

SCHEDULE 1

Regulation 4(2)

Damage to Protected Species, Natural Habitats and Sites of Special Scientific Interest

Damage to a protected species or natural habitat

1. In the case of a protected species or natural habitat (other than damage to a site of special scientific interest, to which paragraph 4 applies) the damage must be such that it has a significant adverse effect on reaching or maintaining the favourable conservation status of the protected species or natural habitat, taking into account—

- (a) the conservation status at the time of the damage;
- (b) the services provided by the amenities they produce;
- (c) their capacity for natural regeneration;
- (d) the number of individuals, their density or the area covered;
- (e) 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 ^[F1], national or in their natural range];
- (f) the capacity of the species for propagation, its viability, or the capacity of the habitat for natural regeneration; and
- (g) the capacity of the species or habitat, within a short time of the damage being caused, to recover to a condition that leads to its state at the time of the damage or better without any intervention other than increased protection measures.

Textual Amendments

- F1** Words in Sch. 1 para. 1(e) substituted (31.12.2020) by [The Environment \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/458\)](#), regs. 1(1), 7(3); 2020 c. 1, Sch. 5 para. 1(1)

Conservation status of natural habitats

2.—(1) A habitat's conservation status is the sum of the influences acting on that habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species.

- (2) The conservation status of a habitat is favourable if—
- (a) the natural range and areas covered within that natural range are stable or increasing;
 - (b) the specific structure and functions which are necessary for the long-term maintenance of the natural habitat exist and are likely to continue to exist for the foreseeable future; and
 - (c) the conservation status of its typical species is favourable.

Conservation status of species

3.—(1) The conservation status of a species is the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations.

- (2) The conservation status is favourable if—
- (a) the population dynamics data on the species indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitat;
 - (b) the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future; and

Changes to legislation: There are currently no known outstanding effects for the *The Environmental Damage (Prevention and Remediation) (England) Regulations 2015*. (See end of Document for details)

- (c) there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

Sites of special scientific interest

4.—(1) In the case of a site of special scientific interest, the damage must be to—

- (a) the species or habitats notified under section 28 of the Wildlife and Countryside Act 1981; or
 (b) a protected species or natural habitat.

(2) The damage must have an adverse effect on the integrity of the site (that is, the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats or the levels of populations of the species affected).

Express authorisation

[^{F2}5.—(1) Damage to a protected site or natural habitat and damage to a site of special scientific interest do not include damage caused by an act expressly authorised by the relevant authorities in accordance with—

- (a) the Conservation (Natural Habitats, &c.) Regulations 1994;
 (b) the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001;
 (c) the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007;
 (d) the Conservation of Habitats and Species Regulations 2010;
 (e) the Conservation of Habitats and Species Regulations 2017;
 (f) the Conservation of Offshore Marine Habitats and Species Regulations 2017.

(2) Damage to sites of special scientific interest does not include, in the case of a site that is not a European site, damage caused by an act expressly authorised by the relevant authorities in accordance with Part 2 of the Wildlife and Countryside Act 1981.

(3) In sub-paragraph (2), “European site” has the same meaning as in regulation 8 of [^{F3}the Conservation of Habitats and Species Regulations 2017].]

Textual Amendments

- F2** Sch. 1 para. 5 substituted (1.4.2018) by [The Environmental Damage \(Prevention and Remediation\) \(England\) \(Amendment\) Regulations 2017 \(S.I. 2017/1177\)](#), regs. 1, 7 (with reg. 9)
F3 Words in Sch. 1 para. 5(3) substituted (1.6.2018) by [The Environment, Food and Rural Affairs \(Miscellaneous Amendments\) \(England\) Regulations 2018 \(S.I. 2018/575\)](#), art. 1(2), **reg. 11(2)**

SCHEDULE 2

Regulation 5(1)

Activities causing damage

Operations to which this Schedule applies

1. This Schedule lists the activities for which there is liability under regulation 5(1).

[^{F4} Interpretation

1A. A reference in this Schedule to an activity being authorised, prohibited or managed pursuant to, or subject to a permit or registration under, a Directive includes, after IP completion day, any activity authorised, prohibited or managed pursuant to, or subject to a permit or registration under, any retained EU law which transposed that Directive.]

Textual Amendments

- F4** Sch. 2 para. 1A inserted (31.12.2020) by [The Environment \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/458\)](#), regs. 1(1), **7(4)(a)**; 2020 c. 1, **Sch. 5 para. 1(1)** (as amended by [S.I. 2020/1540](#), regs. 1(3), **12(4)**)

Operation of permitted installations

2. The operation of installations subject to permit in pursuance of—
- (a) Council Directive [96/61/EC](#) concerning integrated pollution prevention and control ^{M1};
 - (b) Directive [2008/1/EC](#) of the European Parliament and of the Council concerning integrated pollution prevention and control ^{M2} (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 on industrial emissions (integrated pollution prevention and control) ^{M3}.

Marginal Citations

- M1** OJ No. L 257, 10.10.1996, p.26; repealed by Directive [2008/1/EC](#) of the European Parliament and of the Council (OJ No. L 24, 29.1.2008, p.8).
- M2** OJ No. L 24, 29.1.2008, p.8; amended by Directive [2009/31/EC](#) of the European Parliament and of the Council (OJ No. L 140, 5.6.2009, p.114) and repealed by Directive [2010/75/EU](#) on industrial emissions (integrated pollution prevention and control) (OJ No. L 334, 17.12.2010, p.17).
- M3** OJ No. L 334, 17.12.2010, p.17.

Waste management operations

3.—(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 [75/439/EEC](#) on the disposal of waste oils ^{M4};
 - (b) Council Directive [75/442/EEC](#) on waste ^{M5};
 - (c) Council Directive [91/689/EEC](#) on hazardous waste ^{M6};
 - (d) Directive [2006/12/EC](#) of the European Parliament and of the Council on waste ^{M7}; or
 - (e) Directive [2008/98/EC](#) of the European Parliament and of the Council on waste ^{M8F5}
- (2) The operation of—
- (a) landfill sites under Council Directive [1999/31/EC](#) on the landfill of waste ^{M9}; or
 - (b) incineration plants under—

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- (i) Directive [2000/76/EC](#) of the European Parliament and of the Council on the incineration of waste ^{M10}; or
 - (ii) Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control).
- (3) The activities to which these Regulations apply do not include the spreading of sewage sludge from urban waste water treatment plants, treated to an approved standard, for agricultural purposes.

Textual Amendments

- F5** Words in Sch. 2 para. 3(1)(e) omitted (17.9.2018) by virtue of [The Environment, Food and Rural Affairs \(Miscellaneous Amendments and Revocations\) Regulations 2018 \(S.I. 2018/942\)](#), regs. 1(2), **24**

Marginal Citations

- M4** OJ No. L 194, 25.7.1975, p.23; repealed by Directive 2008/98/EC of the European Parliament and of the Council (OJ No. L 312, 22.11.2008, p.3).
- M5** OJ No. L 194, 25.7.1975, p.39; repealed by Directive 2006/12/EC of the European Parliament and of the Council (OJ No. L 114, 27.4.2006, p.9).
- M6** OJ No. L 337, 31.12.1991, p.20; repealed by Directive 2008/98/EC.
- M7** OJ No. L 114, 27.4.2006, p.9; repealed by Directive 2008/98/EC.
- M8** OJ No. L 312, 22.11.2008, p.3; last amended by Commission Regulation (EU) No. 1357/2014 (OJ No. L 365, 19.12.2014, p.89).
- M9** OJ No. L 182, 16.7.1999, p.1; last amended by Council Directive 2011/97/EU (OJ No. L 328, 10.12.2011, p.49).
- M10** OJ No. L 332, 28.12.2000, p.91, as corrected in OJ No. L 145, 31.5.2001, p.52; repealed by Directive 2010/75/EU of the European Parliament and of the Council (OJ No. L 334, 17.12.2010, p.17).

Mining waste

4. The management of extractive waste under Directive [2006/21/EC](#) of the European Parliament and of the Council on the management of waste from extractive industries ^{M11}.

Marginal Citations

- M11** OJ No. L 102, 11.4.2006, p.15; last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council (OJ No. L 188, 18.7.2009, p.14).

Discharges requiring authorisation

5.—(1) All discharges into the inland surface water that require prior authorisation in pursuance of—

- (a) Council Directive [76/464/EEC](#) on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community ^{M12}; or
- (b) Directive [2006/11/EC](#) of the European Parliament and of the Council on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community ^{M13}.

(2) All discharges of substances into groundwater that required prior authorisation in pursuance of—

- (a) Council Directive [80/68/EEC](#) on the protection of groundwater against pollution caused by certain dangerous substances ^{M14};
 - (b) Directive [2006/118/EC](#) of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration ^{M15}.
- (3) All discharges or injections of pollutants into surface water or groundwater that require a permit, authorisation or registration under Directive [2000/60/EC](#).

Marginal Citations

- M12** OJ No. L 129, 18.5.1976, p.23; repealed by Directive 2006/11/EC of the European Parliament and of the Council (OJ No. L 64, 4.3.2006, p.52).
- M13** OJ No. L 64, 4.3.2006, p.52.
- M14** OJ No. L 20, 26.1.1980, p.43; repealed by Directive 2000/60/EC of the European Parliament and of the Council (OJ No. L 327, 22.12.2000, p.1).
- M15** 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).

Water abstraction and impoundment

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

Dangerous substances, plant protection products and biocidal products

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](#) on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous substances ^{M16};
- (b) hazardous substances as defined in Article 3 of Regulation (EC) No. [1272/2008](#) of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures ^{M17};
- (c) dangerous preparations as defined in Article 2(2) of Directive [1999/45/EC](#) of the European Parliament and of the Council concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations ^{M18};
- (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 concerning the placing of plant protection products on the market ^{M19}; and
- (e) biocidal products as defined in Article 2(1)(a) of Directive [98/8/EC](#) of the European Parliament and of the Council concerning the placing of biocidal products on the market ^{M20}, or as defined in Article 3(1)(a) of Regulation (EU) No. [528/2012](#) of the European Parliament and of the Council concerning the making available on the market and use of biocidal products ^{M21}.

Marginal Citations

- M16** OJ No. L 196, 16.8.1967, p.1; last amended by Council Directive 2013/21/EU (OJ No. L 158, 10.6.2013, p.240).

Changes to legislation: There are currently no known outstanding effects for the The Environmental Damage (Prevention and Remediation) (England) Regulations 2015. (See end of Document for details)

- M17** OJ No. L 353, 31.12.2008, p.1; last amended by Commission Regulation (EU) No. 758/2013 (OJ No. L 216, 10.8.2013, p.1).
- M18** OJ No. L 200, 30.7.1999, p.1; last amended by Council Directive 2013/21/EU.
- M19** OJ No. L 309, 24.11.2009, p.1; last amended by Regulation (EU) No. 652/2014 of the European Parliament and of the Council (OJ No. L 189, 27.6.2014, p.1).
- M20** OJ No. L 123, 24.4.1998, p.1; repealed by Regulation (EU) No. 528/2012 of the European Parliament and of the Council (OJ No. L 167, 27.6.2012, p.1).
- M21** OJ No. L 167, 27.6.2012, p.1; last amended by Regulation (EU) No. 334/2014 of the European Parliament and of the Council (OJ No. L 103, 5.4.2014, p.22).

Transport

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](#) on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road ^{M22};
- (b) the Annex to Council Directive [96/49/EC](#) on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail ^{M23};
- (c) Council Directive [93/75/EEC](#) concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods ^{M24};
- (d) Directive [2002/59/EC](#) of the European Parliament and of the Council establishing a Community vessel traffic monitoring and information system ^{M25}; and
- (e) Directive [2008/68/EC](#) of the European Parliament and of the Council on the inland transport of dangerous goods ^{M26}.

Marginal Citations

- M22** OJ No. L 319, 12.12.1994, p.7; repealed by Directive 2008/68 of the European Parliament and of the Council (OJ No. L 260, 30.9.2008, p.13).
- M23** OJ No. L 235, 17.9.1996, p.25; repealed by Directive 2008/68.
- M24** OJ No. L 247, 5.10.1993, p.19; last amended by Directive 2002/84/EC of the European Parliament and of the Council (OJ No. L 324, 29.11.2002, p.53); repealed by Directive 2002/59/EC of the European Parliament and of the Council (OJ No. L 208, 5.8.2002, p.10).
- M25** OJ No. L 208, 5.8.2002, p.10; last amended by Commission Directive 2014/100/EU (OJ No. L 308, 29.10.2014, p.82).
- M26** OJ No. L 260, 30.9.2008, p.13; last amended by Commission Directive 2014/103/EU (OJ No. L 335, 22.11.2014, p.15).

Genetically modified organisms

9.—(1) Any contained use, including transport, involving genetically modified organisms (including genetically modified micro-organisms as defined by Council Directive [90/219/EEC](#) on the contained use of genetically modified micro-organisms) ^{M27}.

(2) Any deliberate release into the environment, transport and placing on the market of genetically modified organisms as defined by Directive [2001/18/EC](#) of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms ^{M28}.

Changes to legislation: There are currently no known outstanding effects for the The Environmental Damage (Prevention and Remediation) (England) Regulations 2015. (See end of Document for details)

Marginal Citations

- M27** OJ No. L 117, 8.5.1990, p.1; repealed by Directive 2009/41/EC of the European Parliament and of the Council (OJ No. L 125, 21.5.2009, p.75).
- M28** OJ No. L 106, 17.4.2001, p.1; last amended by Directive 2008/27/EC of the European Parliament and of the Council (OJ No. L 81, 20.3.2008, p.45).

Transboundary shipment of waste

10. Transboundary shipment of waste within, into or out of the Community [^{F6}or into or out of the United Kingdom], requiring an authorisation or prohibited under—

- (a) Council Regulation (EEC) No. 259/93 on the supervision and control of shipments of waste within, into and out of the European Community^{M29}; or
- (b) Regulation (EC) No. 1013/2006 of the European Parliament and of the Council on shipments of waste^{M30}.

Textual Amendments

- F6** Words in Sch. 2 para. 10 inserted (31.12.2020) by The Environment (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/458), regs. 1(1), 7(4)(b); 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

- M29** OJ No. L 30, 6.2.1993, p.1.
- M30** OJ No. L 190, 12.7.2006, p.1; last amended by Commission Regulation (EU) No. 1234/2014 (OJ No. L 332, 19.11.2014, p.15).

Operation of carbon dioxide storage sites

11. 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^{M31}.

Marginal Citations

- M31** OJ No. L 140, 5.6.2009, p.114; amended by Directive 2011/92/EU of the European Parliament and of the Council 23(OJ No. L 26, 28.1.2012, p.1).

[^{F7}Schedule 2ZA

Regulation 9A

Modifications where regulation 9A applies

Textual Amendments

- F7** Sch. 2ZA inserted (26.12.2023) by Levelling-up and Regeneration Act 2023 (c. 55), ss. 170(3), 255(6) (with s. 247)

Changes to legislation: There are currently no known outstanding effects for the The Environmental Damage (Prevention and Remediation) (England) Regulations 2015. (See end of Document for details)

1. In relation to anything that is treated as environmental damage by regulation 9A, these regulations apply with the following modifications.
2. Regulation 17 does not apply.
3. Regulation 18 applies as if—
 - (a) the opening words of paragraph (1) provided “Where excess nutrient pollution is treated as environmental damage by regulation 9A(2), the enforcing authority must notify the responsible operator—”;
 - (b) for paragraph (a) there were substituted—
 - “(a) of the environmental damage;”.
4. Regulation 18A applies with the omission of paragraph (2).
5. Regulation 19(3) applies as if for paragraphs (a) to (e) (but not the “or” immediately following paragraph (e)) there were substituted—
 - “(a) the responsible operator did not fail to secure that the nutrient significant plant in question is able to meet the related nutrient pollution standard by the upgrade date;
 - (b) the determination by the Environment Agency of the excess nutrient pollution mentioned in regulation 9A(2) was unreasonable;”.
6. Regulation 25(2) applies as if—
 - (a) for paragraph (a) there were substituted—
 - “(a) determining the excess nutrient pollution mentioned in regulation 9A(2);”;
 - (b) paragraph (b) were omitted.]

[^{F8}SCHEDULE 2A

Regulation 11(1)

Enforcing authority: activities not requiring a permit or registration under the Environmental Permitting (England and Wales) Regulations 2016

Textual Amendments

F8 Sch. 2A inserted (1.4.2018) by [The Environmental Damage \(Prevention and Remediation\) \(England\) \(Amendment\) Regulations 2017 \(S.I. 2017/1177\)](#), regs. 1, 8, **Sch.**

<i>Type of environmental damage (in bold) and (where limited) area of environmental damage</i>	<i>Enforcing authority</i>
Damage to land .	The local authority
Damage to surface water or groundwater .	The Environment Agency
Damage to marine waters out to 12 nautical miles from the baselines in England.	The Marine Management Organisation
Damage to marine waters beyond 12 nautical miles from (a) the baselines in England, or (b) the baselines in Northern Ireland, extending to	The Secretary of State

(1) For the definition of “specified marine activity”, see regulation 11(2).

(2) For the definition of “sea”, see regulation 11(2).]

<i>Type of environmental damage (in bold) and (where limited) area of environmental damage</i>	<i>Enforcing authority</i>
the outermost reach of the area where the United Kingdom exercises jurisdictional rights.	
(a) within the Welsh zone; or	(a) if the damage was caused by anything done in the course of, or for the purpose of, a specified marine activity; or
(b) within the Scottish zone, or 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.	(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— (i) in the case of marine waters within the Welsh zone, section E3 in Part 2 of Schedule 7A to the Government of Wales Act 2006 (marine transport); (ii) in any other case, section E3 in Part 2 of Schedule 5 to the Scotland Act 1998 (marine transport). (2) In a case not falling within paragraph (1) (a) or (b) above— (a) where the marine waters are within the Welsh zone, the Welsh Ministers; (b) otherwise, the Scottish Ministers.
Damage to a protected species or natural habitat or a site of special scientific interest on land.	Natural England
Damage to a protected species or natural habitat or a site of special scientific interest in water, but not in the sea.	The Environment Agency
Damage to a protected species or natural habitat or a site of special scientific interest on any other part of the continental shelf or in the sea up to the limit of the exclusive economic zone.	(1) The Environment Agency, if the damage is due to an activity authorised by the Environment Agency. (2) In any other case, the Secretary of State.

(1) For the definition of “specified marine activity”, see regulation 11(2).

(2) For the definition of “sea”, see regulation 11(2).]

SCHEDULE 3

Regulation 18(1)(c)

Remediation

PART 1

Remediation of Damage to Natural Resources other than Land

Application of Part 1

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

Risk to human health

2. Remediation must remove any significant risk to human health.

Objective

3. The objective of remediation is to achieve the same level of natural resources or services as would have existed if the damage had not occurred.

Primary and complementary remediation

- 4.—(1) The remediation must consist of such primary remediation or complementary remediation or both as will achieve the objective.

(2) Primary remediation is any remedial measure which returns the damaged natural resources or impaired services to, or towards, the state that would have existed if the damage had not occurred (and for this purpose natural recovery is a permitted form of primary remediation in appropriate cases).

(3) Complementary remediation is 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 impaired services to the state that would have existed if the damage had not occurred.

Compensatory remediation

5.—(1) In addition compensatory remediation must be provided to compensate for interim losses of natural resources or services that occur from the date of damage until remediation has achieved its objective; and in this paragraph “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 remediation has been carried out.

- (2) Compensatory remediation does not include financial compensation.

Choice of remediation

6. The remediation options must be evaluated using best available methods, and based on—
 - (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 each component of the natural resources or services;
- (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.

Identification of complementary and compensatory remediation

7.—(1) If possible, complementary and compensatory remedial measures must provide natural resources or services of the same type, quality and quantity as those damaged.

(2) 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).

(3) Where the provision of similar natural resources or services 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.

(4) 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 the cost of which (instead of monetary valuation) is equivalent to the value of the lost natural resources or services.

(5) In the case of complementary remediation at a new site, where possible and appropriate this site should be geographically linked to the damaged site.

Options

8.—(1) 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 its state at the time of the incident, or that restore it more slowly, may be decided on (for example, when the equivalent natural resources or services could be provided elsewhere at a lower cost).

(2) This decision can be taken only if the natural resources or services foregone as a result of the decision are compensated for by increasing complementary or compensatory actions to provide a similar level of natural resources or services.

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

- (a) the remedial measures already taken have removed any significant risk of adversely affecting human health, water or protected species and natural habitats; and
- (b) the cost of the remedial measures needed for restoration to its state before the incident would be disproportionate to the environmental benefits to be obtained.

PART 2

Remediation of Damage to Land

Remediation of damage to land

9.—(1) This Part applies in relation to damage to land.

(2) The remediation must ensure, as a minimum, that the relevant contaminants are removed, controlled, contained or diminished so that the land, taking account of its lawful current use or any planning permission in existence at the time of the damage, no longer poses any significant risk of adverse effects on human health.

(3) The presence of such risks must 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 dispersal.

(4) Natural recovery is a permitted form of remediation in appropriate cases.

SCHEDULE 4

Regulation 19(3)(d)

Permits etc.

1. The following are permits for the purposes of regulation 19(3)(d) in so far as they relate to an activity in Schedule 2—

- (a) a permit granted under [^{F9}the Environmental Permitting (England and Wales) Regulations 2016] or a registration under those Regulations;
- (b) a marine licence granted under Part 4 of the Marine and Coastal Access Act 2009 ^{M32};
- (c) an ordinary or emergency drought order or a drought permit under the Water Resources Act 1991 ^{M33};
- (d) a water abstraction or impoundment licence under the Water Resources Act 1991;
- (e) an authorisation of, or permission for, a plant protection product granted, or deemed to be granted, in accordance with Regulation (EC) No. 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market;
- (f) a consent for the deliberate release of genetically modified organisms granted by the Secretary of State under section 111(1) of the Environmental Protection Act 1990 ^{M34} or a consent given in any other member State for the placing of a genetically modified organism on the market as a product or in a product in accordance with Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms ^{M35}; and
- (g) an authorisation given in any member State in accordance with Article 7 or 19 of Regulation (EC) No. 1829/2003 of the European Parliament and of the Council on genetically modified food and feed ^{M36}.

Textual Amendments

- F9** Words in Sch. 4 para. 1(a) substituted (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 29 para. 90(4)** (with regs. 1(3), 77-79, Sch. 4)

Marginal Citations

M32 2009 c.23.

M33 1991 c.57. See section 73, as amended by paragraph 139 of Schedule 22 to the [Environment Act 1995](#) (c.25) and [S.I. 2013/755](#).

M34 1990 c.43.

M35 OJ No. L106, 17.4.2001, p.1; last amended by Directive 2008/27/EC of the European Parliament and of the Council (OJ No. L 81, 20.3.2008, p.45).

M36 OJ No. L 268, 18.10.2003, p.1; last amended by Regulation (EC) No. 298/2008 of the European Parliament and of the Council (OJ No. L 97, 9.4.2008, p.64).

SCHEDULE 5

Regulations 19(4) and 21(4)

Procedures for Appeals

PART 1

General

1. In this Schedule, the “appointed person” means the person appointed by the Secretary of State in accordance with paragraph 10 of Part 2.

PART 2

Appeals When the Secretary of State is Not the Enforcing Authority

2. This Part applies when the Secretary of State is not the enforcing authority.
3. Notification of appeal must contain—
 - (a) a copy of the notification or remediation notice appealed against; and
 - (b) the grounds of appeal.
4. When notification is received—
 - (a) the Secretary of State must send a copy of the notification of appeal to the enforcing authority; and
 - (b) the enforcing authority must—
 - (i) immediately send a copy to any person who appears to it to have a particular interest in the subject matter of the appeal; and
 - (ii) notify the Secretary of State of the persons to whom a copy has been sent.
5. The Secretary of State must notify the appellant of the time limit within which the appellant must provide in writing—
 - (a) a statement of case; and
 - (b) all relevant correspondence.
6. When these are received, the Secretary of State must send all the documents to the enforcing authority, giving the enforcing authority a time limit within which it must provide a written response.

7. At the same time the Secretary of State must notify any person notified under paragraph 4(b) (i) of the time limit under paragraph 5 and invite that person to make representations before that date.

8. The Secretary of State must then decide whether further evidence is needed, and give directions accordingly.

9. The Secretary of State must then decide whether or not the appeal must be dealt with by written procedure or whether a hearing must be held.

10. The Secretary of State must then refer the appeal to a person appointed by the Secretary of State to deal with the appeal, and specify to the appointed person the decision made under paragraph 9.

11. Following the conclusion of the appeal by the appointed person, the appointed person must decide the appeal or, if so directed by the Secretary of State at any stage before the decision is made, make a recommendation to the Secretary of State, who must decide the appeal.

12. The person deciding the appeal may make such order as to the costs of the parties (including parties who make representations) as appears to that person to be fit.

PART 3

Appeals When the Secretary of State is the Enforcing Authority

13. If the Secretary of State is the enforcing authority, the procedures in Part 2 of this Schedule apply except that—

- (a) the Secretary of State must appoint an appointed person as soon as notification of appeal is received;
- (b) the appointed person must carry out the functions of the Secretary of State specified in paragraphs 4 to 9;
- (c) the notification under paragraph 4(b)(ii) must be made to the appointed person; and
- (d) the appointed person must in all cases decide the appeal.

SCHEDULE 6

Regulation 30(2)

Compensation

Compensation for grant of rights

1. This Schedule prescribes—

- (a) the period within which a person who grants, or joins in granting, any rights pursuant to regulation 30 may apply for compensation for the grant of those rights;
- (b) the manner in which, and the person to whom, such an application may be made; and
- (c) the manner of determining such compensation, for determining the amount of such compensation and for making supplemental provision relating to such compensation.

Interpretation

2. In this Schedule—

“the grantor” means the person who grants, or joins in granting, any right; and

“relevant interest” means an interest in land out of which a right has been granted or which is bound by a right granted.

Period for making an application

3. An application for compensation must be made before the expiry of a period of 12 months beginning with the later of—

- (a) the date of the grant of the rights in respect of which compensation is claimed; or
- (b) where there is an appeal against the notice in relation to which those rights were granted, the date on which the appeal is determined or withdrawn.

Manner of making an application

4.—(1) An application for compensation must be made in writing and delivered at or sent by pre-paid post to the last known address for correspondence of 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 and of any plans attached to such grant;
- (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 (e) of paragraph 5 and showing how the amount applied for under each sub-paragraph has been calculated.

Loss and damage for which compensation is payable

5. Compensation is 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) loss or damage, in relation to any relevant interest to which the grantor is entitled, which—
 - (i) is attributable to the grant of the right or the exercise of it;
 - (ii) does not consist of depreciation in the value of that interest; and
 - (iii) is loss or damage for which the grantor would have been entitled to compensation by way of compensation for disturbance, if that interest had been acquired compulsorily under the Acquisition of Land Act 1981^{M37}, in pursuance of a notice to treat served on the date on which the grant of the right was made;
- (c) damage to any interest in land to which the grantor is entitled which is not a relevant interest and which results from the grant of the right or from the exercise of it;
- (d) any loss or damage sustained by the grantor, other than in relation to any interest in land to which the grantor is entitled, which is attributable to the grant of the right or the exercise of it; and
- (e) 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 compensation and the negotiation of the amount of such compensation.

Marginal Citations

M37 1981 c.67.

Basis on which compensation is assessed

6.—(1) The rules set out in section 5 of the Land Compensation Act 1961 ^{M38} (rules for assessing compensation) have effect, so far as applicable and subject to any necessary modifications, 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 mortgage—

- (a) the compensation must be assessed as if the interest were not subject to the mortgage;
- (b) no compensation is payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
- (c) any compensation payable in respect of the interest that is subject to the mortgage must be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee and must, in either case, be applied as if it were proceeds of sale.

Marginal Citations

M38 1961 c.33. Section 5 was amended by paragraph 1 of Schedule 15 and Part 3 of Schedule 19 to the [Planning and Compensation Act 1991 \(c.34\)](#) and [S.I. 2009/1307](#).

Determination of disputes

7.—(1) Any question of disputed compensation must be referred to and determined by the Upper Tribunal.

(2) In relation to the determination of any such question the provisions of section 4 ^{M39} of the Land Compensation Act 1961 apply as if—

- (a) the reference in sub-section (A1) of that section to section 1 of that Act were a reference to sub-paragraph (1) of this paragraph; and
- (b) references to the acquiring authority were references to the person to whom the rights were granted.

Marginal Citations

M39 Section 4 was amended by [S.I. 2009/1307](#).

Changes to legislation:

There are currently no known outstanding effects for the The Environmental Damage (Prevention and Remediation) (England) Regulations 2015.