
STATUTORY INSTRUMENTS

2015 No. 810

The Environmental Damage (Prevention and Remediation) (England) Regulations 2015

PART 1

Introductory Provisions

Title, commencement and application

1.—(1) These Regulations may be cited as the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 and come into force on 19th July 2015.

(2) They apply in relation to England and the areas specified in regulation 6.

Interpretation

2.—(1) In these Regulations—

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

“baselines” means the baselines from which the breadth of the territorial sea is measured for the purposes of the Territorial Sea Act 1987(1);

“[Directive 2000/60/EC](#)” means [Directive 2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(2);

“[Directive 2004/35/EC](#)” means [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;

“enforcing authority” means the person or body responsible for enforcing these Regulations, in accordance with regulation 10 or 11;

“local authority” means—

(a) where there is a unitary authority for a local government area, that authority;

(b) where there is not a unitary authority—

(i) in a metropolitan district, the council of that district;

(ii) in a non-metropolitan county, the district council;

(iii) in each London borough, the council of that borough;

(iv) in the City of London, the Common Council;

(v) on the Isles of Scilly, the Council of the Isles of Scilly;

(1) 1987 c.49. See [S.I. 2014/1353](#).

(2) OJNo. L 327, 22.12.2000, p.1; last amended by Commission Directive 2014/101/EU (OJ No. L 311, 31.10.2014, p.32).

“marine waters” means waters classified as marine waters pursuant to [Directive 2008/56/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of marine environmental policy⁽³⁾;

“natural habitat” means—

- (a) the habitats of species mentioned in Article 4(2) of, or Annex I to, Council [Directive 2009/147/EC](#) on the conservation of wild birds⁽⁴⁾ or listed in Annex II to Council [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 Council [Directive 92/43/EEC](#);

“natural resources” means—

- (a) a protected species;
- (b) a natural habitat;
- (c) a species or habitat on a site of special scientific interest by reason of which the site has been notified under section 28 of the Wildlife and Countryside Act 1981⁽⁶⁾;
- (d) water; and
- (e) land;

“operator” means the person who operates or controls an activity, including the holder of a permit or authorisation relating to that activity, or the person registering or notifying an activity for the purposes of any enactment;

“protected species” means a species of a kind mentioned in Article 4(2) of Council [Directive 2009/147/EC](#) or listed in Annex I to that Directive or Annexes II and IV to Council [Directive 92/43/EEC](#);

“remediation notice” means a notice served in accordance with regulation 20(2);

“responsible operator” means the operator in relation to an activity that has caused environmental damage;

“the Scottish zone” has the meaning it has in the Scotland Act 1998⁽⁷⁾;

“services” means the functions performed by natural resources which benefit other natural resources or the public;

“site of special scientific interest” has the same meaning as in the Wildlife and Countryside Act 1981⁽⁸⁾.

(2) Unless otherwise defined in these Regulations, expressions used in [Directive 2004/35/EC](#) have the same meaning in these Regulations.

(3) OJ No. L 164, 25.6.2008, p.19.

(4) OJ No. L 20, 26.1.2010, p.7; amended by Council Directive 2013/17/EU (OJ No. L 158, 10.6.2013, p.193).

(5) OJ No. L 206, 22.7.1992, p.7; last amended by Council Directive 2013/17/EU (OJ No. L 158, 10.6.2013, p.193).

(6) [1981 c.69](#). Section 28 was substituted by paragraph 1 of Schedule 9 to the Countryside and Rights of Way Act 2000 ([c.37](#)) and amended by paragraph 79 of Schedule 11 to the Natural Environment and Rural Communities Act 2006 ([c.16](#)) and paragraph 2(1) and (2) of Schedule 13 to the Marine and Coastal Access Act 2009 ([c.23](#)).

(7) [1998 c.46](#). The term “the Scottish zone” is defined by section 126(1). The Scottish Adjacent Waters Boundaries Order 1999 ([S.I. 1999/1126](#)) made under section 126(2) defines the boundaries between waters which are to be treated as internal waters or territorial waters, or waters within British fishery limits, adjacent to Scotland and those which are not.

(8) See section 52, amended by paragraph 5(1) and (2) of Schedule 9 to the Countryside and Rights of Way Act 2000 ([c.37](#)).

References to EU instruments

3.—(1) Subject to paragraph (2), references in these Regulations to EU instruments are to those instruments as amended from time to time.

(2) Paragraph (1) does not apply to references to [Directive 2004/35/EC](#).

Meaning of “environmental damage”

4.—(1) These Regulations apply in relation to the prevention and remediation of environmental damage; and environmental damage is damage, as specified in this regulation, to—

- (a) a protected species or natural habitat, or a site of special scientific interest;
- (b) surface water or groundwater;
- (c) marine waters; or
- (d) land.

(2) Environmental damage to a protected species or natural habitat or a site of special scientific interest means damage of a kind specified in Schedule 1.

(3) Environmental damage to surface water means damage to a surface water body classified as such pursuant to [Directive 2000/60/EC](#) such that—

- (a) a biological quality element listed in Annex V to that Directive,
- (b) the level of a chemical listed in the legislation in Annex IX or a chemical listed in Annex X to that Directive, or
- (c) a physicochemical quality element listed in Annex V to that Directive,

changes sufficiently to lower the status of the water body in accordance with [Directive 2000/60/EC](#) (whether or not the water body is in fact reclassified as being of lower status).

(4) Environmental damage to groundwater means any damage to a body of groundwater such that its conductivity, level or concentration of pollutants changes sufficiently to lower its status for the purposes of [Directive 2000/60/EC](#) (and, in relation to pollutants, for the purposes of [Directive 2006/118/EC](#) of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration⁽⁹⁾), whether or not the body of groundwater is in fact reclassified as being of lower status.

(5) Environmental damage to marine waters means damage to marine waters such that their environmental status is significantly adversely affected.

(6) Environmental damage to land means contamination of land by substances, preparations, organisms or micro-organisms, where that damage results in a significant risk of adverse effects on human health.

Environmental damage to which these Regulations apply

5.—(1) These Regulations apply in relation to environmental damage if it is caused by an activity mentioned in Schedule 2.

(2) In the case of environmental damage to a protected species or natural habitat or a site of special scientific interest, these Regulations also apply in relation to environmental damage caused by any other activity if the operator—

- (a) intended to cause environmental damage; or
- (b) was negligent as to whether environmental damage would be caused.

(9) OJ No. L 372, 27.12.2006, p.19; amended by Commission Directive 2014/80/EU (OJ No. L 182, 21.6.2014, p.52).

Areas of application

6.—(1) Environmental damage is relevant for the purposes of these Regulations only if the damage, of a type specified in the first column of the following table, occurs in an area specified in the second column of that table in relation to damage of that type.

| <i>Type of damage</i> | <i>Area in which these Regulations apply</i> |
|--|--|
| Damage to surface water or groundwater | England and all waters up to one nautical mile seaward from the baselines in England. |
| Damage to marine waters | All marine waters within any of the following descriptions— (a) marine waters up to one nautical mile seaward from the baselines in England so far as not already addressed as damage to surface water or groundwater; (b) marine waters from one nautical mile seaward from the baselines in England, extending to the outermost reach of the area where the United Kingdom exercises jurisdictional rights, in accordance with UNCLOS; (c) marine waters beyond 12 nautical miles from the baselines in Wales, extending to the outermost reach of the area where the United Kingdom exercises jurisdictional rights, in accordance with UNCLOS; (d) marine waters up to the limit of the exclusive economic zone which lies within the Scottish zone, or which lies outside the Scottish zone, but is nearer to any point on the baselines from which the breadth of the territorial sea adjacent to Scotland is measured than to any point on the baselines in any other part of the United Kingdom. |
| Damage in a site of special scientific interest | England |
| Damage to a protected species or natural habitat | England, the seabed out to the limits of the continental shelf ⁽¹⁾ , and anywhere within marine waters, other than the seabed, out to the limits of the exclusive economic zone ⁽¹⁾ . |
| Damage to land | England |

(1) These areas do not include areas adjacent to Northern Ireland, Scotland or Wales or the territorial sea adjacent to the Isle of Man, Jersey or Guernsey; and for these purposes—

- (i) “Wales” has the meaning given by section 158(1) of the Government of Wales Act 2006⁽¹⁰⁾;
- (ii) “Scotland” has the meaning given by section 126(1) of the Scotland Act 1998; and
- (iii) “Northern Ireland” has the meaning given by section 98 of the Northern Ireland Act 1998⁽¹¹⁾.

(10) 2006 c.32.

(11) 1998 c.47.

(2) In the table in paragraph (1)—

“the continental shelf” means the areas designated by Order in Council under section 1(7) of the Continental Shelf Act 1964(12);

“the exclusive economic zone” means the areas designated by the Exclusive Economic Zone Area Order 2013(13); and

“UNCLOS” means the United Nations Convention on the Law of the Sea, which opened for signature on 10th December 1982(14).

Other legislation

7.—(1) These Regulations are without prejudice to any other enactment concerning damage to the environment.

(2) They are without prejudice to the right of an operator to limit liability in accordance with the Convention on Limitation of Liability for Maritime Claims 1976(15).

Exemptions

8.—(1) These Regulations do not apply in relation to—

- (a) damage that occurred before 1st March 2009(16) (but see also paragraph (2));
- (b) damage that occurs or occurred after that date, or is or was threatened after that date, but is caused by an incident, event or emission that took place before that date; or
- (c) damage caused by an incident, event or emission that takes or took place after that date, if it derives from an activity that took place and finished before that date.

(2) Paragraph (1) applies in relation to damage to marine waters as if, in sub-paragraph (a), for “1st March 2009” there were substituted “19th July 2015”.

(3) These Regulations do not apply in relation to environmental damage caused by—

- (a) an act of terrorism;
- (b) an exceptional natural phenomenon, provided the operator of the activity concerned took all reasonable precautions to protect against damage being caused by such an event;
- (c) activities the sole purpose of which is to protect against natural disasters;
- (d) an incident in respect of which liability or compensation falls within the scope of—
 - (i) the International Convention of 27th November 1992 on Civil Liability for Oil Pollution Damage(17);
 - (ii) the International Convention of 27th November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage(18); or
 - (iii) the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001(19);

(12) 1964 c.29. Areas are currently designated under section 1(7) by S.I. 2013/3162 (which revoked S.I. 2000/3062 and 2001/3670, subject to a saving in respect of the Continental Shelf (Designation of Areas) Orders 1964 to 1982). Section 1(7) was amended by paragraph 1 of Schedule 3 to the Oil and Gas (Enterprise) Act 1982 (c.23) and by section 103 of the Energy Act 2011 (c.16).

(13) S.I. 2013/3161.

(14) The Convention entered into force on 16th November 1994. It was approved on behalf of the European Community by Council Decision 98/392/EC concerning the conclusion by the European Community of the United Nations Convention of 10th December 1982 on the Law of the Sea and the Agreement of 28th July 1994 relating to the implementation of Part XI thereof (OJ No. L 179, 23.6.1998, p.1).

(15) The Convention is set out in Schedule 7 to the Merchant Shipping Act 1995 (c.21), amended by S.I. 1998/1258.

(16) This is the date on which S.I. 2009/153, which is revoked and replaced by these Regulations, came into force.

(17) Implemented by the Merchant Shipping Act 1995.

(18) Implemented by the Merchant Shipping Act 1995.

(19) The Convention was implemented by amendments to the Merchant Shipping Act 1995 made by S.I. 2006/1244.

- (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 29th July 1960 on Third Party Liability in the Field of Nuclear Energy and the Brussels Supplementary Convention of 31st January 1963; or
 - (g) any activity carried out in the course of commercial sea fishing if all legislation relating to that fishing was complied with.
- (4) These Regulations only apply to environmental damage caused by pollution of a diffuse character if it is possible to establish a causal link between the damage and specific activities.

Exclusion from damage to water

9.—(1) Where all the conditions in paragraph (2) are satisfied, damage to water does not include—

- (a) damage caused by new modifications to the physical characteristics of a surface water body;
 - (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 where Article 4(7) of that Directive is complied with.
- (2) The conditions are that—
- (a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;
 - (b) the reasons for these 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 these 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 those modifications or alterations cannot, for reasons of technical feasibility or disproportionate cost, be achieved by other means.

Enforcing authorities under the Environmental Permitting (England and Wales) Regulations 2010

10.—(1) These Regulations are to be enforced in accordance with this regulation if the damage is caused by an activity that requires a permit or registration under the Environmental Permitting (England and Wales) Regulations 2010(20).

(2) If either the Environment Agency or the Natural Resources Board for Wales is responsible for granting the permit, these Regulations are to be enforced by the Environment Agency.

(3) If the local authority is responsible for granting the permit—

- (a) Part 2 is to be enforced by the local authority;
- (b) Part 3 is to be enforced by—
 - (i) the local authority, if the damage is to land;

(20) [S.I. 2010/675](#); amended by [S.I. 2010/676](#), and [2172](#); [2011/988](#), [2043](#) and [2933](#); [2012/630](#) and [811](#); [2013/390](#), [755](#), [766](#) and [2952](#); [2014/255](#) and [2852](#).

- (ii) the Environment Agency, if the damage is to surface water or groundwater;
- (iii) the Marine Management Organisation, if the damage is to marine waters, or to a natural habitat or protected species or a site of special scientific interest within those waters, out to 12 nautical miles from the baselines in England;
- (iv) the Secretary of State, if the damage is to marine waters beyond 12 nautical miles from the baselines in England or the baselines in Wales; and
- (v) Natural England, if the damage is to a natural habitat or a protected species or a site of special scientific interest on land or in surface water or groundwater.

Enforcing authorities in other cases

11.—(1) If the damage caused is caused by an activity that does not require a permit or registration under the Environmental Permitting (England and Wales) Regulations 2010, these Regulations are to be enforced in accordance with the following table.

| <i>Type of environmental damage</i> | <i>Area of damage</i> | <i>Enforcing Authority</i> |
|--|--|---|
| Damage to surface water or groundwater | All surface water or groundwater. | Environment Agency |
| Damage to marine waters | All marine waters out to 12 nautical miles from the baselines in England. | Marine Management Organisation |
| | All marine waters beyond 12 nautical miles from the baselines in England and the baselines in Wales, extending to the outermost reach of the area where the United Kingdom exercises jurisdictional rights. | The Secretary of State |
| | All marine waters up to the limit of the exclusive economic zone which lies— | The Secretary of State— |
| | (a) within the Scottish zone; or (b) outside the Scottish zone, but nearer to any point on the baselines from which the breadth of the territorial sea adjacent to Scotland is measured than to any point on the baselines in any other part of the United Kingdom. | (a) if the damage was caused by anything done in the course of, or for the purpose of, a specified marine activity ⁽¹⁾ ; or (b) in relation to the exercise of powers under Part 2 of these Regulations only, if the damage was caused by an activity relating to a matter which is a reserved matter by virtue of section E3 (marine transport) in Part 2 of |

(1) For the definition of “specified marine activity”, see paragraph (2).

(2) For the definition of “sea”, see paragraph (2).

| <i>Type of environmental damage</i> | <i>Area of damage</i> | <i>Enforcing Authority</i> |
|---|--|--|
| | | Schedule 5 to the Scotland Act 1998. |
| | | In any other case, the Scottish Ministers. |
| Damage to a protected species or natural habitat or a site of special scientific interest | On land. | Natural England |
| | In water, but not in the sea ⁽²⁾ . | Environment Agency |
| | In the sea up to the limit of the exclusive economic zone which lies— | The Secretary of State— |
| | (a) within the Scottish zone; or (b) outside the Scottish zone, but nearer to any point on the baselines from which the breadth of the territorial sea adjacent to Scotland is measured than to any point on the baselines in any other part of the United Kingdom. | (a) if the damage was caused by anything done in the course of, or for the purpose of, a specified marine activity; or (b) in relation to the exercise of powers under Part 2 of these Regulations only, if the damage was caused by an activity relating to a matter which is a reserved matter by virtue of section E3 (marine transport) in Part 2 of Schedule 5 to the Scotland Act 1998. |
| | The continental shelf up to the limit of the exclusive economic zone which lies— | The Secretary of State— |
| | (a) within the Scottish zone; or (b) outside the Scottish zone, but nearer to any point on the baselines from which the breadth of the territorial sea adjacent to Scotland is measured than to any point on the baselines in any other part of the United Kingdom. | (a) if the damage was caused by anything done in the course of, or for the purpose of, a specified marine activity; or (b) in relation to the exercise of powers under Part 2 of these Regulations only, if the damage was caused by an activity relating to a matter which is a reserved matter by virtue of section E3 (marine transport) in Part 2 of Schedule 5 to the Scotland Act 1998. |

(1) For the definition of “specified marine activity”, see paragraph (2).

(2) For the definition of “sea”, see paragraph (2).

| <i>Type of environmental damage</i> | <i>Area of damage</i> | <i>Enforcing Authority</i> |
|-------------------------------------|---|--|
| | | In any other case, the Scottish Ministers. |
| | Any other part of the continental shelf or in the sea up to the limit of the exclusive economic zone. | The Environment Agency, if the damage is due to an activity authorised by the Environment Agency. In any other case, the Secretary of State. |
| Damage to land | All land. | Local authority |

(1) For the definition of “specified marine activity”, see paragraph (2).

(2) For the definition of “sea”, see paragraph (2).

(2) For the purposes of this regulation—

“installation abandonment measures” means any measures taken in connection with the abandonment of—

- (a) an offshore installation within the meaning of Part 4 of the Petroleum Act 1998(21), or submarine pipeline within the meaning of that Part, or
- (b) a carbon storage installation, within the meaning of section 30 of the Energy Act 2008(22),

in either case, whether or not the measures are taken in pursuance of an abandonment programme under Part 4 of the Petroleum Act 1998, or under that Part as it applies by virtue of section 30 of the Energy Act 2008;

“sea” includes—

- (a) any area of land submerged at mean high water spring tide; and
- (b) each of the following, so far as the tide flows at mean high water spring tide—
 - (i) the waters of every estuary or arm of the sea; and
 - (ii) the waters of any channel, bay or river;

“specified marine activity” means—

- (a) an activity for which a licence under section 3 of the Petroleum Act 1998 or section 2 of the Petroleum (Production) Act 1934(23) (licences to search for and get petroleum) is (or was) required;
- (b) constructing or maintaining a pipeline in respect of any part of which an authorisation (within the meaning of Part 3(24) of the Petroleum Act 1998) is in force;
- (c) establishing or maintaining an offshore installation (within the meaning of Part 4(25) of the Petroleum Act 1998);

(21) 1998 c.17. The definition of “offshore installation” for the purposes of Part 4 of that Act is contained in section 44 of that Act. Section 44 was amended by paragraph 11 of Schedule 1 to the Energy Act 2008 (c.32).

(22) 2008 c.32. Section 30 was amended by section 107(1) and (4) of the Energy Act 2011 (c.16) and by S.I. 2011/2453.

(23) 1934 c.36. The Act was repealed by Part 1 of Schedule 5 to the Petroleum Act 1998.

(24) Part 3 was amended by the Energy Act 2004 (c.20), sections 151(5) and 197(9) and Schedule 23, Part 1; the Energy Act 2008, sections 36, 78(3) and (4) and 108, Schedule 1, paragraph 9, and Schedule 6; the Energy Act 2011, Schedule 2 paragraphs 8, 9, 10, 12, 13, 14 and 15; the Marine and Coastal Access Act 2009 (c.23), section 112(1) and Schedule 8, paragraph 7; and by S.I. 2000/1937, 2004/2043, 2007/290 and 2011/2305 and 2704.

(25) Part 4 was amended by the Energy Act 2008, sections 36, 72(1) to (8), 73(1) to (6), 74(1), 107, 108 and Schedule 1, paragraphs 10 and 11, Schedule 5, paragraphs 6, 7, 9, 10 and 11, and Schedule 6; and by the Marine and Coastal Access Act 2009, section 112(1) and Schedule 8, paragraph 8.

- (d) taking any installation abandonment measures;
- (e) an activity for which a licence under section 4 or 18 of the Energy Act 2008⁽²⁶⁾ (gas unloading, storage and recovery and carbon dioxide storage) is required;
- (f) an activity, other than those specified in paragraphs (a) to (e), relating to a matter which is a reserved matter by virtue of section D2 (oil and gas) in Part 2 of Schedule 5 to the Scotland Act 1998.

Enforcement

12.—(1) If there is more than one type of environmental damage, so that there is more than one enforcing authority, these Regulations are to be enforced by any or all of the enforcing authorities.

(2) An enforcing authority may appoint any other enforcing authority to act on its behalf.

(3) The Secretary of State may delegate to the Director of Public Prosecutions functions in relation to the prosecution of an offence under these Regulations.

PART 2

Preventing Environmental Damage

Preventing environmental damage

13.—(1) An operator of an activity that causes an imminent threat of environmental damage, or an imminent threat of damage where there are reasonable grounds to believe that the damage will become environmental damage, must immediately—

- (a) take all practicable steps to prevent the damage; and
- (b) (unless the threat has been eliminated) notify all relevant details to the enforcing authority appearing to the operator to be the appropriate one.

(2) The enforcing authority may (whether or not notification has been given under subparagraph (1)) serve a notice on an operator that—

- (a) describes a threat of a kind mentioned in paragraph (1);
- (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 with a notice served under paragraph (2), is an offence.

Preventing further environmental damage

14.—(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, must immediately—

- (a) take all practicable steps to prevent further damage; and
- (b) notify all relevant details to the enforcing authority appearing to the operator to be the appropriate one.

(26) Section 18 was amended by S.I. 2011/224 and 2435.

(2) The enforcing authority may (whether or not notification has been given under paragraph (1)) serve a notice on an operator that—

- (a) describes damage of a kind mentioned in paragraph (1);
- (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 with a notice served under paragraph (2), is an offence.

Action by the enforcing authority

15. 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; or
- (c) if the operator fails to comply with a notice under regulation 13(2) or 14(2).

Following instructions from a public authority

16. 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 action is taken under regulations 13, 14 or 15, the operator may recover the costs of actions under any of those regulations from that public authority, unless the instructions related to an emission or incident caused by the operator's own activities.

PART 3

Remediation

Assessment of damage

17. Where damage has been caused and there are reasonable grounds for believing that it is, or may be, environmental damage, the enforcing authority must establish whether or not it is environmental damage.

Determining liability to remediate

18.—(1) If the enforcing authority establishes that the damage is environmental damage, it must notify the responsible operator—

- (a) that the damage is environmental damage;
- (b) that the responsible operator's activity was a cause of the environmental damage;
- (c) that the responsible operator must submit proposals, within a time specified by the enforcing authority, for measures that will achieve the remediation of the environmental damage in accordance with Schedule 3; and
- (d) that the responsible operator has a right to appeal.

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

Appeals against liability to remediate

19.—(1) A person served with notification under regulation 18 may appeal against that notification by giving notice of appeal to the Secretary of State.

(2) Notice of appeal must be served within 28 days of service of the notification under regulation 18 unless the time limit is extended by the Secretary of State.

(3) The grounds of appeal are that—

- (a) the operator's activity was not a cause of the environmental 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 responsible 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 a permit listed in Schedule 4;
- (e) the responsible 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 responsible operator took all appropriate safety measures.

(4) Schedule 5 contains procedures for the appeal.

(5) The person deciding the appeal may confirm or quash the notice.

Remediation notices

20.—(1) Once it receives the proposals from the responsible operator (or, if a proposal is not received within the specified time limit, at any time after the time limit has expired), the enforcing authority—

(a) must, so far as is practicable, consult—

- (i) any person who has notified an enforcing authority under regulation 29; and
- (ii) any person on whose land the remedial measures will be carried out; and

(b) may consult any other person appearing to the enforcing authority to be necessary.

(2) Following consultation the enforcing authority must serve a notice on the responsible operator 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 must be taken;
- (d) any additional monitoring or investigative measures that the responsible operator must carry out during remediation; and
- (e) the right of appeal against the notice.

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

Appeal against a remediation notice

21.—(1) A responsible operator may appeal against a remediation notice on the grounds that its contents are unreasonable by giving notice of appeal to the Secretary of State.

(2) An appeal may only be brought against those parts of the remediation notice that specify requirements which are different from proposals submitted by the responsible operator in accordance with a notification under regulation 18(1)(c).

(3) Notice of appeal must be served within 28 days of service of the remediation notice unless the time limit is extended by the Secretary of State.

(4) Schedule 5 contains procedures for the appeal.

(5) The Secretary of State or the person appointed by the Secretary of State to deal with the appeal—

- (a) may confirm, vary or quash the notice;
- (b) must give written notification of the final decision and the reasons for it; and
- (c) may, if appropriate, add further compensatory remediation requirements necessitated by the lapse of time since the remediation notice was served.

(6) A remediation notice need not be complied with pending determination of an appeal unless the person hearing the appeal directs otherwise.

Further provisions on remediation notices

22. An enforcing authority may serve further remediation notices at any time while remediation is being carried out or, if remediation has not been achieved, at the end of the remediation period, requiring further or different remediation.

Action by the enforcing authority

23. 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 a responsible operator cannot be identified;
- (b) if a responsible operator fails to comply with a remediation notice, whether or not an appeal is pending; or
- (c) if the responsible operator is not required to carry out remediation under these Regulations.

PART 4

Administration, Enforcement and Review

Costs when the enforcing authority acts instead of the operator

24.—(1) An operator liable to carry out works under Part 2 is liable for the reasonable costs incurred by the enforcing authority in taking any reasonable action under regulation 15.

(2) The responsible operator is liable for the reasonable costs of the enforcing authority for any action taken under regulation 23(a) or (b).

Costs concerned with administration

25.—(1) An operator liable to carry out works under Part 2 is liable for the reasonable costs incurred by the enforcing authority in preparing any notice under Part 2, or in ensuring compliance with that Part.

(2) The responsible operator is liable for the costs incurred by the enforcing authority under Part 3 of—

- (a) assessing whether the damage is environmental damage;
- (b) establishing who is the responsible operator;
- (c) establishing what remediation is appropriate;
- (d) carrying out necessary consultation; and
- (e) monitoring the remediation, both during and after the work.

(3) In paragraph (2) “costs” means costs that are justified by the need to ensure the proper and effective enforcement of these Regulations.

Proceedings for costs by an enforcing authority

26. No proceedings for the recovery of costs may be commenced by the enforcing authority under these Regulations after a period of five years has elapsed since the later of—

- (a) the completion of the measures to which the proceedings relate; or
- (b) the identification of the operator liable to carry out the measures.

Costs recoverable from owner to be a charge on premises

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

- (a) the costs carry interest, at such reasonable rate as the authority may determine, from the date of service of the notice until the whole amount is paid; and
- (b) subject to the provisions of this regulation, the costs and accrued interest are a charge on the premises.

(2) A notice served under this regulation must—

- (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 paragraph; and
- (c) state the effect of paragraphs (4) and (5).

(3) On the date on which an enforcing authority serves a notice on a person under this regulation the authority must also serve a copy of the notice on every other person who, to the knowledge of the authority, has an interest in the premises capable of being affected by the charge.

(4) Subject to any order under paragraph (6)(b) or (c), the amount of any costs specified in a notice under this regulation and the accrued interest is a charge on the premises (until the costs and interest are recovered)—

- (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 (5), as from the final determination or withdrawal of the appeal.

(5) A person served with a notice or a 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.

(6) On an appeal under paragraph (5) 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.

(7) An enforcing authority has, for the purpose of enforcing a charge under this regulation, all the same powers and remedies under the Law of Property Act 1925(27), and otherwise, as if it were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

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

Recovery of costs from other persons

28. An operator who incurs liability under these Regulations (whether in carrying out work or in payment to the enforcing authority) may recover all or some of those costs from any other person who also caused the damage.

Requests for action by interested parties

29.—(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 appropriate enforcing authority of any environmental damage which is being, or has been, caused, or of which there is an imminent threat.

(2) A notification must be accompanied by—

- (a) a statement explaining the way in which the notifier will be affected by the damage, or the reason that the notifier has a sufficient interest; and
- (b) sufficient information to enable the enforcing authority to identify the location and nature of the incident.

(3) The enforcing authority must consider the notification and inform the notifier as to the action, if any, that it intends to take.

(4) Before taking any decision the enforcing authority must, if practicable—

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

(5) Paragraphs (3) and (4) do not apply if, in the opinion of the enforcing authority—

- (a) the notifier is not likely to be affected or does not have a sufficient interest;
- (b) 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.

Grant of and compensation for rights of entry etc.

30.—(1) Any person whose consent is required before any works required by these Regulations may be carried out must 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 that work.

(2) A person who grants, or joins in granting, any rights as required by paragraph (1) is, on making an application in accordance with Schedule 6, entitled to compensation from the operator determined in accordance with that Schedule.

Powers of authorised persons

31.—(1) Enforcing authorities may authorise persons for the purposes of enforcing these Regulations.

(2) The powers in section 108 of the Environment Act 1995⁽²⁸⁾ apply in relation to these Regulations, and the powers of persons authorised by the Environment Agency in that section are exercisable by persons authorised by any enforcing authority.

(3) Those powers are extended to all areas to which these Regulations apply.

(4) In addition, a person authorised by the Secretary of State enforcing these Regulations in relation to the sea may at any time board and inspect—

- (a) a ship or marine installation in the United Kingdom territorial waters adjacent to England; or
- (b) a United Kingdom ship (within the meaning of section 1(3) of the Merchant Shipping Act 1995⁽²⁹⁾) or a marine installation in the renewable energy zone (as defined in section 84 of the Energy Act 2004⁽³⁰⁾).

(5) For the purposes of exercising the powers in this regulation, the authorised person may require a ship or marine installation—

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

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

- (a) to stop; or
- (b) to do anything else that will enable the authorised person, and any person accompanying that person, to disembark.

(7) 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.

(8) It is an offence to fail to comply with instructions given under this regulation, or knowingly to provide false or misleading information.

⁽²⁸⁾ 1995 c.25. Section 108 was amended by Schedule 3 to the Pollution Prevention and Control Act 1999 (c.24); S.I. 2000/1973; section 55(6) to (9) of the Anti-social Behaviour Act 2003 (c.38); S.I. 2010/675; paragraph 3 of Part 1 of Schedule 2 to the Protection of Freedoms Act 2012 (c.9); and S.I. 2013/755. There are other amendments which are not relevant to these Regulations.

⁽²⁹⁾ 1995 c.21.

⁽³⁰⁾ 2004 c.20. Section 84 was amended by paragraph 4 of Part 1 of Schedule 4 to the Marine and Coastal Access Act 2009 (c.23).

Provision of information to the enforcing authority

32.—(1) An enforcing authority may require an operator to provide such information as it may reasonably require for the purpose of enabling the enforcing authority to carry out its functions under these Regulations.

(2) Failure to provide information required in accordance with paragraph (1) is an offence.

Enforcement

33. No enforcement action may be taken under these Regulations after the end of the period of 30 years starting with the date of the emission, event or incident concerned.

Penalties

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

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

(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.

Review

35.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review, the Secretary of State must, so far as is reasonable, have regard to how [Directive 2004/35/EC](#) which is implemented by these Regulations, is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives have been achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with 19th July 2015.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

PART 5

Revocations

Revocations

36. The following Regulations are revoked—
the Environmental Damage (Prevention and Remediation) Regulations 2009**(31)**;
the Environmental Damage (Prevention and Remediation) (Amendment) Regulations 2009**(32)**;
the Environmental Damage (Prevention and Remediation) (Amendment) Regulations 2010**(33)**.

Dan Rogerson
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

19th March 2015

(31) S.I. 2009/153, amended by S.I. 2009/3275, 2010/587, 675 and 2221; 2011/556, 988, 1043 and 2131; 2012/630 and 2897; and 2013/755.
(32) S.I. 2009/3275.
(33) S.I. 2010/587.