enforcing authority**

**27.** The 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.

**Commencement Information**

**I27** Reg. 27 in operation at 24.7.2009, see [reg. 1](#)

**Costs recoverable from owner to be a charge on land**

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

- (a) the costs carry interest, at such reasonable rate as the enforcing 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 costs and accrued interest are a charge on the land.

(2) A notice served under this regulation shall—

- (a) specify the amount of the costs 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 the enforcing authority serves a notice on a person under this regulation the enforcing authority shall also serve a copy of the notice on every other person who, to the knowledge of the enforcing authority, has an estate in the land capable of being affected by the charge.

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

- (a) as from the end of the period of 21 days beginning with the date of service of the notice; or

**Status:** Point in time view as at 24/07/2009.

**Changes to legislation:** There are currently no known outstanding effects for the The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009. (See end of Document for details)

- (b) where an appeal is brought under paragraph (6) below, as from the final determination of the appeal;

until the costs 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) A charge under this regulation may be recovered by the same means and in the like manner in all respects as if it were a mortgage by deed created by the owner of the estate in favour of the enforcing authority and, for the recovery thereof, the enforcing authority may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881(15) on mortgages by deed.

(9) In this regulation “owner”, in relation to any land, 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 land or, where the land is not let at a rack rent, would be so entitled if they were so let.

#### Commencement Information

**I28** Reg. 28 in operation at 24.7.2009, see [reg. 1](#)

#### Penalties

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

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years.

(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.

#### Commencement Information

**I29** Reg. 29 in operation at 24.7.2009, see [reg. 1](#)



Sealed with the Official Seal of the Department of the Environment on 29th June 2009.



*Maggie Smith*  
A senior officer of the Department of the  
Environment

**Status:** Point in time view as at 24/07/2009.

**Changes to legislation:** There are currently no known outstanding effects for the The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009. (See end of Document for details)

## SCHEDULE 1

Regulation 3

### Damage to species and natural habitats

#### Damage to protected species and natural habitats

1. In the case of protected species or natural habitats (other than damage in an area of special scientific interest to which paragraph 4 applies) the damage shall 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.

#### Commencement Information

**I30** Sch. 1 para. 1 in operation at 24.7.2009, see [reg. 1](#)

#### 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 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.

#### Commencement Information

**I31** Sch. 1 para. 2 in operation at 24.7.2009, see [reg. 1](#)

#### 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.

**Commencement Information**

**I32** Sch. 1 para. 3 in operation at 24.7.2009, see [reg. 1](#)

**Areas of special scientific interest**

4.—(1) In the case of an area of special scientific interest, the damage shall be to—

- (a) the species or habitats declared under Article 28(1) of the Environment (Northern Ireland) Order 2002(16), or
- (b) protected species or natural habitats.

(2) The damage shall 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).

**Commencement Information**

**I33** Sch. 1 para. 4 in operation at 24.7.2009, see [reg. 1](#)

**Express authorisation**

5. Damage to protected species and natural habitats and damage in an area of special scientific interest does not include damage caused by an act expressly authorised by the relevant authorities in accordance with the Conservation (Nature Habitats, etc.) Regulations (Northern Ireland) 1995(17) or the Wildlife (Northern Ireland) Order 1985(18) or the Environment (Northern Ireland) Order 2002.

**Commencement Information**

**I34** Sch. 1 para. 5 in operation at 24.7.2009, see [reg. 1](#)

(16) S.I. 2002/3153 (N.I. 7)

(17) S.R. 1995 No. 380

(18) S.R. 1985 No. 171

**Status:** Point in time view as at 24/07/2009.

**Changes to legislation:** There are currently no known outstanding effects for the The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009. (See end of Document for details)

## SCHEDULE 2

Regulation 3

### Activities causing damage

#### Operation of permitted installations

1. The operation of installations subject to permit in pursuance of Directive [2008/1/EC](#) of the European Parliament and of the Council concerning integrated pollution prevention and control<sup>(19)</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).

##### Commencement Information

**I35** Sch. 2 para. 1 in operation at 24.7.2009, see [reg. 1](#)

#### 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 [2006/12/EC](#) on waste<sup>(20)</sup> and Council Directive [91/689/EEC](#) on hazardous waste<sup>(21)</sup>.

(2) The operation of landfill sites under Council Directive [1999/31/EC](#) on the landfill of waste<sup>(22)</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>(23)</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.

##### Commencement Information

**I36** Sch. 2 para. 2 in operation at 24.7.2009, see [reg. 1](#)

#### 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>(24)</sup>.

##### Commencement Information

**I37** Sch. 2 para. 3 in operation at 24.7.2009, see [reg. 1](#)

<sup>(19)</sup> O.J. No. L24, 29.01.08, p.8

<sup>(20)</sup> O.J. No. L114, 27.4.06, p.9 (as last amended by Directive [2008/98/EC](#) of the European Parliament and of the Council, O.J. No. L312, 22.11.08, p.3)

<sup>(21)</sup> O.J. No. L377, 31.12.91, p.20 (as last amended by Directive [2008/98/EC](#) of the European Parliament and of the Council, O.J. No. L312, 22.11.08, p.3)

<sup>(22)</sup> O.J. No. L182, 16.7.99, p.1 (as last amended by Regulation [\(EC\) No 1137/2008](#) of the European Parliament and of the Council, O.J. No. L311, 21.11.08, p.1)

<sup>(23)</sup> O.J. No. L332, 28.12.00, p.91 (as corrected in O.J. No. L145, 31.5.01, p.52)

<sup>(24)</sup> O.J. No. L102, 11.04.06, p.15

## Discharges requiring authorisation

4.—(1) All discharges into the inland surface water that require prior authorisation in pursuance of Directive [2006/11/EC](#) of the European Parliament and of the Council on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community(**25**).

(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(**26**).

(3) All discharges or injections of pollutants into surface water or groundwater that require a permit, authorisation or registration under Directive [2000/60/EC](#)(**27**).

### Commencement Information

**I38** Sch. 2 para. 4 in operation at 24.7.2009, see [reg. 1](#)

## Water abstraction and impoundment

5. Water abstraction and impoundment of water subject to prior authorisation in pursuance of Directive [2000/60/EC](#).

### Commencement Information

**I39** Sch. 2 para. 5 in operation at 24.7.2009, see [reg. 1](#)

## 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(**28**);
- (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(**29**);
- (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(**30**);
- (d) biocidal products as defined in Article 2(1)(a) of Directive [98/8/EC](#) of the European Parliament and of the Council concerning the placing of biocidal products on the market(**31**).

(25) O.J. No. L64, 4.3.06, p.52

(26) O.J. No. L20, 26.1.80, p.43 (as amended by Council Directive [91/692/EC](#), O.J. No. L377, 31.12.91, p.48)

(27) O.J. No. L327, 22.12.00, p.1 (as amended by Directive [2008/105/EC](#) of the European Parliament and of the Council, O.J. No. L348, 24.12.08, p.84)

(28) O.J. No. L196, 16.8.67, p.1 (as last amended by Regulation (EC) No 2008/1272 of the European Parliament and of the Council, O.J. No. L353, 31.12.08, p.1)

(29) O.J. No. L 200, 30.7.99, p.1 (as last amended by Regulation (EC) No 2008/1272 of the European Parliament and of the Council, O.J. No. L353, 31.12.08, p.1)

(30) O.J. No. L 230, 19.8.91, p.1 (as last amended by Commission Directive [2008/127/EC](#), O.J. No. L344, 20.12.08, p.89)

(31) O.J. No. L 123, 24.4.98, p.1 (as last amended by Directive [2008/31/EC](#) of the European Parliament and of the Council, O.J. No. L81, 20.3.08, p.57)

**Status:** Point in time view as at 24/07/2009.

**Changes to legislation:** There are currently no known outstanding effects for the The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009. (See end of Document for details)

#### Commencement Information

**I40** Sch. 2 para. 6 in operation at 24.7.2009, see [reg. 1](#)

### 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([32](#));
- (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([33](#));
- (c) Council Directive [93/75/EEC](#) concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods([34](#)).

#### Commencement Information

**I41** Sch. 2 para. 7 in operation at 24.7.2009, see [reg. 1](#)

### Genetically modified organisms

8.—(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([35](#)).

(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([36](#)).

#### Commencement Information

**I42** Sch. 2 para. 8 in operation at 24.7.2009, see [reg. 1](#)

### Transboundary shipment of waste

9. Transboundary shipment of waste within, into or out of the Community, requiring an authorisation or prohibited under Regulation (EC) No [1013/2006](#) of the European Parliament and of the Council on shipments of waste ([37](#)).

#### Commencement Information

**I43** Sch. 2 para. 9 in operation at 24.7.2009, see [reg. 1](#)

(32) O.J. No. L 319, 12.12.94, p.7 (as last amended by Commission Directive [2006/89/EC](#), O.J. No. L305, 4.11.06, p.4)

(33) O.J. No. L 235, 17.9.96, p.25 (as last amended by Commission Directive [2006/90/EC](#), O.J. No. L305, 4.11.06, p.6)

(34) O.J. No. L 247, 5.10.93, p.19 (as last amended by Directive [2002/84/EC](#) of the European Parliament and of the Council, O.J. No. L324, 29.11.02, p.53)

(35) O.J. No. L117, 08.05.90, p.1 (as last amended by Commission Decision [2005/174/EC](#), O.J. No. L59, 5.3.05, p.20)

(36) O.J. No. L106, 17.04.01, p.1 (as last amended by Directive [2008/27/EC](#) of the European Parliament and of the Council, O.J. No. L81, 20.3.08, p.45)

(37) O.J. No. L190, 12.07.06, p.1 (as last amended by [Commission Regulation \(EC\) No 669/2008](#), O.J. No. L188, 16.7.08, p.7)

## SCHEDULE 3

Regulation 16

Permits, etc.

### Integrated pollution prevention and control

1. A permit granted under the Pollution Prevention and Control Regulations (Northern Ireland) 2003<sup>(38)</sup> for an activity listed in Annex 1 to Council Directive 96/61/EC concerning integrated pollution prevention and control<sup>(39)</sup>.

#### Commencement Information

**I44** Sch. 3 para. 1 in operation at 24.7.2009, see [reg. 1](#)

### Waste

2.—(1) A permit issued under the Pollution Prevention and Control Regulations (Northern Ireland) 2003 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 2006/12/EC on waste and Council Directive 91/689/EEC on hazardous waste.

(2) A licence or registration issued under the Waste Management Licensing Regulations (Northern Ireland) 2003<sup>(40)</sup> or the Hazardous Waste Regulations (Northern Ireland) 2005<sup>(41)</sup> 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 2006/12/EC on waste and Council Directive 91/689/EEC on hazardous waste.

(3) A licence granted under Part II of the Food and Environment Protection Act 1985<sup>(42)</sup> issued for the purpose of those Directives.

#### Commencement Information

**I45** Sch. 3 para. 2 in operation at 24.7.2009, see [reg. 1](#)

### Landfill

3. A permit granted under the Pollution Prevention and Control Regulations (Northern Ireland) 2003 for the operation of landfill sites under Council Directive 1999/31/EC on the landfill of waste.

#### Commencement Information

**I46** Sch. 3 para. 3 in operation at 24.7.2009, see [reg. 1](#)

<sup>(38)</sup> S.R. 2003 No. 46

<sup>(39)</sup> O.J. No. L257, 10.10.96, p.26

<sup>(40)</sup> S.R. 2003 No. 493

<sup>(41)</sup> S.R. 2005 No. 300

<sup>(42)</sup> 1985 c. 48

**Status:** Point in time view as at 24/07/2009.

**Changes to legislation:** There are currently no known outstanding effects for the The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009. (See end of Document for details)

### Incineration plants

4. A permit granted under the Pollution Prevention and Control Regulations (Northern Ireland) 2003 for the operation of incineration plants under Directive [2000/76/EC](#) of the European Parliament and of the Council on the incineration of waste.

#### Commencement Information

**I47** Sch. 3 para. 4 in operation at 24.7.2009, see [reg. 1](#)

### Discharges to water

5. A water discharge consent under the Water (Northern Ireland) Order 1999([43](#)) or a drought order under the Water and Sewerage Services (Northern Ireland) Order 2006([44](#)).

#### Commencement Information

**I48** Sch. 3 para. 5 in operation at 24.7.2009, see [reg. 1](#)

### Discharges to groundwater

6. An authorisation under the Groundwater Regulations (Northern Ireland) 1998([45](#))

#### Commencement Information

**I49** Sch. 3 para. 6 in operation at 24.7.2009, see [reg. 1](#)

### Water abstraction or impoundment

7. A water abstraction or impoundment licence under the Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006([46](#)).

#### Commencement Information

**I50** Sch. 3 para. 7 in operation at 24.7.2009, see [reg. 1](#)

### Pesticides and biocides

8. An approval of a pesticide under the Control of Pesticides Regulations (Northern Ireland) 1987([47](#)) or the Plant Protection Products Regulations (Northern Ireland) 2005([48](#)) or an authorisation of a biocidal product under, the Biocidal Products Regulations (Northern Ireland) 2001([49](#)).

(43) S.I. 1999/662 (N.I. 6)

(44) S.I. 2006/3336 (N.I. 21)

(45) S.R. 1998 No. 401

(46) S.R. 2006 No. 482

(47) S.R. 1987 No. 414

(48) S.R. 2005 No. 526

(49) S.R. 2001 No. 422



**Commencement Information**

**I51** Sch. 3 para. 8 in operation at 24.7.2009, see [reg. 1](#)

**Genetically modified organisms**

9.—(1) An authorisation for the contained use of genetically modified organisms under the Genetically Modified Organisms (Contained Use) Regulations (Northern Ireland) 2001(**50**) or an authorisation given in any Member State in accordance with Article 7 or 19 of Regulation ([EC](#)) No 1829/2003 of the European Parliament and of the Council on genetically modified food and feed(**51**).

(2) A consent for the deliberate release of genetically modified organisms under Article 8(1) of the Genetically Modified Organisms (Northern Ireland) Order 1991(**52**) and the Genetically Modified Organisms (Deliberate Release) Regulations (Northern Ireland) 2003(**53**) or a consent given in any other Member State for the placing of a genetically modified organism on the market as a product or in a product in accordance with Directive [2001/18/EC](#) of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms(**54**).

**Commencement Information**

**I52** Sch. 3 para. 9 in operation at 24.7.2009, see [reg. 1](#)

SCHEDULE 4

Regulation 15

Remediation

**PART 1**

Remediation of damage to natural resources other than land

**Application of Part 1**

1. This Part relates to remediation of damage to natural resources other than land.

**Commencement Information**

**I53** Sch. 4 para. 1 in operation at 24.7.2009, see [reg. 1](#)

**Risk to human health**

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

(50) [S.R. 2001 No. 295](#)

(51) O.J. No. L268, 18.10.03, p.1 (as last amended by Regulation ([EC](#)) No 298/2008 of the European Parliament and of the Council, O.J. No. L97, 9.4.08, p.64)

(52) [S.I. 1991/1714 \(N.I. 19\)](#)

(53) [S.R. 2003 No. 167](#)

(54) O.J. No. L106, 17.4.01, p.1 (as last amended by Directive [2008/27/EC](#) of the European Parliament and of the Council, O.J. No. L81, 20.3.08, p.45)

**Status:** Point in time view as at 24/07/2009.

**Changes to legislation:** There are currently no known outstanding effects for the The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009. (See end of Document for details)

#### Commencement Information

**I54** Sch. 4 para. 2 in operation at 24.7.2009, see [reg. 1](#)

#### Objective

3. The objective of remediation is to achieve the same level of natural resource or services as would have existed if the damage had not occurred.

#### Commencement Information

**I55** Sch. 4 para. 3 in operation at 24.7.2009, see [reg. 1](#)

#### Primary and complementary remediation

4.—(1) The remediation shall consist of such primary remediation or complementary remediation or both as will achieve the objective.

(2) Primary remediation is any remedial measure which returns the damaged natural resources or impaired services to, or towards, the state that would have existed if the damage had not occurred (natural recovery is a permitted form of primary remediation in appropriate cases).

(3) 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 to the state that would have existed if the damage had not occurred.

#### Commencement Information

**I56** Sch. 4 para. 4 in operation at 24.7.2009, see [reg. 1](#)

#### Compensatory remediation

5.—(1) In addition, compensatory remediation shall be provided to compensate for interim losses of natural resources or services that occur from the date of damage until remediation has achieved its objective; and 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.

(2) Compensatory remediation does not include financial compensation.

#### Commencement Information

**I57** Sch. 4 para. 5 in operation at 24.7.2009, see [reg. 1](#)

#### Choice of remediation

6. The remediation options shall 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 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
- (j) the geographical linkage to the damaged site.

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**Commencement Information**

**I58** Sch. 4 para. 6 in operation at 24.7.2009, see [reg. 1](#)

**Identification of complementary and compensatory remediation**

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

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

(3) Where this is not possible, different natural resources or services may be provided, and the remedial measures shall have the same monetary valuation as the lost natural resources or services.

(4) If valuation of the lost natural 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 may be provided whose cost (instead of monetary valuation) is equivalent to the value of the lost natural resources or services.

(5) In the case of complementary remediation at a new site, where possible and appropriate this site should be geographically linked to the damaged site.

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**Commencement Information**

**I59** Sch. 4 para. 7 in operation at 24.7.2009, see [reg. 1](#)

**Options**

8.—(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.

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

**Status:** Point in time view as at 24/07/2009.

**Changes to legislation:** There are currently no known outstanding effects for the The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009. (See end of Document for details)

- (4) The enforcing 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 risk 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.

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**Commencement Information**

**I60** Sch. 4 para. 8 in operation at 24.7.2009, see [reg. 1](#)

## PART 2

### Remediation of damage to land

#### Remediation of damage to land

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

(2) The remediation shall 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 to human health.

(3) The presence of such risks shall 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.

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**Commencement Information**

**I61** Sch. 4 para. 9 in operation at 24.7.2009, see [reg. 1](#)

## SCHEDULE 5

Regulation 25

### Compensation

#### Compensation for grant of rights

1. This schedule prescribes—

- (a) the period within which a person who grants, or joins in granting, any rights pursuant to regulation 25 may apply for compensation for the grant of those rights;
- (b) the manner in which, and the person to whom, such an application may be made; and
- (c) the manner of determining such compensation, for determining the amount of such compensation and for making supplemental provision relating to such compensation.

**Commencement Information**

**I62** Sch. 5 para. 1 in operation at 24.7.2009, see [reg. 1](#)

**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.

**Commencement Information**

**I63** Sch. 5 para. 2 in operation at 24.7.2009, see [reg. 1](#)

**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.

**Commencement Information**

**I64** Sch. 5 para. 3 in operation at 24.7.2009, see [reg. 1](#)

**Manner of making an application**

4.—(1) An application for compensation shall 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 shall 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.

**Commencement Information**

**I65** Sch. 5 para. 4 in operation at 24.7.2009, see [reg. 1](#)

**Status:** Point in time view as at 24/07/2009.

**Changes to legislation:** There are currently no known outstanding effects for the The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009. (See end of Document for details)

### Loss and damage for which compensation is 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 Land Acquisition and Compensation (NI) Order 1973<sup>(55)</sup>, in pursuance of a notice of intention to vest 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 attributable to the grant of the right or the exercise of it; and
  - (e) the amount of any valuation and legal costs 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.

#### Commencement Information

**I66** Sch. 5 para. 5 in operation at 24.7.2009, see [reg. 1](#)

### Basis on which compensation is assessed

6.—(1) The rules set out in Article 6 of the Land Compensation (Northern Ireland) Order 1982<sup>(56)</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 shall 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 shall 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.

#### Commencement Information

**I67** Sch. 5 para. 6 in operation at 24.7.2009, see [reg. 1](#)

<sup>(55)</sup> S.I. 1973/1896 (N.I. 21)

<sup>(56)</sup> S.I. 1982/712 (N.I. 9)

## Determination of disputes

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

(2) In relation to the determination of any such question of compensation, the provisions of Articles 4 and 5 of the Land Compensation (Northern Ireland) Order 1982 (procedure on references to the Lands Tribunal and costs) shall apply as if—

- (a) the reference in Article 4 of the Land Compensation (Northern Ireland) Order 1982 to Article 3 of that Order were a reference to sub-paragraph (1); and
- (b) references in Article 5 of the Land Compensation (Northern Ireland) Order 1982 to the acquiring authority were references to the person to whom the rights were granted.

### Commencement Information

**I68** Sch. 5 para. 7 in operation at 24.7.2009, see [reg. 1](#)

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## 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, areas of special scientific interest, water and land (regulation 3).

They are enforced by the Department of the Environment (regulation 8).

They provide that, for certain economic activities, where there is an imminent risk of environmental damage, the 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 operator specifying what remediation is required (Part 3).

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 level 5 on the standard scale or to imprisonment for a term not exceeding three months; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years.

A Regulatory Impact Assessment in relation to these Regulations has been placed in the library of the Northern Ireland Assembly. It is available on the DOE website.

**Status:**

Point in time view as at 24/07/2009.

**Changes to legislation:**

There are currently no known outstanding effects for the The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009.