



STATUTORY INSTRUMENTS.

**S.I. No. 547 of 2008**

EUROPEAN COMMUNITIES (ENVIRONMENTAL LIABILITY)  
REGULATIONS 2008

**(Prn. A8/2000)**

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S.I. No. 547 of 2008

EUROPEAN COMMUNITIES (ENVIRONMENTAL LIABILITY)  
REGULATIONS 2008

I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004<sup>1</sup> hereby make the following regulations:

*Citation and Commencement*

1. (1) These Regulations may be cited as the European Communities (Environmental Liability) Regulations 2008.

(2) These Regulations come into operation on 1 April 2009.

*Interpretation*

2. (1) In these Regulations—

“Agency” means the Environmental Protection Agency;

“Birds Directive” means Council Directive 79/409/EEC of 2 April 1979<sup>2</sup> on the conservation of wild birds;

“costs” means costs which are justified by the need to ensure the proper and effective implementation of these Regulations including the costs of assessing environmental damage, an imminent threat of such damage, alternatives for action as well as the administrative, legal, and enforcement costs, the costs of data collection and other general costs, monitoring and supervision costs;

“damage to protected species and natural habitats” means any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species; the significance of such effects is to be assessed with reference to the baseline condition, taking account of the criteria set out in Schedule 1; this damage does not include previously identified adverse effects which result from an act by an operator which was expressly authorised by—

(a) the relevant authorities in accordance with Article 6(3) and (4) of the Habitats Directive and Regulation 16, 25, 26 or 32 of the Natural Habitats Regulations, or

(b) such enactments or rules of law (if any) that apply to habitats and species in the State, to which the Natural Habitats Regulations do not apply;

<sup>1</sup> O.J. No. L143 30.4.2004 p. 56

<sup>2</sup> O.J. No. L103 25.4.1979 p. 1

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 23rd December, 2008.*

“Directive” means Directive 2004/35/EC<sup>3</sup> on environmental liability with regard to the prevention and remedying of environmental damage;

“direction” means a direction issued by the Agency pursuant to Regulation 8(1), 10(1) or 12(1);

“environmental damage” means—

- (a) damage to protected species and natural habitats,
- (b) water damage, or
- (c) land damage;

“Habitats Directive” means Council Directive 92/43/EEC<sup>4</sup> of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;

“land damage” means any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms;

“Minister” means the Minister for the Environment, Heritage and Local Government;

“Natural Habitats Regulations” means the European Communities (Natural Habitats) Regulations 1997 (S.I. No. 94 of 1997), the European Communities (Natural Habitats) (Amendment) Regulations 1998 (S.I. No. 233 of 1998), the European Communities (Natural Habitats) (Amendment) Regulations 2005 (S.I. No. 378 of 2005);

“operator” means, in relation to an occupational activity, the person-

- (a) who operates or controls it, or
- (b) the person to whom decisive economic power over the activity has been delegated, including, where an enactment or other rule of law applies to the occupational activity, the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity pursuant to the enactment or other rule of law as the case may be, and, for the purposes of an activity referred to in Schedule 3—
  - (i) the holder of a licence (within the meaning given to that term in article 1 of Schedule 3) referred to in paragraph (a), (b), (c), (d), (e), (f), (i) or (l) of article 2 of that Schedule,
  - (ii) for the purposes of—

<sup>3</sup> O.J No. L143 30.4.2004 p. 56

<sup>4</sup> O.J No. L206 22.7.1992 p. 7

- (I) the European Communities (Classification, Packaging, Labelling and Notification of Dangerous Substances) Regulations 2003 (S.I. No. 116 of 2003) the person “responsible for placing on the market a substance to which these Regulations apply” within the meaning of Regulation 2 of those Regulations,
  - (II) the European Communities (Classification, Packaging, and Labelling of Dangerous Preparations) Regulations 2004 (S.I. No. 62 of 2004), the “person responsible for placing on the Market” within the meaning of Regulation 2 of those Regulations,
  - (III) the European Communities (Authorisation, Placing on the Market, Use and Control of Plant Protection Products) Regulations 2003 (S.I. No. 83 of 2003), the person who holds an authorisation to place on the market and use a plant protection product pursuant to Regulation 13 or 19 of those Regulations,
  - (IV) the European Communities (Authorisation, Placing on the Market, Use and Control of Biocidal Products) Regulations 2001 (S.I. No. 625 of 2001), the person who is authorised or registered for placing on the market or use of a biocidal product pursuant to Regulation 10, 19 or 20 of those Regulations,
- (iii) for the purposes of—
- (I) the Carriage of Dangerous Goods by Road Regulations 2007 (S.I. No. 288 of 2007), a participant, within the meaning of Regulation 13, to whom Regulation 17, 21, 26, 30, 33, 35 or 37 of those Regulations, as the case may be, applies,
  - (II) the European Communities (Carriage of Dangerous Goods by Road) (ADR Miscellaneous Provisions) Regulations (S.I. No. 289 of 2007), a carrier within the meaning of Regulation 3 and a consignor within the meaning of Regulation 4 of those Regulations,
  - (III) the European Communities (Transport of Dangerous Goods by Rail) Regulations 2003 (S.I. No. 701 of 2003), any participant, within the meaning of Regulation 9, to whom Regulation 10, 11, 12, 13, 14, 15, 16 or 17, as the case may be, applies,
  - (IV) the European Communities (Vessel Traffic Monitoring and Information System) Regulations 2004 (S.I. No. 81 of 2004), the operator, agent or master of a ship within the meaning of Regulation 3 of those Regulations,

- (V) the Genetically Modified Organisms (Contained Use) Regulations 2001 (S.I. No 73 of 2001), the user within the meaning of Regulation 3 of those Regulations,
- (VI) the Genetically Modified Organism (Deliberate Release) Regulations 2003 (S.I. No. 500 of 2003), the notifier within the meaning of Regulation 3 of those Regulations, and
- (VII) Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006<sup>5</sup> on the management of waste from extractive industries;

“protected species and natural habitats” means—

- (a) the species mentioned in Article 4(2) of the Birds Directive or listed in Annex I thereto or listed in Annexes II and IV to the Habitats Directive, and
- (b) the habitats of species mentioned in Article 4(2) of the Birds Directive or listed in Annex I thereto or listed in Annex II to the Habitats Directive, and the natural habitats listed in Annex I to the Habitats Directive and the breeding sites or resting places of the species listed in Annex IV to the Habitats Directive;

“public authority” means:

- (a) a Minister of the Government,
- (b) a local authority within the meaning of the Local Government Act 2001 (No. 37 of 2001),
- (c) the Commissioners of Public Works in Ireland,
- (d) a harbour authority within the meaning of the Harbours Acts 1946 to 2005,
- (e) a harbour company under the Harbours Acts 1996 to 2005,
- (f) the Health Service Executive,
- (g) a board or other body (but not including a company under the Companies Acts) established by or under statute, or
- (h) a company under the Companies Act, in which all the shares are held—
  - (i) by or on behalf of or jointly with a Minister of the Government,
  - (ii) by directors appointed by a Minister of the Government, or

<sup>5</sup> O.J No L102 11.4.2006 p.15

- (iii) by a board, company or other body referred to in paragraph (g) or subparagraph (i) or (ii);

“remedial measures” means any action, or combination of actions, including mitigating or interim measures to restore, rehabilitate or replace damaged natural resources or impaired services, or to provide an equivalent alternative to those resources or services as foreseen in Schedule 2;

“Statutes of Limitations” means the Statute of Limitation 1957 (No. 6 of 1957), the Statute of Limitations (Amendment) Act 1991 (No. 18 of 1991) and the Statute of Limitations (Amendment) Act 2000 (No. 13 of 2000);

“water damage” means any damage that significantly adversely affects the ecological, chemical or quantitative status or ecological potential, as defined in the Water Framework Directive, of the waters concerned, with the exception of adverse effects where Article 4(7) of the Water Framework Directive applies;

“Water Framework Directive” means Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000<sup>6</sup> establishing a framework for Community action in the field of water policy;

(2) A word or expression that is used in these Regulations and is also used in the Directive has the same meaning in these Regulations that it has in the Directive.

#### *Application*

3. (1) These Regulations apply to—

- (a) environmental damage, or imminent threat of environmental damage caused by an occupational activity referred to in Schedule 3,
- (b) damage to protected species and natural habitats, or imminent threat of that damage, where an operator of an occupational activity (other than an occupational activity referred to in Schedule 3) acts or fails to act and he or she knows or ought to have known that his or her act or failure to act causes or would cause damage or imminent threat of damage to protected species and natural habitats.

(2) These Regulations are without prejudice to—

- (a) an obligation or duty imposed on an operator pursuant to another law of the European Communities or enactment or rule of law that regulates an occupational activity, where a requirement pursuant to that law of the European Communities or enactment or rule of law as the case may be, to comply with that obligation or duty is more onerous than a requirement pursuant to these Regulations to comply with a corresponding duty or obligation,
- (b) any law of the European Communities or enactment or rule of law that provides for rules regarding a dispute relating to—

<sup>6</sup> O.J No. L327 22.12.2000 p. 1



- (i) the power of a court or a judge to hear and decide an action, petition or other proceeding,
- (ii) the territorial limits within which legal authority may be exercised, or
- (iii) the district or limits within which the judgments or orders of a court can be enforced or executed.

(3) Without prejudice to an enactment or rule of law that confers a right on a person who suffers loss or harm to seek relief by way of damages in respect of same, these Regulations do not confer such a right on a person who suffers loss or harm as a result of environmental damage or imminent threat of environmental damage.

*Exceptions*

4. (1) These Regulations do not apply to environmental damage or an imminent threat of such damage caused by—

- (a) an act of armed conflict, hostilities, civil war or insurrection, or
- (b) a natural phenomenon of exceptional, inevitable, and irresistible character.

(2) These Regulations do not apply to environmental damage or an imminent threat of such damage arising from an incident in respect of which liability or compensation is provided for by—

- (a) the enactments giving effect to the international conventions, or
- (b) as the case may be, the international conventions,

referred to in Schedule 4.

(3) These Regulations are without prejudice to the right of an operator to limit his or her liability in accordance with the Merchant Shipping (Liability of Shipowners and Others) Act 1996 (No. 35 of 1996).

(4) These Regulations do not apply to such nuclear risks or environmental damage or imminent threat of such damage as may be caused by—

- (a) the activities to which the Treaty establishing the European Atomic Energy Community applies or
- (b) an incident or activity in respect of which liability or compensation falls to be determined within any of the international instruments listed in Schedule 5.

(5) Where environmental damage or an imminent threat of such damage is caused by pollution of a diffuse character these Regulations shall not apply unless it is possible to establish a causal link between the damage and the activities of an operator.

- (6) These Regulations do not apply to an activity where—
- (a) the main purpose of the activity is to serve national defence or international security, or
  - (b) the sole purpose of the activity is to protect from natural disasters.

*Temporal Application*

5. These Regulations do not apply to—
- (a) damage caused by an emission, event or incident which takes place before 1 April 2009.
  - (b) damage caused by an emission, event or incident which takes place after 1 April 2009 when it derives from a specific activity that took place and finished before the said date, or
  - (c) damage, if more than 30 years have passed since the emission, event or incident resulting in the damage occurred.

*Competent Authority*

6. The Agency is designated as the competent authority in the State for the purposes of these Regulations and the Directive.

*Imminent threat — operator*

7. (1) Where environmental damage has not occurred, but an operator of an occupational activity—

- (a) is aware, or
- (b) ought reasonably be expected in the circumstances to form the opinion,

that there is an imminent threat that it will occur he or she shall without delay take necessary preventive measures.

(2) Where the operator referred to in paragraph (1) forms, or ought reasonably be expected in the circumstances to form, the opinion that preventive measures taken pursuant to paragraph (1) do not dispel the imminent threat of environmental damage, he or she shall as soon as possible inform the Agency of the imminent threat, the preventive measures taken and of the forming by him or her of the opinion that the measures do not dispel the threat.

(3) A person who contravenes paragraph (1) or (2) is guilty of an offence.

*Imminent threat — issue of direction*

8. (1) Where the Agency is aware that there is or may be an imminent threat of environmental damage it shall issue a direction to an operator who has informed them pursuant to Regulation 7 (2) or to any other operator who it considers appropriate—

- (a) to provide the information to the Agency specified in the direction,

(b) to take necessary preventive measures, or

(c) identifying necessary preventive measures to be taken and giving instructions to be followed by the operator in relation to taking them.

(2) An operator, who does not comply with a direction issued to him or her within the time referred to in the direction is guilty of an offence.

(3) Where there is or may be an imminent threat referred to in paragraph (1), the Agency may take necessary preventive measures where it considers it appropriate for any of the following reasons—

(a) an operator fails to take the preventive measures pursuant to Regulation 7(1), or comply with a direction issued pursuant to paragraph (1) within the time referred to in the direction,

(b) the relevant operator cannot be identified, or

(c) the Agency is satisfied that the operator has a defence referred to in Regulation 17 (4) (a) or (b).

*Environmental damage — operator*

9. (1) Where environmental damage has occurred, the operator who—

(a) is aware, or

(b) ought reasonably be expected in the circumstances to form the opinion,

that his or her occupational activity caused the damage shall inform the Agency without delay.

(2) The operator referred to in paragraph (1) shall also take all practicable steps to immediately control, contain, remove or manage contaminants or causes of damage where he or she is aware, or ought reasonably be expected in the circumstances to form the opinion, that to do so would prevent—

(a) further environmental damage,

(b) damage to human health, or

(c) further impairment of services.

(3) A person who contravenes paragraph (1) or (2) is guilty of an offence.

*Environmental damage — issue of direction*

10. (1) Where the Agency is aware that environmental damage has occurred it shall issue a direction to an operator who has informed it pursuant to Regulation 9(1) or to any other operator who it considers appropriate—

(a) to provide information including but not limited to information that is supplemental to that furnished pursuant to Regulation 8(1)(a),

- (b) to take immediate practicable steps including but not limited to steps that are additional to those taken pursuant to Regulation 9(2),
- (c) to take necessary remedial measures, or
- (d) identifying necessary remedial measures to be taken and giving instructions to be followed by the operator in taking them.

(2) An operator who does not comply with a direction issued to him or her within the time specified in the direction is guilty of an offence.

(3) The Agency may, as a means of last resort, take necessary remedial measures where environmental damage has occurred where it considers that it is appropriate for any of the following reasons—

- (a) the operator fails to take the remedial measures required pursuant to Regulation 11, or comply with a direction issued pursuant to paragraph (1) within the time referred to in the direction,
- (b) the relevant operator cannot be identified, or
- (c) the Agency is satisfied that the operator has a defence referred to in Regulation 17(4)(a) or (b).

*Determination of remedial measures*

11. (1) Subject to this Regulation, the Agency shall decide what remedial measures are required to ensure the remedying of the environmental damage.

(2) This Regulation shall not apply if the Agency has already taken remedial measures pursuant to Regulation 10(3).

(3) The Agency shall direct the operator who caused the environmental damage to identify and choose what he or she considers are the remedial measures required to ensure that the environmental damage concerned is remedied.

(4) The operator shall so identify and choose, within the time specified in the direction, and in so doing shall follow the framework set out in Schedule 2 and submit a report in relation thereto to the Agency.

(5) The Agency shall, for the purposes of paragraph (1), invite observations from a person referred to in Regulation 15(2)(a) and (b).

(6) Where the Agency in considering the report of the operator or its authorised officer, or having regard to any other information in its possession, forms the opinion that entry on to lands may be required, it shall, for the purposes of paragraph (1), invite observations from the occupier or owner of the lands.

(7) In deciding as referred in paragraph (1) the Agency shall, at all times having regard to the framework set out in Schedule 2, consider—

- (a) the report of the operator submitted pursuant to paragraph (4), and may consult with that operator if, in the opinion of the Agency it is necessary to do so, and
- (b) where applicable—
  - (i) the report of an authorised officer, and
  - (ii) observations of a person referred to in paragraph (5) or (6), as the case may be,

(8) Where different kinds of environmental damage have occurred that require different remedial measures, the Agency may decide not to carry out all of the remedial measures together and in that case the Agency may decide the order in which the remedial measures required shall be carried out.

(9) In deciding as referred to in paragraph (8), the Agency shall have regard to—

- (a) the framework to be followed in identifying and choosing appropriate remedial measures set out in Schedule 2,
- (b) the nature, extent and gravity of different kinds of environmental damage that have occurred,
- (c) whether any of the environmental damage that occurred may be remedied by being allowed to recover naturally, and
- (d) risks to human health.

*Remedial measures — direction by Agency to operator*

12. (1) Where the Agency has decided, pursuant to Regulation 11, what remedial measures are required it shall issue a direction to the operator who caused the environmental damage notifying him or her—

- (a) of the environmental damage that has occurred and the remedial measures that the operator is required to take,
- (b) where relevant, the order in which the remedial measures shall be taken, and
- (c) where relevant, the monitoring and inspection that the Agency proposes in relation to the remedial measures until the Agency is satisfied that they are complete.

(2) An operator referred to in paragraph (1) who does not comply with a direction issued to him or her within the time referred to in that direction is guilty of an offence.

*Appeal from a direction issued under Regulation 8, 10 or 12*

13. (1) A direction referred to in Regulation 8(1), 10(1) or 12(1) as the case may be, shall take effect—

- (a) where it is received by the person on whom it is served, or
  - (b) where an appeal is brought against the direction, on the day immediately following—
    - (i) the day on which the direction is confirmed on appeal or the appeal is withdrawn, or
    - (ii) the day specified in the direction.
- (2) The bringing of an appeal against a direction referred to in paragraph (1) shall not have the effect of suspending the operation of the direction but the appellant may apply to the court to have the operation of the direction suspended until the appeal is disposed of and, on such application, the court may, if it thinks proper to do so, direct that the operation of the notice be suspended until the appeal is disposed of.
- (3) A person on whom a direction referred to in paragraph (1) is served may, within 7 days beginning on the day on which the direction is served on him or her, appeal against the direction to a judge of the District Court in the district court district in which the direction was served and in determining the appeal the judge may, if he or she is satisfied that it is reasonable to do so, confirm, vary or cancel the notice.
- (4) Where, on the hearing of an appeal under this Regulation, a direction is confirmed, notwithstanding paragraph (1), the judge by whom the appeal is heard may, on the application of the appellant, suspend the operation of the direction for such period as in the circumstances of the case the judge considers appropriate.
- (5) A person who,
- (a) brings an appeal under paragraph (3), or
  - (b) applies for the suspension of the operation of a direction under paragraph (4), shall at the same time notify the Agency of the appeal or application, and the grounds for the appeal or application.

*Co-operation with public authorities*

14. (1) In an instance of environmental damage or an imminent threat of such damage, the Agency may—
- (a) request a public authority to furnish, within a specified period, to it information in relation to the performance by the authority, either generally or in a specific case, of a statutory function of that authority in relation to preventing and remedying environmental damage and the authority shall comply with such a request, and
  - (b) issue a direction to the public authority requiring it to carry out, cause to be carried out, or arrange for, within a specified period, such action

related to the function in question as the Agency considers necessary for the purposes of preventing and remedying environmental damage.

(2) Where the public authority fails to comply with a direction issued under paragraph (1)(b), the Agency may carry out, cause to be carried out, or arrange for, such action related to the function in question as it considers necessary to ensure compliance with the direction and the costs of such action may be recovered by the Agency from the authority as a simple contract debt in any court of competent jurisdiction.

*Environmental damage — submission and request*

15. (1) A person referred to in paragraph (2) may submit observations to the Agency and request that the Agency perform its functions under these Regulations in relation to an instance of environmental damage or imminent threat of environmental damage as the case may be.

(2) A person who may submit and request under paragraph (1) is a person who—

(a) is affected or likely to be affected by the instance of environmental damage, or

(b) has a sufficient interest in the decisions relating to the environment made by the Agency or any other person.

(3) In paragraph (2)(b), “a sufficient interest” means that a person can satisfy the Agency that he or she is a member of an organisation that—

(a) promotes protection of the environment, and

(b) has acted to promote protection of the environment during the period of 12 months before the person submits and requests pursuant to paragraph (1).

(4) Where a person submits observations and requests the performance by the Agency of its functions, he or she shall also furnish a report to the Agency containing all information and data relevant to the environmental damage.

(5) The Agency shall read the report referred to in paragraph (4) and if it is of the opinion that the report—

(a) shows that environmental damage exists, shall—

(i) consider the submission of observations and request for performance of its functions by the Agency, and

(ii) consult with the operator who has caused the environmental damage concerned and request his or her views in relation to the submission and request, or

- (b) does not show that environmental damage exists, or that the person is not a person to whom paragraph (2) (a) or (b) refers, shall so notify the person in writing giving reasons for its opinion.

(6) Having considered the submission of observations and request for performance by the Agency of its functions and consulted with the operator pursuant to paragraph (5)(a), the Agency shall decide whether or not to accede to the request for performance and shall notify the person who submitted the observations and requested the performance in writing of the decision, giving reasons for it and advising the person of the period for bringing review or other legal proceedings in relation thereto pursuant to Regulation 16.

*Review of decision of Agency under Regulation 15*

16. (1) Subject to paragraph (2), a person shall not, by application for judicial review or in any other legal proceedings whatsoever, question the validity of a decision of the Agency relating to—

- (a) existence of environmental damage or whether Regulation 15 (2)(a) or (b) applies to a person, or
- (b) whether or not to perform its functions under these Regulations pursuant to Regulation 15(6),

unless the proceedings are instituted within the period of 8 weeks beginning on the date on which the decision is made.

(2) Where, on application to the High Court, the Court considers that in the particular circumstances there is good and sufficient reason for doing so, the Court may extend the period referred to in paragraph (1).

*Liability for prevention and remediation costs*

17. (1) Subject to these Regulations, the operator whose occupational activity causes the imminent threat of environmental damage or the environmental damage shall be liable for the costs incurred in carrying out, subject to these Regulations, the preventive or remedial measures required in respect of the imminent threat or damage, as appropriate.

(2) The Agency may recover from the operator referred to in paragraph (1), as a simple contract debt in a court of competent jurisdiction, the costs that it has incurred in relation to the preventive or remedial measures that it has taken pursuant to these Regulations.

(3) Notwithstanding paragraph (2), the Agency may decide not to recover all or any of the costs referred to in that paragraph where it is of the opinion that—

- (a) the expenditure required to so recover would be greater than the amount that may be recovered, or
- (b) the operator from whom all or any of the costs may be recovered can not be identified.



(4) In an action to recover costs referred to in paragraph (2), it shall be a defence for the operator concerned to prove that the imminent threat of environmental damage or environmental damage was caused—

- (a) by the act or omission of a third party and that the operator has appropriate safety measures in place in relation to the occupational activity, or
- (b) by the operator or a third party complying with an order or instruction of a public authority duly issued by that body in the performance of its statutory functions, where the order or instruction did not relate to an emission or incident arising from the occupational activity of the operator.

(5) Where the operator proves the matters referred to in paragraph (4) (a) or (b), he or she may recover, as a simple contract debt in a court of competent jurisdiction, the costs that he or she has incurred in relation to the preventive or remedial measures taken pursuant to these Regulations from the third party or public authority as the case may be.

(6) The taking by the Agency of any preventive or remedial measures pursuant to Regulation 8(3) or 10(3) shall not prejudice—

- (a) the liability of the operator to pay for costs of preventive or remedial measures pursuant to paragraph (1) and the cause of action that lies with the Agency pursuant to paragraph (2), for recovery of costs, or
- (b) the requirement of compliance by the Agency with the laws of the European Communities governing State aid.

*Joint and several liability*

18. (1) Nothing in these Regulations shall be taken to affect the operation of Part III of the Civil Liability Act 1961 (No.41 of 1961) where 2 or more persons are liable, by virtue of these Regulations, for the same imminent threat of environmental damage or environmental damage, as the case may be.

(2) Nothing in these Regulations shall be taken to affect the operation of—

- (a) section 9(1) of the Liability for Defective Products Act 1991 (No. 28 of 1991), where the imminent threat of environmental damage, or environmental damage, as the case may be is caused both by a defect in a product and by the act or omission of a third party, or
- (b) section 9(2) of the Liability for Defective Products Act 1991 where the imminent threat of environmental damage, or environmental damage, as the case may be, is caused partly by a defect in a product and partly by the fault of an injured person (within the meaning of that Act) or of any person for whom the injured person is responsible.

*Limitation of actions*

19. Notwithstanding any provisions of the Statutes of Limitations, an action by the Agency under these Regulations against an operator for recovery of costs, shall not be brought after the expiration of 5 years from the date on which the preventive or remedial measures required pursuant to these Regulations have been completed or the date (if later) on which the Agency became aware of the identity of the operator as appropriate.

*Damage occurring in more than one State — co-operation by Minister and Agency*

20. (1) Where the Minister is aware of environmental damage that may affect a Member State other than the State as well as the State, or originates in the State, the Minister shall communicate to the competent authority of the Member State other than the State that may be affected by the damage, such information in relation thereto as the Minister has in his or her possession which, in the opinion of the Minister, is appropriate and necessary to assist the Member State in relation to taking preventive and remedial measures in that State.

(2) Where the Agency becomes aware that environmental damage or a threat of environmental damage has occurred in the State that is caused by an occupational activity carried on by an operator in a Member State other than the State the Agency—

(a) shall—

- (i) notify the Commission of the environmental damage,
- (ii) notify the competent authority of the Member State where the occupational activity that caused the environmental damage or threat of environmental damage is carried on, of the damage or threat, and
- (iii) make recommendations to the competent authority of the Member State, and if that competent authority is in agreement, to the operator regarding the preventive or remedial measures that, in the opinion of the Agency, are required,

and

(b) may recover costs incurred in relation to preventive or remedial measures that it takes.

(3) Where the Minister is notified by the competent authority of a Member State other than the State of environmental damage that occurs in that State and that the occupational activity that caused the environmental damage is carried on in the State, he or she shall inform the Agency.

(4) Where the Agency is informed by the Minister pursuant to paragraph (3), or is notified by the competent authority of the Member State, or otherwise becomes aware of the circumstances referred to in that paragraph, it shall—

- (a) furnish all information that it has in its possession and that it considers appropriate in relation to the environmental damage, to that competent authority, and
- (b) where it considers that it is appropriate, furnish recommendations of that competent authority to the relevant operator.

*Register*

21. (1) The Agency shall report to the Commission pursuant to Article 18 of the Directive.

(2) The Agency shall establish and maintain a Register (to be known as the “Article 18 Register”) and referred to in this Regulation as “the register”.

(3) The Agency shall place all of the information and data in its possession in relation to each instance of environmental damage or liability arising therefrom, being the information referred to in articles 1 to 5 of Part 1 of Schedule 6, on the register.

(4) Where, in relation to an instance of environmental damage or liability arising therefrom, the Agency is of the opinion that it is required for the proper performance of its functions under paragraph (1), it may place the information and data in its possession regarding the instance of damage and liability referred to in article 1, 2 or 3 of Part 2 of Schedule 6, on the register.

*Injunctive Relief*

22. (1) Where, on application by the Agency to the High Court, the Court is satisfied that an operator has failed to comply with a direction or a requirement of these Regulations, the Court may by order—

- (a) direct the person to comply with the direction or requirement, and
- (b) make such other provision, including provision in relation to the payment of costs, as the Court considers appropriate.

(2) An application for an order under this Regulation shall be by motion, and the High Court, when considering the matter, may make such interim or interlocutory order as it considers appropriate.

(3) An application for an order under this Regulation may be made whether or not there has been a prosecution for an offence under these Regulations in relation to the activity concerned, and shall not prejudice the initiation of a prosecution for an offence under these Regulations in relation to the activity concerned.

*Authorised Officer*

23. (1) The Agency may appoint in writing one or more of its officers, as it considers appropriate, to be an authorised officer or authorised officers for the purposes of ensuring compliance with these Regulations.

(2) Every authorised officer appointed under this Regulation shall be furnished with a warrant of his or her appointment and shall if requested by any person thereby affected, produce such warrant of appointment to that person for inspection.

(3) An appointment under this Regulation shall cease—

- (a) if the Agency revokes the appointment,
- (b) in the case of an appointment that is for a fixed period, on the expiry of the period, or
- (c) if the person appointed ceases to be an officer of the Agency.

(4) An authorised officer may, for the purposes of these Regulations—

- (a) subject to paragraph (7) enter on any premises at all reasonable times between the hours of 9 a.m. and 6 p.m. or, if there is an imminent threat of environmental damage, at any time for any purpose connected with these Regulations,
- (b) at such premises do all things reasonably necessary for the purpose for which the entry is made and, in particular,
  - (i) may survey, carry out inspections examinations and checks of, take photographs, take samples, make excavations, and examine any damage or imminent damage to the soil, subsoil, or waters,
  - (ii) examine any plant, machinery, equipment, installation or matter on the premises,
  - (iii) make enquiries relating to the occupational activity or any process or procedure carried out on the premises,
  - (iv) examine preventive or remedial works being carried out on the premises,
  - (v) require that the premises and anything at it be left undisturbed for so long as is reasonably necessary for a purpose referred to at subparagraph (i), (ii), (iii) or (iv), or
  - (vi) do any thing as may be required by the Agency for the proper performance of its functions under these Regulations,
- (c) at such premises inspect and take copies of, any books, records, other documents (including documents stored in non-legible form) or extracts therefrom, which he or she finds in the course of his or her inspection,
- (d) remove such photographs, samples, books, records or documents from such premises and detain them for such period as he or she reasonably

considers to be necessary for the purposes of his or her functions under these Regulations,

- (e) require the operator or his or her agent or employee or any person at the premises or person in charge of the premises and any person employed there to give to him or her such assistance and information and to produce to him or her such books, documents or other records (and in the case of documents or records stored in non-legible form, produce to him or her a legible reproduction thereof) that are in that person's power or procurement, as he or she may reasonably require for the purposes of his or her functions under this Act,
- (f) direct that any matter or thing not be moved from the premises without his or her consent,
- (g) secure for later inspection any premises or part of any premises in which an occupational activity is being carried on,

(5) When performing a function under these Regulations, an authorised officer may, subject to any warrant under paragraph (6), be accompanied by such number of authorised officers or members of the Garda Síochána as he or she considers appropriate.

(6) An authorised officer shall not enter a dwelling other than—

- (a) with the consent of the occupier, or
- (b) in accordance with a warrant issued under paragraph (7).

(7) Upon the sworn information of an authorised officer, a judge of the District Court may, if satisfied that there are reasonable grounds for believing that an occupational activity is being carried on in a dwelling or that samples, books, records or other documents (including documents in non-legible form referred to in paragraph (4)(e)) are being kept or stored in any dwelling, issue a warrant authorising a named authorised officer accompanied by such other authorised officers or members of the Garda Síochána as may be necessary, at any time or times, not later than one month from the date of issue of the warrant, to enter the dwelling and perform the functions of an authorised officer under subparagraphs (a) to (g) of paragraph (4).

(8) Any person who obstructs or interferes with an authorised officer or a member of the Garda Síochána in the course of exercising a power conferred on him or her by this Act or a warrant under paragraph (7), or impedes the exercise by the officer or member, as the case may be, of such power, or fails or refuses to comply with a request or requirement of, or to answer a question asked by, the officer or member pursuant to this section, or in purported compliance with such request or requirement or in answer to such question gives information to the officer or member that he or she knows to be false or misleading in any material respect, is guilty of an offence.

(9) Where an authorised officer believes, upon reasonable grounds, that a person has committed an offence under this Act he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.

(10) A person who falsely represents himself or herself to be an authorised officer is guilty of an offence.

(11) A statement or admission made by a person pursuant to a request or requirement or in answer to a question under this section shall not be admissible as evidence in proceedings brought against that person for an offence (other than an offence under paragraph 8).

(12) In this Regulation—

“premises” means as respects entry pursuant to paragraph (4), any lands or waters where an occupational activity is being carried out, and shall include any building, ship or other vessel, aircraft, railway wagon and includes a lorry or container used to transport vehicles, or a lorry found on the lands,

“record” includes, in addition to a record in writing—

- (a) a disc, tape, sound-track or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,
- (b) a film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form, and
- (c) a photograph,

and any reference to a copy of a record includes—

- (i) in the case of a record to which paragraph (a) applies, a transcript of the sounds or signals embodied therein,
- (ii) in the case of a record to which paragraph (b) applies, a still reproduction of the images embodied therein, and
- (iii) in the case of a record to which paragraphs (a) and (b) apply, such a transcript together with such a still reproduction.

#### *Offences*

24. (1) A person guilty of an offence under Regulation 7, 8, 9, 10, or 12, shall be liable—

- (a) on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 6 months or both, or

(b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or both.

(2) It shall be a defence in proceedings for an offence under Regulation 7, 8, 9, 10 or 12 for the person charged with the offence to prove that the person took all reasonable steps to avoid the commission of the offence.

(3) A person guilty of an offence under Regulation 23(8) or (10) is liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 6 months or both.

(4) Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent, connivance of or to be attributable to any neglect on the part of a person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first mentioned offence.

(5) Summary proceedings for an offence under Regulation 7, 8, 9, 10, 12, 23(8) or (10), as the case may be, may be brought and prosecuted by the Agency.

(6) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851 summary proceedings for an offence under Regulation 23(8) or (10) may be instituted not later than 12 months from the date of the offence.

#### *Direction*

25. A direction issued by the Agency pursuant to Regulation 8(1), 10(1), or 12(1) shall be—

- (a) in writing,
- (b) served in accordance with Regulation 26,
- (c) contain reasons for the direction, and
- (d) advise the recipient of his or her right of appeal pursuant to Regulation 13.

#### *Service of Direction*

26. (1) Where a direction is required to be issued by the Agency, the direction shall be in writing and shall be addressed to the operator and shall be given to the operator in one of the following ways—

- (a) by delivering it to the operator,
- (b) by leaving it at the address at which the operator carries on business,
- (c) by sending it by post in a pre-paid registered letter addressed to the operator at the address at which the operator carries on his or her business,

- (d) if an address for the service of a direction has been furnished by the operator, by leaving it at, or sending it by pre-paid registered post addressed to the operator, to that address,
- (e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the operator carries on business or, if an address for the service of a direction has been furnished by the carrier, that address:

provided that—

- (i) the sender's—
  - (I) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or
  - (II) facsimile machine generates a message confirming successful transmission of the total number of pages of the direction,and
- (ii) the direction is also given in one of the other ways mentioned in any of the preceding paragraphs.

(2) For the purposes of paragraph (1), a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

(3) A copy of a direction, which has endorsed on it a certificate purporting to be signed by an officer of the Agency authorised in that behalf by the Agency stating that the copy is a true copy of the direction or reply may, without proof of signature of that person, be produced in every court and in all legal proceedings and is evidence, unless the contrary is shown, of the direction or reply.



## Schedule 1

## CRITERIA IN ASSESSING DAMAGE TO PROTECTED SPECIES AND NATURAL HABITATS

The significance of any damage that has adverse effects on reaching or maintaining the favourable conservation status of habitats or species has to be assessed by reference to the conservation status at the time of the damage, the services provided by the amenities they produce and their capacity for natural regeneration. Significant adverse changes to the baseline condition should be determined by means of measurable data such as:

- the number of individuals, their density or the area covered;
- the role of the particular individuals or of the damaged area in relation to the species or to the habitat conservation, the rarity of the species or habitat (assessed at local, regional and higher level including at Community level);
- the species' capacity for propagation (according to the dynamics specific to that species or to that population), its viability or the habitat's capacity for natural regeneration (according to the dynamics specific to its characteristic species or to their populations); and
- the species' or habitat's capacity, after damage has occurred, to recover within a short time, without any intervention other than increased protection measures, to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.

Damage with a proven effect on human health must be classified as significant damage.

The following does not have to be classified as significant damage:

- negative variations that are smaller than natural fluctuations regarded as normal for the species or habitat in question;
- negative variations due to natural causes or resulting from intervention relating to the normal management of sites, as defined in habitat records or target documents or as carried on previously by owners or operators; or
- damage to species or habitats for which it is established that they will recover, within a short time and without intervention, either to the baseline condition or to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.

## REMEDYING OF ENVIRONMENTAL DAMAGE

This Schedule sets out a common framework to be followed in order to choose the most appropriate measures to ensure the remedying of environmental damage.

### 1. Remediation of damage to water or protected species or natural habitats

Remedying of environmental damage, in relation to water or protected species or natural habitats, is achieved through the restoration of the environment to its baseline condition by way of primary, complementary and compensatory remediation, where:

- (a) 'Primary' remediation is any remedial measure which returns the damaged natural resources or impaired services to, or towards, baseline condition;
- (b) 'Complementary' remediation is any remedial measure taken in relation to natural resources or services to compensate for the fact that primary remediation does not result in fully restoring the damaged natural resources and/or services;
- (c) 'Compensatory' remediation is any action taken to compensate for interim losses of natural resources or services that occur from the date of damage occurring until primary remediation has achieved its full effect; and
- (d) 'interim losses' means losses which result from the fact that the damaged natural resources or services are not able to perform their ecological functions or provide services to other natural resources or to the public until the primary or complementary measures have taken effect. It does not consist of financial compensation to members of the public.

Where primary remediation does not result in the restoration of the environment to its baseline condition, then complementary remediation will be undertaken. In addition, compensatory remediation will be undertaken to compensate for the interim losses.

Remedying of environmental damage, in terms of damage to water or protected species or natural habitats, also implies that any significant risk of human health being adversely affected be removed.

#### 1.1. Remediation objectives

##### Purpose of primary remediation

1.1.1. The purpose of primary remediation is to restore the damaged natural resources or services to, or towards, baseline condition.

## Purpose of complementary remediation

1.1.2. Where the damaged natural resources and/or services do not return to their baseline condition, then complementary remediation will be undertaken. The purpose of complementary remediation is to provide a similar level of natural resources or services, including, as appropriate, at an alternative site, as would have been provided if the damaged site had been returned to its baseline condition. Where possible and appropriate the alternative site should be geographically linked to the damaged site, taking into account the interests of the affected population.

## Purpose of compensatory remediation

1.1.3. Compensatory remediation shall be undertaken to compensate for the interim loss of natural resources and services pending recovery. This compensation consists of additional improvements to protected natural habitats and species or water at either the damaged site or at an alternative site. It does not consist of financial compensation to members of the public.

## 1.2. Identification of remedial measures

### Identification of primary remedial measures

1.2.1. Options comprised of actions to directly restore the natural resources and services towards baseline condition on an accelerated time frame, or through natural recovery, shall be considered.

### Identification of complementary and compensatory remedial measures

1.2.2. When determining the scale of complementary and compensatory remedial measures, the use of resource-to-resource or service-to-service equivalence approaches shall be considered first. Under these approaches, actions that provide natural resources or services of the same type, quality and quantity as those damaged shall be considered first. Where this is not possible, then alternative natural resources and/or services shall be provided. For example, a reduction in quality could be offset by an increase in the quantity of remedial measures.

1.2.3. If it is not possible to use the first choice resource-to-resource or service-to-service equivalence approaches, then alternative valuation techniques shall be used. The Agency may prescribe the method, for example monetary valuation, to determine the extent of the necessary complementary and compensatory remedial measures. If valuation of the lost resources or services is practicable, but valuation of the replacement natural resources or services cannot be performed within a reasonable time-frame or at a reasonable cost, then the Agency may choose remedial measures whose cost is equivalent to the estimated monetary value of the lost natural resources and/or services.

The complementary and compensatory remedial measures should be so designed that they provide for additional natural resources or services to reflect time preferences and the time profile of the remedial measures. For example,

the longer the period of time before the baseline condition is reached, the greater the amount of compensatory remedial measures that will be undertaken (other things being equal).

### 1.3. Choice of the remedial options

1.3.1. The reasonable remedial options should be evaluated, using best available technologies, based on the following criteria:

- The effect of each option on public health and safety;
- The cost of implementing the option;
- The likelihood of success of each option;
- The extent to which each option will prevent future damage, and avoid collateral damage as a result of implementing the option;
- The extent to which each option benefits to each component of the natural resource or service;
- The extent to which each option takes account of relevant social, economic and cultural concerns and other relevant factors specific to the locality;
- The length of time it will take for the restoration of the environmental damage to be effective;
- The extent to which each option achieves the restoration of site of the environmental damage; and
- The geographical linkage to the damaged site.

1.3.2. When evaluating the different identified remedial options, primary remedial measures that do not fully restore the damaged water or protected species or natural habitat to baseline condition or that restore it more slowly can be chosen. This decision can be taken only if the natural resources or services foregone at the primary site as a result of the decision are compensated for by increasing complementary or compensatory actions to provide a similar level of natural resources or services as were foregone. This will be the case, for example, when the equivalent natural resources or services could be provided elsewhere at a lower cost. These additional remedial measures shall be determined in accordance with the rules set out in section 1.2.2.

1.3.3. Notwithstanding the rules set out in section 1.3.2 and in accordance with Regulation 9(3), the Agency is entitled to decide that no further remedial measures should be taken if:

- (a) the remedial measures already taken secure that there is no longer any significant risk of adversely affecting human health, water or protected species and natural habitats, and

- (b) the cost of the remedial measures that should be taken to reach baseline condition or similar level would be disproportionate to the environmental benefits to be obtained.

## **2. Remediation of land damage**

The necessary measures shall be taken to ensure, as a minimum, that the relevant contaminants are removed, controlled, contained or diminished so that the contaminated land, taking account of its current use or approved future use at the time of the damage, no longer poses any significant risk of adversely affecting human health. The presence of such risks shall be assessed through risk-assessment procedures taking into account the characteristic and function of the soil, the type and concentration of the harmful substances, preparations, organisms or micro-organisms, their risk and the possibility of their dispersion. Use shall be ascertained on the basis of the land use regulations, or other relevant regulations, in force, if any, when the damage occurred.

If the use of the land is changed, all necessary measures shall be taken to prevent any adverse effects on human health.

If land use regulations, or other relevant regulations, are lacking, the nature of the relevant area where the damage occurred, taking into account its expected development, shall determine the use of the specific area.

A natural recovery option, that is to say an option in which no direct human intervention in the recovery process would be taken, shall be considered.

### Interpretation

1. In this Schedule reference to a licence issued pursuant to or under an enactment referred to in article 2 includes—

- (a) a licence,
- (b) a permit,
- (c) an authorisation,
- (d) a consent, or
- (e) other like instrument,

howsoever described in the enactment.

### Occupational Activities

2. The following are the activities referred to in Regulation 3 (1)(a)—

(a) Those activities, within the meaning of section 3 (amended by section 5 of the Protection of the Environment Act 2003 (No. 27 of 2003)) of the Environmental Protection Agency Act 1992 (No. 7 of 1992) to which Part IV (amended by section 15 of the Protection of the Environment Act 2003) of the Environmental Protection Agency Act 1992 applies, operated under a licence issued pursuant to Part IV aforesaid, which are referred to in Annex I of Council Directive 96/61/EC<sup>7</sup>;

(b) Waste management operations including—

- (i) collection, transport, recovery and disposal of waste and hazardous waste,
- (ii) supervision of operations referred to in subparagraph (i),
- (iii) after-care of disposal sites,
- (iv) operation of land-fill sites, or
- (v) operation of incineration plants,

operated under a licence issued pursuant to or under the Waste Management Acts 1996 to 2008 or the Waste Management (Registration of Brokers and Dealers) Regulations 2008 (S.I. No. 113 of 2008) as the case may be;

<sup>7</sup> O.J L257, 10.10.1996, p 26

(c) Discharges into inland surface water operated under a licence issued—

(i) pursuant to or, where applicable under the—

(I) Local Government (Water Pollution) Act 1977 (No. 1 of 1977),

(II) Part V of the Waste Management Act 1996,

(III) Environmental Protection Agency Act 1992, or

(ii) pursuant to the—

(A) Water Quality (Dangerous Substances) Regulations 2001 (S.I. No. 12 of 2001),

(B) Waste Water Discharge (Authorisation) Regulations 2007 (S.I. No. 684 of 2007), or

(C) European Communities (Aerial Fertilisation) (Forestry) Regulations 2006 (S.I. No. 592 of 2006),

as the case may be;

(d) Discharges of substances into groundwater operated under a licence issued—

(i) pursuant to, or where applicable, under the—

(I) Local Government (Water Pollution) Act 1977,

(II) Part V of the Waste Management Act 1996,

(ii) under the—

(A) Local Government (Water Pollution) Regulations 1992 (S.I. No 271 of 1992) (amended by the Local Government (Water Pollution) (Amendment) Regulations 1996 (S.I. No. 184 of 1996) and the Local Government (Water Pollution) (Amendment) Regulations 1999 (S.I. No 42 of 1999)),

(B) Waste Management (Licensing) Regulations 1997 (S.I. No. 133 of 1997),

(C) Waste Management (Licensing) Regulations 2004 (S.I. No 395 of 2004),

as the case may be;

(e) Discharges or injections of pollutants into surface water operated under a licence, howsoever called, issued—

(i) pursuant to, or where applicable, under the—

(I) Local Government (Water Pollution) Acts 1977 and 1992,

(II) Waste Management Act 1996,

(III) Environmental Protection Agency Act 1992,

(IV) Water Services Act 2007 (No. 30 of 2007),

(ii) under the—

(A) Water Quality (Dangerous Substances) Regulations 2001  
(S.I. No. 12 of 2001),

(B) European Communities (Water Policy) Regulations 2003  
(S.I. No. 722 of 2003),

as the case may be;

(f) Water abstraction and impoundment of water under a licence issued—

(i) pursuant to, or where applicable, under the—

(I) Local Government (Water Pollution) Acts 1977 and 1992,

(II) Environmental Protection Agency Act 1992,

(ii) under the—

(A) Water Quality (Dangerous Substances) Regulations 2001  
(S.I. No. 12 of 2001),

(B) European Communities (Water Policy) Regulations 2003  
(S.I. No. 722 of 2003)

as the case may be;

(g) (i) Classification, packaging, labelling and notification of dangerous substances pursuant to the European Communities (Classification, Packaging, Labelling and Notification of Dangerous Substances) Regulations 2003,

(ii) Classification, packaging, and labelling of dangerous preparations pursuant to the European Communities (Classification, Packaging and Labelling of Dangerous Preparations) Regulations 2004,

(iii) Authorisation, placing on the market, use and control of plant protection products under the European Communities (Authorisation, Placing on the Market, Use and Control of Plant Protection Products) Regulations 2003, and



- (iv) Authorisation, placing on the market, use and control of biocidal products under the European Communities (Authorisation, Placing on the Market, Use and Control of Biocidal Products) Regulations 2001;
- (h) (i) Transport of dangerous goods by road pursuant to—
  - (I) Carriage of Dangerous Goods by Road Act 1998 (No. 43 of 1998),
  - (II) Carriage of Dangerous Goods by Road Regulations 2007,
  - (III) European Communities (Carriage of Dangerous Goods by Road) (ADR Miscellaneous Provisions) Regulations 2007,
- (ii) Transport of dangerous goods by rail under the European Communities (Transport of Dangerous Goods by Rail) Regulations 2003,
- (iii) Transport of dangerous goods by vessels under the European Communities (Vessel Traffic Monitoring and Information Systems) Regulations 2004;
- (i) Operation of industrial plant or existing industrial plant (within the meaning given to those terms in the Air Pollution Act 1987 (No. 6 of 1987)) under a licence issued pursuant to or under that Act;
- (j) Contained use of genetically modified organisms under the Genetically Modified Organisms (Contained Use) Regulations 2001;
- (k) Deliberate release of genetically modified organisms under the Genetically Modified Organisms (Deliberate Release) Regulations 2003;
- (l) Transboundary shipment of waste within, into or out of the European Union, within the meaning of Regulation (EC) No 1013/2006<sup>8</sup> pursuant to a licence, pursuant to or under the Waste Management Acts 1996 to 2008, or under the Waste Management (Shipments of Waste) Regulations 2007 (S.I. No. 419 of 2007) or the Waste Management (Registration of Brokers and Dealers) Regulations 2008 (S.I. No. 113 of 2008) as the case may be;
- (m) Management of extractive waste within the meaning of Directive 2006/21/EC of the European Parliament and of the Council 15 March 2006 on the management of waste from extractive industries.

<sup>8</sup> O.J No L190 12/07/2006 p. 1

### International Conventions

1. Oil Pollution of the Sea (Civil Liability and Compensation) (Amendment) Act 1998 (No. 13 of 1998) giving effect to—

- (a) The International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage, and
- (b) The International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

2. The Sea Pollution (Miscellaneous Provisions) Act 2006 (No. 29 of 2006) giving effect to the International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage.

3. The Sea Pollution (Hazardous Substances) (Compensation) Act 2005 giving effect to the International Convention of 3 May 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea.

4. The Convention of 10 October 1989 on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels.

### International Instruments

1. Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and the Brussels Supplementary Convention of 31 January 1963.
2. Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage.
3. Convention of 12 September 1997 on Supplementary Compensation for Nuclear Damage.
4. Joint Protocol of 21 September 1988 relating to the Application of the Vienna Convention and the Paris Convention.
5. Brussels Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material.

## Information and Data referred to in Article 18(1)

## Part 1

## Information to be placed on the register

1. Type of environmental damage, date of occurrence or discovery of the damage and date on which proceedings were initiated under this Directive.
2. Activity classification code of the liable person. (NACE code can be used pursuant to Council Regulation (EEC) No. 3037/90 of 9 October 1990)<sup>9</sup>.
3. Whether there has been resort to appeals or judicial review either by liable persons or persons referred to in Regulation 16.
4. Outcome of remediation process.
5. Date of closure of proceedings.

## Part 2

## Information that may be placed on the register

1. Costs incurred with remediation and prevention measures as defined in these Regulations:
  - (a) paid for directly by liable parties as the measures are taken,
  - (b) recovered from liable parties after the measures are taken,
  - (c) that have not been recovered from liable parties (reasons for which should be specified).
2. Results of the actions to promote and the implementation of the financial security instruments used in accordance with Article 14 (1) of the Directive.
3. An assessment of the additional administrative costs incurred annually by the public administration in setting up and operating the administrative structures needed to implement and enforce these Regulations.

<sup>9</sup> O.J. No. L293, 24.10.1990, p. 1



GIVEN under my Official Seal,  
16 December 2008

JOHN GORMLEY,  
Minister for the Environment, Heritage and Local Government.

EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation)*

These Regulations transpose EU Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage.

The purpose of these Regulations is to establish a framework of environmental liability based on the ‘polluter-pays’ principle, to prevent and remedy environmental damage.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,  
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,  
nó tríd an bpost ó  
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,  
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nó trí aon díoltóir leabhar.

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