
STATUTORY RULES OF NORTHERN IRELAND

2009 No. 252

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

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.

(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

11 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

12 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

13 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

14 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 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) [^{F1}under the authority of a warrant by virtue of Schedule 6].

(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 [^{F2}under the authority of a warrant by virtue of Schedule 6].

(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.

Textual Amendments

- F1** Words in [reg. 26\(7\)\(b\)](#) substituted (14.12.2009) by [The Environmental Liability \(Prevention and Remediation\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/361\)](#), [reg. 3\(3\)](#)
- F2** Words in [reg. 26\(8\)](#) substituted (14.12.2009) by [The Environmental Liability \(Prevention and Remediation\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/361\)](#), [reg. 3\(4\)](#)

Commencement Information

- I5** [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

- I6** [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
- (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(1) 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

I7 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 [^{F3}not exceeding the statutory maximum] 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.

(1) 1881 c.41

Textual Amendments

- F3** Words in [reg. 29\(1\)\(a\)](#) substituted (14.12.2009) by [The Environmental Liability \(Prevention and Remediation\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/361\)](#), [reg. 3\(5\)](#)
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Commencement Information

- I8** Reg. 29 in operation at 24.7.2009, see [reg. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009, PART 4.