

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 06/04/2012.

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^{M1}; 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

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 \(c. 16\)](#).

Express authorisation

5. Damage to protected species and natural habitats, and damage on a site of special scientific interest, does not include damage caused by an act expressly authorised by the relevant authorities in accordance with the Conservation (Natural Habitats, etc.) Regulations 1994^{M2} or Part II of the Wildlife and Countryside Act 1981.

Marginal Citations

M2 [S.I. 1994/2716](#) as last amended by [S.I. 2009/6](#).

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).

Operation of permitted installations

2. The operation of installations subject to permit in pursuance of Directive [2008/1/EC](#) of the European Parliament and of the Council concerning integrated pollution prevention and control^{M3} (all activities listed in Annex I to that Directive with the exception of installations or parts of installations used for research, development and testing of new products and processes).

Marginal Citations

M3 OJ No L 24, 29.1.2008, p. 8.

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 [^{F1}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 ^{M4} and the operation of incineration plants under Directive 2000/76/EC of the European Parliament and of the Council on the incineration of waste ^{M5}.

(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

F1 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

Marginal Citations

M4 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).

M5 OJ No L 332, 28.12.2000, p. 91 as corrected in OJ No L 145, 31.5.2001, p. 52.

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 ^{M6}.

Marginal Citations

M6 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 ^{M7}.

(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 ^{M8}.

(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 ^{M9}.

Marginal Citations

M7 OJ No L 64 ,4.3.2006, p. 52.

M8 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).

M9 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).

Status: Point in time view as at 06/04/2012.

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)

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 ^{M10};
- (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 ^{M11};
- (c) plant protection products [^{F2}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 ^{M12}.

Textual Amendments

F2 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)

Marginal Citations

M10 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).

M11 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).

M12 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).

Transport

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

- (a) Annex A to Council Directive [94/55/EC](#) on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road ^{M13};
- (b) the Annex to Council Directive [96/49/EC](#) on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail ^{M14}; and
- (c) Council Directive [93/75/EEC](#) concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods ^{M15}.

Marginal Citations

- M13** OJ No L 319, 12.12.94, p. 7 as last amended by Commission Directive 2006/89/EC (OJ No L 305, 4.11.2006, p. 4).
- M14** OJ No L 235, 17.9.96, p. 25 as last amended by Commission Directive 2006/90/EC (OJ No L 305, 4.11.2006, p. 6).
- M15** OJ No L 247, 5.10.93, p. 19 as last amended by Directive 2002/84/EC of the European Parliament and of the Council (OJ No L 324, 29.11.2002, p. 53).

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 ^{M16}).

(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 ^{M17}.

Marginal Citations

- M16** 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).
- M17** 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 ^{M18}.

Marginal Citations

- M18** 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).

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 the Environmental Permitting (England and Wales) Regulations [^{F3}2010] or a registration under those Regulations;
- [^{F4}(b) a marine licence granted under Part 4 of the Marine and Coastal Access Act 2009;]

Status: Point in time view as at 06/04/2012.

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)

- (c) ^{F5} ... an ordinary or emergency drought order or a drought permit under the Water Resources Act 1991 ^{M19};
- ^{F6}(d)
- (e) a water abstraction or impoundment licence under the Water Resources Act 1991;
- [^{F7}(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

F3 Word in Sch. 3 para. 1(a) substituted (6.4.2012) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2012 (S.I. 2012/630), regs. 1(b), **19(4)(b)(i)**

F4 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)**

F5 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)**

F6 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)**

F7 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

M19 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;
- (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.

Status: Point in time view as at 06/04/2012.

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(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.
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—
 - (a) the Welsh Ministers must appoint a person as soon as notification of appeal is received;
 - (b) the appointed person must carry out the functions of the Welsh Ministers specified in that Part; and
 - (c) the appointed person must in all cases decide the appeal.

Status: Point in time view as at 06/04/2012.

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)

SCHEDULE 6

Regulation 30

Compensation

Compensation for grant of rights

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

Interpretation

2. In this Schedule—

“the grantor” (“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—
 - (a) the date of the grant of the rights in respect of which compensation is claimed, or
 - (b) where there is an appeal against the notice in relation to which those rights were granted, the date on which the appeal is determined or withdrawn,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 ^{M20}, 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

M20 1981 c. 67.

Basis on which compensation assessed

6.—(1) The rules set out in section 5 of the Land Compensation Act 1961 ^{M21} (rules for assessing compensation) have effect, so far as applicable and subject to any necessary modifications, for the purpose of assessing any compensation as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(2) Where the relevant interest in respect of which any compensation is to be assessed is subject to a mortgage—

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

Marginal Citations

M21 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

Status: Point in time view as at 06/04/2012.

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- (b) references in section 4 of that Act to the acquiring authority were references to the person to whom the rights were granted.

Status:

Point in time view as at 06/04/2012.

Changes to legislation:

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