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WELSH STATUTORY INSTRUMENTS

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**2009 No. 995 (W.81)**

**ENVIRONMENTAL PROTECTION, WALES**

**The Environmental Damage (Prevention  
and Remediation) (Wales) Regulations 2009**

<i>Made</i>	- - - -	<i>11 April 2009</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>15 April 2009</i>
<i>Coming into force</i>	- -	<i>6 May 2009</i>

The Welsh Ministers being designated <sup>M1</sup> for the purposes of section 2(2) of the European Communities Act 1972 <sup>M2</sup> make these Regulations under the powers conferred by that section as read with paragraph 1A of Schedule 2 to that Act.

The Regulations make provision for a purpose mentioned in section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for the Community instruments referred to in these Regulations to be construed as references to those instruments as amended from time to time.

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**Marginal Citations**

- M1** The relevant designations are conferred by [S.I. 2002/248](#), as amended by [S.I. 2006/3329](#) (measures relating to the conservation of natural habitats and of wild fauna and flora); [S.I. 2003/2901](#), as amended by [S.I. 2006/3329](#) (measures relating to water resources and measures relating to the control and regulation of the deliberate release, placing on the market and transboundary movements of genetically modified organisms); [S.I. 2005/850](#), as amended by [S.I. 2006/3329](#) (measures relating to the prevention, reduction and elimination of pollution caused by waste and the management of packaging and packaging waste and measures relating to the prevention and limitation of the effects of accidents involving dangerous substances in so far as they relate to land-use planning policies and consents); and [S.I. 2007/193](#) (measures relating to the prevention and remedying of land contamination).
- M2** 1972 c. 68. Paragraph 1A was inserted into Schedule 2 by section 28 of the [Legislative and Regulatory Reform Act 2006 \(c. 51\)](#).

## PART 1

### Introductory provisions

#### Title, commencement and application

1.—(1) The title of these Regulations is the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009. They come into force on 6 May 2009.

(2) These Regulations apply in relation to Wales and the areas specified in regulation 6.

#### Interpretation

2.—(1) In these Regulations—

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

[<sup>F1</sup>“baseline” (“gwaelodlin”) means the baselines from which the breadth of the territorial sea is measured for the purposes of the Territorial Sea Act 1987;]

“groundwater” (“dŵ r daear”) means all water that is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil;

“local authority” (“awdurdod lleol”) means a county council or a county borough council;

[<sup>F1</sup>“marine waters” (“dyfroedd morol”) 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;]

“natural habitat” (“cynefin naturiol”) means—

- (a) [<sup>F2</sup>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 or listed in Annex II to Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora;]
- (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 resource” (“adnoddyn naturiol”) means—

- (a) protected species;
- (b) natural habitats;
- (c) species or habitats on a site of special scientific interest for which the site has been notified under section 28 of the Wildlife and Countryside Act 1981 <sup>M3</sup>;
- (d) water; and
- (e) land;

“operator” (“gweithredwr”) means a person who operates or controls an activity, the holder of a permit or authorisation relating to that activity or the person registering or notifying such an activity;

[<sup>F3</sup>“protected species” (“rhywogaethau a warchodir”) 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](#);]

“services” (“gwasanaethau”) means the functions performed by a natural resource for the benefit of another natural resource or the public;

“Wales” (“Cymru”) has the meaning given under section 158 of the Government of Wales Act 2006<sup>M4</sup>.

(2) Unless otherwise defined in these Regulations, expressions used in 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<sup>M5</sup> have the same meaning in these Regulations.

(3) In relation to the deliberate release and placing on the market of genetically modified organisms, “operator” (“gweithredwr”) and “responsible operator” (“gweithredwr cyfrifol”) includes—

- (a) the holder of a relevant consent issued under Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms<sup>M6</sup>;
- (b) the holder of a relevant consent for the deliberate release of genetically modified organisms granted by the Welsh Ministers under section 111(1) of the Environmental Protection Act 1990<sup>M7</sup>; or
- (c) the holder of a relevant authorisation issued under Regulation (EC) No 1829/2003 of the European Parliament and of the Council on genetically modified food and feed<sup>M8</sup>.

#### Textual Amendments

- F1** Words in reg. 2(1) inserted (19.7.2015) by [The Environmental Damage \(Prevention and Remediation\) \(Amendment\) \(Wales\) Regulations 2015 \(S.I. 2015/1394\)](#), regs. 1(2), **2(2)**
- F2** Words in reg. 2(1) substituted (18.12.2015) by [The Environmental Damage \(Prevention and Remediation\) \(Wales\) \(Amendment\) \(No.2\) Regulations 2015 \(S.I. 2015/1937\)](#), regs. 1(2), **3(a)**
- F3** Words in reg. 2(1) substituted (18.12.2015) by [The Environmental Damage \(Prevention and Remediation\) \(Wales\) \(Amendment\) \(No.2\) Regulations 2015 \(S.I. 2015/1937\)](#), regs. 1(2), **3(b)**

#### Marginal Citations

- M3** 1981 c. 69. Part II of the Act (which includes section 28) was inserted by Schedule 9 to the [Countryside and Rights of Way Act 2000 \(c. 37\)](#) and subsequently amended by Schedule 11 to the [Natural Environment and Rural Communities Act 2006 \(c. 16\)](#).
- M4** 2006 c. 32.
- M5** OJ No L 143, 30.4.2004, p. 56 as amended by Directive 2006/21/EC (OJ No L 102, 11.4.2006, p. 15).
- M6** OJ No L 106, 17.4.2001, p. 1 as last amended by Directive 2008/27/EC of the European Parliament and of the Council (OJ No L 81, 20.3.2008, p. 45).
- M7** 1990 c. 43.
- M8** OJ No L 268, 18.10.2003, p. 1 as 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).

### References to Community instruments

3. Reference in these Regulations to Community instruments are references to those instruments as amended from time to time.

### Meaning of “environmental damage”

4.—(1) These Regulations apply in relation to the prevention and remediation of environmental damage; and “environmental damage” (“difrod amgylcheddol”) is damage to—

- (a) protected species or natural habitats, or a site of special scientific interest,
- (b) surface water or groundwater,<sup>F4</sup>...

*Status: Point in time view as at 01/01/2017.*

*Changes to legislation: There are currently no known outstanding effects for the The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009. (See end of Document for details)*

<sup>F5</sup>(c) .....

[<sup>F6</sup>(c) marine waters, or  
(d) land,]

as specified in this regulation.

(2) Environmental damage to protected species or natural habitats 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 of the European Parliament and of the Council establishing a framework for Community action in the field of water policy <sup>M9</sup> 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 of the European Parliament and of the Council (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 pursuant to Directive 2000/60/EC of the European Parliament and of the Council (and for pollutants Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration <sup>M10</sup>) (whether or not the body of groundwater is in fact reclassified as being of lower status).

<sup>F7</sup>(5) .....

[<sup>F8</sup>(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 that results in a significant risk of adverse effects on human health.]

**Textual Amendments**

- F4** Word in reg. 4(1)(b) omitted (19.7.2015) by virtue of The Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015 (S.I. 2015/1394), regs. 1(2), **2(3)(a)(i)**
- F5** Reg. 4(1)(c) omitted (19.7.2015) by virtue of The Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015 (S.I. 2015/1394), regs. 1(2), **2(3)(a)(ii)**
- F6** Reg. 4(1)(c)(d) inserted (19.7.2015) by The Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015 (S.I. 2015/1394), regs. 1(2), **2(3)(a)(ii)**
- F7** Reg. 4(5) omitted (19.7.2015) by virtue of The Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015 (S.I. 2015/1394), regs. 1(2), **2(3)(b)**
- F8** Reg. 4(5)(6) inserted (19.7.2015) by The Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015 (S.I. 2015/1394), regs. 1(2), **2(3)(b)**

**Marginal Citations**

- M9** OJ No L 327, 22.12.2000, p. 1 as last amended by Directive 2008/105/EC of the European Parliament and of the Council (OJ No L 348, 24.12.2008, p. 84).
- M10** OJ No L 372, 27.12.2006, p. 19.

**Environmental damage to which these Regulations apply**

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

(2) In the case of environmental damage to protected species or natural habitats or a site of special scientific interest the 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.

**Areas of application**

6.—(1) The damage must be in an area specified in the following table—

Type of damage	Area in which these Regulations apply
Damage to water	Wales and all water up to one nautical mile seaward from the baseline in Wales
[ <sup>F9</sup> Damage to marine waters]	[ <sup>F10</sup> All marine waters within any of the following descriptions— (a) marine waters up to one nautical mile seaward from the baseline in Wales so far as not already addressed as damage to water; (b) marine waters from one nautical mile seaward from the baseline in Wales, extending out to 12 nautical miles from the baseline in Wales]
Damage in a site of special scientific interest	Wales
Damage to protected species or natural habitats	Wales
Damage to land	Wales

<sup>F11</sup>(2) .....

**Textual Amendments**

- F9** Words in reg. 6(1) inserted (19.7.2015) by [The Environmental Damage \(Prevention and Remediation\) \(Amendment\) \(Wales\) Regulations 2015 \(S.I. 2015/1394\)](#), regs. 1(2), **2(4)(a)(i)**
- F10** Words in reg. 6(1) inserted (19.7.2015) by [The Environmental Damage \(Prevention and Remediation\) \(Amendment\) \(Wales\) Regulations 2015 \(S.I. 2015/1394\)](#), regs. 1(2), **2(4)(a)(ii)**
- F11** Reg. 6(2) omitted (19.7.2015) by virtue of [The Environmental Damage \(Prevention and Remediation\) \(Amendment\) \(Wales\) Regulations 2015 \(S.I. 2015/1394\)](#), regs. 1(2), **2(4)(b)**

**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 <sup>M11</sup>.

*Status: Point in time view as at 01/01/2017.*

*Changes to legislation: There are currently no known outstanding effects for the The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009. (See end of Document for details)*

### Marginal Citations

**M11** The Convention is set out in Schedule 7 to the [Merchant Shipping Act 1995 \(c. 21\)](#).

### Exemptions

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

- (a) damage that took place before the coming into force of these Regulations;
- (b) damage that takes place after that date, or is 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 place after that date if it derives from an activity that took place and finished before that date.

[<sup>F12</sup>(1A) Paragraph (1) applies in relation to damage to marine waters as if, in sub-paragraph (a), for “the coming into force of these Regulations” there were substituted “19 July 2015”.]

(2) They 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 from natural disasters;
- (d) an incident in respect of which liability or compensation falls within the scope of—
  - (i) the International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage;
  - (ii) the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage <sup>M12</sup>; or
  - (iii) the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 <sup>M13</sup>;
- (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 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and the Brussels Supplementary Convention of 31 January 1963; or
- (g) damage caused in the course of commercial sea fishing if all legislation relating to that fishing was complied with.

(3) They 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.

### Textual Amendments

**F12** [Reg. 8\(1A\)](#) inserted (19.7.2015) by [The Environmental Damage \(Prevention and Remediation\) \(Amendment\) \(Wales\) Regulations 2015 \(S.I. 2015/1394\)](#), regs. 1(2), 2(5)

### Marginal Citations

**M12** Both these conventions were implemented in the [Merchant Shipping Act 1995 \(c. 21\)](#).

**M13** Implemented in the [Merchant Shipping Act 1995](#) by amendments made to that Act by [S.I. 2006/1244](#).

**Exemption from damage to water**

9.—(1) 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 of the European Parliament and of the Council, or
- (c) deterioration from high status to good status of a body of surface water resulting from new sustainable human development activities pursuant to that Directive,

if all the conditions in paragraph (2) are fulfilled.

(2) The conditions are—

- (a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;
- (b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 of Directive 2000/60/EC of the European Parliament and of the Council and the objectives are reviewed every six years;
- (c) the reasons for those 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 of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means.

**[<sup>F13</sup>Enforcing authorities under [<sup>F14</sup>the Environmental Permitting (England and Wales) Regulations 2016]]**

10.—(1) These Regulations are enforced in accordance with this regulation if the damage is caused by [<sup>F15</sup>an activity] that requires a permit or registration under [<sup>F16</sup>the Environmental Permitting (England and Wales) Regulations 2016].

(2) If [<sup>F17</sup>either the Natural Resources Body for Wales or] the Environment Agency is responsible for granting the permit, they are enforced by [<sup>F18</sup>the Natural Resources Body for Wales] in all cases.

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

- (a) Part 2 is enforced by the local authority;
- (b) Part 3 is enforced by—
  - (i) the local authority if the damage is to land;
  - (ii) [<sup>F19</sup>the Natural Resources Body for Wales] if the damage is to water;
  - <sup>F20</sup>(iii) . . . . .
  - [<sup>F21</sup>(iii) the Welsh Ministers, if the damage is to marine waters; and
  - (iv) the Natural Resources Body for Wales, if the damage is to natural habitats or protected species or a site of special scientific interest.]

**Textual Amendments**

**F13** Reg. 10 heading substituted (6.4.2012) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2012 \(S.I. 2012/630\)](#), regs. 1(b), **19(2)(b)**

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*Changes to legislation: There are currently no known outstanding effects for the The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009. (See end of Document for details)*

- F14** Words in reg. 10 heading substituted (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), **Sch. 29 para. 30(2)(a)** (with regs. 1(3), 77-79, Sch. 4)
- F15** Words in reg. 10(1) substituted (6.4.2012) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2012 (S.I. 2012/630), regs. 1(b), **19(2)(b)(i)**
- F16** Words in reg. 10(1) substituted (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), **Sch. 29 para. 30(2)(a)** (with regs. 1(3), 77-79, Sch. 4)
- F17** Words in reg. 10(2) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 5 para. 52(2)(a)** (with Sch. 7)
- F18** Words in reg. 10(2) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 5 para. 52(2)(b)** (with Sch. 7)
- F19** Words in reg. 10(3)(a)(ii) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 5 para. 52(3)(a)** (with Sch. 7)
- F20** Reg. 10(3)(b)(iii) omitted (19.7.2015) by virtue of The Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015 (S.I. 2015/1394), regs. 1(2), **2(6)**
- F21** Reg. 10(3)(b)(iii)(iv) inserted (19.7.2015) by The Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015 (S.I. 2015/1394), regs. 1(2), **2(6)**

### Enforcing authorities in other cases

11.—(1) If the damage is caused by an activity that does not require a permit or registration under [F22the Environmental Permitting (England and Wales) Regulations 2016] these Regulations are enforced in accordance with the following table.

<i>Type of environmental damage</i>	<i>Area of damage</i>	<i>Enforcing authority</i>
Damage to water—		[F23Natural Resources Body for Wales]
[F24Damage to marine waters—]	[F25All marine waters out to 12 nautical miles from the baseline in Wales]	[F26the Welsh Ministers]
Damage to protected species or natural habitats or a site of special scientific interest—	land	[F27Natural Resources Body for Wales]
	water but not in the sea <sup>(1)</sup>	[F23Natural Resources Body for Wales]
	the sea	— if the damage is due to an activity authorised by the [F23Natural Resources Body for Wales], the [F23Natural Resources Body for Wales]; — otherwise the Welsh Ministers
Damage to land—		Local authority

(1) “Sea” includes—

- (a) any area 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) every estuary or arm of the sea; and
  - (ii) the waters of any channel, creek, bay or river.
- (2) The Welsh Ministers may give directions to an enforcing authority of a general or specific character with respect to the carrying out of its functions under these Regulations.
- (3) An enforcing authority must comply with a direction given to it under these Regulations.

#### Textual Amendments

- F22** Words in reg. 11(1) substituted (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 29 para. 30(3)(a)** (with regs. 1(3), 77-79, Sch. 4)
- F23** Words in reg. 11 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 5 para. 53(2)(a)** (with Sch. 7)
- F24** Words in reg. 11(1) inserted (19.7.2015) by [The Environmental Damage \(Prevention and Remediation\) \(Amendment\) \(Wales\) Regulations 2015 \(S.I. 2015/1394\)](#), regs. 1(2), **2(7)(a)**
- F25** Words in reg. 11(1) inserted (19.7.2015) by [The Environmental Damage \(Prevention and Remediation\) \(Amendment\) \(Wales\) Regulations 2015 \(S.I. 2015/1394\)](#), regs. 1(2), **2(7)(b)**
- F26** Words in reg. 11(1) inserted (19.7.2015) by [The Environmental Damage \(Prevention and Remediation\) \(Amendment\) \(Wales\) Regulations 2015 \(S.I. 2015/1394\)](#), regs. 1(2), **2(7)(c)**
- F27** Words in reg. 11 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 5 para. 53(2)(b)** (with Sch. 7)

#### Enforcement

- 12.**—(1) If there is more than one type of damage, so that there is more than one enforcing authority, these Regulations are enforced by any or all of the specified enforcing authorities.
- (2) An enforcing authority may enter into an arrangement with any other enforcing authority to act on its behalf.

## 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 in relation to which there are reasonable grounds to believe 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 be the appropriate one.
- (2) The enforcing authority may serve a notice on that operator that—
- (a) describes the threat;
  - (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 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 be the appropriate one.
- (2) The enforcing authority may serve a notice on that operator that—
- (a) describes the damage;
  - (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 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.

### **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 then, unless the instructions related to an emission or incident caused by the operator's own activities, the operator may recover the costs of actions under those regulations from that public authority.

## **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 decides that the damage is environmental damage it must notify the operator or operators of any activity or activities that caused the damage (referred to in these Regulations as “the responsible operator” (“y gweithredwr cyfrifol”)) that—

- (a) the damage is environmental damage;
- (b) the responsible operator's activity was a cause of the environmental damage;

- (c) 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 4; and
  - (d) the responsible operator has a right to appeal.
- (2) The enforcing authority may withdraw or vary the notification if it is satisfied that the notification should not have been served or that an appeal against the notification is likely to succeed.

### **Appeals against liability to remediate**

**19.**—(1) A person served with notification under regulation 18 may notify the Welsh Ministers that that person intends to appeal against that notification.

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

(3) The grounds of appeal are—

- (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 3;
- (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;
- (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) Paragraph 3(e) does not apply in relation to the deliberate release of genetically modified organisms.

(5) Schedule 5 contains procedures for the appeal.

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

- (a) anyone who has notified an enforcing authority under regulation 29, and
- (b) any person on whose land the remedial measures will be carried out,

and may consult any other person appearing to be necessary.

(2) Following consultation the enforcing authority must serve a remediation notice on the responsible operator that specifies—

- (a) the damage;
- (b) the measures necessary for remediation of the damage, together with the reasons;

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*Status: Point in time view as at 01/01/2017.*

*Changes to legislation: There are currently no known outstanding effects for the The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009. (See end of Document for details)*

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- (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 remediation notice.
- (3) The enforcing authority may withdraw or vary the remediation notice if it is satisfied that the remediation notice should not have been served or that an appeal against the remediation notice is likely to succeed.
- (4) Failure to comply with a remediation notice is an offence.

#### **Appeal against the remediation notice**

**21.**—(1) The responsible operator may notify the Welsh Ministers that that person intends to appeal against the remediation notice on the grounds that its contents are unreasonable.

(2) An appeal may only be brought against those parts of the remediation notice that are different from proposals made by the responsible operator.

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

(4) Schedule 5 contains procedures for the appeal.

(5) The Welsh Ministers or the appointed person may confirm, vary or quash the notice, and must give written notification of the final decision and the reasons for it, and 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 remediate under these Regulations.

## **PART 4**

### **Administration and enforcement**

#### **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 any 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 unless the responsible operator was not liable for the action taken.

#### 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 responsible 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) 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 5 years has elapsed since—

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

whichever is the later.

#### 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 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 following, 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) to (6).

(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 (7)(b) or (c) below, the amount of any costs specified in a notice under this regulation and the accrued interest is a charge on the premises—

- (a) as from the end of the period of 21 days beginning with the date of service of the notice, or

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(b) where an appeal is brought under paragraph (6), as from the final determination of the appeal,  
until the costs and interest are recovered.

(5) For the purposes of paragraph (4), the withdrawal of an appeal has the same effect as a final determination of the appeal.

(6) A person served with a notice or 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.

(7) On such an appeal 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.

(8) 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<sup>M14</sup>, 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.

(9) In this regulation, “owner” (“perchennog”), 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.

#### Marginal Citations

M14 1925 c. 20.

### Recovery of costs from other persons

**28.** An operator who incurs liability to the enforcing authority 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 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 that operator to submit comments on them.
- (5) Paragraphs (3) and (4) do not apply if—
- (a) the notifier is not likely to be affected or does not have a sufficient interest;
  - (b) in the opinion of the enforcing authority 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 entitled to compensation from the operator determined in accordance with Schedule 6.

### **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 <sup>M15</sup> apply in relation to these Regulations, and the powers of persons authorised by [<sup>F28</sup>the Natural Resources Body for Wales] 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 Welsh Ministers enforcing these Regulations in relation to the sea may at any time board and inspect a ship or marine installation.

(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.

#### **Textual Amendments**

**F28** Words in [reg. 31\(2\)](#) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 5 para. 54](#) (with [Sch. 7](#))

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#### **Marginal Citations**

**M15** 1995 c. 25.

#### **Provision of information to the enforcing authority**

**32.** An enforcing authority may require an operator to provide such information as it may reasonably require to enable the enforcing authority to carry out its functions under these Regulations, and failure to provide such information is an offence.

#### **Enforcement**

**33.** No enforcement action may be taken under these Regulations 30 years or more after 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 not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or both; or
- (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” (“cyfarwyddwr”), in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

*Jane Davidson*  
Minister for Environment, Sustainability and  
Housing, one of the Welsh Ministers



## SCHEDULE 1

Regulation 4

### Damage to protected species, natural habitats and sites of special scientific interest

#### **Damage to protected species and natural habitats**

**1.—**(1) In the case of protected species or natural habitat (other than damage on 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 or Community-wide;
- (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 to recover within a short time of the damage being caused to a condition that leads to its state at the time of the damage or better without any intervention other than increased protection measures.

#### **Conservation status of natural habitats**

**2.—**(1) A natural 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) Its conservation status 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) A species' conservation status 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 concerned 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
  - (c) there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long term basis.

**Status:** Point in time view as at 01/01/2017.

**Changes to legislation:** There are currently no known outstanding effects for the The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009. (See end of Document for details)

### 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<sup>M16</sup>, or
  - (b) protected species or natural habitats.

(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).

#### Marginal Citations

**M16** 1981 c. 69. Part II of the Act (which includes section 28) was inserted by Schedule 9 to the [Countryside and Rights of Way Act 2000 \(c. 37\)](#) and subsequently amended by Schedule 11 to the [Natural Environment and Rural Communities Act 2006 \(c. 16\)](#).

### Express authorisation

[<sup>F29</sup>5. Damage to a protected species or natural habitat, and damage to a site of special scientific interest, does not include damage caused by an act expressly authorised by the relevant authorities in accordance with Part 2 of the Wildlife and Countryside Act 1981 or the Conservation of Habitats and Species Regulations 2010.]

#### Textual Amendments

**F29** Sch. 1 para. 5 substituted (18.12.2015) by [The Environmental Damage \(Prevention and Remediation\) \(Wales\) \(Amendment\) \(No.2\) Regulations 2015 \(S.I. 2015/1937\)](#), regs. 1(2), 4

## SCHEDULE 2

Regulation 5

### Activities causing damage

#### Operations to which this Schedule applies

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

#### [<sup>F30</sup>Operation of permitted installations

2. The operation of installations subject to permit in pursuance of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control).]

#### Textual Amendments

**F30** Sch. 2 para. 2 substituted (18.12.2015) by [The Environmental Damage \(Prevention and Remediation\) \(Wales\) \(Amendment\) \(No.2\) Regulations 2015 \(S.I. 2015/1937\)](#), regs. 1(2), 5(a)

### 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 [<sup>F31</sup>Directive 2008/98/EC of the European Parliament and of the Council on waste].

(2) The operation of landfill sites under Council Directive 1999/31/EC on the landfill of waste<sup>M17</sup> and the operation of incineration plants under [<sup>F32</sup>Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control).]

(3) This does not include the spreading of sewage sludge from urban waste water treatment plants, treated to an approved standard, for agricultural purposes.

#### Textual Amendments

**F31** Words in Sch. 2 para. 3(1) substituted (29.3.2011) by [The Waste \(Miscellaneous Provisions\) \(Wales\) Regulations 2011 \(S.I. 2011/971\)](#), regs. 1(2), 6

**F32** Words in Sch. 2 para. 3(2) substituted (18.12.2015) by [The Environmental Damage \(Prevention and Remediation\) \(Wales\) \(Amendment\) \(No.2\) Regulations 2015 \(S.I. 2015/1937\)](#), regs. 1(2), 5(b)

#### Marginal Citations

**M17** OJ No L 182, 16.7.99, p. 1 as last amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council (OJ No L 311, 21.11.2008, p. 1).

### 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<sup>M18</sup>.

#### Marginal Citations

**M18** OJ No L102, 11.4.2006, p. 15.

### Discharges requiring authorisation

5.—(1) All discharges into the inland surface water that require prior authorisation in pursuance of 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<sup>M19</sup>.

(2) All discharges of substances into groundwater that require prior authorisation in pursuance of Council Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances<sup>M20</sup> [<sup>F33</sup>or Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration].

(3) All discharges or injections of pollutants into surface water or groundwater that require a permit, authorisation or registration under Directive 2000/60/EC of the European Parliament and of the Council of establishing a framework for Community action in the field of water policy<sup>M21</sup>.

#### Textual Amendments

**F33** Words in Sch. 2 para. 5(2) inserted (18.12.2015) by [The Environmental Damage \(Prevention and Remediation\) \(Wales\) \(Amendment\) \(No.2\) Regulations 2015 \(S.I. 2015/1937\)](#), regs. 1(2), 5(c)

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### Marginal Citations

**M19** OJ No L 64 ,4.3.2006, p. 52.

**M20** OJ No L 20, 26.1.80, p. 43 as amended by Council Directive 91/692/EC (OJ No L 377, 31.12.1991, p. 48).

**M21** OJ No L 327, 22.12.2000, p. 1 as amended by Directive 2008/105/EC of the European Parliament and of the Council (OJ No L 348, 24.12.2008, p. 84).

## Water abstraction and impoundment

6. Water abstraction and impoundment of water subject to prior authorisation in pursuance of Directive [2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy.

## 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 <sup>M22</sup>;
- (b) 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 <sup>M23</sup>;
- (c) plant protection products [<sup>F34</sup>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 and repealing Council Directives [79/117/EEC](#) and [91/414/EEC](#)]; and
- (d) 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 <sup>M24</sup>[<sup>F35</sup>or as defined in Article 3(1)(a) of Regulation No. 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products].

### Textual Amendments

**F34** Words in Sch. 2 para. 7(c) substituted (24.9.2011) by [The Plant Protection Products Regulations 2011 \(S.I. 2011/2131\)](#), reg. 1(1), [Sch. 4](#) (with reg. 29)

**F35** Words in Sch. 2 para. 7(d) inserted (18.12.2015) by [The Environmental Damage \(Prevention and Remediation\) \(Wales\) \(Amendment\) \(No.2\) Regulations 2015 \(S.I. 2015/1937\)](#), regs. 1(2), [5\(d\)](#)

### Marginal Citations

**M22** OJ No L 196, 16.8.67, p. 1 as last amended by Regulation (EC) No 2008/1272 of the European Parliament and of the Council (OJ No L 353, 31.12.2008, p. 1).

**M23** OJ No L 200, 30.7.99, p. 1 as last amended by Regulation (EC) No 2008/1272 of the European Parliament and of the Council (OJ No L 353, 31.12.2008, p. 1).

**M24** OJ No L 123, 24.4.98, p. 1 as last amended by Directive 2008/31/EC of the European Parliament and of the Council (OJ No L 81, 20.3.2008, p. 57).

## [<sup>F36</sup>Transport

**8.** Transport by road, rail, inland waterways, sea or air of dangerous goods; or polluting goods as defined in—

- (a) Directive [2002/59/EC](#) of the European Parliament and of the Council establishing a Community vessel traffic monitoring and information system; and
- (b) Directive [2008/68/EC](#) of the European Parliament and of the Council on the inland transport of dangerous goods.]

### Textual Amendments

**F36** Sch. 2 para. 8 substituted (18.12.2015) by [The Environmental Damage \(Prevention and Remediation\) \(Wales\) \(Amendment\) \(No.2\) Regulations 2015 \(S.I. 2015/1937\)](#), regs. 1(2), **5(e)**

## 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 <sup>M25</sup>).

(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 <sup>M26</sup>.

### Marginal Citations

**M25** OJ No L 117, 8.5.90, p. 1 as last amended by Commission Decision 2005/174/EC (OJ No L 59, 5.3.2005, p. 20).

**M26** OJ No L 106, 17.4.2001, p. 1 as 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, requiring an authorisation or prohibited under Regulation (EC) No [1013/2006](#) of the European Parliament and of the Council on shipments of waste <sup>M27</sup>.

### Marginal Citations

**M27** OJ No L 190, 12.7.2006, p. 1 as last amended by Commission Regulation (EC) No 669/2008 (OJ No L 188, 16.7.2008, p. 7).

## [<sup>F37</sup>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.]

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**Textual Amendments**

**F37** Sch. 2 para. 11 inserted (18.12.2015) by [The Environmental Damage \(Prevention and Remediation\) \(Wales\) \(Amendment\) \(No.2\) Regulations 2015 \(S.I. 2015/1937\)](#), regs. 1(2), **5(f)**

SCHEDULE 3

Regulation 19

Permits, etc.

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

- (a) a permit granted under [<sup>F38</sup>the Environmental Permitting (England and Wales) Regulations 2016] or a registration under those Regulations;
- [<sup>F39</sup>(b) a marine licence granted under Part 4 of the Marine and Coastal Access Act 2009;]
- (c) <sup>F40</sup>... an ordinary or emergency drought order or a drought permit under the Water Resources Act 1991 <sup>M28</sup>;
- <sup>F41</sup>(d) .....
- (e) a water abstraction or impoundment licence under the Water Resources Act 1991;
- [<sup>F42</sup>(f) 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 and repealing Council Directives 79/117/EEC and 91/414/EEC.]

**Textual Amendments**

- F38** Words in Sch. 3 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. 30(4)(a)** (with regs. 1(3), 77-79, Sch. 4)
- F39** Sch. 3 para. 1(b) substituted (6.4.2011) by [The Marine and Coastal Access Act 2009 \(Commencement No.5, Consequential and Transitional Provisions\) Order 2011 \(S.I. 2011/556\)](#), art. 1(3), **Sch. para. 10(2)(a)**
- F40** Words in Sch. 3 para. 1(c) omitted (6.4.2012) by virtue of [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2012 \(S.I. 2012/630\)](#), regs. 1(b), **19(4)(b)(ii)**
- F41** Sch. 3 para. 1(d) omitted (6.4.2012) by virtue of [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2012 \(S.I. 2012/630\)](#), regs. 1(b), **19(4)(b)(iii)**
- F42** Sch. 3 para. 1(f) substituted (24.9.2011) by [The Plant Protection Products Regulations 2011 \(S.I. 2011/2131\)](#), reg. 1(1), **Sch. 4** (with reg. 29)

**Marginal Citations**

**M28** 1991 c. 57 as amended by the [Water Act 2003 \(c. 37\)](#).

## SCHEDULE 4

Regulation 18

### 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 resource 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 (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” (“colledion interim”) 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.—(1) 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;

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- (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 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.

### **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 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.

(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 whose cost (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 dispersion.

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

#### SCHEDULE 5

Regulations 19 and 21

#### Appeals

## PART 1

### Appeals when the Welsh Ministers are not the enforcing authority

1. This Part applies when the Welsh Ministers are not the enforcing authority.

2. Notification of appeal must contain—

- (a) a copy of the notification or remediation notice appealed against; and
- (b) the grounds of appeal.

3. When notification is received, the Welsh Ministers must send a copy of the notification of appeal to the enforcing authority, and the enforcing authority must immediately send a copy to any person who appears to it to have a particular interest in the subject matter of the appeal, and notify the Welsh Ministers whom it has notified.

4. The Welsh Ministers 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.

5. When these are received, the Welsh Ministers must send all the documents to the enforcing authority, giving the enforcing authority a time limit within which it must provide a written response.

6. At the same time the Welsh Ministers must notify any person notified under paragraph 3 of the time limit under paragraph 5 and invite them to make representations before that date.

7. The Welsh Ministers must then decide whether further evidence is needed, and give directions accordingly.

**Status:** Point in time view as at 01/01/2017.

**Changes to legislation:** There are currently no known outstanding effects for the The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009. (See end of Document for details)

**8.** The Welsh Ministers must then refer the appeal to a person appointed by the Welsh Ministers to deal with the appeal, and specify to the appointed person whether or not the appeal must be dealt with by written procedure or whether a hearing must be held.

**9.** Following the conclusion of the appeal by the appointed person, the appointed person must decide the matter or, if so directed by the Welsh Ministers at any stage before the decision is made, make a recommendation to the Welsh Ministers, who must decide the appeal.

**10.** The person deciding the appeal may make such order as to the costs of the parties (including parties who make representation) as is fit.

## PART 2

### Appeals when the Welsh Ministers are the enforcing authority

- 11.** If the Welsh Ministers are the enforcing authority, the procedures in Part 1 apply except that—
- the Welsh Ministers must appoint a person as soon as notification of appeal is received;
  - the appointed person must carry out the functions of the Welsh Ministers specified in that Part; and
  - the appointed person must in all cases decide the appeal.

## SCHEDULE 6

Regulation 30

### Compensation

#### Compensation for grant of rights

- 1.** This Schedule prescribes—
- 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;
  - the manner in which, and the person to whom, such an application may be made; and
  - 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” (“y grantwr”) means the person who grants, or joins in granting, any right; and
- “relevant interest” (“buddiant perthnasol”) 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 date of the grant of the rights in respect of which compensation is claimed, or
  - 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,

whichever is the later date.

### **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 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<sup>M29</sup>, 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 and the negotiation of the amount of compensation.

#### **Marginal Citations**

M29 1981 c. 67.

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

6.—(1) The rules set out in section 5 of the Land Compensation Act 1961<sup>M30</sup> (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—

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- (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

**M30** 1961 c. 33.

#### Determination of disputes

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

(2) In relation to the determination of any such question of compensation the provisions of sections 2 and 4 of the Land Compensation Act 1961 (procedure on references to the Lands Tribunal and costs) shall apply as if—

- (a) the reference in section 2 of the Land Compensation Act 1961 to section 1 of that Act were a reference to sub-paragraph (1) of this paragraph; and
- (b) references in section 4 of that Act to the acquiring authority were references to the person to whom the rights were granted.

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations 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.

They apply to damage to protected species, natural habitats, sites of special scientific interest, water and land (regulation 4).

They are enforced by the bodies specified in regulations 10 and 11.

They provide that, for certain economic activities, where there is an imminent risk of environmental damage, the operator must take steps to prevent it, and if it has occurred must prevent further damage. Where damage has occurred the enforcing authority must assess the damage and identify remedial measures. It must then serve a remediation notice on the responsible operator specifying what remediation is required (Part 3).

They make provision for enforcement (Part 4).

Breach of specified provisions of the Regulations is an offence punishable—

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

A regulatory impact assessment has been prepared and copies are available from the Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ.

**Status:**

Point in time view as at 01/01/2017.

**Changes to legislation:**

There are currently no known outstanding effects for the The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009.