

## SCHEDULE 1

Regulation 4(1)

### ACTIVITIES FOR THE PURPOSES OF REGULATION 4(1)

#### . Interpretation

[<sup>F1</sup>A1. A reference in this schedule to an activity being authorised, prohibited or managed pursuant to, or subject to a permit, authorisation or registration under, a Directive includes, on or after exit day, any activity authorised, prohibited or managed pursuant to, or subject to a permit, authorisation or registration under, any [<sup>F2</sup>assimilated] law which transposed that Directive.]

#### Textual Amendments

- F1** Sch. 1 para. A1 inserted (31.12.2020) by [The Environmental Liability etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/276\)](#), regs. 1(1)(b), **4(5)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F2** Word in sch. 1 para. A1 substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), **sch. 2 para. 13(3)**

[<sup>F3</sup>1. The operation of installations subject to permit in pursuance of—

- (a) Council [Directive 96/61/EC](#) of 24 September 1996 concerning the integrated pollution prevention and control in respect of 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,
- (b) [Directive 2008/1/EC](#) of the European Parliament and of Council of 15 January 2008 concerning integrated pollution prevention and control in respect of 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, or
- (c) [Directive 2010/75/EU](#) of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).]

#### Textual Amendments

- F3** Sch. 1 paras. 1, 2 substituted (31.10.2019) by [The Environmental Liability etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/276\)](#), regs. 1(1)(a), **2(5)(a)**

[<sup>F3</sup>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—

- (a) Council [Directive 91/689/EEC](#) of 12 December 1991 on hazardous waste,
- (b) [Directive 2006/12/EC](#) of the European Parliament and of Council of 5 April 2006 on waste,
- (c) [Directive 2008/98/EC](#) of the European Parliament and of the Council of 19 November 2008 on waste.

(2) The operation of—

- (a) landfill sites under Council [Directive 1999/31/EC](#) of 26 April 1999 on the landfill of waste, or
- (b) incineration plants under—

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

- (i) [Directive 2000/76/EC](#) of the European Parliament and of the Council of 4 December 2000 on the incineration of waste, or
- (ii) [Directive 2010/75/EU](#) of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).

(3) Sub-paragraphs (1) and (2) do not apply to operations to the extent to which they include the spreading of sewage sludge from urban waste water treatment plants, treated to an approved standard, for the purposes of agriculture (within the meaning of regulation 2 of the Sludge (Use in Agriculture) Regulations 1989).]

#### Textual Amendments

**F3** Sch. 1 paras. 1, 2 substituted (31.10.2019) by [The Environmental Liability etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/276\)](#), regs. 1(1)(a), **2(5)(a)**

**3.** All discharges into inland surface water, which require prior authorisation in pursuance of Council Directive [2006/11/EC](#) of 15th February 2006 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community <sup>M1</sup>.

#### Marginal Citations

**M1** O.J. No. L 64, 4.3.2006, p.52.

[<sup>F4</sup>**4.** All discharges of substances into groundwater which require prior authorisation in pursuance of—

- (a) Council [Directive 80/68/EEC](#) of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances,
- (b) [Directive 2006/118/EC](#) of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration.]

#### Textual Amendments

**F4** Sch. 1 para. 4 substituted (31.10.2019) by [The Environmental Liability etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/276\)](#), regs. 1(1)(a), **2(5)(b)**

**5.** The discharge or injection of pollutants into surface water or groundwater which require a permit, authorisation or registration in pursuance of Directive [2000/60/EC](#).

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

[<sup>F5</sup>**7.** 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](#) of 27 June 1967 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous substances,
- (b) hazardous substances as defined in Article 3 of Regulation [\(EC\) No. 1272/2008](#) of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures,

- (c) dangerous preparations as defined in Article 2(2) of Directive [1999/45/EC](#) of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations,
- (d) plant protection products which has the same meaning as in Article 2(1) of Regulation [\(EC\) No 1107/2009](#) of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market,
- (e) biocidal products as defined in Article 2(1)(a) of Directive [98/8/EC](#) of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market or as defined in Article 3(1)(a) of Regulation (EU) No. 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products.]

**Textual Amendments**

**F5** Sch. 1 paras. 7, 8 substituted (31.10.2019) by [The Environmental Liability etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/276\)](#), regs. 1(1)(a), **2(5)(c)**

[<sup>F5</sup>8. 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](#) of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road,
- (b) the Annex to Council [Directive 96/49/EC](#) of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail,
- (c) Council [Directive 93/75/EEC](#) of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods,
- (d) [Directive 2002/59/EC](#) of the European Parliament and of the Council of 27th June 2002 establishing a Community vessel traffic monitoring and information system,
- (e) [Directive 2008/68/EC](#) of the European Parliament and of the Council of 24th September 2008 on the inland transport of dangerous goods.]

**Textual Amendments**

**F5** Sch. 1 paras. 7, 8 substituted (31.10.2019) by [The Environmental Liability etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/276\)](#), regs. 1(1)(a), **2(5)(c)**

9. Any contained use, including transport, involving genetically modified micro-organisms as defined by [<sup>F6</sup>[Directive 2009/41/EC](#) of the European Parliament and of the Council of 6 May 2009 on the contained use of genetically modified micro-organisms].

**Textual Amendments**

**F6** Words in sch. 1 para. 9 substituted (31.10.2019) by [The Environmental Liability etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/276\)](#), regs. 1(1)(a), **2(5)(d)**

10. Any deliberate release into the environment, transport and placing on the market of genetically modified organisms as defined by Directive [2001/18/EC](#).

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

**11.** Transboundary shipment of waste within, into or out of the European Union [<sup>F7</sup>or into or out of the United Kingdom], requiring an authorisation or prohibited in the meaning of Council Regulation (EC) No. 1013/2006 of 14th June 2006 on shipments of waste <sup>M2</sup>.

**Textual Amendments**

**F7** Words in sch. 1 para. 11 inserted (31.12.2020) by [The Environmental Liability etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/276\)](#), regs. 1(1)(b), **4(5)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

**Marginal Citations**

**M2** O.J. No. L 190, 12.7.2006, p.1, as last amended by Commission Regulation (EC) No. 669/2008 (O.J. No. L 188, 16.7.2008, p.7).

**12.** The management of extractive waste pursuant to Directive [2006/21/EC](#) of the European Parliament and of the Council of 15th March 2006 on the management of waste from extractive industries <sup>M3</sup>.

**Marginal Citations**

**M3** O.J. No. L 102, 11.4.2006, p.15.

[<sup>F8</sup>**13.** The operation of storage sites pursuant to Directive [2009/31/EC](#) of the European Parliament and of the Council on the geological storage of carbon dioxide and amending Council Directive [85/337/EEC](#), European Parliament and Council Directives [2000/60/EC](#), [2001/80/EC](#), [2004/35/EC](#), [2006/12/EC](#), [2008/1/EC](#) and Regulation (EC) No 1013/2006.]

**Textual Amendments**

**F8** Sch. 1 para. 13 inserted (25.6.2011) by [The Environmental Liability \(Scotland\) Amendment Regulations 2011 \(S.S.I. 2011/116\)](#), regs. 1(1), **2(2)** (with reg. 1(2))

SCHEDULE 2

Regulation 9

SUPPLEMENTARY PROVISIONS IN RESPECT  
OF POWERS OF ENTRY AND INSPECTION

[<sup>F3</sup>**Interpretation**

1. The operation of installations subject to permit in pursuance of—
  - (a) Council Directive [96/61/EC](#) of 24 September 1996 concerning the integrated pollution prevention and control in respect of 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,
  - (b) Directive [2008/1/EC](#) of the European Parliament and of Council of 15 January 2008 concerning integrated pollution prevention and control in respect of 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, or

- (c) [Directive 2010/75/EU](#) of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).]

**Textual Amendments**

- F3** Sch. 1 paras. 1, 2 substituted (31.10.2019) by [The Environmental Liability etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/276\)](#), regs. 1(1)(a), **2(5)(a)**

**[<sup>F3</sup>Warrants**

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—

- (a) Council [Directive 91/689/EEC](#) of 12 December 1991 on hazardous waste,
- (b) [Directive 2006/12/EC](#) of the European Parliament and of Council of 5 April 2006 on waste,
- (c) [Directive 2008/98/EC](#) of the European Parliament and of the Council of 19 November 2008 on waste.

(2) The operation of—

- (a) landfill sites under Council [Directive 1999/31/EC](#) of 26 April 1999 on the landfill of waste, or
- (b) incineration plants under—
  - (i) [Directive 2000/76/EC](#) of the European Parliament and of the Council of 4 December 2000 on the incineration of waste, or
  - (ii) [Directive 2010/75/EU](#) of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).

(3) Sub-paragraphs (1) and (2) do not apply to operations to the extent to which they include the spreading of sewage sludge from urban waste water treatment plants, treated to an approved standard, for the purposes of agriculture (within the meaning of regulation 2 of the *Sludge (Use in Agriculture) Regulations 1989*).]

**Textual Amendments**

- F3** Sch. 1 paras. 1, 2 substituted (31.10.2019) by [The Environmental Liability etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/276\)](#), regs. 1(1)(a), **2(5)(a)**

**Evidence of authority**

3. A person designated as the person who may exercise a relevant power shall produce evidence of that designation and other authority before exercising the power.

**Admissibility of information**

4.—(1) Subject to regulation 9(7), information obtained in consequence of the exercise of a relevant power, with or without the consent of any person, shall be admissible in evidence against that or any other person.

(2) Without prejudice to the generality of sub-paragraph (1), information obtained by means of monitoring or other apparatus installed on any premises in the exercise of a relevant power, with or

without the consent of any person in occupation of the premises, shall be admissible in evidence in any proceedings against that or any other person.

### **Securing of premises**

5. A person who, in the exercise of a relevant power, enters on any premises which are unoccupied or whose occupier is temporarily absent shall leave the premises as effectually secured against trespassers as they were on entry.

### **Compensation**

6.—(1) Where any person exercises any power conferred by regulation 9(2)(a) or (b), it shall be the duty of the competent authority under whose authorisation that person acts to make full compensation to any person who has sustained loss or damage by reason of—

- (a) the exercise by that person of that power; or
- (b) the performance of, or failure of that person to perform, the duty imposed by paragraph 5.

(2) Compensation shall not be payable by virtue of sub-paragraph (1) in respect of any loss or damage if compensation is payable in respect of that loss or damage by virtue of any other enactment.

(3) A person exercising any power conferred by regulation 9(2)(a) or (b) shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of any relevant power if the court is satisfied that the person acted in good faith.

## SCHEDULE 3

Regulation 11(2)

### REMEDICATION OF ENVIRONMENTAL DAMAGE

## PART I

### **Application of Part I**

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

### **Definitions**

2. In this Part—
  - (a) “primary remediation” means any remedial measure which returns the damaged natural resources or impaired services to, or towards, baseline condition;
  - (b) “complementary remediation” means 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 services;
  - (c) “compensatory remediation” means any action taken to compensate for interim losses of natural resources or services that occur from the date of damage occurring until primary remediation has achieved its full effect; and
  - (d) “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; and does not include financial compensation to the public.

## Objectives

3.—(1) Environmental damage, in relation to water, protected species or natural habitats, shall be effected by the restoration of the environment to its baseline condition by—

- (a) primary remediation;
- (b) complementary remediation; and
- (c) compensatory remediation.

(2) Where primary remediation does not result in the restoration of the environment to its baseline condition, then complementary remediation will be undertaken, and compensatory remediation will be undertaken to compensate for the interim losses.

## Risk to human health

4. The remedying of environmental damage, in relation to damage to water, protected species or natural habitats, shall result in the removal of any significant risk of human health being adversely affected.

## Identification of remedial measures

5.—(1) In relation to primary remediation, actions to restore the natural resources and services towards baseline condition on an accelerated time-frame, or through natural recovery, shall be considered.

(2) In relation to complementary and compensatory remediation—

- (i) if possible, complementary and compensatory remedial measures must provide natural resources or services of the same type, quality and quantity as those damaged;
- (ii) where this is not possible, similar but different natural resources or services must be provided (for example, by offsetting a reduction in the quality of natural resources or services by increasing their quantity);
- (iii) where this is not possible, different natural resources or services may be provided, and the remedial measures must have the same monetary valuation as the lost natural resources or services;
- (iv) 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 is equivalent to the estimated monetary value of the lost natural resources or services;
- (v) in the case of complementary remediation at a new site, where possible and appropriate this site should be geographically linked to the damaged site.

## Choice of remediation

6.—(1) The reasonable remedial options should be evaluated, using best available technologies, based on the following criteria—

- (a) the effect of each option on public health and safety;
- (b) the cost of implementing the option;
- (c) the likelihood of success of each option;
- (d) the extent to which each option will prevent future damage, and avoid collateral damage as a result of implementing the option;
- (e) the extent to which each option benefits to each component of the natural resource or service;

- (f) the extent to which each option takes account of relevant social, economic and cultural concerns and other relevant factors specific to the locality;
- (g) the length of time it will take for the restoration of the environmental damage to be effective;
- (h) the extent to which each option achieves the restoration of the site of the environmental damage; and
- (i) the geographical linkage to the damaged site.

(2) 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 baseline or that restore it more slowly can be chosen. 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 actions to provide a similar level of natural resources or services as were foregone. This will be the case, for example, when the equivalent natural resources or services could be provided elsewhere at a lower cost. These additional remedial measures shall be determined in accordance with the rules set out in paragraph 5(2).

(3) The competent authority may at any time decide that no further remedial measures should be taken if—

- (a) the remedial measures already taken secure that there is no longer any significant risk of adversely affecting human health, water or protected species and natural habitats; and
- (b) the cost of the remedial measures that should be taken to reach baseline condition or similar level would be disproportionate to the environmental benefits to be obtained.

## PART II

1. This Part applies to damage to land.

2. The necessary measures shall be taken to ensure, as a minimum, that the relevant contaminants are removed, controlled, contained or diminished so that the contaminated land, taking account of its current use or approved future use at the time of the damage, no longer poses any significant risk of adversely affecting 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. Use shall be ascertained on the basis of any enactment relating to land use, or other relevant enactments, in force, when the damage occurred.

5. If the use of the land is changed, all necessary measures shall be taken to prevent any adverse effects on human health.

6. If there are no enactments which are relevant for the purposes of paragraph 4, the nature of the relevant area where the damage occurred, taking into account its expected development, shall determine the use of the specific area.

7. A natural recovery option, that is to say an option in which no direct human intervention in the recovery process would be taken, shall be considered.



## SCHEDULE 4

Regulation 16

### COMPENSATION

#### Interpretation

**1.** In this Schedule—

“the Act” means the Land Compensation (Scotland) Act 1963 <sup>M4</sup>;

“the grantor” means the person who grants, or joins in granting, any rights under regulation 16, and

“relevant interest” means an interest in land in respect of which rights are granted in terms of regulation 16.

#### Marginal Citations

M4 1963 c.51.

#### Period for making an application

**2.** An application for compensation shall be made before the expiry of a period of 12 months beginning with the date of completion of the measures required to be carried out in respect of which compensation is claimed.

#### Manner of making an application

**3.—(1)** An application for compensation must be made in writing to the person to whom the right was granted.

(2) The application must contain—

- (a) a copy of the grant of rights in respect of which the grantor is applying for compensation;
- (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 (c) of paragraph 4 and showing how the amount applied for under each sub-paragraph has been calculated.

#### Loss and damage for which compensation payable

**4.** 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) any loss or damage sustained by the grantor which is attributable to the grant of the right or the exercise of it; and
- (c) 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.

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

5.—(1) The rules set out in section 12 of the Act (rules for assessing compensation) <sup>M5</sup> shall, so far as applicable and subject to any necessary modifications, have effect 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 standard security (within the meaning of section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970 <sup>M6</sup>)—

- (a) the compensation must be assessed as if the interest were not subject to that security; and
- (b) no compensation shall be payable in respect of the interest of the creditor (as distinct from the interest which is subject to the security).

#### **Marginal Citations**

- M5** Section 12 has been amended by Schedules 17 and 19 to the [Planning and Compensation Act 1991 \(c.34\)](#).
- M6** [1970 c.35](#). Section 9 has been amended by paragraph 30(6) of and Schedule 13 to the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5) and by paragraph 4(2) of Schedule 14 to the Title Conditions (Scotland) Act 2003 (asp 9).

### **Determination of disputes**

6. Any question of disputed compensation shall be referred to and determined by the Lands Tribunal for Scotland.

**Changes to legislation:**

There are currently no known outstanding effects for the The Environmental Liability (Scotland) Regulations 2009.