
STATUTORY RULES OF NORTHERN IRELAND

2009 No. 252

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

PART 1

Introductory provisions

Citation and commencement

1. These Regulations may be cited as the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009 and come into operation on 24th July 2009.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(1) applies to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations—

“activity” means any economic activity, whether public or private and whether or not carried out for profit;

“area of special scientific interest” means an area declared under Article 28(1) of the Environment (Northern Ireland) Order 2002(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;

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

“imminent threat of damage” means a sufficient likelihood that environmental damage will occur in the near future;

“marine installation” means any artificial island, installation, platform or other artificial structure at sea, other than a pipeline or a vessel;

“natural habitats” 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(3) or listed in Annex II to Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora(4);
- (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 that Directive;

(1) [1954 c.33 \(N.I.\)](#)

(2) [S.I. 2002/3153 \(N.I. 7\)](#)

(3) O.J. No. L103, 25.4.79, p.1 (as last amended by Council Directive [2008/102/EC](#), O.J. No. L323, 3.12.08, p.31)

(4) O.J. No. L206, 22.7.92, p.7 (as last amended by Council Directive [2006/105/EC](#), O.J. No. L363, 20.12.06, p.368)

“natural resource” means—

- (a) protected species;
- (b) natural habitats;
- (c) species or habitat in an area of special scientific interest for which the site has been declared;
- (d) water; and
- (e) land;

“operator” means any natural or legal, private or public person who operates or controls the activity by means of delegated authority or otherwise and includes the holder of a permit or authorisation for such an activity;

“Planning Appeals Commission” means the Planning Appeals Commission established under Article 110 of the Planning (Northern Ireland) Order 1991⁽⁵⁾;

“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 listed in 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;

“vessel” means—

- (a) hovercraft, and
- (b) any other craft capable of travelling on, in or under water, whether or not self-propelled.

(3) 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⁽⁶⁾ have the same meaning in these Regulations.

Meaning of “environmental damage”

3.—(1) Subject to regulations 5, 6 and 7, these Regulations apply to environmental damage to—

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

(2) Environmental damage to protected species or natural habitats or an area of special scientific interest means damage of a kind specified in Schedule 1 if it is caused by—

- (a) an activity in Schedule 2; or
- (b) an activity where the operator was at fault or was negligent as to whether such damage would be caused.

(3) Environmental damage to surface water means damage to a body of surface water classified as such pursuant to Annex II to Council Directive [2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy⁽⁷⁾ caused by an activity in Schedule 2 such that one of the—

- (a) biological quality elements listed in Annex V to that Directive;

⁽⁵⁾ [S.I. 1991/1220 \(N.I. 11\)](#)

⁽⁶⁾ O.J. No. L143, 30.4.04, p.56 (as amended by Directive [2006/21/EC](#), O.J. No. L102, 11.4.06, p.15)

⁽⁷⁾ O.J. No. L327, 22.12.00, p.1 (as last amended by Directive [2008/105/EC](#) of the European Parliament and of the Council, O.J. No. L348, 24.12.08, p.84)

(b) level of one of the chemicals listed in the legislation in Annex IX or a chemical listed in Annex X to that Directive; or

(c) physicochemical quality elements (as listed in Annex V to that Directive),

is adversely affected in such a way that its value changes to a value consistent with the water being classified as a lower status than before the damage (whether or not the body of water is, in fact, reclassified).

(4) Environmental damage to groundwater means any adverse effect on a body of groundwater as described in Annex II to Directive [2000/60/EC](#) on—

(a) its conductivity or its level (both of which are specified in Annex V to Directive [2000/60/EC](#)); or

(b) its concentration of pollutants (as specified in that Annex and in Directive [2006/118/EC](#) of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration⁽⁸⁾)

in such a way that the value changes to a value consistent with the water being classified as a lower status than before the damage caused by an activity in Schedule 2 (whether or not the body of water is, in fact, reclassified).

(5) Environmental damage to land means contamination of land by substances, preparations, organisms or micro-organisms arising out of an activity specified in Schedule 2 that results in a significant risk of adverse effects on human health.

(6) This regulation extends to the foreshore, sea bed and subsoil and their natural resources.

Other legislation

4. Nothing in these Regulations shall be construed so as to affect the right of an operator to limit liability in accordance with the Convention on Limitation of Liability for Maritime Claims 1976⁽⁹⁾.

Exceptions

5. These Regulations shall not apply in relation to environmental damage, or imminent threat of damage, caused by—

(a) an act of terrorism, armed conflict, civil war, insurrection or hostilities;

(b) an exceptional natural phenomenon, provided the operator 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 phenomena;

(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⁽¹⁰⁾;

(ii) the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage^(a); or

(iii) the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001⁽¹¹⁾;

(e) activities, the main purpose of which is to serve national defence or international security;

⁽⁸⁾ O.J. No. L372, 27.12.06, p.19

⁽⁹⁾ The Convention is set out in Schedule 7 to the Merchant Shipping Act 1995 (1995 c. 21)

⁽¹⁰⁾ This Convention was implemented in Chapter III of the Merchant Shipping Act 1995 (1995 c. 21)

⁽¹¹⁾ Implemented in the United Kingdom by S.I. 2006/1244

- (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;
- (g) pollution of a diffuse character if it is not possible to establish a causal link between the damage and the activities of individual operators; or
- (h) damage caused in the course of commercial sea fishing if all legislation relating to that fishing was complied with.

Temporal application

6. These Regulations shall not apply to—
- (a) damage caused by an incident, event or emission that finished before the coming into operation of these Regulations;
 - (b) damage or imminent threat of damage caused by an incident, event or emission that occurs after that date if it derives from an activity that took place and finished before that date; or
 - (c) damage caused by an emission, event or incident that took place 30 years or more before the damage.

Exception from environmental damage to surface water or groundwater

- 7.—(1) Environmental damage to water does not include—
- (a) damage caused by a new modification to the physical characteristics of a body of surface water;
 - (b) an alteration to the level of a body of groundwater pursuant to Directive [2000/60/EC](#); or
 - (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 specified 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 the modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 of Directive [2000/60/EC](#) and the objectives are reviewed every six years;
 - (c) the reasons for the 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 the modifications or alterations of the body of water cannot for reasons of technical feasibility or disproportionate cost be achieved by other means.

Enforcing authority

8. These Regulations shall be enforced by the Department of the Environment.

PART 2

Preventing environmental damage

Preventing environmental damage

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

- (a) take all necessary steps to prevent the damage; and
 - (b) in any case where the threat has not been dispelled despite the preventative measures taken, inform the enforcing authority of all relevant details.
- (2) The enforcing authority may assess the threat and may serve a notice on the 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

10.—(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, shall immediately—

- (a) take all necessary steps to prevent further damage, and
 - (b) inform the enforcing authority of all relevant details.
- (2) The enforcing authority may assess the damage and may serve a notice on the 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

11. 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;
- (c) if the operator fails to comply with a notice; or
- (d) if the operator is not required to bear the costs under these Regulations.

Costs

12.—(1) An operator is liable for any reasonable costs incurred by the enforcing authority in taking any reasonable action to discharge any duty under regulation 11.

(2) An operator is also liable for the reasonable costs incurred by the enforcing authority in preparing any notice under this Part, or in monitoring compliance with such notice.

Following instructions from a public authority

13. 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 is obliged to take action under regulations 9 or 10, or if the enforcing authority takes action under regulation 11, then, unless the instruction related to an emission or incident caused by the operator's own activities, the operator or the enforcing authority may recover the costs of actions under those Regulations from that public authority.

PART 3

Remediation

Assessment of damage

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

Determining liability to remediate

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

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

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

Appeals against liability to remediate

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

(2) The grounds of appeal are—

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

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

Remediation notices

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

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

and may consult any other person appearing to be necessary.

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

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

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

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

Appeal against the remediation notice

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

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

Appeals generally

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

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

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

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

(5) The Planning Appeals Commission shall determine the appeal and paragraphs (1), (3), (4) and (5) of Article 111 of the Planning (Northern Ireland) Order 1991⁽¹²⁾ shall apply in relation to the determination of the appeal as they apply in relation to determination of an appeal under that Order.

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

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

(8) An appeal shall be accompanied by a fee as specified in regulation 17(1) of the Planning (Fees) Regulations (Northern Ireland) 1995⁽¹³⁾ as if it were an appeal under Article 127(1)(c) of the Planning (Northern Ireland) Order 1991.

Actions by the enforcing authority

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

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

Costs

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

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

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

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

PART 4

Enforcement

Requests for action by interested parties

22.—(1) Any person—

- (a) who is affected or likely to be affected by environmental damage; or

⁽¹²⁾ S.I. 1991/1220 (N.I. 11)

⁽¹³⁾ S.R. 1995 No. 78

- (b) who otherwise has a sufficient interest,
- may notify the enforcing authority of any environmental damage which is being, or has been caused or of which there is an imminent threat.
- (2) A notification under paragraph (1) shall be accompanied by—
 - (a) a statement outlining the way the notifier is, or may be, affected by the damage; or
 - (b) a statement outlining the sufficient interest of the notifier; and
 - (c) sufficient information to enable the enforcing authority to identify the location and nature of the incident; and
 - (d) any information in the possession of the notifier which would assist the enforcing authority in identifying the operator.
 - (3) The enforcing authority shall consider the notification, make a decision as to what action, if any, it intends to take and inform the notifier of that decision.
 - (4) Before making any decision in accordance with paragraph (3) the enforcing authority shall, if practicable—
 - (a) notify the operator 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) in the opinion of the enforcing authority, 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.
 - (6) For the purposes of this regulation, a person shall be deemed to have a sufficient interest if they are a member of a body or organisation, or the body or organisation itself, whose aims or objectives relate to the promotion of—
 - (a) environmental health;
 - (b) environmental protection;
 - (c) public health; or
 - (d) activities, including recreational activities, likely to be affected by the damage.

Proceedings for costs by the enforcing authority

23. No proceedings for the recovery of costs may be commenced by the enforcing authority 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 later.

Recovery of costs from other persons

24. An operator who incurs costs under these Regulations may recover all or some of those costs from any third party who also caused or contributed to the damage.

Grant of and compensation for rights of entry etc.

25.—(1) Any person whose consent is required before any works required by these Regulations may be carried out shall 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 such works.

(2) A person who grants, or joins in granting, any rights as required by paragraph (1) is entitled to compensation from the operator of such amount as may be determined in accordance with Schedule 5.

Powers of authorised persons

26.—(1) An “authorised person” means a person who is authorised in writing by the enforcing authority for the purposes of this regulation.

(2) An authorised person may, on production of an authority under paragraph (1), exercise any of the powers specified in paragraph (3) for the purpose of discharging one or more of the functions conferred or imposed on the enforcing authority by these Regulations.

(3) The powers of an authorised person are—

- (a) to enter at any time any land where there is reason to believe it is necessary to enter;
- (b) on entering any land by virtue of sub-paragraph (a)—
 - (i) to be accompanied by any other person including, if the authorised person has reasonable cause to apprehend any serious obstruction, a constable; and
 - (ii) to take any equipment or materials required for any purpose for which the power of entry is being exercised;
- (c) to make such examination and investigation as may in any circumstances be necessary;
- (d) as regards any land subject to power of entry, to direct that that land or any part of it, or anything in it, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (e) to take such measurements and photographs and make such recordings as may in any circumstances be necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (f) to take samples, or cause samples to be taken, of any articles or substances found in or on any land or of the air in the vicinity of the land;
- (g) in the case of any article or substance found in or on any land subject to power of entry, being an article or substance which appears to have caused or to be likely to cause damage to the environment, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);
- (h) in the case of any such article or substance as is mentioned in sub-paragraph (g), to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
 - (i) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which is necessary under that sub-paragraph;
 - (ii) to ensure that it is not tampered with before examination of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations or in any other proceedings relating to a notification or notice under these Regulations;
- (j) to remove any living or dead species found in or on any land and to cause any such species to be photographed, examined or subjected to testing as necessary by suitably qualified

persons but not so as to injure it or destroy it unless destruction is necessary in the interests of its welfare;

- (k) in the case of the removal of any living species to cause it to be treated by suitably qualified persons so as to protect its health and welfare;
- (l) to require any person whom there is reasonable cause to believe capable of giving any information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of such answers;
- (m) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which it is necessary to see for the purposes of an examination or investigation under sub-paragraph (c), and to inspect and take copies of, or of any entry in, the records;
- (n) to require any person to afford such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred by this regulation.

(4) No answer given by a person in pursuance of a requirement imposed under paragraph (3)(l) shall be admissible in evidence against that person in any proceedings.

(5) The powers which are conferred under paragraphs (2) and (3) extend to all areas to which these Regulations apply.

(6) The powers which under paragraphs (2) and (3) are conferred in relation to any land for the purpose of enabling the enforcing authority to determine whether any provision of these Regulations is being, or has been, complied with shall include power, in order to obtain the information on which that determination may be made—

- (a) to carry out experimental borings or other works on that land; and
- (b) to install, keep or maintain monitoring and other apparatus there.

(7) In any case where it is proposed to enter any land used for residential purposes, or to take heavy equipment on to any land which is to be entered, any entry by virtue of this regulation shall only be effected either—

- (a) with the consent of a person who is in occupation of that land; or
- (b) under the authority of a warrant.

(8) Where an authorised person proposes to enter any land and—

- (a) entry has been refused and there are reasonable grounds to apprehend that the use of force may be necessary to effect entry; or
- (b) it is apprehended on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry,

any entry on to that land by virtue of this regulation shall only be effected under the authority of a warrant.

(9) Any reference in this regulation to land shall be construed so as to include a reference to the foreshore, sea bed and subsoil and their natural resources and territorial waters adjacent to Northern Ireland.

(10) An authorised person enforcing these Regulations in relation to the territorial waters adjacent to Northern Ireland may, at any time, board and inspect a vessel or marine installation.

(11) For the purposes of exercising any power conferred by paragraph (2), the authorised person may require a vessel or marine installation—

- (a) to stop; or
- (b) to do anything else that will facilitate the boarding of that or any other vessel or marine installation.

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

- (a) to stop; or
- (b) to do anything else that will enable the authorised person, and any person accompanying the authorised person, to disembark from the vessel or installation.

(13) 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 regulation.

(14) Failure to comply with instructions given under this regulation or providing false or misleading information or obstructing an authorised person in performing any duty under these Regulations is an offence.

(15) Nothing in this regulation shall be taken to compel the production by any person of a document which would on grounds of legal professional privilege be entitled to be withheld on an order for discovery in an action in the High Court.

Provision of information to the enforcing authority

27. The enforcing authority may require any person to provide relevant information in that person's possession to enable the enforcing authority to carry out its functions under these Regulations, and failure to provide such information is an offence.

Costs recoverable from owner to be a charge on land

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

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

(2) A notice served under this regulation shall—

- (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 subsection; and
- (c) state the effect of paragraphs (4) to (6).

(3) On the date on which the enforcing authority serves a notice on a person under this regulation the enforcing authority shall also serve a copy of the notice on every other person who, to the knowledge of the enforcing authority, has an estate in the land 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 land—

- (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) below, 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) A charge under this regulation may be recovered by the same means and in the like manner in all respects as if it were a mortgage by deed created by the owner of the estate in favour of the enforcing authority and, for the recovery thereof, the enforcing authority may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881(14) on mortgages by deed.

(9) In this regulation “owner”, in relation to any land, 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 land or, where the land is not let at a rack rent, would be so entitled if they were so let.

Penalties

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

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years.

(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.

Sealed with the Official Seal of the Department of the Environment on 29th June 2009.



Maggie Smith
A senior officer of the Department of the
Environment