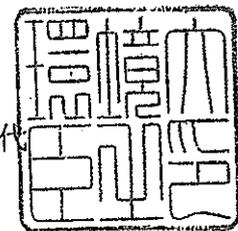


諮問第417号  
環自野発第1511093号  
平成27年11月9日

中央環境審議会  
会長 浅野 直人 殿

環境大臣  
大塚 珠 代



バイオセーフティに関するカルタヘナ議定書の責任及び救済に  
関する名古屋・クアラルンプール補足議定書に対応した国内措置  
のあり方について（諮問）

環境基本法（平成5年法律第91号）第41条第2項第2号の規定に基づき、バイオセーフティに関するカルタヘナ議定書の責任及び救済に関する名古屋・クアラルンプール補足議定書に対応した国内措置のあり方について、貴審議会の意見を求めます。

(諮問理由)

平成 12 年に、遺伝子組換え生物等が生物の多様性の保全及び持続可能な利用に及ぼす可能性のある悪影響を防止するための措置に関する国際的な法的枠組みを定めた「生物の多様性に関する条約のバイオセーフティに関するカルタヘナ議定書」が採択され、平成 15 年に発効した。

同議定書第 27 条が、遺伝子組換え生物等の国境を越える移動から損害が生ずる場合の責任及び救済に関する国際的な規則及び手続について作業すること等を求めていることを踏まえ、平成 22 年に「バイオセーフティに関するカルタヘナ議定書の責任及び救済に関する名古屋・クアラルンプール補足議定書」(以下「補足議定書」という。)が採択された。

補足議定書では、国境を越えて移動する遺伝子組換え生物等により損害が生ずる場合に、損害を引き起こした管理者に対応措置を求めること等が求められており、我が国として補足議定書を締結する場合は、我が国においても補足議定書の的確かつ円滑な実施を図るための措置を講じる必要がある。

このため、補足議定書に対応した国内措置のあり方について、貴審議会の意見を求めるものである。



中環審第869号  
平成27年11月9日

中央環境審議会 自然環境部会  
部会長 石井 実 殿

中央環境審議会  
会長 浅野 直人



バイオセーフティに関するカルタヘナ議定書の責任及び救済に関する名古屋・  
クアラルンプール補足議定書に対応した国内措置のあり方について（付議）

平成27年11月9日付け諮問第417号をもって環境大臣より、当審議会に対し  
てなされた標記諮問については、中央環境審議会議事運営規則第5条の規定に基づき、  
自然環境部会に付議する。

# カルタヘナ議定書について

- **遺伝子組換え生物**（例：農作物、微生物、ウイルス）による**生物多様性への悪影響を防止**するための措置として、締約国に対し主に以下の措置の実施を求めている。
  - ・ 遺伝子組換え生物の輸出入に係る事前通告及び同意の手続
  - ・ 輸入時等における遺伝子組換え生物によるリスクの評価及び締約国内におけるリスクの管理
- 平成15年9月発効。我が国は平成15年11月に締結。
- 我が国は、同議定書の担保法として、**遺伝子組換え生物を作成又は輸入して使用・栽培等する場合の事前承認制度**等を内容とする**カルタヘナ法**を平成15年に制定。

[参考] 遺伝子組換え生物による生物多様性への悪影響の例

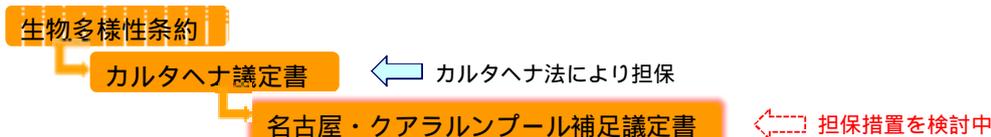


# 名古屋・クアラルンプール補足議定書について

- **カルタヘナ議定書の補足議定書**。カルタヘナ議定書第5回締約国会合（平成22年10月：名古屋）において採択。
- 国境を越えて移動する**遺伝子組換え生物**により**損害**（生物多様性への著しい悪影響）が生ずる場合に、管理者（遺伝子組換え生物の使用者等）に**対応措置**（生物多様性の復元等）をとること等を要求する旨を規定。
- 現在のところ未発効。ただし、現在までに32か国及びEUが締結しており、**近い将来に発効する可能性**がある（発効要件は40か国の締結）。
- 我が国では締結に必要な**国内措置を関係省庁間で検討中**（平成24年3月に署名済）。



[参考] 名古屋・クアラルンプール補足議定書の法体系



## バイオセーフティに関するカルタヘナ議定書の責任及び救済に関する 名古屋・クアラルンプール補足議定書の概要

国境を越える移動に起源を有する改変された生物から生ずる損害について、締約国の権限のある当局が、改変された生物を直接又は間接に管理する者に対して適切な対応措置をとることを要求すること等を規定するもの（カルタヘナ議定書を補足するものとして、21の条文で構成）。

### 1. 目的(第1条)

補足議定書は、改変された生物に関連する責任及び救済の分野における国際的な規則及び手続を定めることにより、人の健康に対する危険も考慮しつつ、生物の多様性の保全及び持続可能な利用に寄与することを目的とする。

### 2. 用語(第2条)

「損害」とは、生物の多様性の保全及び持続可能な利用への悪影響（人の健康に対する危険も考慮したもの）であって、次の要件を満たすものをいう。

- ) 測定し、又は観察することができること。
- ) 次の要素に基づいて決定される「著しい」悪影響であること。
  - a) 合理的な期間内に自然の回復を通じて是正されることがない変化として理解される長期的又は恒久的な変化
  - b) 生物の多様性の構成要素に悪影響を与える質的又は量的な変化の程度
  - c) 生物の多様性の構成要素が物品及びサービスを提供する能力の低下
  - d) 議定書に定める範囲内で、人の健康に及ぼす悪影響の程度

「管理者」とは、改変された生物を直接又は間接に管理する者をいい、状況に応じ、国内法によって決定するところに従い、開発者、生産者、輸出者、輸入者、運送者等を含むことができる。

「対応措置」とは、次のことのための合理的な措置をいう。

- ) 状況に応じ、損害を防止し、最小限にし、限定し、緩和し、又は他の方法で回避すること。
- ) 次の優先順位により措置をとることを通じて生物の多様性を復元すること。
  - a) 損害が発生する前に存在した状態又はこれに最も近い同等の状態に復元すること。
  - b) a) の措置が不可能であると決定する場合には、生物の多様性の喪失について、同一の場所又は適当な場合にはこれに代替する場所において、生物の多様性の他の構成要素であって同一又は他の目的で利用されるものにより当該喪失を埋め合わせることで復元すること。

### 3. 適用範囲(第3条)

補足議定書は、締約国の管轄権の範囲内にある区域において国境を越える移動に起源を有する改変された生物から生じた損害について適用する。また、改変された生物の意図的でない国境を越える移動、不法な国境を越える移動及び非締約国からの国境を越え

る移動から生ずる損害についても適用する。

#### 4. 因果関係(第4条)

因果関係は、損害と問題となる改変された生物との間に、国内法に従って確立される。

#### 5. 対応措置(第5条)

- (1) 締約国は、適当な管理者に対し、損害が生ずる場合には権限のある当局に直ちに報告すること、損害を評価すること及び適当な対応措置をとることを要求する。
- (2) 権限のある当局は、損害を引き起こした管理者を特定し、損害を評価し、及び当該管理者がとるべき対応措置を決定する。
- (3) 関連情報が、時宜を得た対応措置がとられない場合において損害が生ずる高い可能性があることを示すときは、管理者は、当該損害を回避するために適当な対応措置をとることを要求される。
- (4) 権限のある当局は、特に管理者が対応措置をとることができない場合も含め、適当な対応措置をとることができる。
- (5) 権限のある当局は、損害の評価及び(4)の適当な対応措置の実施に係る費用及び経費等を管理者から回収する権利を有する。
- (6) 管理者に対し対応措置をとることを要求する権限のある当局の決定に関し、国内法において救済措置(当該決定の行政上又は司法上の見直しのための機会を含む。)を定める。
- (7) 対応措置は、国内法に従って実施する。

#### 6. 免責(第6条)

締約国は、自国の国内法において、免責又は責任の緩和について定めることができる。

#### 7. 金銭上の保証(第10条)

締約国は、自国の国内法において金銭上の保証について定める権利を保持し、国際法に基づく自国の権利及び義務に反しない方法で、当該権利を行使する。

#### 8. 実施及び民事責任との関係(第12条)

- (1) 締約国は、自国の国内法において、損害に対処する規則及び手続を定めるとともに、この義務を実施するため、補足議定書に従って対応措置を定める。
- (2) 締約国は、民事責任に関する自国の国内法において、損害に関連する物的又は人的な損害について適当な規則及び手続を定める。

#### 9. 効力発生(第18条)

補足議定書は、議定書の締約国である国又は地域的な経済統合のための機関による40番目の批准書、受託書、承認書又は加入書の寄託の日の後の90日目の日に効力を生ずる。

バイオセーフティに関するカルタヘナ議定書の責任及び救済に関する名古屋・クアラルンプール補足議定書

Nagoya - Kuala Lumpur SUPPLEMENTARY PROTOCOL ON LIABILITY AND REDRESS TO THE CARTAGENA PROTOCOL ON BIOSAFETY

この補足議定書の締約国は、生物の多様性に関する条約のバイオセーフティに関するカルタヘナ議定書(以下「議定書」という。)の締約国として、

環境及び開発に関するリオ宣言の原則 13 を考慮し、

環境及び開発に関するリオ宣言の原則 15 に規定する予防的な取組方法を再確認し、

議定書に反することなく、損害又は損害の高い可能性がある場合における適当な対応措置について定める必要性を認識し、

議定書第二十七条の規定を想起して、次のとおり協定した。

*The Parties to this Supplementary Protocol, Being Parties to the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, hereinafter referred to as "the Protocol",*

*Taking into account Principle 13 of the Rio Declaration on Environment and Development,*

*Reaffirming the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development,*

*Recognizing the need to provide for appropriate response measures where there is damage or sufficient likelihood of damage, consistent with the Protocol,*

*Recalling Article 27 of the Protocol, Have agreed as follows:*

第一条 目的

Article 1 OBJECTIVE

この補足議定書は、改変された生物に関連する責任及び救済の分野における国際的な規則及び手続を定めることにより、人の健康に対する危険も考慮しつつ、生物の多様性の保全及び持続可能な利用に寄与することを目的とする。

The objective of this Supplementary Protocol is to contribute to the conservation and sustainable use of biological diversity, taking also into account risks to human health, by providing international rules and procedures in the field of liability and redress relating to living modified organisms.

第二条 用語

Article 2 USE OF TERMS

1 生物の多様性に関する条約(以下「条約」という。)第二条及び議定書第三条に定める用語は、この補足議定書について適用する。

1. The terms used in Article 2 of the Convention on Biological Diversity, hereinafter referred to as "the Convention", and Article 3 of the Protocol shall apply to this Supplementary Protocol.

2 さらに、この補足議定書の適用上、

2. In addition, for the purposes of this Supplementary Protocol:

(a) 「議定書の締約国の会合としての役割を果たす締約国会議」とは、議定書の締約国の会合としての役割を果たす条約の締約国会議をいう。

(a) "Conference of the Parties serving as the meeting of the Parties to the Protocol" means the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol;

(b) 「損害」とは、生物の多様性の保全及び持続可能な利用への悪影響(人の健康に対する危険も考慮したもの)であって、次の要件を満たすものをいう。

(b) "Damage" means an adverse effect on the conservation and sustainable use of biological diversity, taking also into account risks to human health, that:

(i) 測定し、又は観察することができること。権限のある当局が他の人為的な変化及び

(i) Is measurable or otherwise observable taking into account, wherever available, scientifically-established

自然の変化を考慮して認める科学的に確立された基準が存在する場合には、当該基準を考慮して測定し、又は観察することができること。

(ii) 3に規定する著しい悪影響であること。

(c) 「管理者」とは、改変された生物を直接又は間接に管理する者をいい、状況に応じ、国内法によって決定するところに従い、特に許可証の所持者、改変された生物を市場取引に付した者、開発者、生産者、通告をした者、輸出者、輸入者、運送者又は供給者を含むことができる。

(d) 「対応措置」とは、次のことのための合理的な措置をいう。

(i) 状況に応じ、損害を防止し、最小限にし、限定し、緩和し、又は他の方法で回避すること。

(ii) 次の優先順位により措置をとることを通じて生物の多様性を復元すること。

a 損害が発生する前に存在した状態又はこれに最も近い同等の状態に生物の多様性を復元すること。

b 権限のある当局が a に定める措置が不可能であると決定する場合には、生物の多様性の喪失について、特に、同一の場所又は適当な場合にはこれに代替する場所において、生物の多様性の他の構成要素であって同一又は他の目的で利用されるものにより当該喪失を埋め合わせることによって復元すること。

3 「著しい」悪影響は、次のような要素に基づいて決定される。

(a) 合理的な期間内に自然の回復を通じて是正されることがない変化として理解される長期的又は恒久的な変化

(b) 生物の多様性の構成要素に悪影響を与える質的又は量的な変化の程度

(c) 生物の多様性の構成要素が物品及びサービスを提供する能力の低下

(d) 議定書に定める範囲内で、人の健康に及ぼす悪影響の程度

baselines recognized by a competent authority that takes into account any other human induced variation and natural variation; and

(ii) Is significant as set out in paragraph 3 below;

(c) “Operator” means any person in direct or indirect control of the living modified organism which could, as appropriate and as determined by domestic law, include, *inter alia*, the permit holder, person who placed the living modified organism on the market, developer, producer, notifier, exporter, importer, carrier or supplier;

(d) “Response measures” means reasonable actions to:

(i) Prevent, minimize, contain, mitigate, or otherwise avoid damage, as appropriate;

(ii) Restore biological diversity through actions to be undertaken in the following order of preference:

a. Restoration of biological diversity to the condition that existed before the damage occurred, or its nearest equivalent; and where the competent authority determines this is not possible;

b. Restoration by, *inter alia*, replacing the loss of biological diversity with other components of biological diversity for the same, or for another type of use either at the same or, as appropriate, at an alternative location.

3. A “significant” adverse effect is to be determined on the basis of factors, such as:

(a) The long-term or permanent change, to be understood as change that will not be redressed through natural recovery within a reasonable period of time;

(b) The extent of the qualitative or quantitative changes that adversely affect the components of biological diversity;

(c) The reduction of the ability of components of biological diversity to provide goods and services;

(d) The extent of any adverse effects on human health in the context of the Protocol.

1 この補足議定書は、国境を越える移動に起源を有する改変された生物から生ずる損害について適用する。当該改変された生物は、次のものをいう。

(a) 食料若しくは飼料として直接利用し、又は加工することを目的とするもの

(b) 拡散防止措置の下での利用を目的とするもの。

(c) 環境への意図的な導入を目的とするもの。

2 この補足議定書は、意図的な国境を越える移動に関し、1に定める改変された生物の認められた利用から生ずる損害について適用する。

3 この補足議定書は、議定書第十七条に規定する意図的でない国境を越える移動から生ずる損害及び議定書第二十五条に規定する不法な国境を越える移動から生ずる損害についても適用する。

4 この補足議定書は、自国の管轄内に改変された生物の国境を越える移動が行われた締約国についてこの補足議定書の効力が生じたときは、その効力発生の後に開始した当該国境を越える移動から生ずる損害について適用する。

5 この補足議定書は、締約国の管轄権の範囲内にある区域において生じた損害について適用する。

6 締約国は、自国の管轄権の範囲内において生ずる損害に対応するために自国の国内法に定める基準を用いることができる。

7 この補足議定書を実施する国内法は、非締約国からの改変された生物の国境を越える移動から生ずる損害についても適用する。

1. This Supplementary Protocol applies to damage resulting from living modified organisms which find their origin in a transboundary movement. The living modified organisms referred to are those:

(a) Intended for direct use as food or feed, or for processing;

(b) Destined for contained use;

(c) Intended for intentional introduction into the environment.

2. With respect to intentional transboundary movements, this Supplementary Protocol applies to damage resulting from any authorized use of the living modified organisms referred to in paragraph 1 above.

3. This Supplementary Protocol also applies to damage resulting from unintentional transboundary movements as referred to in Article 17 of the Protocol as well as damage resulting from illegal transboundary movements as referred to in Article 25 of the Protocol.

4. This Supplementary Protocol applies to damage resulting from a transboundary movement of living modified organisms that started after the entry into force of this Supplementary Protocol for the Party into whose jurisdiction the transboundary movement was made.

5. This Supplementary Protocol applies to damage that occurred in areas within the limits of the national jurisdiction of Parties.

6. Parties may use criteria set out in their domestic law to address damage that occurs within the limits of their national jurisdiction.

7. Domestic law implementing this Supplementary Protocol shall also apply to damage resulting from transboundary movements of living modified organisms from non-Parties.

#### 第四条 因果関係

因果関係は、損害と問題となる改変された生物との間に、国内法に従って確立される。

#### Article 4 CAUSATION

A causal link shall be established between the damage and the living modified organism in question in accordance with domestic law.

#### 第五条 対応措置

1 締約国は、適当な管理者に対し、損害が生ずる場合には権限のある当局が定める要件に

#### Article 5 RESPONSE MEASURES

1. Parties shall require the appropriate operator or operators, in the event of damage, subject to any

従って次のことを行うよう要求する。

- (a) 権限のある当局に直ちに報告すること。
- (b) 損害を評価すること。
- (c) 適当な対応措置をとること。

2 権限のある当局は、次のことを行う。

- (a) 損害を引き起こした管理者を特定すること。
- (b) 損害を評価すること。
- (c) 当該管理者がとるべき対応措置を決定すること。

3 関連情報(利用可能な科学的な情報及びバイオセーフティに関する情報交換センターにおいて利用可能な情報を含む。)が、時宜を得た対応措置がとられない場合において損害が生ずる高い可能性があることを示すときは、管理者は、当該損害を回避するために適当な対応措置をとることを要求される。

4 権限のある当局は、特に管理者が対応措置をとることができない場合も含め、適当な対応措置をとることができる。

5 権限のある当局は、損害の評価及び4に規定する適当な対応措置の実施により生じ、又はこれらに付随する費用及び経費を管理者から回収する権利を有する。締約国は、自国の国内法において、管理者がそれらの費用及び経費を負担することを要求されない場合について定めることができる。

6 管理者に対して対応措置をとることを要求する権限のある当局の決定は、理由を示すべきである。当該決定は、当該管理者に通告すべきである。国内法は、救済措置(当該決定の行政上又は司法上の見直しのための機会を含む。)について定める。権限のある当局は、また、国内法に従い、利用可能な救済措置について管理者に通知する。当該救済措置の請求は、国内法に別段の定めがある場合を除くほか、権限のある当局が適当な状況の下において対応措置をとることを妨げてはならない。

7 締約国は、この条の規定を実施するに当たり、権限のある当局が要求し、又はとるべき特定の対応措置を定めるため、適当な場合には、民事責任に関する自国の国内法により対応措置が既に取り扱われているか否かについて評価することができる。

8 対応措置は、国内法に従って実施する。

requirements of the competent authority, to:

- (a) Immediately inform the competent authority;
- (b) Evaluate the damage; and
- (c) Take appropriate response measures.

2. The competent authority shall:

- (a) Identify the operator which has caused the damage;
- (b) Evaluate the damage; and
- (c) Determine which response measures should be taken by the operator.

3. Where relevant information, including available scientific information or information available in the Biosafety Clearing-House, indicates that there is a sufficient likelihood that damage will result if timely response measures are not taken, the operator shall be required to take appropriate response measures so as to avoid such damage.

4. The competent authority may implement appropriate response measures, including, in particular, when the operator has failed to do so.

5. The competent authority has the right to recover from the operator the costs and expenses of, and incidental to, the evaluation of the damage and the implementation of any such appropriate response measures. Parties may provide, in their domestic law, for other situations in which the operator may not be required to bear the costs and expenses.

6. Decisions of the competent authority requiring the operator to take response measures should be reasoned. Such decisions should be notified to the operator. Domestic law shall provide for remedies, including the opportunity for administrative or judicial review of such decisions. The competent authority shall, in accordance with domestic law, also inform the operator of the available remedies. Recourse to such remedies shall not impede the competent authority from taking response measures in appropriate circumstances, unless otherwise provided by domestic law.

7. In implementing this Article and with a view to defining the specific response measures to be required or taken by the competent authority, Parties may, as appropriate, assess whether response measures are already addressed by their domestic law on civil liability.

8. Response measures shall be implemented in

accordance with domestic law.

<b>第六条 免責</b>	<b>Article 6 EXEMPTIONS</b>
<p>1 締約国は、自国の国内法において、次の場合における免責について定めることができる。</p> <p>(a) 天災又は不可抗力の場合</p> <p>(b) 戦争又は国内争乱の場合</p> <p>2 締約国は、自国の国内法において、適当と認めるその他の免責又は責任の緩和について定めることができる。</p>	<p>1. Parties may provide, in their domestic law, for the following exemptions:</p> <p>(a) Act of God or <i>force majeure</i>; and</p> <p>(b) Act of war or civil unrest.</p> <p>2. Parties may provide, in their domestic law, for any other exemptions or mitigations as they may deem fit.</p>
<b>第七条 期限</b>	<b>Article 7 TIME LIMITS</b>
<p>締約国は、自国の国内法において、次の事項について定めることができる。</p> <p>(a) 相対的又は絶対的な期限（対応措置に関連する訴訟又は申立てのためのものを含む。）</p> <p>(b) 期限を適用する期間の開始</p>	<p>Parties may provide, in their domestic law, for:</p> <p>(a) Relative and/or absolute time limits including for actions related to response measures; and</p> <p>(b) The commencement of the period to which a time limit applies.</p>
<b>第八条 限度額</b>	<b>Article 8 FINANCIAL LIMITS</b>
<p>締約国は、自国の国内法において、対応措置に関連する費用及び経費の回収に関する限度額を定めることができる。</p>	<p>Parties may provide, in their domestic law, for financial limits for the recovery of costs and expenses related to response measures.</p>
<b>第九条 請求の権利</b>	<b>Article 9 RIGHT OF RECOURSE</b>
<p>この補足議定書は、管理者が他の者に対して有する請求又は補償についての権利を限定し、又は制限するものではない。</p>	<p>This Supplementary Protocol shall not limit or restrict any right of recourse or indemnity that an operator may have against any other person.</p>
<b>第十条 金銭上の保証</b>	<b>Article 10 FINANCIAL SECURITY</b>
<p>1 締約国は、自国の国内法において金銭上の保証について定める権利を保持する。</p> <p>2 締約国は、議定書前文の末尾にある三つの段落を考慮しつつ、国際法に基づく自国の権利及び義務に反しない方法で1に規定する権利を行使する。</p> <p>3 この補足議定書の効力発生の後最初に開催される議定書の締約国会合としての役割を果たす締約国会議の会合は、特に次のものを対象とする包括的な研究を行うことを事務局に要求する。</p> <p>(a) 金銭上の保証の仕組みの態様</p> <p>(b) 特に開発途上国における金銭上の保証</p>	<p>1. Parties retain the right to provide, in their domestic law, for financial security.</p> <p>2. Parties shall exercise the right referred to in paragraph 1 above in a manner consistent with their rights and obligations under international law, taking into account the final three preambular paragraphs of the Protocol.</p> <p>3. The first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol after the entry into force of the Supplementary Protocol shall request the Secretariat to undertake a comprehensive study which shall address, <i>inter alia</i>:</p> <p>(a) The modalities of financial security mechanisms;</p> <p>(b) An assessment of the environmental, economic and</p>

の仕組みの環境、経済及び社会への影響の評価

social impacts of such mechanisms, in particular on developing countries; and

(c) 金銭上の保証を提供する適当な組織の特定

(c) An identification of the appropriate entities to provide financial security.

**第十一条 国際的に不法な行為についての国家の責任**

**Article 11 RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS**

この補足議定書は、国際的に不法な行為についての国家の責任に関する一般国際法の規則に基づく国家の権利及び義務に影響を与えるものではない。

This Supplementary Protocol shall not affect the rights and obligations of States under the rules of general international law with respect to the responsibility of States for internationally wrongful acts.

**第十二条 実施及び民事責任との関係**

**Article 12 IMPLEMENTATION AND RELATION TO CIVIL LIABILITY**

1 締約国は、自国の国内法において、損害に対処する規則及び手続を定める。締約国は、この義務を実施するため、この補足議定書に従って対応措置を定めるものとし、適当な場合には、次のいずれかのことを行うことができる。

1. Parties shall provide, in their domestic law, for rules and procedures that address damage. To implement this obligation, Parties shall provide for response measures in accordance with this Supplementary Protocol and may, as appropriate:

(a) 自国の既存の国内法(適用可能な場合には、民事責任に関する一般的な規則及び手続を含む。)を適用すること。

(a) Apply their existing domestic law, including, where applicable, general rules and procedures on civil liability;

(b) 特に当該義務を実施するための民事責任に関する規則及び手続を適用し、又は策定すること。

(b) Apply or develop civil liability rules and procedures specifically for this purpose; or

(c) (a)に規定する国内法並びに(b)に規定する規則及び手続の双方を適用し、又は策定すること。

(c) Apply or develop a combination of both.

2 締約国は、民事責任に関する自国の国内法において第二条 2 (b)に定義する損害に関連する物的又は人的な損害について適当な規則及び手続を定めるため、次のいずれかのことを行う。

2. Parties shall, with the aim of providing adequate rules and procedures in their domestic law on civil liability for material or personal damage associated with the damage as defined in Article 2, paragraph 2 (b):

(a) 民事責任に関する自国の既存の一般的な法律を引き続き適用すること。

(a) Continue to apply their existing general law on civil liability;

(b) 特に当該規則及び手続を定めるための民事責任に関する法律を策定し、及び適用し、又は引き続き適用すること。

(b) Develop and apply or continue to apply civil liability law specifically for that purpose; or

(c) (a)に規定する一般的な法律及び(b)に規定する民事責任に関する法律の双方を策定し、及び適用し、又は引き続き適用すること。

(c) Develop and apply or continue to apply a combination of both.

3 締約国は、1 (b)若しくは(c)又は2 (b)若しくは(c)に定める民事責任に関する法律を策定する場合において、適当なときは、特に次の

3. When developing civil liability law as referred to in subparagraphs (b) or (c) of paragraphs 1 or 2 above, Parties shall, as appropriate, address, *inter alia*, the

要素を取り扱う。

- (a) 損害
- (b) 責任の基準( 厳格責任又は過失に基づく責任を含む。 )
- (c) 状況に応じ、責任者の特定
- (d) 請求を行う権利

following elements:

- (a) Damage;
- (b) Standard of liability, including strict or fault-based liability;
- (c) Channelling of liability, where appropriate;
- (d) Right to bring claims.

### 第十三条 評価及び再検討

### Article 13 ASSESSMENT AND REVIEW

議定書の締約国の会合としての役割を果たす締約国会議は、この補足議定書の効力発生の五年後に及びその後は五年ごとに、この補足議定書の有効性についての再検討を行う。ただし、当該再検討の必要性を示す情報が締約国によって提供されている場合に限る。当該再検討は、この補足議定書の締約国が別段の決定を行わない限り、議定書第三十五条に規定する議定書の評価及び再検討と併せて行う。最初の再検討は、第十条及び第十二条の規定の有効性についての再検討を含む。

The Conference of the Parties serving as the meeting of the Parties to the Protocol shall undertake a review of the effectiveness of this Supplementary Protocol five years after its entry into force and every five years thereafter, provided information requiring such a review has been made available by Parties. The review shall be undertaken in the context of the assessment and review of the Protocol as specified in Article 35 of the Protocol, unless otherwise decided by the Parties to this Supplementary Protocol. The first review shall include a review of the effectiveness of Articles 10 and 12.

### 第十四条 議定書の締約国の会合としての役割を果たす締約国会議

### Article 14 CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE PROTOCOL

1 議定書の締約国の会合としての役割を果たす締約国会議は、条約第三十二条2の規定に従うことを条件として、この補足議定書の締約国の会合としての役割を果たす。

1. Subject to paragraph 2 of Article 32 of the Convention, the Conference of the Parties serving as the meeting of the Parties to the Protocol shall serve as the meeting of the Parties to this Supplementary Protocol.

2 議定書の締約国の会合としての役割を果たす締約国会議は、この補足議定書の実施状況を定期的に検討し、及びその権限の範囲内でこの補足議定書の効果的な実施を促進するために必要な決定を行う。議定書の締約国の会合としての役割を果たす締約国会議は、この補足議定書により与えられる任務を遂行し、及び議定書第二十九条4(a)及び(f)の規定により与えられる任務に必要な変更を加えたものを遂行する。

2. The Conference of the Parties serving as the meeting of the Parties to the Protocol shall keep under regular review the implementation of this Supplementary Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Supplementary Protocol and, *mutatis mutandis*, the functions assigned to it by paragraphs 4 (a) and (f) of Article 29 of the Protocol.

### 第十五条 事務局

### Article 15 SECRETARIAT

条約第二十四条の規定によって設置された事務局は、この補足議定書の事務局としての役割を果たす。

The Secretariat established by Article 24 of the Convention shall serve as the secretariat to this Supplementary Protocol.

### 第十六条 条約及び議定書との関係

### Article 16 RELATIONSHIP WITH THE CONVENTION

AND THE PROTOCOL

1 この補足議定書は、議定書を補足するものとし、議定書を修正し、又は改正するものではない。

2 この補足議定書は、この補足議定書の締約国の条約及び議定書に基づく権利及び義務に影響を及ぼすものではない。

3 条約及び議定書は、この補足議定書に別段の定めがある場合を除くほか、この補足議定書について準用する。

4 この補足議定書は、3の規定の適用を妨げることなく、国際法に基づく締約国の権利及び義務に影響を及ぼすものではない。

1. This Supplementary Protocol shall supplement the Protocol and shall neither modify nor amend the Protocol.

2. This Supplementary Protocol shall not affect the rights and obligations of the Parties to this Supplementary Protocol under the Convention and the Protocol.

3. Except as otherwise provided in this Supplementary Protocol, the provisions of the Convention and the Protocol shall apply, *mutatis mutandis*, to this Supplementary Protocol.

4. Without prejudice to paragraph 3 above, this Supplementary Protocol shall not affect the rights and obligations of a Party under international law.

第十七条 署名

Article 17 SIGNATURE

この補足議定書は、二十一年三月七日から二十二年三月六日まで、ニューヨークにある国際連合本部において、議定書の締約国による署名のために開放しておく。

This Supplementary Protocol shall be open for signature by Parties to the Protocol at the United Nations Headquarters in New York from 7 March 2011 to 6 March 2012.

第十八条 効力発生

Article 18 ENTRY INTO FORCE

1 この補足議定書は、議定書の締約国である国又は地域的な経済統合のための機関による四十番目の批准書、受諾書、承認書又は加入書の寄託の日の後九十日目の日に効力を生ずる。

1. This Supplementary Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession by States or regional economic integration organizations that are Parties to the Protocol.

2 この補足議定書は、1の規定に基づく四十番目の文書の寄託の後にこれを批准し、受諾し、若しくは承認し、又はこれに加入する国又は地域的な経済統合のための機関については、当該国又は当該機関が批准書、受諾書、承認書若しくは加入書を寄託した日の後九十日目の日又は議定書が当該国若しくは当該機関について効力を生ずる日のいずれか遅い日に効力を生ずる。

2. This Supplementary Protocol shall enter into force for a State or regional economic integration organization that ratifies, accepts or approves it or accedes thereto after the deposit of the fortieth instrument as referred to in paragraph 1 above, on the ninetieth day after the date on which that State or regional economic integration organization deposits its instrument of ratification, acceptance, approval, or accession, or on the date on which the Protocol enters into force for that State or regional economic integration organization, whichever shall be the later.

3 地域的な経済統合のための機関によって寄託される文書は、1及び2の規定の適用上、当該機関の構成国によって寄託されたものに追加して数えてはならない。

3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

**第十九条 留保****Article 19 RESERVATIONS**

この補足議定書には、いかなる留保も付することができない。

No reservations may be made to this Supplementary Protocol.

**第二十条 脱退****Article 20 WITHDRAWAL**

1 締約国は、この補足議定書が自国について効力を生じた日から二年を経過した後いつでも、寄託者に対して書面による脱退の通告を行うことにより、この補足議定書から脱退することができる。

1. At any time after two years from the date on which this Supplementary Protocol has entered into force for a Party, that Party may withdraw from this Supplementary Protocol by giving written notification to the Depositary.

2 1の脱退は、寄託者が脱退の通告を受領した日の後一年を経過した日又はそれよりも遅い日であって脱退の通告において指定される日に効力を生ずる。

2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

3 議定書第三十九条の規定に従って議定書から脱退する締約国は、この補足議定書からも脱退したものとみなす。

3. Any Party which withdraws from the Protocol in accordance with Article 39 of the Protocol shall be considered as also having withdrawn from this Supplementary Protocol.

**第二十一条 正文****Article 21 AUTHENTIC TEXTS**

アラビア語、中国語、英語、フランス語、ロシア語及びスペイン語をひとしく正文とするこの補足議定書の原本は、国際連合事務総長に寄託する。

The original of this Supplementary Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

以上の証拠として、下名は、正当に委任を受けてこの補足議定書に署名した。

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Supplementary Protocol.

二千十年十月十五日に名古屋で作成した。

DONE at Nagoya on this fifteenth day of October two thousand and ten.

和文テキストは署名のための閣議に提出した仮訳文であり、今後の国会提出へ向けた作業において変更の可能性があります。



バイオセーフティに関するカルタヘナ議定書の責任及び救済に関する  
名古屋・クアラルンプール補足議定書の担保に係る諸外国の制度（環境省仮訳）

資料3  
(参考資料1)

	EU	英国	ドイツ
締結	2013年5月承認	2015年5月批准	2013年8月批准
国内措置の名称	EU環境責任指令(以下「指令」という。) Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability	環境損害(予防と修復)規則 The Environmental Damage (Prevention and Remediation) Regulations 2009	環境損害の予防と修復に係るEU環境責任指令の実施のための法律 Act serving to implement the Directive of the European Parliament and of the Council on Environment Liability with Regard to the Prevention and Remedying of Environmental Damage
「損害」の定義 (補足議定書第2条2b)	「環境損害」とは、直接的もしくは間接的に生じる天然資源の測定可能な負の変化又は測定可能な天然資源サービスの減損であって、(a)保護された種及び自然生息地に対するもの、(b)水に対するもの及び(c)土地に対するもの(第2条1・2)。 このうち、生物多様性の損害は、保護された種及び自然生息地に対するものに限られていると推定される(指令Q&A)。	「環境損害」とは(a)保護された種もしくは自然生息地、又は特別な科学的関心が高い地域、(b)表流水及び地下水、(c)土地、に対する損害(第4条)。 別段の定義をおいていない用語については、指令におけるのと同じ意味を有する(第2条(2))。	「直接的もしくは間接的に生じる天然資源(種及び自然生息地、水並びに土壌)の測定可能な負の変化又は測定可能な天然資源サービスの減損であって、(a)連邦自然保護法§ 21aに定める種及び自然生息地に対するもの、(b)連邦水資源法§ 22aに定める水に対するもの、及び(c)連邦土壌保護法§ 2第2節に定める土壌機能への影響による土地に対するもの(第1条§ 2(1)・(2))。
「管理者」の定義 (補足議定書第2条2c)	「管理者(Operator)」とは、業務活動を運営もしくは管理する民間又は公共のすべての自然人又は法人等(業務活動に関する許可もしくは承認を得た者又は業務活動について登録もしくは通知を行っている者を含む)(第2条6)。	「指令におけるのと同じ意味(第2条(2))」。	「責任者(Responsible party)」とは、業務活動に従事し、もしくは業務活動を管理する自然人又は法人であって、直接的に環境損害等を生じた者(業務活動に関する許可もしくは承認を得た者又は業務活動について登録もしくは通知を行っている者を含む)(第1条§ 2(3))。
「対応措置」の定義 (補足議定書第2条2d)	「防止措置(preventive measures)」とは、環境損害の差し迫ったおそれを生ずる事象等に対応して、当該損害を防止又は最小化するために講じる措置(第2条10)。 「修復措置(remedial measures)」とは、損害を受けた天然資源及び若しくは減損(impaired)したサービスの修復、回復もしくは置換え(replace)を行うための活動、又は当該天然資源もしくはサービスについて同等の代替物を提供するための活動(第2条11)。	「指令におけるのと同じ意味(第2条(2))」。	「防止措置(preventive measure)」とは、環境損害の差し迫ったおそれが生じた際に、当該損害を防止又は最小化するためにとる措置(第1条§ 2(6))。 「損害管理措置(damage control measure)」とは、更なる環境損害等を制限するため、ただちに関連する汚染源及びその他の損害要因を管理し、封じ込め、除去し又はその他の管理するためにとる措置(第1条§ 2(7))。 「修復措置(remedial measure)」とは、特別の規則に定めるところにより、環境損害を修復するための措置(第1条§ 2(8))。
認められた利用への適用 (補足議定書第3条2)	管理者は、適切な安全措置がとられたにも関わらず第三者により引き起こされた結果起きたものであること、を立証すれば、防止・修復措置費用の負担を要求されない(第8条3)。 加盟国は、管理者に過失がなく、国内法等に基づき与えられた許可にしたがった行為、行為の時点で環境損害を引き起こす可能性が科学的に予見できなかった行為については、管理者に修復措置の負担を求めないこととすることができる(第8条4)。	管理者は、当局の命令に対し、適切な安全措置がとられたにも関わらず第三者により引き起こされたこと、公的機関の命令を遵守した結果起きたものであること、過失や懈怠のない許可を得た排出又は活動であること、行為の時点で環境損害を引き起こす可能性が科学的に予見できなかったこと、等を理由に異議を主張することができる(第19条)。	州政府は、指令第8条4に従い、責任者が修復措置に係るコストの負担を求められない場合について定めることができる(第1条§ 9(1))。

	EU	英国	ドイツ
環境損害が生じた場合に管理者に求める対応措置 (補足議定書第5条1)	<p>管理者には、以下の義務がある。 当局への報告(第6条1) 更なる環境損害の防止のための措置(第6条1(a)) 修復措置(第6条1(b)) …実施可能な措置の特定(第7条1) 当局が実施すべき措置を決定(第7条2)</p>	<p>管理者には、以下の義務がある。 当局への通知(第14条(b)) 更なる環境損害を防止するための措置(第14条(1)(a)) 修復措置(第20条(2))</p>	<p>責任者には、以下の義務がある。 当局への報告(第1条§4) 損害管理措置(第1条§6) 修復措置(第1条§6)</p>
環境損害が生じた場合の当局の対応 (補足議定書第5条2)	<p>加盟国の当局には、以下の義務がある(第11条2) 環境損害を生じた管理者の特定 環境損害の評価 修復措置の決定</p>	<p>当局には、以下の義務がある。 環境損害を生じた管理者の特定(第18条) 環境損害の評価(第17条) 修復措置の決定(第20条(2))</p> <p>なお、当局は管理者に対し、損害に関する情報の要求や必要な防止措置の要求を行うことができる(第12条2、第13条2、第14条2)。</p>	<p>当局は、講じられるべき修復措置について決定しなければならない(第1条§8)。</p> <p>なお、当局は責任者に対し、環境損害に関する情報の要求や必要な防止措置、損害管理措置及び修復措置の要求を行うことができる(may)(第1条§7(2))。</p>
管理者による損害防止措置 (補足議定書第5条3)	<p>管理者は、損害発生の際に、必要な防止措置を実施しなければならない(第5条1)。</p>	<p>管理者は、損害発生の際に、必要な防止措置を実施(第13条1)、更なる環境損害を防止するための手順の実施(第14条1)、当局への通知(第13条1、第14条1)を行わなければならない。</p>	<p>責任者は、環境損害の脅威が差し迫っている場合、必要な防止措置を講じなければならない(第1条§5)</p>
当局が自ら行う対応措置 (補足議定書第5条4)	<p>当局は、管理者が行うことができないなどの場合、自ら防止措置及び修復措置を講じることができる(第5条3及び第6条3)。</p>	<p>当局は、緊急の場合、管理者が確かでない場合、管理者が通知を遵守しない場合には、管理者に替わって防止措置を実施することができる(第15条)。 当局は、管理者が特定されない場合、管理者が修復通知を遵守しない場合、管理者に修復を求められない場合には、妥当な措置を実施することができる(第23条)。</p>	<p>当局が、自ら修復措置を講じていない場合に、責任者は必要な修復措置を特定し、当局に承認を求める(第1条§8(1))</p>
天災等に係る免責 (補足議定書第6条1)	<p>指令は、武力紛争、戦闘、内戦又は暴動の行為、異常、不可避的及び抑制困難な自然現象、により生ずる環境損害等については適用しない(第4条1)。</p>	<p>規則は、テロの行為、異常な自然現象(ただし、活動の管理者がそのような事象に起因する損害に対するすべての合理的な予防措置を講じていた場合に限る)、により生じた環境損害には適用しない(第8条2)。</p>	<p>法は、武力紛争、対立、内戦又は暴動、異常、不可避的及び抑制困難な自然現象、により生ずる環境損害等については適用しない(第1条§3(3))。</p>
その他免責・緩和 (補足議定書第6条2)	<p>指令は、以下については適用しない(第4条2、4及び6)。 その責任又は補償が附属書IVに掲げる国際条約の適用範囲となる事故により生ずる環境損害等 欧州原子力共同体設立協定に定める活動又はその責任もしくは補償が附属書Vに掲げる国際枠組みの適用範囲となる環境損害等 主たる目的が国防等である活動又はもっぱら自然災害からの保護を目的とする活動</p>	<p>規則は、以下については適用しない(第8条2)。 もっぱら自然災害からの保護を目的とする活動 その責任又は補償が特定の国際条約の適用範囲となる事故 主たる目的が国防等である活動 欧州原子力共同体設立協定に定める活動又はその責任もしくは補償が特定の国際枠組みの適用範囲と活動商業的な海洋漁業(すべての規制が遵守されている場合)</p>	<p>法は、以下については適用しない(第1条§3(3))。 その責任又は補償が、附属書2に掲げる国際条約の適用範囲となる事故 欧州原子力共同体設立協定に定める活動の実施 その責任又は補償が、附属書3に掲げる国際的仕組みの適用範囲となる事故又は活動 主たる目的が国防等である活動又はもっぱら自然災害からの保護を目的とする活動</p>
金銭上の保証 (補足議定書第10条)	<p>加盟国は、適切な経済及び金融事業者による金銭的保証に係る仕組み及び市場の構築を奨励するための措置を講じなければならない(第14条)。</p>	<p>特段の規定なし</p>	<p>特段の規定なし</p>

**DIRECTIVE 2004/35/CE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 21 April 2004**

**on environmental liability with regard to the prevention and remedying of environmental damage**

THE EUROPEAN PARLIAMENT AND THE  
COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the Opinion of the European Economic and Social Committee <sup>(2)</sup>,

After consulting the Committee of the Regions ,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(3)</sup>, in the light of the joint text approved by the Conciliation Committee on 10 March 2004,

Whereas:

- (1) There are currently many contaminated sites in the Community, posing significant health risks, and the loss of biodiversity has dramatically accelerated over the last decades. Failure to act could result in increased site contamination and greater loss of biodiversity in the future. Preventing and remedying, insofar as is possible, environmental damage contributes to implementing the objectives and principles of the Community's environment policy as set out in the Treaty. Local conditions should be taken into account when deciding how to remedy damage.
- (2) The prevention and remedying of environmental damage should be implemented through the furtherance of the 'polluter pays' principle, as indicated in the Treaty

and in line with the principle of sustainable development. The fundamental principle of this Directive should therefore be that an operator whose activity has caused the environmental damage or the imminent threat of such damage is to be held financially liable, in order to induce operators to adopt measures and develop practices to minimise the risks of environmental damage so that their exposure to financial liabilities is reduced.

- (3) Since the objective of this Directive, namely to establish a common framework for the prevention and remedying of environmental damage at a reasonable cost to society, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level by reason of the scale of this Directive and its implications in respect of other Community legislation, namely Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds <sup>(4)</sup>, Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora <sup>(5)</sup>, and Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy <sup>(6)</sup>, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (4) Environmental damage also includes damage caused by airborne elements as far as they cause damage to water, land or protected species or natural habitats.
- (5) Concepts instrumental for the correct interpretation and application of the scheme provided for by this Directive should be defined especially as regards the definition of environmental damage. When the concept in question derives from other relevant Community legislation, the same definition should be used so that common criteria can be used and uniform application promoted.

<sup>(1)</sup> OJ C 151 E, 25.6.2002, p. 132.

<sup>(2)</sup> OJ C 241, 7.10.2002, p. 162.

<sup>(3)</sup> Opinion of the European Parliament of 14 May 2003 (not yet published in the Official Journal), Council Common Position of 18 September 2003 (OJ C 277 E, 18.11.2003, p.10) and Position of the European Parliament of 17 December 2003 (not yet published in the Official Journal). Legislative resolution of the European Parliament of 31 March 2004 and Council Decision of 30 March 2004.

<sup>(4)</sup> OJ L 103, 25.4.1979, p. 1. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

<sup>(5)</sup> OJ L 206, 22.7.1992, p. 7. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

<sup>(6)</sup> OJ L 327, 22.12.2000, p. 1. Directive as amended by Decision No 2455/2001/EC (OJ L 331, 15.12.2001, p. 1).

- (6) Protected species and natural habitats might also be defined by reference to species and habitats protected in pursuance of national legislation on nature conservation. Account should nevertheless be taken of specific situations where Community, or equivalent national, legislation allows for certain derogations from the level of protection afforded to the environment.
- (7) For the purposes of assessing damage to land as defined in this Directive the use of risk assessment procedures to determine to what extent human health is likely to be adversely affected is desirable.
- (8) This Directive should apply, as far as environmental damage is concerned, to occupational activities which present a risk for human health or the environment. Those activities should be identified, in principle, by reference to the relevant Community legislation which provides for regulatory requirements in relation to certain activities or practices considered as posing a potential or actual risk for human health or the environment.
- (9) This Directive should also apply, as regards damage to protected species and natural habitats, to any occupational activities other than those already directly or indirectly identified by reference to Community legislation as posing an actual or potential risk for human health or the environment. In such cases the operator should only be liable under this Directive whenever he is at fault or negligent.
- (10) Express account should be taken of the Euratom Treaty and relevant international conventions and of Community legislation regulating more comprehensively and more stringently the operation of any of the activities falling under the scope of this Directive. This Directive, which does not provide for additional rules of conflict of laws when it specifies the powers of the competent authorities, is without prejudice to the rules on international jurisdiction of courts as provided, inter alia, in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(1)</sup>. This Directive should not apply to activities the main purpose of which is to serve national defence or international security.
- (11) This Directive aims at preventing and remedying environmental damage, and does not affect rights of compensation for traditional damage granted under any relevant international agreement regulating civil liability.
- (12) Many Member States are party to international agreements dealing with civil liability in relation to specific fields. These Member States should be able to remain so after the entry into force of this Directive, whereas other Member States should not lose their freedom to become parties to these agreements.
- (13) Not all forms of environmental damage can be remedied by means of the liability mechanism. For the latter to be effective, there need to be one or more identifiable polluters, the damage should be concrete and quantifiable, and a causal link should be established between the damage and the identified polluter(s). Liability is therefore not a suitable instrument for dealing with pollution of a widespread, diffuse character, where it is impossible to link the negative environmental effects with acts or failure to act of certain individual actors.
- (14) This Directive does not apply to cases of personal injury, to damage to private property or to any economic loss and does not affect any right regarding these types of damages.
- (15) Since the prevention and remedying of environmental damage is a task directly contributing to the pursuit of the Community's environment policy, public authorities should ensure the proper implementation and enforcement of the scheme provided for by this Directive.
- (16) Restoration of the environment should take place in an effective manner ensuring that the relevant restoration objectives are achieved. A common framework should be defined to that end, the proper application of which should be supervised by the competent authority.
- (17) Appropriate provision should be made for those situations where several instances of environmental damage have occurred in such a manner that the competent authority cannot ensure that all the necessary remedial measures are taken at the same time. In such a case, the competent authority should be entitled to decide which instance of environmental damage is to be remedied first.
- (18) According to the 'polluter-pays' principle, an operator causing environmental damage or creating an imminent threat of such damage should, in principle, bear the cost of the necessary preventive or remedial measures. In cases where a competent authority acts, itself or through a third party, in the place of an operator, that

<sup>(1)</sup> OJ L 12, 16.1.2001, p. 1. Regulation as amended by Commission Regulation (EC) No 1496/2002 (OJ L 225, 22.8.2002, p. 13).

- authority should ensure that the cost incurred by it is recovered from the operator. It is also appropriate that the operators should ultimately bear the cost of assessing environmental damage and, as the case may be, assessing an imminent threat of such damage occurring.
- (19) Member States may provide for flat-rate calculation of administrative, legal, enforcement and other general costs to be recovered.
- (20) An operator should not be required to bear the costs of preventive or remedial actions taken pursuant to this Directive in situations where the damage in question or imminent threat thereof is the result of certain events beyond the operator's control. Member States may allow that operators who are not at fault or negligent shall not bear the cost of remedial measures, in situations where the damage in question is the result of emissions or events explicitly authorised or where the potential for damage could not have been known when the event or emission took place.
- (21) Operators should bear the costs relating to preventive measures when those measures should have been taken as a matter of course in order to comply with the legislative, regulatory and administrative provisions regulating their activities or the terms of any permit or authorisation.
- (22) Member States may establish national rules covering cost allocation in cases of multiple party causation. Member States may take into account, in particular, the specific situation of users of products who might not be held responsible for environmental damage in the same conditions as those producing such products. In this case, apportionment of liability should be determined in accordance with national law.
- (23) Competent authorities should be entitled to recover the cost of preventive or remedial measures from an operator within a reasonable period of time from the date on which those measures were completed.
- (24) It is necessary to ensure that effective means of implementation and enforcement are available, while ensuring that the legitimate interests of the relevant operators and other interested parties are adequately safeguarded. Competent authorities should be in charge of specific tasks entailing appropriate administrative discretion, namely the duty to assess the significance of the damage and to determine which remedial measures should be taken.
- (25) Persons adversely affected or likely to be adversely affected by environmental damage should be entitled to ask the competent authority to take action. Environmental protection is, however, a diffuse interest on behalf of which individuals will not always act or will not be in a position to act. Non-governmental organisations promoting environmental protection should therefore also be given the opportunity to properly contribute to the effective implementation of this Directive.
- (26) The relevant natural or legal persons concerned should have access to procedures for the review of the competent authority's decisions, acts or failure to act.
- (27) Member States should take measures to encourage the use by operators of any appropriate insurance or other forms of financial security and the development of financial security instruments and markets in order to provide effective cover for financial obligations under this Directive.
- (28) Where environmental damage affects or is likely to affect several Member States, those Member States should cooperate with a view to ensuring proper and effective preventive or remedial action in respect of any environmental damage. Member States may seek to recover the costs for preventive or remedial actions.
- (29) This Directive should not prevent Member States from maintaining or enacting more stringent provisions in relation to the prevention and remedying of environmental damage; nor should it prevent the adoption by Member States of appropriate measures in relation to situations where double recovery of costs could occur as a result of concurrent action by a competent authority under this Directive and by a person whose property is affected by the environmental damage.
- (30) Damage caused before the expiry of the deadline for implementation of this Directive should not be covered by its provisions.
- (31) Member States should report to the Commission on the experience gained in the application of this Directive so as to enable the Commission to consider, taking into account the impact on sustainable development and future risks to the environment, whether any review of this Directive is appropriate,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Subject matter**

The purpose of this Directive is to establish a framework of environmental liability based on the 'polluter-pays' principle, to prevent and remedy environmental damage.

*Article 2*

**Definitions**

For the purpose of this Directive the following definitions shall apply:

1. 'environmental damage' means:

- (a) damage to protected species and natural habitats, which is 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 Annex I;

Damage to protected species and natural habitats does not include previously identified adverse effects which result from an act by an operator which was expressly authorised by the relevant authorities in accordance with provisions implementing Article 6(3) and (4) or Article 16 of Directive 92/43/EEC or Article 9 of Directive 79/409/EEC or, in the case of habitats and species not covered by Community law, in accordance with equivalent provisions of national law on nature conservation.

- (b) water damage, which is any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as defined in Directive 2000/60/EC, of the waters concerned, with the exception of adverse effects where Article 4(7) of that Directive applies;
- (c) land damage, which is 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;

2. 'damage' means a measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly;

3. 'protected species and natural habitats' means:

- (a) the species mentioned in Article 4(2) of Directive 79/409/EEC or listed in Annex I thereto or listed in Annexes II and IV to Directive 92/43/EEC;
- (b) the habitats of species mentioned in Article 4(2) of Directive 79/409/EEC or listed in Annex I thereto or listed in Annex II to Directive 92/43/EEC, and the natural habitats listed in Annex I to Directive 92/43/EEC and the breeding sites or resting places of the species listed in Annex IV to Directive 92/43/EEC; and
- (c) where a Member State so determines, any habitat or species, not listed in those Annexes which the Member State designates for equivalent purposes as those laid down in these two Directives;

4. 'conservation status' means:

- (a) in respect of a natural habitat, the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within, as the case may be, the European territory of the Member States to which the Treaty applies or the territory of a Member State or the natural range of that habitat;

The conservation status of a natural habitat will be taken as 'favourable' when:

- its natural range and areas it covers within that range are stable or increasing,
- the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and
- the conservation status of its typical species is favourable, as defined in (b);

- (b) in respect of a species, the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within, as the case may be, the European territory of the Member States to which the Treaty applies or the territory of a Member State or the natural range of that species;

The conservation status of a species will be taken as 'favourable' when:

- population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats,
- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;

5. 'waters' mean all waters covered by Directive 2000/60/EC;
6. 'operator' means any natural or legal, private or public person who operates or controls the occupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity;
7. 'occupational activity' means any activity carried out in the course of an economic activity, a business or an undertaking, irrespectively of its private or public, profit or non-profit character;
8. 'emission' means the release in the environment, as a result of human activities, of substances, preparations, organisms or micro-organisms;
9. 'imminent threat of damage' means a sufficient likelihood that environmental damage will occur in the near future;
10. 'preventive measures' means any measures taken in response to an event, act or omission that has created an imminent threat of environmental damage, with a view to preventing or minimising that damage;
11. 'remedial measures' means any action, or combination of actions, including mitigating or interim measures to restore, rehabilitate or replace damaged natural resources and/or impaired services, or to provide an equivalent alternative to those resources or services as foreseen in Annex II;
12. 'natural resource' means protected species and natural habitats, water and land;
13. 'services' and 'natural resources services' mean the functions performed by a natural resource for the benefit of another natural resource or the public;
14. 'baseline condition' means the condition at the time of the damage of the natural resources and services that would have existed had the environmental damage not occurred, estimated on the basis of the best information available;
15. 'recovery', including 'natural recovery', means, in the case of water, protected species and natural habitats the return of damaged natural resources and/or impaired services to baseline condition and in the case of land damage, the elimination of any significant risk of adversely affecting human health;
16. 'costs' means costs which are justified by the need to ensure the proper and effective implementation of this Directive 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.

### Article 3

#### Scope

1. This Directive shall apply to:
  - (a) environmental damage caused by any of the occupational activities listed in Annex III, and to any imminent threat of such damage occurring by reason of any of those activities;
  - (b) damage to protected species and natural habitats caused by any occupational activities other than those listed in Annex III, and to any imminent threat of such damage occurring by reason of any of those activities, whenever the operator has been at fault or negligent.
2. This Directive shall apply without prejudice to more stringent Community legislation regulating the operation of any of the activities falling within the scope of this Directive and without prejudice to Community legislation containing rules on conflicts of jurisdiction.

3. Without prejudice to relevant national legislation, this Directive shall not give private parties a right of compensation as a consequence of environmental damage or of an imminent threat of such damage.

#### Article 4

##### Exceptions

1. This Directive shall not cover environmental damage or an imminent threat of such damage caused by:

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

2. This Directive shall not apply to environmental damage or to any imminent threat of such damage arising from an incident in respect of which liability or compensation falls within the scope of any of the International Conventions listed in Annex IV, including any future amendments thereof, which is in force in the Member State concerned.

3. This Directive shall be without prejudice to the right of the operator to limit his liability in accordance with national legislation implementing the Convention on Limitation of Liability for Maritime Claims (LLMC), 1976, including any future amendment to the Convention, or the Strasbourg Convention on Limitation of Liability in Inland Navigation (CLNI), 1988, including any future amendment to the Convention.

4. This Directive shall not apply to such nuclear risks or environmental damage or imminent threat of such damage as may be caused by the activities covered by the Treaty establishing the European Atomic Energy Community or caused by an incident or activity in respect of which liability or compensation falls within the scope of any of the international instruments listed in Annex V, including any future amendments thereof.

5. This Directive shall only apply to environmental damage or to an imminent threat of such damage caused by pollution of a diffuse character, where it is possible to establish a causal link between the damage and the activities of individual operators.

6. This Directive shall not apply to activities the main purpose of which is to serve national defence or international security nor to activities the sole purpose of which is to protect from natural disasters.

#### Article 5

##### Preventive action

1. Where environmental damage has not yet occurred but there is an imminent threat of such damage occurring, the operator shall, without delay, take the necessary preventive measures.

2. Member States shall provide that, where appropriate, and in any case whenever an imminent threat of environmental damage is not dispelled despite the preventive measures taken by the operator, operators are to inform the competent authority of all relevant aspects of the situation, as soon as possible.

3. The competent authority may, at any time:

- (a) require the operator to provide information on any imminent threat of environmental damage or in suspected cases of such an imminent threat;
- (b) require the operator to take the necessary preventive measures;
- (c) give instructions to the operator to be followed on the necessary preventive measures to be taken; or
- (d) itself take the necessary preventive measures.

4. The competent authority shall require that the preventive measures are taken by the operator. If the operator fails to comply with the obligations laid down in paragraph 1 or 3(b) or (c), cannot be identified or is not required to bear the costs under this Directive, the competent authority may take these measures itself.

#### Article 6

##### Remedial action

1. Where environmental damage has occurred the operator shall, without delay, inform the competent authority of all relevant aspects of the situation and take:

- (a) all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effects on human health or further impairment of services and
- (b) the necessary remedial measures, in accordance with Article 7.

2. The competent authority may, at any time:
- (a) require the operator to provide supplementary information on any damage that has occurred;
  - (b) take, require the operator to take or give instructions to the operator concerning, all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effect on human health, or further impairment of services;
  - (c) require the operator to take the necessary remedial measures;
  - (d) give instructions to the operator to be followed on the necessary remedial measures to be taken; or
  - (e) itself take the necessary remedial measures.

3. The competent authority shall require that the remedial measures are taken by the operator. If the operator fails to comply with the obligations laid down in paragraph 1 or 2(b), (c) or (d), cannot be identified or is not required to bear the costs under this Directive, the competent authority may take these measures itself, as a means of last resort.

#### Article 7

##### Determination of remedial measures

1. Operators shall identify, in accordance with Annex II, potential remedial measures and submit them to the competent authority for its approval, unless the competent authority has taken action under Article 6(2)(e) and (3).
2. The competent authority shall decide which remedial measures shall be implemented in accordance with Annex II, and with the cooperation of the relevant operator, as required.
3. Where several instances of environmental damage have occurred in such a manner that the competent authority cannot ensure that the necessary remedial measures are taken at the same time, the competent authority shall be entitled to decide which instance of environmental damage must be remedied first.

In making that decision, the competent authority shall have regard, *inter alia*, to the nature, extent and gravity of the various instances of environmental damage concerned, and to the possibility of natural recovery. Risks to human health shall also be taken into account.

4. The competent authority shall invite the persons referred to in Article 12(1) and in any case the persons on whose land remedial measures would be carried out to submit their observations and shall take them into account.

#### Article 8

##### Prevention and remediation costs

1. The operator shall bear the costs for the preventive and remedial actions taken pursuant to this Directive.
2. Subject to paragraphs 3 and 4, the competent authority shall recover, *inter alia*, via security over property or other appropriate guarantees from the operator who has caused the damage or the imminent threat of damage, the costs it has incurred in relation to the preventive or remedial actions taken under this Directive.

However, the competent authority may decide not to recover the full costs where the expenditure required to do so would be greater than the recoverable sum or where the operator cannot be identified.

3. An operator shall not be required to bear the cost of preventive or remedial actions taken pursuant to this Directive when he can prove that the environmental damage or imminent threat of such damage:

- (a) was caused by a third party and occurred despite the fact that appropriate safety measures were in place; or
- (b) resulted from compliance with a compulsory order or instruction emanating from a public authority other than an order or instruction consequent upon an emission or incident caused by the operator's own activities.

In such cases Member States shall take the appropriate measures to enable the operator to recover the costs incurred.

4. The Member States may allow the operator not to bear the cost of remedial actions taken pursuant to this Directive where he demonstrates that he was not at fault or negligent and that the environmental damage was caused by:

- (a) an emission or event expressly authorised by, and fully in accordance with the conditions of, an authorisation conferred by or given under applicable national laws and regulations which implement those legislative measures adopted by the Community specified in Annex III, as applied at the date of the emission or event;

(b) an emission or activity or any manner of using a product in the course of an activity which 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.

5. Measures taken by the competent authority in pursuance of Article 5(3) and (4) and Article 6(2) and (3) shall be without prejudice to the liability of the relevant operator under this Directive and without prejudice to Articles 87 and 88 of the Treaty.

#### Article 9

#### Cost allocation in cases of multiple party causation

This Directive is without prejudice to any provisions of national regulations concerning cost allocation in cases of multiple party causation especially concerning the apportionment of liability between the producer and the user of a product.

#### Article 10

#### Limitation period for recovery of costs

The competent authority shall be entitled to initiate cost recovery proceedings against the operator, or if appropriate, a third party who has caused the damage or the imminent threat of damage in relation to any measures taken in pursuance of this Directive within five years from the date on which those measures have been completed or the liable operator, or third party, has been identified, whichever is the later.

#### Article 11

#### Competent authority

1. Member States shall designate the competent authority(ies) responsible for fulfilling the duties provided for in this Directive.

2. The duty to establish which operator has caused the damage or the imminent threat of damage, to assess the significance of the damage and to determine which remedial measures should be taken with reference to Annex II shall rest with the competent authority. To that effect, the competent authority shall be entitled to require the relevant operator to carry out his own assessment and to supply any information and data necessary.

3. Member States shall ensure that the competent authority may empower or require third parties to carry out the necessary preventive or remedial measures.

4. Any decision taken pursuant to this Directive which imposes preventive or remedial measures shall state the exact grounds on which it is based. Such decision shall be notified forthwith to the operator concerned, who shall at the same time be informed of the legal remedies available to him under the laws in force in the Member State concerned and of the time-limits to which such remedies are subject.

#### Article 12

#### Request for action

1. Natural or legal persons:

- (a) affected or likely to be affected by environmental damage or
- (b) having a sufficient interest in environmental decision making relating to the damage or, alternatively,
- (c) alleging the impairment of a right, where administrative procedural law of a Member State requires this as a precondition,

shall be entitled to submit to the competent authority any observations relating to instances of environmental damage or an imminent threat of such damage of which they are aware and shall be entitled to request the competent authority to take action under this Directive.

What constitutes a 'sufficient interest' and 'impairment of a right' shall be determined by the Member States.

To this end, the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of subparagraph (b). Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (c).

2. The request for action shall be accompanied by the relevant information and data supporting the observations submitted in relation to the environmental damage in question.

3. Where the request for action and the accompanying observations show in a plausible manner that environmental damage exists, the competent authority shall consider any such observations and requests for action. In such circumstances the competent authority shall give the relevant operator an opportunity to make his views known with respect to the request for action and the accompanying observations.

4. The competent authority shall, as soon as possible and in any case in accordance with the relevant provisions of national law, inform the persons referred to in paragraph 1, which submitted observations to the authority, of its decision to

accede to or refuse the request for action and shall provide the reasons for it.

5. Member States may decide not to apply paragraphs 1 and 4 to cases of imminent threat of damage.

#### Article 13

##### Review procedures

1. The persons referred to in Article 12(1) shall have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the competent authority under this Directive.

2. This Directive shall be without prejudice to any provisions of national law which regulate access to justice and those which require that administrative review procedures be exhausted prior to recourse to judicial proceedings.

#### Article 14

##### Financial security

1. Member States shall take measures to encourage the development of financial security instruments and markets by the appropriate economic and financial operators, including financial mechanisms in case of insolvency, with the aim of enabling operators to use financial guarantees to cover their responsibilities under this Directive.

2. The Commission, before 30 April 2010 shall present a report on the effectiveness of the Directive in terms of actual remediation of environmental damages, on the availability at reasonable costs and on conditions of insurance and other types of financial security for the activities covered by Annex III. The report shall also consider in relation to financial security the following aspects: a gradual approach, a ceiling for the financial guarantee and the exclusion of low-risk activities. In the light of that report, and of an extended impact assessment, including a cost-benefit analysis, the Commission shall, if appropriate, submit proposals for a system of harmonised mandatory financial security.

#### Article 15

##### Cooperation between Member States

1. Where environmental damage affects or is likely to affect several Member States, those Member States shall cooperate, including through the appropriate exchange of information, with a view to ensuring that preventive action and, where necessary, remedial action is taken in respect of any such environmental damage.

2. Where environmental damage has occurred, the Member State in whose territory the damage originates shall provide sufficient information to the potentially affected Member States.

3. Where a Member State identifies damage within its borders which has not been caused within them it may report the issue to the Commission and any other Member State concerned; it may make recommendations for the adoption of preventive or remedial measures and it may seek, in accordance with this Directive, to recover the costs it has incurred in relation to the adoption of preventive or remedial measures.

#### Article 16

##### Relationship with national law

1. This Directive shall not prevent Member States from maintaining or adopting more stringent provisions in relation to the prevention and remedying of environmental damage, including the identification of additional activities to be subject to the prevention and remediation requirements of this Directive and the identification of additional responsible parties.

2. This Directive shall not prevent Member States from adopting appropriate measures, such as the prohibition of double recovery of costs, in relation to situations where double recovery could occur as a result of concurrent action by a competent authority under this Directive and by a person whose property is affected by environmental damage.

#### Article 17

##### Temporal application

This Directive shall not apply to:

- damage caused by an emission, event or incident that took place before the date referred to in Article 19(1),
- damage caused by an emission, event or incident which takes place subsequent to the date referred to in Article 19(1) when it derives from a specific activity that took place and finished before the said date,
- damage, if more than 30 years have passed since the emission, event or incident, resulting in the damage, occurred.

#### Article 18

##### Reports and review

1. Member States shall report to the Commission on the experience gained in the application of this Directive by 30 April 2013 at the latest. The reports shall include the information and data set out in Annex VI.

2. On that basis, the Commission shall submit a report to the European Parliament and to the Council before 30 April 2014, which shall include any appropriate proposals for amendment.

3. The report, referred to in paragraph 2, shall include a review of:

(a) the application of:

- Article 4(2) and (4) in relation to the exclusion of pollution covered by the international instruments listed in Annexes IV and V from the scope of this Directive, and
- Article 4(3) in relation to the right of an operator to limit his liability in accordance with the international conventions referred to in Article 4(3).

The Commission shall take into account experience gained within the relevant international fora, such as the IMO and Euratom and the relevant international agreements, as well as the extent to which these instruments have entered into force and/or have been implemented by Member States and/or have been modified, taking account of all relevant instances of environmental damage resulting from such activities and the remedial action taken and the differences between the liability levels in Member States, and considering the relationship between shipowners' liability and oil receivers' contributions, having due regard to any relevant study undertaken by the International Oil Pollution Compensation Funds.

- b) the application of this Directive to environmental damage caused by genetically modified organisms (GMOs), particularly in the light of experience gained within relevant international fora and Conventions, such as the Convention on Biological Diversity and the Cartagena Protocol on Biosafety, as well as the results of any incidents of environmental damage caused by GMOs;
- c) the application of this Directive in relation to protected species and natural habitats;

d) the instruments that may be eligible for incorporation into Annexes III, IV and V.

#### Article 19

#### Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 April 2007. They shall forthwith inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive together with a table showing how the provisions of this Directive correspond to the national provisions adopted.

#### Article 20

#### Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

#### Article 21

#### Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 21 April 2004.

*For the European Parliament*  
The President  
P. COX

*For the Council*  
The President  
D. ROCHE

## ANNEX I

**CRITERIA REFERRED TO IN ARTICLE 2(1)(A)**

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),
- 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,
- 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.

—

## ANNEX II

**REMEDYING OF ENVIRONMENTAL DAMAGE**

This Annex 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 and/or impaired services to, or towards, baseline condition;
- (b) 'Complementary' remediation is any remedial measure taken in relation to natural resources and/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 and/or services that occur from the date of damage occurring until primary remediation has achieved its full effect;
- (d) 'interim losses' means losses which result from the fact that the damaged natural resources and/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 and/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 and/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 and/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 competent authority 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 and/or services is practicable, but valuation of the replacement natural resources and/or services cannot be performed within a reasonable time-frame or at a reasonable cost, then the competent authority 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 and/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 and/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,
  - 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 or that restore it more slowly can be chosen. This decision can be taken only if the natural resources and/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 and/or services as were foregone. This will be the case, for example, when the equivalent natural resources and/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 Article 7(3), the competent authority 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.

---

## ANNEX III

## ACTIVITIES REFERRED TO IN ARTICLE 3(1)

1. The operation of installations subject to permit in pursuance of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control <sup>(1)</sup>. That means all activities listed in Annex I of Directive 96/61/EC with the exception of installations or parts of installations used for research, development and testing of new products and processes.
2. Waste management operations, including the collection, transport, recovery and disposal of waste and hazardous waste, including the supervision of such operations and after-care of disposal sites, subject to permit or registration in pursuance of Council Directive 75/442/EEC of 15 July 1975 on waste <sup>(2)</sup> and Council Directive 91/689/EEC of 12 December 1991 on hazardous waste <sup>(3)</sup>.

Those operations include, inter alia, the operation of landfill sites under Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste <sup>(4)</sup> and the operation of incineration plants under Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste <sup>(5)</sup>.

For the purpose of this Directive, Member States may decide that those operations shall not include the spreading of sewage sludge from urban waste water treatment plants, treated to an approved standard, for agricultural purposes.

3. All discharges into the inland surface water, which require prior authorisation in pursuance of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances, discharged into the aquatic environment of the Community <sup>(6)</sup>.
4. All discharges of substances into groundwater which require prior authorisation in pursuance of Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances <sup>(7)</sup>.
5. The discharge or injection of pollutants into surface water or groundwater which require a permit, authorisation or registration in pursuance of Directive 2000/60/EC.
6. Water abstraction and impoundment of water subject to prior authorisation in pursuance of Directive 2000/60/EC.
7. Manufacture, use, storage, processing, filling, release into the environment and onsite transport of
  - (a) dangerous substances as defined in Article 2(2) of Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous substances <sup>(8)</sup>;
  - (b) dangerous preparations as defined in Article 2(2) of Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations <sup>(9)</sup>;
  - (c) plant protection products as defined in Article 2(1) of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market <sup>(10)</sup>;
  - (d) biocidal products as defined in Article 2(1)(a) of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market <sup>(11)</sup>.

<sup>(1)</sup> OJ L 257, 10.10.1996, p. 26. Directive as last amended by Regulation (EC) No 1882/2003.

<sup>(2)</sup> OJ L 194, 25.7.1975, p. 39. Directive as last amended by Regulation (EC) No 1882/2003.

<sup>(3)</sup> OJ L 377, 31.12.1991, p. 20. Directive as amended by Directive 94/31/EC (OJ L 168, 2.7.1994, p. 28).

<sup>(4)</sup> OJ L 182, 16.7.1999, p. 1. Directive as amended by Regulation (EC) No 1882/2003.

<sup>(5)</sup> OJ L 332, 28.12.2000, p. 91.

<sup>(6)</sup> OJ L 129, 18.5.1976, p. 23. Directive as last amended by Directive 2000/60/EC.

<sup>(7)</sup> OJ L 20, 26.1.1980, p. 43. Directive as amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).

<sup>(8)</sup> OJ 196, 16.8.1967, p. 1. Directive as last amended by Regulation (EC) No 807/2003.

<sup>(9)</sup> OJ L 200, 30.7.1999, p. 1. Directive as last amended by Regulation (EC) No 1882/2003.

<sup>(10)</sup> OJ L 230, 19.8.1991, p. 1. Directive as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).

<sup>(11)</sup> OJ L 123, 24.4.1998, p. 1. Directive as amended by Regulation (EC) No 1882/2003.

8. Transport by road, rail, inland waterways, sea or air of dangerous goods or polluting goods as defined either in Annex A to Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road <sup>(1)</sup> or in the Annex to Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail <sup>(2)</sup> or as defined in Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods <sup>(3)</sup>.
  9. The operation of installations subject to authorisation in pursuance of Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants <sup>(4)</sup> in relation to the release into air of any of the polluting substances covered by the aforementioned Directive.
  10. Any contained use, including transport, involving genetically modified micro-organisms as defined by Council Directive 90/219/EEC of 23 April 1990 on the contained use of genetically modified micro-organisms <sup>(5)</sup>.
  11. Any deliberate release into the environment, transport and placing on the market of genetically modified organisms as defined by Directive 2001/18/EC of the European Parliament and of the Council <sup>(6)</sup>.
  12. Transboundary shipment of waste within, into or out of the European Union, requiring an authorisation or prohibited in the meaning of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community <sup>(7)</sup>.
- 

<sup>(1)</sup> OJ L 319, 12.12.1994, p. 7. Directive as last amended by Commission Directive 2003/28/EC (OJ L 90, 8.4.2003, p. 45).

<sup>(2)</sup> OJ L 235, 17.9.1996, p. 25. Directive as last amended by Commission Directive 2003/29/EC (OJ L 90, 8.4.2003, p. 47).

<sup>(3)</sup> OJ L 247, 5.10.1993, p. 19. Directive as last amended by Directive 2002/84/EC of the European Parliament and of the Council (OJ L 324, 29.11.2002, p. 53).

<sup>(4)</sup> OJ L 188, 16.7.1984, p. 20. Directive as amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).

<sup>(5)</sup> OJ L 117, 8.5.1990, p. 1. Directive as last amended by Regulation (EC) No 1882/2003.

<sup>(6)</sup> OJ L 106, 17.4.2001, p. 1. Directive as last amended by Regulation (EC) No 1830/2003 (OJ L 268, 18.10.2003, p. 24).

<sup>(7)</sup> OJ L 30, 6.2.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 2557/2001 (OJ L 349, 31.12.2001, p. 1).

## ANNEX IV

**INTERNATIONAL CONVENTIONS REFERRED TO IN ARTICLE 4(2)**

- (a) the International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage;
  - (b) the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage;
  - (c) the International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage;
  - (d) 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;
  - (e) the Convention of 10 October 1989 on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels.
-

## ANNEX V

**INTERNATIONAL INSTRUMENTS REFERRED TO IN ARTICLE 4(4)**

- (a) the 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;
  - (b) the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage;
  - (c) the Convention of 12 September 1997 on Supplementary Compensation for Nuclear Damage;
  - (d) the Joint Protocol of 21 September 1988 relating to the Application of the Vienna Convention and the Paris Convention;
  - (e) the Brussels Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material.
-

## ANNEX VI

**INFORMATION AND DATA REFERRED TO IN ARTICLE 18(1)**

The reports referred to in Article 18(1) shall include a list of instances of environmental damage and instances of liability under this Directive, with the following information and data for each instance:

1. Type of environmental damage, date of occurrence and/or discovery of the damage and date on which proceedings were initiated under this Directive.
2. Activity classification code of the liable legal person(s) <sup>(1)</sup>.
3. Whether there has been resort to judicial review proceedings either by liable parties or qualified entities. (The type of claimants and the outcome of proceedings shall be specified.)
4. Outcome of the remediation process.
5. Date of closure of proceedings.

Member States may include in their reports any other information and data they deem useful to allow a proper assessment of the functioning of this Directive, for example:

1. Costs incurred with remediation and prevention measures, as defined in this Directive:
  - paid for directly by liable parties, when this information is available;
  - recovered ex post facto from liable parties;
  - unrecovered from liable parties. (Reasons for non-recovery should be specified.)
2. Results of the actions to promote and the implementation of the financial security instruments used in accordance with this 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 this Directive.

---

<sup>(1)</sup> The NACE code can be used (Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1).

**Commission declaration on Article 14(2) — Environmental liability Directive**

The Commission takes note of article 14(2). In accordance with this article, the Commission will present a report, six years after the entry into force of the Directive, covering, *inter alia*, the availability at reasonable costs and conditions of insurance and other types of financial security. The report will in particular take into account the development by the market forces of appropriate financial security products in relation to the aspects referred to. It will also consider a gradual approach according to the type of damage and the nature of the risks. In the light of the report, the Commission will, if appropriate, submit as soon as possible proposals. The Commission will carry out an impact assessment, extended to the economic, social and environmental aspects, in accordance with the relevant existing rules and in particular the inter-institutional agreement on Better Law-Making and its Communication on Impact Assessment [COM(2002) 276 final].

---

---

STATUTORY INSTRUMENTS

---

2009 No. 153

**ENVIRONMENTAL PROTECTION, ENGLAND**

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

<i>Made</i> - - - -	<i>29th January 2009</i>
<i>Laid before Parliament</i>	<i>2nd February 2009</i>
<i>Coming into force</i> - -	<i>1st March 2009</i>

**CONTENTS**

**PART 1**

**Introductory provisions**

1. Title, commencement and application
2. Interpretation
3. References to Community instruments
4. Meaning of “environmental damage”
5. Environmental damage to which these Regulations apply
6. Areas of application
7. Other legislation
8. Exemptions
9. Exemption from damage to water
10. Enforcing authorities under the Environmental Permitting (England and Wales) Regulations 2007
11. Enforcing authorities in other cases
12. Enforcement

**PART 2**

**Preventing environmental damage**

13. Preventing environmental damage
14. Preventing further environmental damage
15. Action by the enforcing authority
16. Following instructions from a public authority

**PART 3**

**Remediation**

17. Assessment of damage
18. Determining liability to remediate
19. Appeals against liability to remediate
20. Remediation notices
21. Appeal against the remediation notice
22. Further provisions on remediation notices
23. Action by the enforcing authority

## PART 4

### Administration and enforcement

24. Costs when the enforcing authority acts instead of the operator
25. Costs concerned with administration
26. Proceedings for costs by an enforcing authority
27. Costs recoverable from owner to be a charge on premises
28. Recovery of costs from other persons
29. Requests for action by interested parties
30. Grant of and compensation for rights of entry etc.
31. Powers of authorised persons
32. Provision of information to the enforcing authority
33. Enforcement
34. Penalties

---

SCHEDULE 1 — Damage to protected species, natural habitats and sites of special scientific interest

SCHEDULE 2 — Activities causing damage

SCHEDULE 3 — Permits, etc.

SCHEDULE 4 — Remediation

PART 1 — Remediation of damage to natural resources other than land

PART 2 — Remediation of damage to land

SCHEDULE 5 — Appeals

PART 1 — Appeals when the Secretary of State is not the enforcing authority

PART 2 — Appeals when the Secretary of State is the enforcing authority

SCHEDULE 6 — Compensation

The Secretary of State has been designated in respect of the environment<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup>, and makes these Regulations under the powers conferred by that section as read with paragraph 1A of Schedule 2 to that Act.

The Regulations make provision for a purpose mentioned in section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 and it appears to the Secretary of State that it

---

<sup>(a)</sup> S.I. 2008/301.

<sup>(b)</sup> 1972 c. 68. Paragraph 1A was inserted into Schedule 2 by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).

is expedient for the Community instruments referred to in these Regulations to be construed as references to those instruments as amended from time to time.

## PART 1

### Introductory provisions

#### Title, commencement and application

1.—(1) These Regulations may be cited as the Environmental Damage (Prevention and Remediation) Regulations 2009 and come into force on 1st March 2009.

(2) They apply in England and the areas specified in regulation 6.

#### Interpretation

2.—(1) In these Regulations—

“activity” means any economic activity, whether public or private and whether or not carried out for profit and “operator” means the person who operates or controls such an activity, including the holder of a permit or authorisation relating to that activity, or the person registering or notifying such an activity;

“groundwater” means all water that is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil;

“local authority” means—

- (a) where there is a unitary authority for that local government area, that authority;
- (b) where there is not a unitary authority—
  - (i) in a metropolitan district, the council of that district;
  - (ii) in a non-metropolitan county, the district council;
  - (iii) in each London borough, the council of that borough;
  - (iv) in the City of London, the Common Council;
  - (v) on the Isles of Scilly, the Council of the Isles of Scilly;

“natural habitat” means—

- (a) the habitats of species mentioned in Article 4(2) of, or Annex I to, Council Directive 79/409/EEC on the conservation of wild birds(a) or listed in Annex II to Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(b);
- (b) the natural habitats listed in Annex I to Council Directive 92/43/EEC; and
- (c) the breeding sites or resting places of the species listed in Annex IV to Council Directive 92/43/EEC;

“natural resource” means—

- (a) protected species;
- (b) natural habitats;
- (c) species or habitats on a site of special scientific interest for which the site has been notified under section 28 of the Wildlife and Countryside Act 1981(c);

---

(a) OJ No L 103, 25.4.1979, p. 1 as last amended by Council Directive 2008/102/EC, OJ No L323, 3.12.2008, p. 31).  
(b) OJ No L 206, 22.7.1992, p. 7 as last amended by Council Directive 2006/105/EC (OJ No L 363, 20.12.2006, p. 368).  
(c) 1981 c.69. Part II of the Act (which includes section 28) was inserted by Schedule 9 to the Countryside and Rights of Way Act 2000 (2000 c. 37) and subsequently amended by Schedule 11 to the Natural Environment and Rural Communities Act 2006 (2006 c. 16).

(d) water; and

(e) land;

“protected species” means the species mentioned in Article 4(2) of Council Directive 79/409/EEC or listed in Annex I to that Directive or Annexes II and IV to Council Directive 92/43/EEC;

“services” means the functions performed by a natural resource for the benefit of another natural resource or the public.

(2) Unless otherwise defined in these Regulations, expressions used in 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(a) have the same meaning in these Regulations.

### References to Community instruments

3. References in Schedule 2 to Community instruments are references to those instruments as amended from time to time.

### Meaning of “environmental damage”

4.—(1) These Regulations apply in relation to the prevention and remediation of environmental damage; and “environmental damage” is damage to—

- (a) protected species or natural habitats, or a site of special scientific interest,
- (b) surface water or groundwater, or
- (c) land,

as specified in this regulation.

(2) Environmental damage to protected species or natural habitats or a site of special scientific interest means damage of a kind specified in Schedule 1.

(3) Environmental damage to surface water means damage to a surface water body classified as such pursuant to Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(b) such that—

- (a) a biological quality element listed in Annex V to that Directive,
- (b) the level of a chemical listed in the legislation in Annex IX or a chemical listed in Annex X to that Directive, or
- (c) a physicochemical quality element listed in Annex V to that Directive,

changes sufficiently to lower the status of the water body in accordance with Directive 2000/60/EC of the European Parliament and of the Council (whether or not the water body is in fact reclassified as being of lower status).

(4) Environmental damage to groundwater means any damage to a body of groundwater such that its conductivity, level or concentration of pollutants changes sufficiently to lower its status pursuant to Directive 2000/60/EC of the European Parliament and of the Council (and for pollutants Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration(c)) (whether or not the body of groundwater is in fact reclassified as being of lower status).

(5) Environmental damage to land means contamination of land by substances, preparations, organisms or micro-organisms that results in a significant risk of adverse effects on human health.

---

(a) OJ No L 143, 30.4.2004, p. 56 as amended by Directive 2006/21/EC (OJ No L102, 11.4.2006, p. 15).

(b) OJ No L 327, 22.12.2000, p. 1 as last amended by Directive 2008/105/EC of the European Parliament and of the Council (OJ No L 348, 24.12.2008, p. 84).

(c) OJ No L 372, 27.12/2006, p. 19.

**Environmental damage to which these Regulations apply**

5.—(1) These Regulations apply in relation to environmental damage if it is caused by an activity in Schedule 2.

(2) In the case of environmental damage to protected species or natural habitats or a site of special scientific interest the Regulations also apply in relation to environmental damage caused by any other activity if the operator—

- (a) intended to cause environmental damage; or
- (b) was negligent as to whether environmental damage would be caused.

**Areas of application**

6.—(1) The damage must be in an area specified in the following table.

<i>Type of damage</i>	<i>Area in which these Regulations apply</i>
Damage to water	England and all water up to one nautical mile seaward from the baseline in England
Damage in a site of special scientific interest	England
Damage to protected species or natural habitats	England The seabed of the continental shelf <sup>(a)</sup> Anywhere other than the seabed in the renewable energy zone <sup>(a)</sup>
Damage to land	England

<sup>(a)</sup> These areas do not include areas that form part of Northern Ireland, Scotland or Wales or the territorial sea adjacent to the Isle of Man, Jersey<sup>(a)</sup> or Guernsey; and for these purposes—

- (i) Wales is as defined in section 158(1) of the Government of Wales Act 2006<sup>(b)</sup>;
- (ii) Scotland is as defined in section 126(1) of the Scotland Act 1998<sup>(c)</sup>; and
- (iii) Northern Ireland is as defined in section 98 of the Northern Ireland Act 1998<sup>(d)</sup>.

(2) In this table—

“the baseline” means the baselines from which the breadth of the territorial sea is measured for the purposes of the Territorial Sea Act 1987<sup>(e)</sup>;

“the continental shelf” means the areas designated by Order in Council under section 1(7) of the Continental Shelf Act 1964<sup>(f)</sup>; and

“the renewable energy zone” means the waters superjacent to the seabed situated within the areas designated by Order in Council under section 84(4) of the Energy Act 2004<sup>(g)</sup>.

(a) See section 1 of the Territorial Sea Act 1987 (c. 49) as extended to Jersey by the Territorial Sea Act 1987(Jersey) Order 1997 (S. I. 1997/278) as amended by S.I. 2002/250, and to the Isle of Man by the Territorial Sea Act 1987 (Isle of Man) Order 1991 (S.I. 1991/1722).

(b) 2006 c. 32.

(c) 1998 c. 46.

(d) 1998 c. 47.

(e) 1987 c. 49.

(f) 1964 c. 29. Areas have been designated under section 1(7) by S.I. 1987/1265, 2000/3062 and 2001/3670. Section 1(7) was amended by paragraph 1 of Schedule 3 to the Oil and Gas (Enterprise) Act 1982 (c. 23).

(g) 2004 c. 20. Areas have been designated under section 84(4) by S.I. 2004/2668.

## Other legislation

7.—(1) These Regulations are without prejudice to any other enactment concerning damage to the environment.

(2) They are without prejudice to the right of an operator to limit liability in accordance with the Convention on Limitation of Liability for Maritime Claims 1976(a).

## Exemptions

8.—(1) These Regulations do not apply in relation to—

- (a) damage that took place before the coming into force of these Regulations;
- (b) damage that takes place after that date, or is threatened after that date, but is caused by an incident, event or emission that took place before that date; or
- (c) damage caused by an incident, event or emission that takes place after that date if it derives from an activity that took place and finished before that date.

(2) They do not apply in relation to environmental damage caused by—

- (a) an act of terrorism;
- (b) an exceptional natural phenomenon, provided the operator of the activity concerned took all reasonable precautions to protect against damage being caused by such an event;
- (c) activities the sole purpose of which is to protect from natural disasters;
- (d) an incident in respect of which liability or compensation falls within the scope of—
  - (i) the International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage;
  - (ii) the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage(b); or
  - (iii) the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001(c);
- (e) activities the main purpose of which is to serve national defence or international security;
- (f) radioactivity from an activity covered by the Treaty establishing the European Atomic Energy Community or caused by an incident or activity in respect of which liability or compensation falls within the scope of the 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; or
- (g) damage caused in the course of commercial sea fishing if all legislation relating to that fishing was complied with.

(3) They only apply to environmental damage caused by pollution of a diffuse character if it is possible to establish a causal link between the damage and specific activities.

## Exemption from damage to water

9.—(1) Damage to water does not include—

- (a) damage caused by new modifications to the physical characteristics of a surface water body,
- (b) an alteration to the level of a body of groundwater pursuant to Directive 2000/60/EC of the European Parliament and of the Council, or

---

(a) The Convention is set out in Schedule 7 to the Merchant Shipping Act 1995 (c. 21).

(b) Both these conventions were implemented in the Merchant Shipping Act 1995 (1995 c. 21).

(c) Implemented in the Merchant Shipping Act 1995 by amendments made to that Act by S.I. 2006/1244.

- (c) deterioration from high status to good status of a body of surface water resulting from new sustainable human development activities pursuant to that Directive,

if all the conditions in paragraph (2) are fulfilled.

(2) The conditions are—

- (a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;
- (b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 of Directive 2000/60/EC of the European Parliament and of the Council and the objectives are reviewed every six years;
- (c) the reasons for those modifications or alterations are of overriding public interest, or the result of the damage is outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development; and
- (d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means.

**Enforcing authorities under the Environmental Permitting (England and Wales) Regulations 2007**

10.—(1) These Regulations are enforced in accordance with this regulation if the damage is caused by an installation, waste operation or mobile plant that requires a permit or registration under the Environmental Permitting (England and Wales) Regulations 2007(a).

(2) If the Environment Agency is responsible for granting the permit, they are enforced by the Environment Agency in all cases.

(3) If the local authority is responsible for granting the permit—

- (a) Part 2 is enforced by the local authority;
- (b) Part 3 is enforced by—
  - (i) the local authority if the damage is to land;
  - (ii) the Environment Agency if the damage is to water;
  - (iii) Natural England if the damage is to natural habitats or protected species or a site of special scientific interest.

**Enforcing authorities in other cases**

11. If the damage 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

(a) S. I. 2007/3538.

<i>Type of environmental damage</i>	<i>Area of damage</i>	<i>Enforcing authority</i>
Damage to protected species or natural habitats or a site of special scientific interest—	land	Natural England
	water but not in the sea <sup>(1)</sup>	Environment Agency
	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

<sup>(1)</sup> "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, creek, bay or river.

#### **Enforcement**

12.—(1) If there is more than one type of damage, so that there is more than one enforcing authority, these Regulations are enforced by any or all of the specified enforcing authorities.

(2) An enforcing authority may appoint any other enforcing authority to act on its behalf.

## **PART 2**

### **Preventing environmental damage**

#### **Preventing environmental damage**

13.—(1) An operator of an activity that causes an imminent threat of environmental damage, or an imminent threat of damage which there are reasonable grounds to believe will become environmental damage, must immediately—

- (a) take all practicable steps to prevent the damage; and
- (b) (unless the threat has been eliminated) notify all relevant details to the enforcing authority appearing to be the appropriate one.

(2) The enforcing authority may serve a notice on that operator that—

- (a) describes the threat;
- (b) specifies the measures required to prevent the damage; and
- (c) requires the operator to take those measures, or measures at least equivalent to them, within the period specified in the notice.

(3) Failure to comply with paragraph (1) or a notice served under paragraph (2) is an offence.

### **Preventing further environmental damage**

14.—(1) An operator of an activity that has caused environmental damage, or has caused damage where there are reasonable grounds to believe that the damage is or will become environmental damage, must immediately—

- (a) take all practicable steps to prevent further damage; and
  - (b) notify all relevant details to the enforcing authority appearing to be the appropriate one.
- (2) The enforcing authority may serve a notice on that operator that—
- (a) describes the damage;
  - (b) requires the operator to provide additional information on any damage that has occurred;
  - (c) specifies the measures required to prevent further damage; and
  - (d) requires the operator to take those measures, or measures at least equivalent to them, within the period specified in the notice.
- (3) Failure to comply with paragraph (1) or a notice served under paragraph (2) is an offence.

### **Action by the enforcing authority**

15. Any duty in this Part on the operator of an activity may be carried out by the enforcing authority instead of the operator—

- (a) in an emergency;
- (b) if the operator cannot be ascertained; or
- (c) if the operator fails to comply with a notice.

### **Following instructions from a public authority**

16. When an operator acts in accordance with the instructions of a public authority, and as a result causes or threatens to cause environmental damage, and accordingly action is taken under regulations 13, 14 or 15 then, unless the instructions related to an emission or incident caused by the operator's own activities, the operator may recover the costs of actions under those regulations from that public authority.

## **PART 3**

### **Remediation**

#### **Assessment of damage**

17. Where damage has been caused, and there are reasonable grounds for believing that it is, or may be, environmental damage, the enforcing authority must establish whether or not it is environmental damage.

#### **Determining liability to remediate**

18.—(1) If the enforcing authority decides that the damage is environmental damage it must notify the operator of any activity or activities that caused the damage (referred to in these Regulations as “the responsible operator”) that—

- (a) the damage is environmental damage;
- (b) the responsible operator's activity was a cause of the environmental damage;
- (c) the responsible operator must submit proposals, within a time specified by the enforcing authority, for measures that will achieve the remediation of the environmental damage in accordance with Schedule 4; and

(d) the responsible operator has a right to appeal.

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

### **Appeals against liability to remediate**

19.—(1) A person served with notification under regulation 18 may notify the Secretary of State that that person intends to appeal against that notification.

(2) Notice of appeal must be within 28 days of service of the notification under regulation 18 unless the time limit is extended by the Secretary of State.

(3) The grounds of appeal are—

- (a) the operator's activity was not a cause of the environmental 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 responsible 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 a permit listed in Schedule 3;
- (e) the responsible 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;
- (f) the environmental damage was the result of an act of a third party and occurred despite the fact that the responsible operator took all appropriate safety measures.

(4) Schedule 5 contains procedures for the appeal.

(5) The person deciding the appeal may confirm or quash the notice.

### **Remediation notices**

20.—(1) Once it receives the proposals from the responsible operator (or, if a proposal is not received within the specified time limit, at any time after the time limit has expired), the enforcing authority must, so far as is practicable, consult—

- (a) anyone who has notified an enforcing authority under regulation 29, 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 must serve a remediation notice on the responsible operator 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 must be taken;
- (d) any additional monitoring or investigative measures that the responsible operator must carry out during remediation; and
- (e) the right of appeal against the remediation notice.

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

### **Appeal against the remediation notice**

21.—(1) The responsible operator may notify the Secretary of State that that person intends to appeal against the remediation notice on the grounds that its contents are unreasonable.

(2) An appeal may only be brought against those parts of the remediation notice that are different from proposals made by the responsible operator.

(3) Notice of appeal must be served within 28 days of service of the remediation notice unless the time limit is extended by the Secretary of State.

(4) Schedule 5 contains procedures for the appeal.

(5) The Secretary of State or the appointed person may confirm, vary or quash the notice, and must give written notification of the final decision and the reasons for it, and may, if appropriate, add further compensatory remediation requirements necessitated by the lapse of time since the remediation notice was served.

(6) A remediation notice need not be complied with pending determination of an appeal unless the person hearing the appeal directs otherwise.

### **Further provisions on remediation notices**

22. An enforcing authority may serve further remediation notices at any time while remediation is being carried out or, if remediation has not been achieved, at the end of the remediation period, requiring further or different remediation.

### **Action by the enforcing authority**

23. 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 a responsible operator cannot be identified;
- (b) if a responsible operator fails to comply with a remediation notice, whether or not an appeal is pending; or
- (c) if the responsible operator is not required to remediate under these Regulations.

## **PART 4**

### **Administration and enforcement**

#### **Costs when the enforcing authority acts instead of the operator**

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

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

#### **Costs concerned with administration**

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

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

- (a) assessing whether the damage is environmental damage;

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

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

#### **Proceedings for costs by an enforcing authority**

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

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

whichever is the later.

#### **Costs recoverable from owner to be a charge on premises**

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

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

(2) A notice served under this regulation must—

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

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

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

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

until the costs and interest are recovered.

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

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

(7) On such an appeal the court may—

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

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

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

#### **Recovery of costs from other persons**

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

#### **Requests for action by interested parties**

29.—(1) Any person—

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

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

(2) A notification must be accompanied by—

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

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

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

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

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

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

#### **Grant of and compensation for rights of entry etc.**

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

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

---

(a) 1925 c. 20.

### **Powers of authorised persons**

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

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

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

(4) In addition, a person authorised by the Secretary of State enforcing these Regulations in relation to the sea may at any time board and inspect—

(a) a ship or marine installation in the United Kingdom territorial waters adjacent to England; or

(b) a United Kingdom ship (within the meaning of section 1(3) of the Merchant Shipping Act 1995) or a marine installation in the renewable energy zone (as defined in section 84 of the Energy Act 2004(b)).

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

(a) to stop; or

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

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

(a) to stop; or

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

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

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

### **Provision of information to the enforcing authority**

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

### **Enforcement**

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

### **Penalties**

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

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

---

(a) 1995 c. 25.  
(b) 2004 c. 20.

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

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

- (a) any director, manager, secretary or other similar person of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

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

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

*Phil Hunt*

Minister of State

29th January 2009

Department for Environment, Food and Rural Affairs

## SCHEDULE 1

Regulation 4

### Damage to protected species, natural habitats and sites of special scientific interest

#### **Damage to protected species and natural habitats**

1.—(1) In the case of protected species or natural habitat (other than damage on a site of special scientific interest to which paragraph 4 applies) the damage must be such that it has a significant adverse effect on reaching or maintaining the favourable conservation status of the protected species or natural habitat taking into account—

- (a) the conservation status at the time of the damage;
- (b) the services provided by the amenities they produce;
- (c) their capacity for natural regeneration;
- (d) the number of individuals, their density or the area covered;
- (e) the role of the particular individuals or of the damaged area in relation to the species or to the habitat conservation and the rarity of the species or habitat assessed at the relevant level whether local, regional or Community-wide;
- (f) the capacity of the species for propagation, its viability or the capacity of the habitat for natural regeneration; and
- (g) the capacity of the species or habitat to recover within a short time of the damage being caused to a condition that leads to its state at the time of the damage or better without any intervention other than increased protection measures.

#### **Conservation status of natural habitats**

2.—(1) A natural habitat’s conservation status is the sum of the influences acting on that habitat and its typical species that may affect its long term natural distribution, structure and functions as well as the long term survival of its typical species.

(2) Its conservation status is favourable if—

- (a) the natural range and areas covered within that natural range are stable or increasing;

- (b) the specific structure and functions which are necessary for the long term maintenance of the natural habitat exist and are likely to continue to exist for the foreseeable future; and
- (c) the conservation status of its typical species is favourable.

#### **Conservation status of species**

3.—(1) A species' conservation status is the sum of the influences acting on the species concerned that may affect the long term distribution and abundance of its populations.

(2) The conservation status is favourable if—

- (a) the population dynamics data on the species concerned indicate that it is maintaining itself on a long term basis as a viable component of its natural habitat;
- (b) the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future; and
- (c) there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long term basis.

#### **Sites of special scientific interest**

4.—(1) In the case of a site of special scientific interest, the damage must be to—

- (a) the species or habitats notified under section 28 of the Wildlife and Countryside Act 1981(a); or
- (b) protected species or natural habitats.

(2) The damage must have an adverse effect on the integrity of the site (that is, the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats or the levels of populations of the species affected).

#### **Express authorisation**

5. Damage to protected species and natural habitats, and damage on a site of special scientific interest, does not include damage caused by an act expressly authorised by the relevant authorities in accordance with the Conservation (Natural Habitats, etc.) Regulations 1994(b) or Part II of the Wildlife and Countryside Act 1981.

## **SCHEDULE 2**

Regulation 5

### **Activities causing damage**

#### **Operations to which this Schedule applies**

1. This Schedule lists the activities for which there is liability under regulation 5(1).

#### **Operation of permitted installations**

2. The operation of installations subject to permit in pursuance of Directive 2008/1/EC of the European Parliament and of the Council concerning integrated pollution prevention and control(c)

(a) 1981 c. 69. Part II of the Act (which includes section 28) was inserted by Schedule 9 to the Countryside and Rights of Way Act 2000 (2000 c. 37) and subsequently amended by Schedule 11 to the Natural Environment and Rural Communities Act 2006 (2006 c. 16).

(b) S.I. 1994/2716 as last amended by S.I. 2009/6.

(c) OJ No L 24, 29.1.2008, p. 8.

(all activities listed in Annex I to that Directive with the exception of installations or parts of installations used for research, development and testing of new products and processes).

### **Waste management operations**

3.—(1) Waste management operations, including the collection, transport, recovery and disposal of waste and hazardous waste, including the supervision of such operations and after-care of disposal sites, subject to permit or registration in pursuance of Directive 2006/12/EC of the European Parliament and of the Council on waste(a) and Council Directive 91/689/EEC on hazardous waste(b).

(2) The operation of landfill sites under Council Directive 1999/31/EC on the landfill of waste(c) and the operation of incineration plants under Directive 2000/76/EC of the European Parliament and of the Council on the incineration of waste(d).

(3) This does not include the spreading of sewage sludge from urban waste water treatment plants, treated to an approved standard, for agricultural purposes.

### **Mining waste**

4. The management of extractive waste under Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries(e).

### **Discharges requiring authorisation**

5.—(1) All discharges into the inland surface water that require prior authorisation in pursuance of Directive 2006/11/EC of the European Parliament and of the Council on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community(f).

(2) All discharges of substances into groundwater that require prior authorisation in pursuance of Council Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances(g).

(3) All discharges or injections of pollutants into surface water or groundwater that require a permit, authorisation or registration under Directive 2000/60/EC of the European Parliament and of the Council of establishing a framework for Community action in the field of water policy(h).

### **Water abstraction and impoundment**

6. Water abstraction and impoundment of water subject to prior authorisation in pursuance of Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy.

### **Dangerous substances, plant protection products and biocidal products**

7. Manufacture, use, storage, processing, filling, release into the environment and onsite transport of—

- 
- (a) OJ No L 114, 27.4.2006, p. 9 as last amended by Directive 2008/98/EC of the European Parliament and of the Council (OJ No L 312, 22.11.2008, p. 3).
- (b) OJ No L 377, 31.12.91, p. 20 as last amended by Directive 2008/98/EC of the European Parliament and of the Council (OJ No L 312, 22.11.2008, p. 3).
- (c) OJ No L 182, 16.7.99, p. 1 as last amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council (OJ No L 311, 21.11.2008, p. 1).
- (d) OJ No L 332, 28.12.2000, p. 91 as corrected in OJ No L 145, 31.5.2001, p. 52.
- (e) OJ No L 102, 11.4.2006, p. 15.
- (f) OJ No L 64, 4.3.2006, p. 52.
- (g) OJ No L 20, 26.1.80, p. 43 as amended by Council Directive 91/692/EC (OJ No L 377, 31.12.1991, p. 48).
- (h) OJ No L 327, 22.12.2000, p. 1 as amended by Directive 2008/105/EC of the European Parliament and of the Council (OJ No L 348, 24.12.2008, p. 84).

- (a) dangerous substances as defined in Article 2(2) of Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous substances (a);
- (b) dangerous preparations as defined in Article 2(2) of Directive 1999/45/EC of the European Parliament and of the Council concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations(b);
- (c) plant protection products as defined in Article 2(1) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market(c); and
- (d) biocidal products as defined in Article 2(1)(a) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market(d).

### Transport

8. Transport by road, rail, inland waterways, sea or air of dangerous goods or polluting goods as defined in—

- (a) Annex A to Council Directive 94/55/EC on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road(e);
- (b) the Annex to Council Directive 96/49/EC on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail(f); and
- (c) Council Directive 93/75/EEC concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods(g).

### Genetically modified organisms

9.—(1) Any contained use, including transport, involving genetically modified organisms (including genetically modified micro-organisms as defined by Council Directive 90/219/EEC on the contained use of genetically modified micro-organisms(h)).

(2) Any deliberate release into the environment, transport and placing on the market of genetically modified organisms as defined by Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms(i).

### Transboundary shipment of waste

10. Transboundary shipment of waste within, into or out of the Community, requiring an authorisation or prohibited under Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste(j).

- (a) OJ No L 196, 16.8.67, p. 1 as last amended by Regulation (EC) No 2008/1272 of the European Parliament and of the Council (OJ No L 353, 31.12.2008, p. 1).
- (b) OJ No L 200, 30.7.99, p. 1 as last amended by Regulation (EC) No 2008/1272 of the European Parliament and of the Council (OJ No L 353, 31.12.2008, p. 1).
- (c) OJ No L 230, 19.8.91, p. 1 as last amended by Commission Directive 2008/127/EC (OJ No L 344, 20.12.2008, p. 89).
- (d) OJ No L 123, 24.4.98, p. 1 as last amended by Directive 2008/31/EC of the European Parliament and of the Council (OJ No L 81, 20.3.2008, p. 57).
- (e) OJ No L 319, 12.12.94, p. 7 as last amended by Commission Directive 2006/89/EC (OJ No L 305, 4.11.2006, p. 4).
- (f) OJ No L 235, 17.9.96, p. 25 as last amended by Commission Directive 2006/90/EC (OJ No L 305, 4.11.2006, p. 6).
- (g) OJ No L 247, 5.10.93, p. 19 as last amended by Directive 2002/84/EC of the European Parliament and of the Council (OJ No L 324, 29.11.2002, p. 53).
- (h) OJ No L 117, 8.5.90, p. 1 as last amended by Commission Decision 2005/174/EC (OJ No L 59, 5.3.2005, p. 20).
- (i) OJ No L 106, 17.4.2001, p. 1 as last amended by Directive 2008/27/EC of the European Parliament and of the Council (OJ No L 81, 20.3.2008, p. 45).
- (j) OJ No L 190, 12.7.2006, p. 1 as last amended by Commission Regulation (EC) No 669/2008 (OJ No L 188, 16.7.2008, p. 7).

## SCHEDULE 3

Regulation 19

### Permits, etc.

1. The following are permits for the purposes of regulation 19(3) in so far as they relate to an activity in Schedule 2—

- (a) a permit granted under the Environmental Permitting (England and Wales) Regulations 2007(a) or a registration under those Regulations;
- (b) a licence granted under Part II of the Food and Environment Protection Act 1985(b);
- (c) a water discharge consent, an ordinary or emergency drought order or a drought permit under the Water Resources Act 1991(c);
- (d) an authorisation under the Groundwater Regulations 1998(d);
- (e) a water abstraction or impoundment licence under the Water Resources Act 1991;
- (f) an approval of a pesticide under the Control of Pesticides Regulations 1986(e), an authorisation of a biocidal product under the Biocidal Products Regulations 2001(f) or an authorisation of a pesticide under the Plant Protection Products Regulations 2005(g);
- (g) a consent for the deliberate release of genetically modified organisms granted by the Secretary of State under section 111(1) of the Environmental Protection Act 1990(h) or a consent given in any other member State for the placing of a genetically modified organism on the market as a product or in a product in accordance with Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms(i);
- (h) an authorisation given in any member State in accordance with Article 7 or 19 of Regulation (EC) No 1829/2003 of the European Parliament and of the Council on genetically modified food and feed(j).

## SCHEDULE 4

Regulation 18

### Remediation

#### PART 1

#### Remediation of damage to natural resources other than land

##### Application of Part 1

1. This Part relates to remediation of damage to natural resources other than land.

- 
- (a) S.I. 2007/3538.
  - (b) 1985 c. 48.
  - (c) 1991 c. 57 as amended by the Water Act 2003 (c. 37).
  - (d) S.I. 1998/2746 as last amended by S.I. 2007/3538.
  - (e) S.I. 1986/1510 to which there are amendments not relevant to these Regulations.
  - (f) S.I. 2001/880 to which there are amendments not relevant to these Regulations.
  - (g) S.I. 2005/1435 to which there are amendments not relevant to these Regulations.
  - (h) 1990 c. 43.
  - (i) OJ No L 106, 17.4.2001, p. 1 as last amended by Directive 2008/27/EC of the European Parliament and of the Council (OJ No L 81, 20.3.2008, p. 45).
  - (j) OJ No L 268, 18.10.2003, p. 1 as last amended by Regulation (EC) No 298/2008 of the European Parliament and of the Council (OJ No L 97, 9.4.2008, p. 64).

### **Risk to human health**

2. Remediation must remove any significant risk to human health.

### **Objective**

3. The objective of remediation is to achieve the same level of natural resource or services as would have existed if the damage had not occurred.

### **Primary and complementary remediation**

4.—(1) The remediation must consist of such primary remediation or complementary remediation or both as will achieve the objective.

(2) Primary remediation is any remedial measure which returns the damaged natural resources or impaired services to, or towards, the state that would have existed if the damage had not occurred (natural recovery is a permitted form of primary remediation in appropriate cases).

(3) 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 or impaired services to the state that would have existed if the damage had not occurred.

### **Compensatory remediation**

5.—(1) In addition compensatory remediation must be provided to compensate for interim losses of natural resources or services that occur from the date of damage until remediation has achieved its objective; and in this paragraph "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 remediation has been carried out.

(2) Compensatory remediation does not include financial compensation.

### **Choice of remediation**

6.—(1) The remediation options must be evaluated using best available methods, and based on—

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

### **Identification of complementary and compensatory remediation**

7.—(1) If possible, complementary and compensatory remedial measures must provide natural resources or services of the same type, quality and quantity as those damaged.

(2) Where this is not possible, similar but different natural resources or services must be provided (for example, by offsetting a reduction in the quality of natural resources or services by increasing their quantity).

(3) Where this is not possible, different natural resources or services may be provided, and the remedial measures must have the same monetary valuation as the lost natural resources or services.

(4) If valuation of the lost natural resources or services is practicable, but valuation of the remedial measures cannot be made within a reasonable time or at a reasonable cost, then remedial measures may be provided whose cost (instead of monetary valuation) is equivalent to the value of the lost natural resources or services.

(5) In the case of complementary remediation at a new site, where possible and appropriate this site should be geographically linked to the damaged site.

### **Options**

8.—(1) 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 its state at the time of the incident or that restore it more slowly may be decided on (for example, when the equivalent natural resources or services could be provided elsewhere at a lower cost).

(2) This decision can be taken only if the natural resources or services foregone 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.

(3) The enforcing authority may at any time decide that no further remedial measures need be taken if—

- (a) the remedial measures already taken have removed any significant risk of adversely affecting human health, water or protected species and natural habitats; and
- (b) the cost of the remedial measures needed for restoration to its state before the incident would be disproportionate to the environmental benefits to be obtained.

## **PART 2**

### **Remediation of damage to land**

#### **Remediation of damage to land**

9.—(1) This Part applies in relation to damage to land.

(2) The remediation must ensure, as a minimum, that the relevant contaminants are removed, controlled, contained or diminished so that the land, taking account of its lawful current use or any planning permission in existence at the time of the damage, no longer poses any significant risk of adverse effects on human health.

(3) The presence of such risks must 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.

(4) Natural recovery is a permitted form of remediation in appropriate cases.

## Appeals

## PART 1

## Appeals when the Secretary of State is not the enforcing authority

1. This Part applies when the Secretary of State is not the enforcing authority.
2. Notification of appeal must contain—
  - (a) a copy of the notification or remediation notice appealed against; and
  - (b) the grounds of appeal.
3. When notification is received, the Secretary of State must send a copy of the notification of appeal to the enforcing authority, and the enforcing authority must immediately send a copy to any person who appears to it to have a particular interest in the subject matter of the appeal, and notify the Secretary of State whom it has notified.
4. The Secretary of State must notify the appellant of the time limit within which the appellant must provide in writing—
  - (a) a statement of case; and
  - (b) all relevant correspondence.
5. When these are received, the Secretary of State must send all the documents to the enforcing authority, giving the enforcing authority a time limit within which it must provide a written response.
6. At the same time the Secretary of State must notify any person notified under paragraph 3 of the time limit under paragraph 5 and invite them make representations before that date.
7. The Secretary of State must then decide whether further evidence is needed, and give directions accordingly.
8. The Secretary of State must then refer the appeal to a person appointed by the Secretary of State to deal with the appeal, and specify to the appointed person whether or not the appeal must be dealt with by written procedure or whether a hearing must be held.
9. Following the conclusion of the appeal by the appointed person, the appointed person must decide the matter or, if so directed by the Secretary of State at any stage before the decision is made, make a recommendation to the Secretary of State, who must decide the appeal.
10. The person deciding the appeal may make such order as to the costs of the parties (including parties who make representation) as is fit.

## PART 2

## Appeals when the Secretary of State is the enforcing authority

11. If the Secretary of State is the enforcing authority, the procedures in Part 1 apply except that—
  - (a) the Secretary of State must appoint an appointed person as soon as notification of appeal is received;
  - (b) the appointed person must carry out the functions of the Secretary of State specified in that Part; and

- (c) the appointed person must in all cases decide the appeal.

## SCHEDULE 6

Regulation 30

### Compensation

#### Compensation for grant of rights

1. This Schedule prescribes—

- (a) the period within which a person who grants, or joins in granting, any rights pursuant to regulation 30 may apply for compensation for the grant of those rights;
- (b) the manner in which, and the person to whom, such an application may be made; and
- (c) the manner of determining such compensation, for determining the amount of such compensation and for making supplemental provision relating to such compensation.

#### Interpretation

2. In this Schedule—

“the grantor” means the person who grants, or joins in granting, any right; and

“relevant interest” means an interest in land out of which a right has been granted or which is bound by a right granted.

#### Period for making an application

3. An application for compensation must be made before the expiry of a period of 12 months beginning with—

- (a) the date of the grant of the rights in respect of which compensation is claimed, or
- (b) where there is an appeal against the notice in relation to which those rights were granted, the date on which the appeal is determined or withdrawn,

whichever is the later date.

#### Manner of making an application

4.—(1) An application for compensation must be made in writing and delivered at or sent by pre-paid post to the last known address for correspondence of the person to whom the right was granted.

(2) The application must contain—

- (a) a copy of the grant of rights in respect of which the grantor is applying for compensation and of any plans attached to such grant;
- (b) a description of the exact nature of any interest in land in respect of which compensation is applied for; and
- (c) a statement of the amount of compensation applied for, distinguishing the amounts applied for under each of sub-paragraphs (a) to (e) of paragraph 5 and showing how the amount applied for under each sub-paragraph has been calculated.

#### Loss and damage for which compensation payable

5. Compensation is payable for loss and damage of the following descriptions—

- (a) any depreciation in the value of any relevant interest to which the grantor is entitled which results from the grant of the right;
- (b) loss or damage, in relation to any relevant interest to which the grantor is entitled, which—
  - (i) is attributable to the grant of the right or the exercise of it;
  - (ii) does not consist of depreciation in the value of that interest; and
  - (iii) is loss or damage for which the grantor would have been entitled to compensation by way of compensation for disturbance, if that interest had been acquired compulsorily under the Acquisition of Land Act 1981(a), in pursuance of a notice to treat served on the date on which the grant of the right was made;
- (c) damage to any interest in land to which the grantor is entitled which is not a relevant interest and which results from the grant of the right or from the exercise of it;
- (d) any loss or damage sustained by the grantor, other than in relation to any interest in land to which the grantor is entitled, which is attributable to the grant of the right or the exercise of it; and
- (e) the amount of any valuation and legal costs reasonably incurred by the grantor in granting the right and in the preparation of the application for and the negotiation of the amount of compensation.

#### **Basis on which compensation assessed**

6.—(1) The rules set out in section 5 of the Land Compensation Act 1961(b) (rules for assessing compensation) have effect, so far as applicable and subject to any necessary modifications, for the purpose of assessing any compensation as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(2) Where the relevant interest in respect of which any compensation is to be assessed is subject to a mortgage—

- (a) the compensation must be assessed as if the interest were not subject to the mortgage;
- (b) no compensation is payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
- (c) any compensation payable in respect of the interest that is subject to the mortgage must be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee and must, in either case, be applied as if it were proceeds of sale.

#### **Determination of disputes**

7.—(1) Any question of disputed compensation must be referred to and determined by the Lands Tribunal.

(2) In relation to the determination of any such question of compensation the provisions of sections 2 and 4 of the Land Compensation Act 1961 (procedure on references to the Lands Tribunal and costs) shall apply as if—

- (a) the reference in section 2 of the Land Compensation Act 1961 to section 1 of that Act were a reference to sub-paragraph (1) of this paragraph; and
- (b) references in section 4 of that Act to the acquiring authority were references to the person to whom the rights were granted.

---

(a) 1981 c. 67.  
 (b) 1961 c. 33.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations 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.

They apply to damage to protected species, natural habitats, sites of special scientific interest, water and land (regulation 4).

They are enforced by the bodies specified in regulations 10 and 11.

They provide that, for certain economic activities, where there is a imminent risk of environmental damage, the operator must take steps to prevent it, and if it has occurred must prevent further damage. Where damage has occurred the enforcing authority must assess the damage and identify remedial measures. It must then serve a remediation notice on the responsible operator specifying what remediation is required (Part 3).

They make provision for enforcement (Part 4).

Breach of specified provisions of the Regulations is an offence punishable—

- (a) on summary conviction, with a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or both; or
- (b) on conviction on indictment, with a fine or to imprisonment for a term not exceeding two years or both.

An impact assessment has been prepared and placed in the libraries of both Houses of Parliament. It is available, together with a transposition note, on the Defra website at [www.defra.gov.uk](http://www.defra.gov.uk).

---

© Crown copyright 2009

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

---

STATUTORY INSTRUMENTS

---

**2009 No. 153**

**ENVIRONMENTAL PROTECTION, ENGLAND**

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

£5.00

**Act serving to implement the Directive of the European Parliament and of the Council  
on Environmental Liability with Regard to the Prevention and Remedying  
of Environmental Damage<sup>1</sup>.**

of 10 May 2007

The *Bundestag* has adopted the following Act:

**Article 1  
Environmental Damage Prevention and Remediation Act.  
(Environmental Damage Act - EDA [USchadG])**

**§ 1  
Relationship with other laws and regulations**

This Act shall govern as far as laws and regulations at federal or state (*Länder*) level do not cover the prevention and remediation of environmental damage in specific detail or their provisions fall short of this Act. Laws and regulations that go beyond this Act shall remain unaffected.

**§ 2  
Definitions**

For the purpose of this Act,

1. Environmental damage: means
  - a) damage to species and natural habitats as defined in § 21a of the Federal Nature Conservation Act,
  - b) water damage as defined in § 22a of the Federal Water Resources Act,
  - c) land damage by impacts on soil functions as defined in § 2 Sec. 2 of the Federal Soil Protection Act, as a result of the direct or indirect introduction of substances, preparations, organisms or micro-organisms on, in or under land, that creates a threat to human health;
2. Damage or detriment: means a measurable adverse change in a natural resource (species and natural habitats, water and soil) or measurable impairment of a natural resource service which may occur directly or indirectly;
3. Responsible party: means any natural or legal person who engages in or controls the occupational activity, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity, thereby directly causing environmental damage or the immediate threat of such damage.

---

<sup>1</sup> This Act serves to implement Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (Official Journal of the European Union No L 143, p. 56).

4. Occupational activity: means any activity carried out in the course of an economic activity, a business or an undertaking, irrespectively of its private or public, profit or non-profit character;
5. Imminent threat of environmental damage: means a sufficient likelihood that environmental damage will occur in the near future;
6. Preventive measure: means any measure taken in the case of an imminent threat of environmental damage with a view to preventing or minimising that damage;
7. Damage control measure: means any measure taken to immediately control, contain, remove or otherwise manage the relevant contaminants and other damage factors concerned in order to limit or prevent further environmental damage and adverse effects on human health or any further impairment of natural resource services;
8. Remedial measure: means any measure serving to remedy environmental damage in accordance with the special regulations;
9. Costs: means the necessary costs incurred in the proper and effective implementation of this Act including the costs of assessing environmental damage or 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;
10. Special regulations: means the Federal Nature Conservation Act, the Federal Water Resources Act and the Federal Soil Protection Act, including the ordinances issued for their implementation.

### **§ 3 Scope**

(1) This Act applies to

1. environmental damage and the imminent threat of such damage caused by any occupational activity listed in Annex 1;
2. damage to species and natural habitats as defined in § 21a Sec. 2 and 3 of the Federal Nature Conservation Act and the imminent threat of such damage caused by occupational activities other than those listed in Annex 1, to the extent the operator has been at fault or negligent.

(2) This Act applies to damage to species and natural habitats and the imminent threat of such damage occurring within the Exclusive Economic Zone and the continental shelf, as defined within the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 (Federal Law Gazette 1994 II p. 1799).

(3) This Act does not apply to environmental damage or the imminent threat of such damage caused by:

1. armed conflicts, hostilities, civil war or insurrections,

2. an exceptional, inevitable and irresistible natural phenomenon,
3. an incident in which liability or compensation fall within the scope of any of the international conventions listed in Annex 2 in their respective versions applicable to Germany,
4. the exercise of activities covered by the Treaty establishing the European Atomic Energy Community, or
5. an incident or activity for which liability or compensation falls within the scope of any of the international instruments listed in Annex 3 in their respectively applicable versions.

(4) This Act shall only apply to cases in which the environmental damage or the imminent threat of such damage is caused by pollution of a diffuse character, where a causal link between the damage and the activities of individual responsible parties can be established.

(5) This Act does not apply to activities whose main purpose is to serve defence or international security nor to activities whose sole purpose is to protect from natural disasters.

#### **§ 4 Information obligation**

In the event of an imminent threat of an environmental damage, or when an environmental damage has occurred, the responsible party must promptly inform the competent authority of all relevant aspects of the situation.

#### **§ 5 Threat prevention obligation**

In the event of an imminent threat of an environmental damage, the responsible party must promptly take the necessary preventive measures.

#### **§ 6 Remedial obligation**

Where an environmental damage has occurred, the responsible party must

1. take the necessary damage control measures,
2. take the necessary remedial measures according to § 8.

#### **§ 7 General obligations and powers of the competent authority**

(1) The competent authority shall monitor the responsible party to ensure that the necessary preventive, damage control and remedial measures are taken.

(2) With regard to the obligations under §§ 4 to 6, the competent authority may require the responsible party to

1. provide all necessary information and data on an imminent threat of environmental damage, on a suspected imminent threat or on a damage that has occurred, along with the responsible party's own assessment,
2. take the necessary preventive measures,
3. take the necessary damage control and remedial measures.

## **§ 8**

### **Determination of remedial measures**

(1) The responsible party shall be obligated to identify, in accordance with the special regulations, the necessary remedial measures and to submit them to the competent authority for approval, unless the competent authority has taken the necessary remedial measures.

(2) The competent authority shall decide, in accordance with the special regulations, on the nature and extent of the remedial measures to be taken.

(3) If several instances of environmental damage do not allow for remedial measures taken at the same time, the competent authority can prioritise the remedial measures in due consideration of the nature, extent and gravity of the various instances of environmental damage, of the possibility of a natural recovery and of the risks to human health.

(4) The competent authority informs those affected and the appropriate associations entitled to an application per § 10 about the planned remedial measures, giving them an opportunity to submit their observations; such information may be in the form of a public announcement. Timely responses will be taken into account in the decision process.

## **§ 9**

### **Costs of preventive and remedial measures**

(1) Subject to any claims against public authorities or third parties the responsible party shall bear the costs of the preventive, damage control and remedial measures. For the enforcement of this Act by the *Länder* authorities the *Länder* shall issue provisions, necessary for implementing Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ EC No L 143, p. 56), on cost allocations, cost exemptions and cost reimbursements including payment deadlines; in particular, the *Länder* may decide that, subject to the provisions of Article 8 Sec. 4 of Directive 2004/35/EC, the responsible party may not have to bear the costs of the remedial measures taken. In doing so the *Länder* will take into account the particular situation in the agricultural sector with regard to the use of pesticides.

(2) Multiple responsible parties, regardless of the manner in which they were obligated, shall have the right to compensatory claims among themselves. Unless stipulated otherwise, the obligation to provide such compensation and the extent of the compensation to be provided

shall depend on the degree to which the damage or threat was caused primarily by one party or the other; § 426 Sec. 1 s. 2 of the Civil Code is applicable accordingly. The statute of limitations for any compensatory claim will be three years; §§ 438, 548 and 606 of the Civil Code will not be applicable. The statute of limitations begins following collection of costs, when the competent authority carries out measures itself, otherwise it begins following completion of the measures by the responsible party and at the time at which the responsible party becomes aware of the identity of the person obligated to provide compensation. Regardless of such knowledge, the statute of limitation for such compensatory claim is 30 years following the completion of the measure. For legal actions, recourse to the ordinary courts shall be available.

(3) This Act does not influence the right of the responsible party to limit its liability in accordance with § 486 Sec. 1, 4 and 5, § 487 to 487e of the Commercial Code or § 4 to 5m of the Inland Waterways Act.

#### **§ 10 Request for action**

The competent authority will take action towards the enforcement of the remedial obligation under this Act ex officio or when an affected party or an association, entitled to appeal under § 11 Sec. 2, submits a corresponding application and when the facts on which that application is based plausibly suggest the occurrence of an environmental damage.

#### **§ 11 Legal protection**

(1) An administrative act taken pursuant to this law shall state the reasons and must be provided with an instruction about legal remedies available.

(2) For associations recognised or considered to have been recognised pursuant to § 3 Sec. 1 of the Environmental Appeals Act (of 7 December 2007, Federal Law Gazette I p. 2816), legal remedy against a decision or the omission of a decision by the competent authority according to this present Act is available through § 2 of the Environmental Appeals Act.

#### **§ 12 Cooperation with the Member States of the European Union**

(1) Where environmental damage affects or is likely to affect one or several Member States of the European Union, the competent authority shall cooperate with the corresponding authorities of the other Member States, exchanging to a reasonable extent the information needed to ensure the necessary preventive, damage control and remedial measures to be taken.

(2) In the event an environmental damage has been caused within the scope of validity of this Act, with a potential effect on the territory of another Member State of the European Union, the competent authority shall be required to provide adequate information to the potentially affected Member States.

(3) Where a competent authority identifies an environmental damage that was caused not

within the scope of validity of this Act but within the territory of another Member State of the European Union, it may make recommendations for the implementation of preventive, damage control and remedial measures, and it may seek to recover the costs it has incurred in relation to the adoption of such measures.

### **§ 13 Time-limited applicability**

(1) This Act does not apply to damage caused by emissions, events or incidents that took place prior to 30 April 2007 or derive from specific activities that finished prior to that date.

(2) This Act does not apply to damage caused more than 30 years ago, if during that period no authority took action against the responsible party.

### **ANNEX 1 (to § 3 Sec. 1) Occupational activities**

1. The operation of installations subject to permit in pursuance of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control. That means all activities listed in Annex I of Directive 96/61/EC with the exception of installations or parts of installations used for research, development and testing of new products and processes.
2. Waste management operations (the collection, transport, recovery and disposal of waste and hazardous waste, including the supervision of such activities and after-care of disposal sites), subject to a permit, an announcement or a plan approval pursuant to regulations implementing Council Directive 75/442/EEC of 15 July 1975 on waste and Council Directive 91/689/EEC of 12 December 1991 on hazardous waste. These operations include, inter alia, the operation of landfill sites requiring a plan approval or planning permission according to § 31 Sec. 2 and 3 of the Closed Substance Cycle and Waste Management Act (KrW-/AbfG), as well as the operation of incineration plants requiring a permit in accordance with § 4 of the Federal Immission Control Act (BImSchG) in conjunction with the Annex to the Fourth Ordinance for the Implementation of the Federal Immission Control Act (4. BImSchV).
3. The introduction, discharge or other input of pollutants into surface waters pursuant to § 3 Sec. 1 No 4 and 4a as well as Sec. 2 No 2 of the Federal Water Resources Act (WHG) requiring a permit in accordance with § 2 Sec. 1 WHG.
4. The introduction, discharge or other input of pollutants into the groundwater pursuant to § 3 Sec. 1 No 5 as well as Sec. 2 No 2 WHG requiring a permit in accordance with § 2 Sec. 1 WHG.
5. The abstraction of water from bodies of water pursuant to § 3 Sec. 1 No 1 and 6 WHG requiring a permit or a licence in accordance with § 2 Sec. 1 WHG.
6. The impoundment of surface waters pursuant to § 3 Sec. 1 No 2 WHG requiring a permit or a licence in accordance with § 2 Sec. 1 WHG or a plan approval or a planning permission in accordance with § 31 Sec. 2 or 3 WHG.
7. The manufacture, use, storage, processing, filling, release into the environment and on-site transport of
  - a) dangerous substances as defined in § 3a Sec. 1 of the Chemicals Act (ChemG);

- b) dangerous preparations as defined in § 3a Sec. 1 ChemG;
  - c) plant protection products as defined in § 2 No 9 of the Plant Protection Act (PflSchG);
  - d) biocidal products as defined in § 3b Sec. 1 No 1 a) ChemG.
8. Transport by road, rail, inland waterways, sea or air of dangerous goods or polluting goods as defined in § 2 No 9 of the Regulation on Carriage of Dangerous Goods by Road and Rail or as defined in No 1.3 and 1.4 of the Annex to § 1 Sec. 1 of the Internal Waters Entering Requirements Ordinance.
  9. The operation of installations subject to authorisation in pursuance of Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants in relation to the release into air of any of the polluting substances covered by the aforementioned Directive.
  10. Genetic engineering activities as defined in § 3 No 2 of the Genetic Engineering Act (GenTG) involving micro-organisms in genetic engineering systems as defined in § 3 No 4 GenTG, as well as the extramural transport of genetically modified micro-organisms.
  11. Any deliberate release of genetically modified organisms into the environment as defined in § 3 No 5 first clause GenTG, as well as the transport and the placing on the market of such organisms as defined in § 3 No 6 GenTG.
  12. Transboundary shipment of waste within, into or out of the European Union, requiring an authorisation or prohibited in the meaning of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community.

#### **ANNEX 2 (to § 3 Sec. 3 No 3)**

##### **International Conventions**

- a) International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage (1992 Liability Convention, Federal Law Gazette 1996 II p. 670);
- b) International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1992 Fund Convention, Federal Law Gazette 1996 II p. 685);
- c) International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage;
- d) International Convention of 3 May 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;
- e) Convention of 10 October 1989 on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels.

**ANNEX 3 (to § 3 Sec. 3 No 5)**

**International Instruments**

- a) 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 (Federal Law Gazette 1975 II p. 957);
- b) Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage (Federal Law Gazette 2001 II p. 202);
- c) Convention of 12 September 1997 on Supplementary Compensation for Nuclear Damage;
- d) Joint Protocol of 21 September 1988 relating to the Application of the Vienna Convention and the Paris Convention (Federal Law Gazette 2001 II p. 202);
- e) Brussels Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material (Federal Law Gazette 1975 II p. 957).

**Article 2  
Amendment of the Federal Water Resources Act**

The Federal Water Resources Act as promulgated in the Federal Law Gazette of 19 August 2002 (Federal Law Gazette I p. 3245), as amended last by Article 2 of the Law of 25 June 2005 (Federal Law Gazette I p. 1746), is amended as follows:

1. In § 1 Sec. 2, 2<sup>nd</sup> sentence, the statement "§ 22" is replaced by the statement "§§ 22 and 22a".

2. After § 22 the following § 22a is inserted:

**§ 22a  
Water Damage**

(1) Water damage according to the Environmental Damage Act means any damage that significantly adversely affects:

1. the ecological or chemical status of surface waters or of coastal waters,
2. the ecological potential or the chemical status of artificial or heavily modified surface waters or coastal waters, or
3. the chemical or quantitative status of the groundwater,

excluding those adverse effects governed by § 25d Sec. 3, § 32c in conjunction with § 25d Sec. 3 and § 33a Sec. 4, 2<sup>nd</sup> sentence.

(2) In the event a responsible party according to the Environmental Damage Act has caused water damage, it will take the necessary remedial measures according to Annex II No 1 of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ EC No L 143, p. 56).

(3) Any additional regulations regarding damage to or other impairments of waters and appropriate remediation shall remain unaffected.

### **Article 3 Amendment of the Federal Nature Conservation Act**

The Federal Nature Conservation Act of 25 March 2002 (Federal Law Gazette I p. 1193), as amended last by Article 8 of the Law of 9 December 2006 (Federal Law Gazette I p. 2833), is amended as follows:

1. In the Table of Contents, after the text for § 21, the following wording is inserted: "§ 21a Damage to certain species and natural habitats".

2. In § 11 1<sup>st</sup> sentence after the statement "§§ 21 and" the wording "'21a, in §" is inserted.

3. After § 21 Sec. 3 the following section 4 is added:

"(4) If in decisions on projects per § 34 of the Federal Building Code, consultation under section 3 is denied because there are indications to the effect that the project could cause damage as defined in § 21a Sec. 1, 1<sup>st</sup> sentence, the developer shall be so informed. At the request of the developer, the authority competent for the permit decision shall, in consultation with the authority responsible for nature conservation and landscape management, take decisions in accordance with § 19 or corresponding *Länder* law, as far as they serve the prevention, mitigation or compensation of damage according to § 21a Sec. 1, 1<sup>st</sup> sentence; in those cases § 21a Sec. 1, 2<sup>nd</sup> sentence will apply. Other than that, section 2, 1<sup>st</sup> sentence remains unaffected."

4. After § 21 the following § 21a is added:

#### **"§21a Damage to certain species and natural habitats**

(1) Damage to species and natural habitats according to the Environmental Damage Act includes any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species. In contrast to the 1<sup>st</sup> sentence, damage does not include previously identified adverse effects which result from an activity of a responsible party which the competent authority approved under the provisions of §§ 34, 34a, 35 or corresponding *Länder* law, of § 43 Sec. 8 or § 62 Sec. 1 or, if such an assessment is not required, in accordance with

1. § 19 or corresponding *Länder* law or
2. on the basis of the preparation of a land-use plan according to §§ 30 and 33 of the Federal Building Code

or which are allowed.

(2) Species according to Sec. 1 are those listed in

1. Article 4 Sec. 2 or Annex I of Directive 79/409/EEC or
2. the Annexes II and IV of Directive 92/43/EEC.

(3) Natural habitats according to Sec. 1 are

1. habitats of species listed in Article 4 Sec. 2 or Annex I of Directive 79/409/EEC or in Annex II of Directive 92/43/EEC,
2. natural habitats listed in Annex I of Directive 92/43/EEC, as well as
3. the breeding sites or resting places of the species listed in Annex IV of Directive 92/43/EEC.

(4) In the event a responsible party according to the Environmental Damage Act has caused damage to protected species or natural habitats, it will take the necessary remedial measures according to Annex II, No 1 of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ EC No L 143, p. 56).

(5) The significance of effects according to Sec. 1 shall be determined with reference to the baseline condition in due consideration of the criteria set forth in Annex I of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ EC No L 143, p. 56) whereas a significant damage normally is not on hand in the following cases:

- 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,
- 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.

(6) Sec. 1 to 5 also apply to the Exclusive Economic Zone and the continental shelf within the legal framework of the United Nations Convention on the Law of the Sea of 10 December 1982 (Federal Law Gazette 1994 II p. 1799). For that area the competent authority under the Environmental Damage Act is the Federal Agency for Nature Conservation."

**Article 4**  
**Entry into force; suspension**

This Act shall enter into force as of the day in the sixth month following the month of its promulgation that matches the number of the day of the promulgation or, if there is no such calendar date, as of the first day of the following calendar month. Annex I No 9 of the Environmental Damage Act shall be suspended as of 30 October 2007.

The constitutional rights of the *Bundesrat* are safeguarded.

The foregoing law is hereby drawn up. It shall be published in the Federal Law Gazette.

Berlin, 10 May 2007.

The Federal President  
The Federal Chancellor  
The Federal Minister for the Environment,  
Nature Conservation and Nuclear Safety