
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2009 No.

The Environmental Liability (Scotland) Regulations 2009

Competent authority

7.—(1) For the purposes of these Regulations, the competent authority in relation to instances of environmental damage or an imminent threat of such damage—

- (a) to protected species or natural habitats in the territorial sea or coastal water (within the meaning of section 3(8) of the Water Environment and Water Services (Scotland) Act 2003), is the Scottish Ministers;
- (b) to protected species or natural habitats in any other place, is Scottish Natural Heritage; and
- (c) to waters or land, is the Scottish Environment Protection Agency.

(2) In relation to environmental damage of the type defined in regulation 4(1)(a), the competent authority shall decide whether or not the damage has occurred or will occur as a result of the fault or negligence of an operator.

(3) Where—

- (a) more than one instance of environmental damage has occurred; and
- (b) the competent authority is unable to ensure the remedial measures are taken at the same time,

the competent authority shall determine which instance of environmental damage is to be remedied first.

(4) When determining which incidence of environmental damage is to be remedied first for the purposes of paragraph (3), the competent authority shall have regard to the following matters—

- (a) the nature, extent and gravity of the instances of environmental damage concerned;
- (b) the possibility of natural recovery; and
- (c) any risk to human health.

(5) Before making a determination under paragraph (3), the competent authority shall, if practicable, consult—

- (a) any interested person (as defined in regulation 14(1)); and
- (b) the owner or occupier of the land upon which, or any waters in respect of which, remedial measures are to be taken.

(6) A person consulted under paragraph (5) may make representations to the competent authority within such time limit as specified by the authority to the person and the competent authority shall take into account any representations in making its determination.

(7) Any decision taken by a competent authority under these Regulations which imposes requirements as to preventive or remedial measures on an operator shall—

- (a) be notified to the relevant operator;
- (b) state the grounds on which it is based; and
- (c) advise the operator of any available appeal and any time limit to which such an appeal is subject.