
EXPLANATORY NOTE

(This note is not part of the Regulations)

^{M1M2}These Regulations revoke and replace the Environmental Damage (Prevention and Remediation) Regulations 2009 (S.I. 2009/153), as amended by numerous subsequent instruments (“the 2009 Regulations”). The Regulations continue to implement 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 (“Directive 2004/35/EC”) and now also implement the changes to that Directive introduced by Article 38 of Directive 2013/30/EU of the European Parliament and of the Council on the safety of offshore oil and gas operations and amending Directive 2004/35/EC (“Directive 2013/30/EU”).

The Regulations apply in England and in specified marine waters and the seabed (regulations 1 and 6). They specify the types of damage to a protected species or natural habitat, a site of special scientific interest, water or land which constitute “environmental damage” for the purposes of the Regulations (regulation 4) and the types of activity causing environmental damage to which the Regulations apply (regulation 5). There are certain exemptions and exclusions from the application of the Regulations (regulations 8 and 9). The Regulations also specify the authorities whose function it is to enforce the Regulations (regulations 10 to 12).

Part 2 of the Regulations deals with prevention of environmental damage (regulations 13 and 14), including action which may be taken by an enforcing authority (regulation 15).

Under Part 3, which deals with remediation, the enforcing authority has a duty to establish whether environmental damage has occurred (regulation 17). It must then serve a notice on the operator whose activities were the cause of the damage, requiring them to submit proposals for remedial measures (regulation 18). A remediation notice must then be served, specifying the measures to be taken (regulation 20). Failure to comply with a remediation notice is an offence.

Part 3 also sets out the procedure for appealing against notices (regulations 19 and 21).

Part 4 provides for an enforcing authority to recover its costs in certain cases (regulations 24 to 27). It enables third parties to notify the enforcing authority of damage caused or being caused, or of which there is an imminent threat (regulation 29) and provides for the payment of compensation to third parties in certain circumstances (regulation 30). It sets out the powers of persons authorised by enforcing authorities (regulation 31) and the penalties for offences under the Regulations (regulation 34). A person who is guilty of an offence under the Regulations is liable—

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

The Secretary of State is required to review the operation of the Regulations periodically (regulation 35).

These Regulations revoke three instruments which amended the 2009 Regulations (regulation 36). These Regulations make minor editorial changes to the 2009 Regulations. The list of EU legislation in Schedule 2 by reference to which activities attracting strict liability are specified is now more comprehensive, although the nature of the activities captured in this list is not affected. References to all EU instruments, other than Directive 2004/35/EC, are now references to those instruments as amended from time to time (regulation 3).

Changes of substance are made for three purposes.

^{M3}Firstly, they reflect the extension by Article 38 of Directive 2013/30/EU to the definition of ‘environmental damage’. This now includes include damage to the environmental status of marine waters as defined in Directive 2008/56/EC of the European Parliament and of the Council

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establishing a framework for Community action in the field of marine environmental policy, such that that status is significantly adversely affected. Regulation 8 now provides temporal limitations in relation to damage to marine waters; regulations 10 and 11 specify the enforcing authorities for damage to marine waters.

Secondly, references in the 2009 Regulations to “renewable energy zone” are updated to “exclusive economic zone”, in consequence of the Exclusive Economic Zone Order 2013 (S.I. 2013/3161).

Thirdly, regulation 35 imposes a new requirement on the Secretary of State to review the operation and effect of the Regulations and publish a report within five years after they come into force and within every five years after that.

A full impact assessment of the effect these Regulations will have on the costs of business, the voluntary sector and the public sector is available from the Energy Development Unit, Offshore Oil & Gas Environment and Decommissioning Branch, Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2AW and, along with other Regulations transposing Directive 2013/30/EU, is published with the Explanatory Memorandum alongside the Regulations on www.legislation.gov.uk.

An updated transposition note setting out how these Regulations continue to transpose the provisions of Directive [2004/35/EC](#) and a transposition note setting out the implementation of Directive 2013/30/EU are available at www.gov.uk/government/publications.

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