



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

### **Summary Guidance**

This document provides a brief summary of the guidance on the Environmental Liability Regulations. For full details of the Regulations you should refer to the Guidance Document which is available at [www.doeni.gov.uk/environmental\\_liability.htm](http://www.doeni.gov.uk/environmental_liability.htm)

#### **Do you:**

- Operate near areas of special scientific interest, special areas of conservation or special protection areas;
- Operate near water; or
- Use or store substances that could cause an adverse affect on human health if they contaminate land?

If the answer to any of these is “yes” you need to consider the **Environmental Liability Regulations**.

#### **Purpose of the Regulations**

The Regulations legally require operators carrying out economic activities (for example farmers, waste operators, businesses or manufacturers) to **prevent, limit or remediate environmental damage**. They apply only to the more serious cases of environmental damage and are in addition to existing legislation. They are based on the ‘polluter pays principle’ which means that those responsible are liable rather than the taxpayer. However, by putting in place appropriate pollution prevention measures, imminent threats of damage or actual environmental damage can be avoided.

## What do they cover?

The Regulations cover only the most serious cases of environmental damage to water, land and biodiversity that causes:

- adverse effects on the site integrity<sup>1</sup> of an Area of Special Scientific Interest (ASSI) – e.g. manure spreading on protected grassland;
- adverse effects on the conservation status<sup>2</sup> of species and natural habitats protected by EU legislation outside ASSI's – e.g. hazardous material from ships killing fish and European-protected birds;
- adverse effects on surface water or groundwater consistent with the body of water being re-classified as a lower status (under the Water Framework Directive) – e.g. groundwater contamination due to leaking drums of pesticide; or
- contamination of land that results in a significant risk of adverse effects on human health – e.g. diesel leaks into soil and vapours are detected in nearby houses.

The full guidance details four case studies which cover examples of environmental damage in more detail.

There is liability without the need to prove negligence or other fault for activities in Schedule 2 of the Regulations. Broadly, these include activities requiring authorisations and permits such as:

- operation of permitted installations;
- disposal of waste and hazardous waste;
- discharges to surface water, groundwater discharges and water abstraction or impoundment;
- using pesticides, biocides or dangerous substances, and using or releasing Genetically Modified Organisms (GMOs);
- transport of dangerous or polluting goods.

There is also liability for damage caused by other activities where the operator was at fault but only for damage to ASSIs or EU-protected species or habitats.

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<sup>1</sup> The coherence of the site's ecological structure and function, across its whole area, or the habitats, complex of habitats and/or populations of species for which the site is or will be classified

<sup>2</sup> The conservation status of a natural habitat is the sum of the influences acting on it 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 within the UK or the natural range of that habitat. The conservation status of species is the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within the UK or the natural range of that species

## What do they not apply to?

Some activities that could cause environmental damage are not covered by the Regulations, such as:

- exceptional natural events;
- an incident within the scope of certain international conventions – e.g. oil pollution damage caused by a shipping incident which is covered by international maritime conventions;
- diffuse pollution if it is not possible to establish a link to the operator responsible;
- commercial sea fishing if all legislation relating to that fishing has been complied with;
- an incident that took place 30 years or more before the damage occurred.

Regulation 5 details all of the exceptions.

## Enforcing Authority

The enforcing authority is the Department of the Environment. In practice this means that enforcement will be carried out by the Northern Ireland Environment Agency (NIEA). DOE will determine whether there is environmental damage and decide on the necessary measures to restore the environment.

## How could the Regulations affect you?

If an incident occurs you **must**:

- take immediate **action** to prevent damage or further damage;
- **provide information** and **undertake preventive and remedial measures** as required by DOE;
- **submit proposals** for remediation;
- **pay costs** claimed by DOE that are justified in ensuring the proper and effective enforcement of the Regulations.

## Appeals

If you are served with a notice of liability to remediate or a remediation notice, you may appeal to the Planning Appeals Commission within 28 days of the notification date.

## Operation of the Regulations

### RELEVANT CASE

Imminent threat of damage or suspected environmental damage.



### IMMEDIATE ACTION: PREVENTING AND NOTIFYING DAMAGE

Operator makes judgement there is an imminent threat or possible environmental damage and takes steps to prevent damage or further damage and informs NIEA.



### DETERMINATION OF ENVIRONMENTAL DAMAGE

NIEA decides whether environmental damage under the Regulations has occurred and, if it has, notifies the operator.



### IDENTIFYING REMEDIAL MEASURES

Operator proposes remedial measures and NIEA invites interested parties to submit observations. NIEA serves a remediation notice on the operator.



### IMPLEMENTATION OF REMEDIAL MEASURES

Operator takes remedial measures, including complementary and compensatory remediation as necessary.

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