
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2009 No.

The Environmental Liability (Scotland) Regulations 2009

Application

4.—(1) Subject to regulation 5, these Regulations apply in relation to—

- (a) damage to protected species and natural habitats if—
 - (i) it has significant adverse effects on reaching or maintaining the favourable conservation status of the protected species or natural habitat; and
 - (ii) it is caused by an activity listed in Schedule 1 or by the fault or negligence of an operator whilst carrying on any other activity;
- (b) water damage, caused by an activity listed in Schedule 1, which is any damage that significantly adversely affects any or all of the—
 - (i) ecological status;
 - (ii) chemical status;
 - (iii) quantitative status;
 - (iv) ecological potential,

of the waters concerned with the exception of adverse effects where Article 4(7) of Directive [2000/60/EC](#) applies;

- (c) land damage, caused by an activity listed in Schedule 1, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction in, on, or under land of substances, preparations, organisms or micro-organisms.

(2) Paragraphs (3) to (5) apply in relation to assessing whether damage has significant adverse effects for the purposes of paragraph (1)(a)(i).

(3) The significance of any damage has to be assessed by reference to—

- (a) the conservation status of the protected species or natural habitat at the time of the damage;
- (b) the services provided by the amenities they produce; and
- (c) their capacity for natural regeneration.

(4) Any damage is significant if it has a proven effect on human health.

(5) The significance of any effects has to be assessed with reference to the baseline condition with significant adverse changes thereto being determined by means of measurable data such as—

- (a) the number of individuals, their density or the area covered;
- (b) 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 higher, including the European Community);
- (c) the capacity of the species for propagation, its viability or the capacity of the habitat for natural regeneration;

- (d) 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.