STATUTORY INSTRUMENTS

2017 No. 1177

ENVIRONMENTAL PROTECTION, ENGLAND

The Environmental Damage (Prevention and Remediation) (England) (Amendment) Regulations 2017

Made - - - -	*23rd November 2017*
Laid before Parliament	*30th November 2017*
Coming into force - -	*1st April 2018*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the environment(**2**).

Citation and commencement

1. These Regulations may be cited as the Environmental Damage (Prevention and Remediation) (England) (Amendment etc.) Regulations 2017 and come into force on 1st April 2018.

Amendment of the Environmental Damage (Prevention and Remediation) (England) Regulations 2015

2. The Environmental Damage (Prevention and Remediation) (England) Regulations 2015(**3**) are amended as follows.

Amendment of regulation 2

3. In regulation 2(1)—

(a) in the definition of "local authority", after "means" insert "(except in relation to a local authority in Wales)";

(b) after the definition of "site of special scientific interest" insert—

(**1**) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).
(**2**) S.I. 2008/301.
(**3**) S.I. 2015/810, as amended by S.I. 2015/1391, 2016/1154.

""the Welsh zone" has the same meaning as in section 158(1) of the Government of Wales Act 2006(**4**).".

Amendment of regulation 10

4.—(1) Regulation 10 is amended as follows.

(2) For paragraph (2) substitute—

"(2) If the Environment Agency or the Natural Resources Body for Wales is responsible for granting the permit, these Regulations are to be enforced—

(a) if the damage is to marine waters in the Welsh zone, or to a natural habitat or protected species or a site of special scientific interest in those waters, by the Welsh Ministers;

(b) in any other case, by the Environment Agency.".

(3) In paragraph (3)—

(a) in the words before sub-paragraph (a), for "the", in the first place it occurs, substitute "a";

(b) in sub-paragraph (b)—

(i) for paragraph (iv) substitute—

"(iv) the Secretary of State, if the damage is to marine waters lying beyond 12 nautical miles from the baselines in England, other than any lying in the Welsh zone, or to a natural habitat or protected species or a site of special scientific interest in those waters;";

(ii) after paragraph (v) insert—

"(vi) the Welsh Ministers, if the damage is to marine waters in the Welsh zone, or to a natural habitat or protected species or a site of special scientific interest, in those waters.".

(4) After paragraph (3) insert—

"(4) If a local authority in Wales is responsible for granting the permit, these Regulations are to be enforced—

(a) if the damage is to marine waters in the Welsh zone, or to a natural habitat or protected species or a site of special scientific interest in those waters, by the Welsh Ministers;

(b) in any other case, by the Environment Agency.

(5) In this regulation, "local authority in Wales" means a county council or a county borough council in Wales.".

Amendment of regulation 11

5.—(1) Regulation 11 is amended as follows.

(2) For paragraph (1) substitute—

"(1) If the damage caused is caused by an activity that does not require a permit or registration under the Environmental Permitting (England and Wales) Regulations 2016(**5**), these Regulations are to be enforced in accordance with the provisions set out in the table in Schedule 2A.".

(**4**) 2006 c. 32; section 158(1) was amended by section 43 of the Marine and Coastal Access Act 2009 (c. 23) ("the Marine Act"). The boundary of the Welsh zone was specified, for the purpose of its definition, in S.I. 2010/760.

(**5**) S.I. 2016/1154.

(3) In paragraph (2)—

(a) in the words before the definitions, for "this regulation" substitute "Schedule 2A";

(b) in the definition of "specified marine activity", for paragraph (f) substitute—

"(f) an activity (other than any specified in paragraphs (a) to (e)) which—

(i) is carried out in the Scottish zone or in an area outside the Scottish zone, but nearer to any point on the baselines from which the breadth of the territorial sea adjacent to Scotland is measured than to any point on the baselines in any other part of the United Kingdom; and

(ii) relates to a matter which is a reserved matter by virtue of section D2 in Part 2 of Schedule 5 to the Scotland Act 1998 (oil and gas)(**6**);

(g) an activity (other than any specified in paragraphs (a) to (e)) which—

(i) is carried out in the Welsh zone; and

(ii) relates to a matter which is a reserved matter by virtue of section D2 in Part D2 of Schedule 7A to the Government of Wales Act 2006 (oil and gas)(**7**).".

Amendment of regulation 20

6. In regulation 20, before paragraph (1), insert —

"(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 3 and submit them in writing to the enforcing authority for its approval.".

Amendment of Schedule 1

7. In Schedule 1, for paragraph 5 substitute—

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

(a) the Conservation (Natural Habitats, &c.) Regulations 1994(**8**);

(b) the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001(**9**);

(c) the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007(**10**);

(d) the Conservation of Habitats and Species Regulations 2010(**11**);

(e) the Conservation of Habitats and Species Regulations 2017(**12**);

(f) the Conservation of Offshore Marine Habitats and Species Regulations 2017(**13**).

(**6**) 1998 c. 46.
(**7**) 2006 c. 32; Schedule 7A was substituted by section 3 of the Wales Act 2017 (c. 4).
(**8**) 1994/2716, amended by paragraph 233(1) of Schedule 22 to the Environment Act 1995 (c. 25); S.I. 1996/525; 1997/3055; 2000/192 and 1973; 2003/2155; 2005/3389; 2006/1282; 2007/1843 and 3538; 2008/2172; 2009/6, 1307, 2438 and 3160; and paragraph 4(1) of Schedule 11 to the Marine and Coastal Access Act 2009 (c.23); and revoked (in relation to England and Wales) by S.I. 2010/490.
(**9**) S.I. 2001/1754, amended by S.I. 2007/77 and 1842; and 2010/1513.
(**10**) S.I. 2007, amended by S.I. 2009/7; 2010/490, 491 and 1513; 2011/2043; 2012/1809 and 1928; and 2013/755.
(**11**) S.I. 2010/490, amended by S.I. 2011/603 and 625; 2012/630, 635, 637 and 1927; and 2013/755.
(**12**) S.I. 2017/1012.
(**13**) S.I. 2017/1013.