
WELSH STATUTORY INSTRUMENTS

2009 No. 995

**The Environmental Damage (Prevention
and Remediation) (Wales) Regulations 2009**

PART 4

Administration and enforcement

Costs when the enforcing authority acts instead of the operator

24.—(1) An operator liable to carry out works under Part 2 is liable for any reasonable costs incurred by the enforcing authority in taking any reasonable action under regulation 15.

(2) The responsible operator is liable for the reasonable costs of the enforcing authority for any action taken under regulation 23 unless the responsible operator was not liable for the action taken.

Costs concerned with administration

25.—(1) An operator liable to carry out works under Part 2 is liable for the reasonable costs incurred by the enforcing authority in preparing any notice under Part 2, or in ensuring compliance with that Part.

(2) The responsible operator is responsible for the costs incurred by the enforcing authority under Part 3 of—

- (a) assessing whether the damage is environmental damage;
- (b) establishing who is the responsible operator;
- (c) establishing what remediation is appropriate;
- (d) carrying out necessary consultation; and
- (e) monitoring the remediation, both during and after the work.

(3) Costs means costs that are justified by the need to ensure the proper and effective enforcement of these Regulations.

Proceedings for costs by an enforcing authority

26. No proceedings for the recovery of costs may be commenced by the enforcing authority under these Regulations after a period of 5 years has elapsed since—

- (a) the completion of the measures to which the proceedings relate, or
- (b) the identification of the operator liable to carry out the measures,

whichever is the later.

Costs recoverable from owner to be a charge on premises

27.—(1) Where any costs are recoverable under these Regulations by an enforcing authority from a person who is the owner of premises and the enforcing authority serves a notice on that person under this regulation—

- (a) the costs carry interest, at such reasonable rate as the authority may determine, from the date of service of the notice until the whole amount is paid; and
- (b) subject to the following, the costs and accrued interest are a charge on the premises.

(2) A notice served under this regulation must—

- (a) specify the amount of the costs that the enforcing authority claims is recoverable;
- (b) state the effect of paragraph (1) and the rate of interest determined by the enforcing authority under that paragraph; and
- (c) state the effect of paragraphs (4) to (6).

(3) On the date on which an enforcing authority serves a notice on a person under this regulation the authority must also serve a copy of the notice on every other person who, to the knowledge of the authority, has an interest in the premises capable of being affected by the charge.

(4) Subject to any order under paragraph (7)(b) or (c) below, the amount of any costs specified in a notice under this regulation and the accrued interest is a charge on the premises—

- (a) as from the end of the period of 21 days beginning with the date of service of the notice, or
- (b) where an appeal is brought under paragraph (6), as from the final determination of the appeal,

until the costs and interest are recovered.

(5) For the purposes of paragraph (4), the withdrawal of an appeal has the same effect as a final determination of the appeal.

(6) A person served with a notice or copy of a notice under this regulation may appeal against the notice to the county court within the period of 21 days beginning with the date of service.

(7) On such an appeal the court may—

- (a) confirm the notice without modification;
- (b) order that the notice is to have effect with the substitution of a different amount for the amount originally specified in it; or
- (c) order that the notice is to be of no effect.

(8) An enforcing authority has, for the purpose of enforcing a charge under this regulation, all the same powers and remedies under the Law of Property Act 1925(1), and otherwise, as if it were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

(9) In this regulation, “owner” (“*perchennog*”), in relation to any premises, means a person (other than a mortgagee not in possession) who, whether in that person’s own right or as trustee for any other person, is entitled to receive the rack rent of the premises or, where the premises are not let at a rack rent, would be so entitled if they were so let.

Recovery of costs from other persons

28. An operator who incurs liability to the enforcing authority under these Regulations (whether in carrying out work or in payment to the enforcing authority) may recover all or some of those costs from any other person who also caused the damage.

Requests for action by interested parties

29.—(1) Any person—

- (a) who is affected or likely to be affected by environmental damage, or
- (b) who otherwise has a sufficient interest,

may notify the appropriate enforcing authority of any environmental damage which is being, or has been caused or of which there is an imminent threat.

(2) A notification must be accompanied by—

- (a) a statement explaining the way the notifier will be affected by the damage, or the reason that the notifier has a sufficient interest; and
- (b) sufficient information to enable the enforcing authority to identify the location and nature of the incident.

(3) The enforcing authority must consider the notification and inform the notifier as to the action, if any, that it intends to take.

(4) Before taking any decision the enforcing authority must, if practicable—

- (a) notify the operator concerned of the notification and the accompanying information; and
- (b) invite that operator to submit comments on them.

(5) Paragraphs (3) and (4) do not apply if—

- (a) the notifier is not likely to be affected or does not have a sufficient interest;
- (b) in the opinion of the enforcing authority the information provided does not disclose any environmental damage or threat of environmental damage; or
- (c) as a result of the urgency of the situation, it is not practicable for the enforcing authority to comply with those paragraphs.

Grant of and compensation for rights of entry etc.

30.—(1) Any person whose consent is required before any works required by these Regulations may be carried out must grant, or join in granting, such rights in relation to any land or water as will enable the operator, or a person acting on behalf of the operator, to carry out that work.

(2) A person who grants, or joins in granting, any rights as required by paragraph (1) is entitled to compensation from the operator determined in accordance with Schedule 6.

Powers of authorised persons

31.—(1) Enforcing authorities may authorise persons for the purposes of enforcing these Regulations.

(2) The powers in section 108 of the Environment Act 1995(2) apply in relation to these Regulations, and the powers of persons authorised by the Environment Agency in that section are exercisable by persons authorised by any enforcing authority.

(3) Those powers are extended to all areas to which these Regulations apply.

(4) In addition, a person authorised by the Welsh Ministers enforcing these Regulations in relation to the sea may at any time board and inspect a ship or marine installation.

(5) For the purposes of exercising the powers in this regulation, the authorised person may require a ship or marine installation—

- (a) to stop; or

(2) 1995 c. 25.

(b) to do anything else that will facilitate the boarding of that or any other ship or marine installation.

(6) An authorised person who has boarded a ship or marine installation may, for the purposes of disembarking from the ship or installation, require that or any other ship or marine installation—

(a) to stop; or

(b) to do anything else that will enable the authorised person, and any person accompanying that person, to disembark.

(7) An authorised person may require any person on board a vessel or marine installation to afford such facilities and assistance with respect to matters under that person's control as the authorised person considers would facilitate the exercise of any power conferred by this regulation.

(8) It is an offence to fail to comply with instructions given under this regulation, or knowingly to provide false or misleading information.

Provision of information to the enforcing authority

32. An enforcing authority may require an operator to provide such information as it may reasonably require to enable the enforcing authority to carry out its functions under these Regulations, and failure to provide such information is an offence.

Enforcement

33. No enforcement action may be taken under these Regulations 30 years or more after the emission, event or incident concerned.

Penalties

34.—(1) A person guilty of an offence under these Regulations is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or both; or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

(2) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

(a) any director, manager, secretary or other similar person of the body corporate, or

(b) any person who was purporting to act in any such capacity,

that person is guilty of the offence as well as the body corporate.

(3) For the purposes of paragraph (2), “director” (“*cyfarwyddwr*”), in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.