

2017 No. 1177

ENVIRONMENTAL PROTECTION, ENGLAND

**The Environmental Damage (Prevention and Remediation)
(England) (Amendment) Regulations 2017**

<i>Made</i>	- - - -	<i>23rd November 2017</i>
<i>Laid before Parliament</i>		<i>30th November 2017</i>
<i>Coming into force</i>	- -	<i>1st April 2018</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the environment(b).

Citation and commencement

1. These Regulations may be cited as the Environmental Damage (Prevention and Remediation) (England) (Amendment) Regulations 2017 and come into force on 1st April 2018.

Amendment of the Environmental Damage (Prevention and Remediation) (England) Regulations 2015

2. The Environmental Damage (Prevention and Remediation) (England) Regulations 2015(c) are amended as follows.

Amendment of regulation 2

3. In regulation 2(1)—

- (a) in the definition of “local authority”, after “means” insert “(except in relation to a local authority in Wales)”;
- (b) after the definition of “site of special scientific interest” insert—
““the Welsh zone” has the same meaning as in section 158(1) of the Government of Wales Act 2006(d).”.

(a) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).
(b) S.I. 2008/301.
(c) S.I. 2015/810, as amended by S.I. 2015/1391, 2016/1154.
(d) 2006 c. 32; section 158(1) was amended by section 43 of the Marine and Coastal Access Act 2009 (c. 23) (“the Marine Act”). The boundary of the Welsh zone was specified, for the purpose of its definition, in S.I. 2010/760.

Amendment of regulation 10

4.—(1) Regulation 10 is amended as follows.

(2) For paragraph (2) substitute—

“(2) If the Environment Agency or the Natural Resources Body for Wales is responsible for granting the permit, these Regulations are to be enforced—

- (a) if the damage is to marine waters in the Welsh zone, or to a natural habitat or protected species or a site of special scientific interest in those waters, by the Welsh Ministers;
- (b) in any other case, by the Environment Agency.”.

(3) In paragraph (3)—

(a) in the words before sub-paragraph (a), for “the”, in the first place it occurs, substitute “a”;

(b) in sub-paragraph (b)—

(i) for paragraph (iv) substitute—

“(iv) the Secretary of State, if the damage is to marine waters lying beyond 12 nautical miles from the baselines in England, other than any lying in the Welsh zone, or to a natural habitat or protected species or a site of special scientific interest in those waters;”;

(ii) after paragraph (v) insert—

“(vi) the Welsh Ministers, if the damage is to marine waters in the Welsh zone, or to a natural habitat or protected species or a site of special scientific interest, in those waters.”.

(4) After paragraph (3) insert—

“(4) If a local authority in Wales is responsible for granting the permit, these Regulations are to be enforced—

- (a) if the damage is to marine waters in the Welsh zone, or to a natural habitat or protected species or a site of special scientific interest in those waters, by the Welsh Ministers;
- (b) in any other case, by the Environment Agency.

(5) In this regulation, “local authority in Wales” means a county council or a county borough council in Wales.”.

Amendment of regulation 11

5.—(1) Regulation 11 is amended as follows.

(2) For paragraph (1) substitute—

“(1) 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 2016(a), these Regulations are to be enforced in accordance with the provisions set out in the table in Schedule 2A.”.

(3) In paragraph (2)—

(a) in the words before the definitions, for “this regulation” substitute “Schedule 2A”;

(b) in the definition of “specified marine activity”, for paragraph (f) substitute—

“(f) an activity (other than any specified in paragraphs (a) to (e)) which—

- (i) is carried out in the Scottish zone or in an area outside the Scottish zone, but nearer to any point on the baselines from which the breadth of the territorial

(a) S.I. 2016/1154.

sea adjacent to Scotland is measured than to any point on the baselines in any other part of the United Kingdom; and

- (ii) relates to a matter which is a reserved matter by virtue of section D2 in Part 2 of Schedule 5 to the Scotland Act 1998 (oil and gas)(a);
- (g) an activity (other than any specified in paragraphs (a) to (e)) which—
 - (i) is carried out in the Welsh zone; and
 - (ii) relates to a matter which is a reserved matter by virtue of section D2 in Part D2 of Schedule 7A to the Government of Wales Act 2006 (oil and gas)(b).”.

Amendment of regulation 20

6. In regulation 20, before paragraph (1), insert —

“(A1) Where a responsible operator has received a notice from the enforcing authority under regulation 18, it must without delay identify potential remedial measures in accordance with Schedule 3 and submit them in writing to the enforcing authority for its approval.”.

Amendment of Schedule 1

7. In Schedule 1, for paragraph 5 substitute—

“5.—(1) Damage to a protected site or natural habitat and damage to a site of special scientific interest do not include damage caused by an act expressly authorised by the relevant authorities in accordance with—

- (a) the Conservation (Natural Habitats, &c.) Regulations 1994(c);
- (b) the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001(d);
- (c) the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007(e);
- (d) the Conservation of Habitats and Species Regulations 2010(f);
- (e) the Conservation of Habitats and Species Regulations 2017(g);
- (f) the Conservation of Offshore Marine Habitats and Species Regulations 2017(h).

(2) Damage to sites of special scientific interest does not include, in the case of a site that is not a European site, damage caused by an act expressly authorised by the relevant authorities in accordance with Part 2 of the Wildlife and Countryside Act 1981(i).

(a) 1998 c. 46.

(b) 2006 c. 32; Schedule 7A was substituted by section 3 of the Wales Act 2017 (c. 4).

(c) 1994/2716, amended by paragraph 233(1) of Schedule 22 to the Environment Act 1995 (c. 25); S.I. 1996/525; 1997/3055; 2000/192 and 1973; 2003/2155; 2005/3389; 2006/1282; 2007/1843 and 3538; 2008/2172; 2009/6, 1307, 2438 and 3160; and paragraph 4(1) of Schedule 11 to the Marine and Coastal Access Act 2009 (c.23); and revoked (in relation to England and Wales) by S.I. 2010/490.

(d) S.I. 2001/1754, amended by S.I. 2007/77 and 1842; and 2010/1513.

(e) S.I. 2007, amended by S.I. 2009/7; 2010/490, 491 and 1513; 2011/2043; 2012/1809 and 1928; and 2013/755.

(f) S.I. 2010/490, amended by S.I. 2011/603 and 625; 2012/630, 635, 637 and 1927; and 2013/755.

(g) S.I. 2017/1012.

(h) S.I. 2017/1013.

(i) 1981 c. 69; Part 2, so far as it relates to sites of special scientific interest, was amended as follows. Section 28 was substituted, and sections 28A to 28C and 28D to 28R were inserted, by paragraph 1 of Schedule 9 and paragraph 1 of Schedule 10 to the Countryside and Rights of Way Act 2000 (“the 2000 Act”). Sections 28 to 28C and 28D to 28R were amended by paragraph 79 of Schedule 11 to the Natural Environment and Rural Communities Act 2006 (“the 2006 Act”). Sections 28, 28A, 28B and 28C were amended by paragraphs 2, 3, 5 and 6 of Schedule 13 to the Marine Act. Sections 28CA and 28CB were inserted by paragraphs 7 and 8 of Schedule 13 to the Marine Act. Section 28D was amended by section 56 of the 2006 Act and paragraph 9 of Schedule 13 to the Marine Act. Section 28E was amended by paragraph 80 of Schedule 11 to the 2006 Act and paragraph 3(2) of Schedule 2 to the Environment (Wales) Act 2016 (anaw 3). Section 28F was amended by paragraph 5 of Schedule 5 to the Planning (Wales) Act 2015 (anaw 4). Section 28G was amended by paragraph 81 of Schedule 11 to the 2006 Act. Section 28J was amended by paragraph 3(3) of Schedule 2 to the Environment (Wales) Act 2016. Section 28L was amended by paragraph 6 of Schedule 5 to the Planning (Wales) Act 2015. Section 28P was amended by section 55 of the 2006 Act and S.I. 2015/664. Section 28S was inserted by section 58(1) of the 2006 Act. Section 31 was amended by sections 37 and 46 of the Criminal Justice Act 1982 (c. 48), paragraph 3 of Schedule 9 to the 2000 Act, paragraph 37 of Schedule 9 to the Constitutional Reform Act 2005 (c. 4), and section 55(5) of, and

(3) In sub-paragraph (2), “European site” has the same meaning as in regulation 8 of the Conservation of Habitats and Species Regulations 2010(a).”.

Insertion of new Schedule 2A

8. After Schedule 2, insert Schedule 2A as set out in the Schedule.

Saving

9. In relation to damage caused before the date on which these Regulations come into force, nothing in regulation 7 affects the application of paragraph 5 of Schedule 1 to the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 as it had effect before that date.

23rd November 2017

Thérèse Coffey
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

SCHEDULE Regulation 8

New Schedule 2A

“SCHEDULE 2A Regulation 11(1)

Enforcing authority: activities not requiring a permit or registration under the Environmental Permitting (England and Wales) Regulations 2016

<i>Type of environmental damage (in bold) and (where limited) area of environmental damage</i>	<i>Enforcing authority</i>
Damage to land .	The local authority
Damage to surface water or groundwater .	The Environment Agency
Damage to marine waters out to 12 nautical miles from the baselines in England.	The Marine Management Organisation
Damage to marine waters beyond 12 nautical miles from (a) the baselines in England, or (b) the baselines in Northern Ireland, extending to the outermost reach of the area where the United Kingdom exercises jurisdictional rights.	The Secretary of State
(a) within the Welsh zone; or	(a) if the damage was caused by anything done in the course of, or for the purpose of, a specified

paragraph 79 of Schedule 11 to, the 2006 Act. Section 32 was amended by section 20(1) to (3) of the Agriculture Act 1986 (c. 49), paragraph 4 of Schedule 9 and Part 3 of Schedule 16 to the 2000 Act, paragraph 79 of Schedule 11 to the 2006 Act, paragraph 3(4) of Schedule 2 to the Environment (Wales) Act 2016, and S.I. 2011/1043. Section 33 was amended by paragraph 82 of Schedule 11 to the 2006 Act.

(a) S.I. 2010/490, amended by S.I. 2012/1927; there are other amending instruments but none is relevant.

<p>(b) within the Scottish zone, or outside the Scottish zone, but 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.</p>	<p>marine activity⁽¹⁾; or</p> <p>(b) 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—</p> <p style="margin-left: 20px;">(i) in the case of marine waters within the Welsh zone, section E3 in Part 2 of Schedule 7A to the Government of Wales Act 2006 (marine transport)(a);</p> <p style="margin-left: 20px;">(ii) in any other case, section E3 in Part 2 of Schedule 5 to the Scotland Act 1998 (marine transport)(b).</p> <p>(2) In a case not falling within paragraph (1)(a) or (b) above—</p> <p style="margin-left: 20px;">(a) where the marine waters are within the Welsh zone, the Welsh Ministers;</p> <p style="margin-left: 20px;">(b) otherwise, the Scottish Ministers.</p>
<p>Damage to a protected species or natural habitat or a site of special scientific interest on land.</p>	<p>Natural England</p>
<p>Damage to a protected species or natural habitat or a site of special scientific interest in water, but not in the sea⁽²⁾.</p>	<p>The Environment Agency</p>
<p>Damage to a protected species or natural habitat or a site of special scientific interest on any other part of the continental shelf or in the sea up to the limit of the exclusive economic zone.</p>	<p>(1) The Environment Agency, if the damage is due to an activity authorised by the Environment Agency.</p> <p>(2) In any other case, the Secretary of State.</p>

⁽¹⁾ For the definition of “specified marine activity”, see regulation 11(2).

⁽²⁾ For the definition of “sea”, see regulation 11(2).”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 (S.I. 2015/810) (“the 2015 Regulations”). They make certain provision to implement 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 (OJ No L143, 30.4.2004, p 56) (“Directive 2004/35/EC”).

Regulation 3 inserts a definition of “the Welsh zone”. In this zone, regulations 4 and 5 provide the Welsh Ministers with powers in relation environmental damage, except where the damage is caused by certain specified operations regulated on a United Kingdom-wide basis.

(a) 2006 c. 32; Schedule 7A was added by section 3 of the Wales Act 2017 (c. 4).

(b) 1998 c. 46.

Regulation 6 amends regulation 20 of the 2015 Regulations, to require operators to identify potential remedial measures and submit them to the enforcement authority.

Regulation 7 amends Schedule 1 to the 2015 Regulations to ensure proper transposition of Directive 2004/35/EC. The amendment addresses damage to a site of scientific interest which is also a European site (as defined in regulation 8 of the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012)). It provides that damage caused by an act expressly authorised by the relevant authorities in accordance with Part 2 of the Wildlife and Countryside Act 1981 (c. 69) (“the 1981 Act”) is not automatically excluded from the scope of the 2015 Regulations. Such damage will continue to be excluded if the authorisation under the 1981 Act was granted in accordance with legislation transposing Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (OJ No L 206, 22.7.1992, p 7). There is a saving in this regard at regulation 9.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.