
STATUTORY RULES OF NORTHERN IRELAND

2009 No. 252

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

PART 3

Remediation

Assessment of damage

14. Where the enforcing authority becomes aware that damage has occurred and there are reasonable grounds for believing that it is, or may be, environmental damage, the enforcing authority shall establish whether or not it is environmental damage.

Determining liability to remediate

15.—(1) If the enforcing authority decides that the damage is environmental damage it shall identify an operator of any activity that caused or contributed to the damage and notify the operator that—

- (a) the damage is environmental damage;
- (b) the damage was caused or contributed to by the activity of the operator;
- (c) the operator shall, within a time specified by the enforcing authority, submit proposals, including time limits, for measures that will achieve the remediation of the environmental damage in accordance with Schedule 4.

(2) The enforcing authority may withdraw the notification if it is satisfied that the notification should not have been served or that an appeal under regulation 16 is likely to succeed.

Appeals against liability to remediate

16.—(1) Subject to regulation 19, an operator served with a notification under 15(1) may appeal it to the Planning Appeals Commission within 28 days of the date of the notification.

(2) The grounds of appeal are—

- (a) the operator's activity did not cause or contribute to the damage;
- (b) the enforcing authority has acted unreasonably in deciding that the damage is environmental damage;
- (c) the environmental damage resulted from compliance with an instruction from a public authority (except an instruction relating to an emission or incident caused by the operator's own activities);
- (d) the operator was not at fault or negligent and the environmental damage was caused by an emission or event expressly authorised by, and fully in accordance with, the conditions of an authorisation granted in relation to an activity in Schedule 3;

- (e) the operator was not at fault or negligent and the environmental damage was caused by an emission or activity or any manner of using a product in the course of an activity that the operator demonstrates was not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time when the emission was released or the activity took place; or
- (f) the environmental damage was the result of an act of a third party and occurred despite the fact that the operator took all appropriate safety measures.

Remediation notices

17.—(1) Once it receives the proposals from the person liable for remediation (or, if a proposal is not received within the specified time limit, at any time after the time limit has expired), the enforcing authority shall, so far as is practicable, consult—

- (a) anyone who has notified under regulation 22, and
- (b) any person on whose land the remedial measures will be carried out,

and may consult any other person appearing to be necessary.

(2) Following consultation the enforcing authority shall serve on the operator a remediation notice that specifies—

- (a) the damage;
- (b) the measures necessary for remediation of the damage, together with the reasons;
- (c) the period within which those measures shall be taken;
- (d) any additional monitoring or investigative measures that the operator shall carry out during remediation; and
- (e) the right of appeal against the remediation notice.

(3) Further remediation notices may be served at any time during remediation or, if remediation has not been achieved, at the end of the remediation period, requiring further or different remediation.

(4) Failure to comply with a remediation notice is an offence.

Appeal against the remediation notice

18.—(1) Subject to regulation 19 the operator may appeal against a notice under regulation 17(2) or 17(3) to the Planning Appeals Commission on the grounds that the contents of the remediation notice are unreasonable.

(2) Where an appeal is brought under paragraph (1), the bringing of the appeal shall have the effect of suspending the requirements of the remediation notice unless the Planning Appeals Commission directs otherwise.

Appeals generally

19.—(1) A person who wishes to appeal to the Planning Appeals Commission under regulations 16 or 18 shall give to the Planning Appeals Commission written notice of the appeal together with a statement of the grounds of appeal and the Planning Appeals Commission shall as soon as is reasonably practicable send to the enforcing authority a copy of that notice together with the statement of the grounds of appeal.

(2) An appellant may withdraw an appeal by notifying the Planning Appeals Commission and the Planning Appeals Commission shall as soon as is reasonably practicable notify the enforcing authority.

(3) Notice of appeal in accordance with paragraph (1) shall be given before the expiry of the period of 28 days beginning with the date of the notification under regulation 15(1) or the period of 28 days beginning with the date of the remediation notice under regulation 17(2) or 17(3).

(4) Paragraphs (1), (2) and (3) do not apply to any proposals made by the operator and contained in the remediation notice.

(5) The Planning Appeals Commission shall determine the appeal and paragraphs (1), (3), (4) and (5) of Article 111 of the Planning (Northern Ireland) Order 1991⁽¹⁾ shall apply in relation to the determination of the appeal as they apply in relation to determination of an appeal under that Order.

(6) The Planning Appeals Commission shall give written reasons for its decision.

(7) The Planning Appeals Commission shall determine the process for determining appeals taking into account any requests of either party to the appeal.

(8) An appeal shall be accompanied by a fee as specified in regulation 17(1) of the Planning (Fees) Regulations (Northern Ireland) 1995⁽²⁾ as if it were an appeal under Article 127(1)(c) of the Planning (Northern Ireland) Order 1991.

Actions by the enforcing authority

20. Once it has established that, in its opinion, damage is environmental damage, the enforcing authority may carry out any reasonable works—

- (a) at any time if an operator cannot be identified (if an operator is subsequently identified the operator shall bear the costs of the work);
- (b) if an operator fails to comply with a remediation notice, whether or not an appeal is pending;
- (c) if the operator is not required to remediate under these Regulations.

Costs

21.—(1) The operator is responsible for the costs of the enforcing authority of—

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

(2) The operator is liable for the costs of the enforcing authority for any action taken under regulation 20 unless the operator was not liable for the action taken or an appeal is successful.

(3) Costs include administrative, legal and enforcement costs and costs of data collection.

(1) S.I. 1991/1220 (N.I. 11)

(2) S.R. 1995 No. 78