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WELSH STATUTORY INSTRUMENTS

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**2009 No. 995**

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

**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>M1</sup>;

(d) water; and

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(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>M2</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>M3</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>F4</sup>, or under [<sup>F5</sup>assimilated] law which transposed Directive 2001/18/EC in relation to Wales];
- (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>M4</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>M5</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)**
- F4** Words in reg. 2(3)(a) inserted (31.12.2020) by The Environmental Damage (Prevention and Remediation) (Wales) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/244), regs. 1, **2(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F5** Word in reg. 2(3)(a) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Wales) Regulations 2023 (S.I. 2023/1332), regs. 1(2), **9(2)**

#### Marginal Citations

- M1** 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).
- M2** 2006 c. 32.
- M3** 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).
- M4** 1990 c. 43.

**M5** 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 <sup>F6</sup>EU instruments

<sup>F7</sup>3.—(1) References in these Regulations to EU instruments are to those instruments as they had effect immediately before exit day.

(2) References to—

- (a) the European Union, or otherwise to the area to which that instrument applies;
- (b) a Member State,

in any EU instrument referred to in these Regulations includes the United Kingdom.]

### Textual Amendments

**F6** Word in reg. 3 heading substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, **8-10**

**F7** Reg. 3 substituted (31.12.2020) by [The Environmental Damage \(Prevention and Remediation\) \(Wales\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/244\)](#), regs. 1, **2(3)**; 2020 c. 1, Sch. 5 para. 1(1)

### 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>F8</sup> ...

<sup>F9</sup>(c) . . . . .

<sup>F10</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>M6</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

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pollution and deterioration <sup>M7</sup>) (whether or not the body of groundwater is in fact reclassified as being of lower status).

<sup>F11</sup>(5) .....

[<sup>F12</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**

- F8** 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)**
- F9** 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)**
- F10** 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)**
- F11** 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)**
- F12** 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**

- M6** 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).
- M7** 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>F13</sup> Damage to marine waters]	[ <sup>F14</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>F15</sup>(2) .....

**Textual Amendments**

- F13** 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)**
- F14** 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)**
- F15** 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>M8</sup>.

**Marginal Citations**

- M8** 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>F16</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—

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- (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>M9</sup>; or
  - (iii) the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 <sup>M10</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

**F16** 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

**M9** Both these conventions were implemented in the [Merchant Shipping Act 1995 \(c. 21\)](#).

**M10** 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>F17</sup>Enforcing authorities under [<sup>F18</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>F19</sup>an activity] that requires a permit or registration under [<sup>F20</sup>the Environmental Permitting (England and Wales) Regulations 2016].

(2) If [<sup>F21</sup>either the Natural Resources Body for Wales or] the Environment Agency is responsible for granting the permit, they are enforced by [<sup>F22</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>F23</sup>the Natural Resources Body for Wales] if the damage is to water;

<sup>F24</sup>(iii) . . . . .

[<sup>F25</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**

- F17** 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)**
- F18** 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)
- F19** 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)**
- F20** 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)
- F21** 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)
- F22** 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)
- F23** 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)
- F24** 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)**
- F25** 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)**

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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)*

### Enforcing authorities in other cases

11.—(1) If the damage is caused by an activity that does not require a permit or registration under [F26the 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—		[F27Natural Resources Body for Wales]
[F28Damage to marine waters—]	[F29All marine waters out to 12 nautical miles from the baseline in Wales]	[F30the Welsh Ministers]
Damage to protected species or natural habitats or a site of special scientific interest—	land	[F31Natural Resources Body for Wales]
	water but not in the sea <sup>(1)</sup>	[F27Natural Resources Body for Wales]
	the sea	— if the damage is due to an activity authorised by the [F27Natural Resources Body for Wales], the [F27Natural 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

- F26** 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)
- 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)(a)** (with Sch. 7)
- F28** 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)**
- F29** 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)**



- F30** 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)**
- F31** 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.

**[<sup>F32</sup>Reporting by enforcing authorities**

18A.—(1) Where an enforcing authority has served a responsible operator with notification under regulation 18(1) after the coming into force of this regulation, the enforcing authority must, as soon as reasonably practicable, notify the Welsh Ministers of the relevant environmental damage.

(2) The notification provided to the Welsh Ministers under paragraph (1) must contain the following information—

- (a) the type of environmental damage, according to the categorisations set out in regulation 4(1)(a) to (d),

- (b) the date on which the environmental damage occurred or was discovered, and
  - (c) the activity which caused the environmental damage, according to the list set out in Schedule 2, except in cases where regulation 5(2) applies.
- (3) The Welsh Ministers may require an enforcing authority to provide such other information in relation to the environmental damage as the Welsh Ministers may reasonably request.]

#### Textual Amendments

**F32** Reg. 18A inserted (20.11.2019) by The Rural Affairs and Environment (Miscellaneous Amendments) (Wales) Regulations 2019 (S.I. 2019/1408), regs. 1(2), 2

#### 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.**—<sup>F33</sup>(A1) Where a responsible operator has received a notice from the enforcing authority under regulation 18, it must without delay identify potential remedial measures in accordance with Schedule 4 and submit them in writing to the enforcing authority for its approval.]

(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—

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- (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;
  - (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.

#### **Textual Amendments**

**F33** [Reg. 20\(A1\)](#) inserted (17.12.2018) by [The Environment, Planning and Rural Affairs \(Miscellaneous Amendments\) \(Wales\) Regulations 2018 \(S.I. 2018/1216\)](#), regs. 1(3), **8(2)**

#### **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.

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(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
- (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>M11</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

M11 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>M12</sup> apply in relation to these Regulations, and the powers of persons authorised by [<sup>F34</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

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(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

**F34** 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](#))

#### Marginal Citations

**M12** [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



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