STATUTORY INSTRUMENTS

2015 No. 810

ENVIRONMENTAL PROTECTION, ENGLAND

The Environmental Damage (Prevention and Remediation) (England) Regulations 2015

Made - - - -	*19th March 2015*
Laid before Parliament	*23rd March 2015*
Coming into force - -	*19th July 2015*

The Secretary of State has been designated in respect of the environment for the purposes of section 2(2) of the European Communities Act 1972 ("the 1972 Act") [F1] and makes these Regulations in exercise of the powers conferred by that section, as read with paragraph 1A of Schedule 2 to the 1972 Act, and section 14A(2)(a) of the Interpretation Act 1978 [F2].

These Regulations make provision for a purpose mentioned in section 2(2) of, and paragraph 1A of Schedule 2 to, the 1972 Act and it appears to the Secretary of State that it is expedient for references to EU instruments in these Regulations (other than references to 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 [F3]) to be construed as references to those instruments as amended from time to time.

F1 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). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006.

F2 1978 c.30. Section 14A was inserted by section 59(1) and (2) of the Enterprise and Regulatory Reform Act 2013 (c.24).

F3 OJ No. L 143, 30.4.2004, p.56; last amended by Directive 2013/30/EU of the European Parliament and of the Council (OJ No. L 178, 28.6.2013, p.66).

PART 1

Introductory Provisions

Title, commencement and application

1.—(1) These Regulations may be cited as the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 and come into force on 19th July 2015.

(2) They apply in relation to England and the areas specified in regulation 6.

Interpretation

2.—(1) In these Regulations—

"activity" means any economic activity, whether public or private and whether or not carried out for profit;

"baselines" means the baselines from which the breadth of the territorial sea is measured for the purposes of the Territorial Sea Act 1987 [F4];

"Directive 2000/60/EC" means Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy [F5];

"Directive 2004/35/EC" means 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;

"enforcing authority" means the person or body responsible for enforcing these Regulations, in accordance with regulation 10 or 11;

"local authority" means **[**[F6](except in relation to a local authority in Wales)**]**—

(a) where there is a unitary authority for a local government area, that authority;

(b) where there is not a unitary authority—

(i) in a metropolitan district, the council of that district;

(ii) in a non-metropolitan county, the district council;

(iii) in each London borough, the council of that borough;

(iv) in the City of London, the Common Council;

(v) on the Isles of Scilly, the Council of the Isles of Scilly;

"marine waters" 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 [F7];

"natural habitat" means—

(a) 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 [F8] or listed in Annex II to Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora [F9];

(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 resources" means—

(a) a protected species;

(b) a natural habitat;

(c) a species or habitat on a site of special scientific interest by reason of which the site has been notified under section 28 of the Wildlife and Countryside Act 1981 [F10];

(d) water; and

(e) land;

"operator" means the person who operates or controls an activity, including the holder of a permit or authorisation relating to that activity, or the person registering or notifying an activity for the purposes of any enactment;

"protected species" 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;

"remediation notice" means a notice served in accordance with regulation 20(2);

"responsible operator" means the operator in relation to an activity that has caused environmental damage;

"the Scottish zone" has the meaning it has in the Scotland Act 1998 [F11];

"services" means the functions performed by natural resources which benefit other natural resources or the public;

"site of special scientific interest" has the same meaning as in the Wildlife and Countryside Act 1981 [F12].

[[F13]"the Welsh zone" has the same meaning as in section 158(1) of the Government of Wales Act 2006.**]**

(2) Unless otherwise defined in these Regulations, expressions used in Directive 2004/35/EC have the same meaning in these Regulations.

F4 1987 c.49. See S.I. 2014/1353.

F5 OJ No. L 327, 22.12.2000, p.1; last amended by Commission Directive 2014/101/EU (OJ No. L 311, 31.10.2014, p.32).

F6 Words in reg. 2(1) inserted (1.4.2018) by The Environmental Damage (Prevention and Remediation) (England) (Amendment) Regulations 2017 (S.I. 2017/1177), regs. 1, **3(a)**

F7 OJ No. L 164, 25.6.2008, p.19.

F8 OJ No. L 20, 26.1.2010, p.7; amended by Council Directive 2013/17/EU (OJ No. L 158, 10.6.2013, p.193).

F9 OJ No. L 206, 22.7.1992, p.7; last amended by Council Directive 2013/17/EU (OJ No. L 158, 10.6.2013, p.193).

F10 1981 c.69. Section 28 was substituted by paragraph 1 of Schedule 9 to the Countryside and Rights of Way Act 2000 (c.37) and amended by paragraph 79 of Schedule 11 to the Natural Environment and Rural Communities Act 2006 (c.16) and paragraph 2(1) and (2) of Schedule 13 to the Marine and Coastal Access Act 2009 (c.23).

F11 1998 c.46. The term "the Scottish zone" is defined by section 126(1). The Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126) made under section 126(2) defines the boundaries between waters which are to be treated as internal waters or territorial waters, or waters within British fishery limits, adjacent to Scotland and those which are not.

F12 *See* section 52, amended by paragraph 5(1) and (2) of Schedule 9 to the Countryside and Rights of Way Act 2000 (c.37).

F13 Words in reg. 2(1) inserted (1.4.2018) by The Environmental Damage (Prevention and Remediation) (England) (Amendment) Regulations 2017 (S.I. 2017/1177), regs. 1, **3(b)**

References to EU instruments

[F14 3.—(1) For the purposes of these Regulations, a reference in any EU instrument referred to in these Regulations—

(a) to the "European Union" or otherwise to the area to which that instrument applies is to be taken to include the United Kingdom;

(b) to a "Member State" is to be taken to include the United Kingdom.**]**

F14 Reg. 3 substituted (31.12.2020) by The Environment (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/458), regs. 1(1), **7(2)**; 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 is damage, as specified in this regulation, to—

(a) a protected species or natural habitat, or a site of special scientific interest;

(b) surface water or groundwater;

(c) marine waters; or

(d) land.

(2) Environmental damage to a protected species or natural habitat 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 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 (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 for the purposes of Directive 2000/60/EC (and, in relation to pollutants, for the purposes of Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration [F15]), whether or not the body of groundwater is in fact reclassified as being of lower status.

(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, where that damage results in a significant risk of adverse effects on human health.

F15 OJ No. L 372, 27.12.2006, p.19; amended by Commission Directive 2014/80/EU (OJ No. L 182, 21.6.2014, p.52).

Environmental damage to which these Regulations apply

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

(2) In the case of environmental damage to a protected species or natural habitat or a site of special scientific interest, these 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) Environmental damage is relevant for the purposes of these Regulations only if the damage, of a type specified in the first column of the following table, occurs in an area specified in the second column of that table in relation to damage of that type.

Type of damage	***Area in which these Regulations apply***
Damage to surface water or groundwater	England and all waters up to one nautical mile seaward from the baselines in England.
Damage to marine waters	All marine waters within any of the following descriptions— (a) marine waters up to one nautical mile seaward from the baselines in England so far as not already addressed as damage to surface water or groundwater; (b) marine waters from one nautical mile seaward from the baselines in England, extending to the outermost reach of the area where the United Kingdom exercises jurisdictional rights, in accordance with UNCLOS; (c) marine waters beyond 12 nautical miles from the baselines in Wales, **[**F19and marine waters beyond 12 nautical miles from the baselines in Northern Ireland, in each case**]** extending to the outermost reach of the area where the United Kingdom exercises jurisdictional rights, in accordance with UNCLOS; (d) marine waters up to the limit of the exclusive economic zone which lies within the Scottish zone, or which lies outside the Scottish zone, but is nearer to any point on the baselines

[1] These areas do not include areas **[**F16that form part of**]** Northern Ireland, Scotland or Wales or the territorial sea adjacent to the Isle of Man, Jersey or Guernsey; and for these purposes—

(i) "Wales" has the meaning given by section 158(1) of the Government of Wales Act 2006 F17;

(ii) "Scotland" has the meaning given by section 126(1) of the Scotland Act 1998; and

(iii) "Northern Ireland" has the meaning given by section 98 of the Northern Ireland Act 1998 F18.