

2010 No. 587

ENVIRONMENTAL PROTECTION, ENGLAND

**The Environmental Damage (Prevention and Remediation)
(Amendment) Regulations 2010**

Made - - - - *1st March 2010*
Laid before Parliament *8th March 2010*
Coming into force - - *1st April 2010*

The Secretary of State has been designated in respect of the environment(a) for the purposes of section 2(2) of the European Communities Act 1972(b).

The Secretary of State makes these Regulations in exercise of the powers conferred by that section.

Title, commencement and application

1.—(1) These Regulations may be cited as the Environmental Damage (Prevention and Remediation) (Amendment) Regulations 2010 and come into force on 1st April 2010.

Amendments

2.—(1) The Environmental Damage (Prevention and Remediation) Regulations 2009(c) are amended as follows.

(2) For regulation 11, substitute the following—

“Enforcing authorities in other cases

11. If the damage caused is caused by an activity that does not require a permit or registration under the Environmental Permitting (England and Wales) Regulations 2007 these Regulations are enforced in accordance with the following table.

<i>Type of environmental damage</i>	<i>Area of damage</i>	<i>Enforcing Authority</i>
Damage to water—		Environment Agency
Damage to protected species or natural habitats or a site of	Land	Natural England

(a) S.I. 2008/301.

(b) 1972 c. 68.

(c) S.I. 2009/153, as amended by S.I. 2009/3275. The 2009 Regulations make provision for implementing in England, surrounding waters and in marine areas where the United Kingdom has jurisdiction beyond the territorial sea, 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.

Water but not in the sea⁽¹⁾

Environment Agency

Any part of the continental shelf or in the sea up to the limit of the renewable energy zone—
which lies within the Scottish zone, as defined in section 126(1) and (2) of the Scotland Act 1998^(a) or which lies outside the Scottish zone, but which is nearer to any point on the baselines from which the breadth of the territorial sea adjacent to Scotland is measured, than to any point on the baselines in any other part of the United Kingdom.

– if the damage was caused by anything done—
(a) in the course of carrying on an activity for which a licence under section 3 of the Petroleum Act 1998^(b) or section 2 of the Petroleum (Production) Act 1934^(c) (licences to search for and get petroleum) is required,
(b) for the purpose of constructing or maintaining a pipeline in respect of any part of which an authorisation (within the meaning of Part 3 of the Petroleum Act 1998) is in force,
(c) for the purpose of establishing or maintaining an offshore installation (within the meaning of Part 4 of the Petroleum Act 1998),
(d) in the course of taking any installation abandonment measures⁽²⁾,
(e) in the course of carrying on an activity for which a licence under section 4 or 18 of the Energy Act 2008^(d) (gas unloading, storage and recovery, and carbon dioxide storage) is required,
(f) in the course of carrying on an activity other than those specified in paragraphs (a) to (e), relating to a matter which is a reserved matter by virtue

(a) 1998 c. 46.

(b) 1998 c. 17.

(c) 1934 c. 36. Repealed by 1998 c. 17, Sch. 5 Pt. 1; but rights conferred by a licence granted under s.2 continue to have effect (1998 c. 17, Sch. 3 Pt II para. 4).

(d) 2008 c. 32.

(e) 1998 c. 46.

of section D2 (oil and gas) in Part 2 of Schedule 5 to the Scotland Act 1998(e), the Secretary of State;

– in relation to the exercise of powers under Part 2 of these Regulations only, if the damage was caused by an activity relating to a matter which is a reserved matter by virtue of section E3 (marine transport) in Part 2 of Schedule 5 to the Scotland Act 1998, the Secretary of State;

– otherwise the Scottish Ministers.

Any other part of the continental shelf or in the sea up to the limit of the renewable energy zone

– if the damage is due to an activity authorised by the Environment Agency, the Environment Agency;

– otherwise the Secretary of State

Damage to land—

Local authority

⁽¹⁾ For the definition of “sea”, see below.

⁽²⁾ For the definition of “installation abandonment measures”, see below.

“Sea” includes—

- (a) Any area submerged at mean high water spring tide; and
- (b) Each of the following, so far as the tide flows at mean high water spring tide—
 - (i) every estuary or arm of the sea; and
 - (ii) the waters of any channel, bay or river.

“Installation abandonment measures” means any measures taken in connection with the abandonment of—

- (a) an offshore installation within the meaning of Part 4 of the Petroleum Act 1998, or submarine pipeline within the meaning of that Part, or
- (b) a carbon storage installation, within the meaning of section 30 of the Energy Act 2008,

whether or not the measures are taken in pursuance of an abandonment programme under Part 4 of the Petroleum Act 1998; or under that Part, as it applies by virtue of section 30 of the Energy Act 2008.”

1st March 2010

Huw Irranca-Davies
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Damage (Prevention and Remediation) Regulations 2009 (“the 2009 Regulations”) which implemented 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.

These Regulations make amendments to the 2009 Regulations pursuant to provide for the devolution to the Scottish Ministers of certain of the Secretary of State’s functions with respect of preventing and remedying damage to marine nature conservation in the Scottish offshore region. They provide that in this area the Scottish Ministers are the enforcing authority except where otherwise specified. In particular the Secretary of State will continue to be the enforcing authority with respect to preventing and remedying damage caused by oil, gas and carbon dioxide storage activities, and with respect to the prevention of damage from marine transport activities. The Regulations do not provide for the devolution of any legislative competence.

An impact assessment has not been prepared in relation to these Regulations as it has no impact on business, charities or the public sector.

A transposition note setting out how the 2009 Regulations, as amended by this instrument, transpose the provisions of Directive 2004/35/EC, is available on the Defra website at www.defra.gov.uk.

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