STATUTORY RULES OF NORTHERN IRELAND

2009 No. 252

ENVIRONMENTAL PROTECTION

The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009

Made - - - -	*29th June 2009*
Coming into operation	*24th July 2009*

The Department of the Environment, being a department designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) in relation to measures relating to the environment, acting in exercise of the powers conferred upon it by that section, makes the following Regulations:

These 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 Department of the Environment 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.

PART 1

Introductory provisions

Citation and commencement

1. These Regulations may be cited as the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009 and come into operation on 24th July 2009.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**2**) applies to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations—

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

(**1**) 1972 c.68
(**2**) 1954 c.33 (N.I.)

"area of special scientific interest" means an area declared under Article 28(1) of the Environment (Northern Ireland) Order 2002(**3**);

"damage" means a measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly;

"groundwater" means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil;

"imminent threat of damage" means a sufficient likelihood that environmental damage will occur in the near future;

"marine installation" means any artificial island, installation, platform or other artificial structure at sea, other than a pipeline or a vessel;

"natural habitats" means—

(a) the habitats of species mentioned in Article 4(2) of, or Annex I to, Council Directive 79/409/EEC on the conservation of wild birds(**4**) or listed in Annex II to Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(**5**);

(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 that Directive;

"natural resource" means—

(a) protected species;

(b) natural habitats;

(c) species or habitat in an area of special scientific interest for which the site has been declared;

(d) water; and

(e) land;

"operator" means any natural or legal, private or public person who operates or controls the activity by means of delegated authority or otherwise and includes the holder of a permit or authorisation for such an activity;

"Planning Appeals Commission" means the Planning Appeals Commission established under Article 110 of the Planning (Northern Ireland) Order 1991(**6**);

"protected species" means the species mentioned in Article 4(2) of Council Directive 79/409/EEC or listed in Annex I to that Directive or listed in Annexes II and IV to Council Directive 92/43/EEC;

"services" means the functions performed by a natural resource for the benefit of another natural resource or the public;

"vessel" means—

(a) hovercraft, and

(b) any other craft capable of travelling on, in or under water, whether or not self-propelled.

(3) 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(**7**) have the same meaning in these Regulations.

(**3**) S.I. 2002/3153 (N.I. 7)
(**4**) O.J. No. L103, 25.4.79, p.1 (as last amended by Council Directive 2008/102/EC, O.J. No. L323, 3.12.08, p.31)
(**5**) O.J. No. L206, 22.7.92, p.7 (as last amended by Council Directive 2006/105/EC, O.J. No. L363, 20.12.06, p.368)
(**6**) S.I. 1991/1220 (N.I. 11)
(**7**) O.J. No. L143, 30.4.04, p.56 (as amended by Directive 2006/21/EC, O.J. No. L102, 11.4.06, p.15)

Meaning of "environmental damage"

3.—(1) Subject to regulations 5, 6 and 7, these Regulations apply to environmental damage to—

(a) protected species or natural habitats, or an area of special scientific interest;

(b) surface water or groundwater; or

(c) land.

(2) Environmental damage to protected species or natural habitats or an area of special scientific interest means damage of a kind specified in Schedule 1 if it is caused by—

(a) an activity in Schedule 2; or

(b) an activity where the operator was at fault or was negligent as to whether such damage would be caused.

(3) Environmental damage to surface water means damage to a body of surface water classified as such pursuant to Annex II to Council Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(**8**) caused by an activity in Schedule 2 such that one of the—

(a) biological quality elements listed in Annex V to that Directive;

(b) level of one of the chemicals listed in the legislation in Annex IX or a chemical listed in Annex X to that Directive; or

(c) physicochemical quality elements (as listed in Annex V to that Directive),

is adversely affected in such a way that its value changes to a value consistent with the water being classified as a lower status than before the damage (whether or not the body of water is, in fact, reclassified).

(4) Environmental damage to groundwater means any adverse effect on a body of groundwater as described in Annex II to Directive 2000/60/EC on—

(a) its conductivity or its level (both of which are specified in Annex V to Directive 2000/60/EC); or

(b) its concentration of pollutants (as specified in that Annex and in Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration(**9**))

in such a way that the value changes to a value consistent with the water being classified as a lower status than before the damage caused by an activity in Schedule 2 (whether or not the body of water is, in fact, reclassified).

(5) Environmental damage to land means contamination of land by substances, preparations, organisms or micro-organisms arising out of an activity specified in Schedule 2 that results in a significant risk of adverse effects on human health.

(6) This regulation extends to the foreshore, sea bed and subsoil and their natural resources.

Other legislation

4. Nothing in these Regulations shall be construed so as to affect the right of an operator to limit liability in accordance with the Convention on Limitation of Liability for Maritime Claims 1976(**10**).

(**8**) O.J. No. L327, 22.12.00, p.1 (as last amended by Directive 2008/105/EC of the European Parliament and of the Council, O.J. No. L348, 24.12.08, p.84)
(**9**) O.J. No. L372, 27.12.06, p.19
(**10**) The Convention is set out in Schedule 7 to the Merchant Shipping Act 1995 (1995 c. 21)

Exceptions

5. These Regulations shall not apply in relation to environmental damage, or imminent threat of damage, caused by—

(a) an act of terrorism, armed conflict, civil war, insurrection or hostilities;

(b) an exceptional natural phenomenon, provided the operator 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 phenomena;

(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((**11**));

(ii) the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage(a); or

(iii) the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001(**12**);

(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;

(g) pollution of a diffuse character if it is not possible to establish a causal link between the damage and the activities of individual operators; or

(h) damage caused in the course of commercial sea fishing if all legislation relating to that fishing was complied with.

Temporal application

6. These Regulations shall not apply to—

(a) damage caused by an incident, event or emission that finished before the coming into operation of these Regulations;

(b) damage or imminent threat of damage caused by an incident, event or emission that occurs after that date if it derives from an activity that took place and finished before that date; or

(c) damage caused by an emission, event or incident that took place 30 years or more before the damage.

Exception from environmental damage to surface water or groundwater

7.—(1) Environmental damage to water does not include—

(a) damage caused by a new modification to the physical characteristics of a body of surface water;

(b) an alteration to the level of a body of groundwater pursuant to Directive 2000/60/EC; 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 specified in paragraph (2) are fulfilled.

(**11**) This Convention was implemented in Chapter III of the Merchant Shipping Act 1995 (1995 c. 21)
(**12**) Implemented in the United Kingdom by S.I. 2006/1244

(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 the modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 of Directive 2000/60/EC and the objectives are reviewed every six years;

(c) the reasons for the 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 the modifications or alterations of the body of water cannot for reasons of technical feasibility or disproportionate cost be achieved by other means.

Enforcing authority

8. These Regulations shall be enforced by the Department of the Environment.

PART 2

Preventing environmental damage

Preventing environmental damage

9.—(1) An operator of an activity that creates an imminent threat of environmental damage, or an imminent threat of damage which there are reasonable grounds to believe will become environmental damage, shall immediately—

(a) take all necessary steps to prevent the damage; and

(b) in any case where the threat has not been dispelled despite the preventative measures taken, inform the enforcing authority of all relevant details.

(2) The enforcing authority may assess the threat and may serve a notice on the 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

10.—(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, shall immediately—

(a) take all necessary steps to prevent further damage, and

(b) inform the enforcing authority of all relevant details.

(2) The enforcing authority may assess the damage and may serve a notice on the 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