

## SCHEDULE 1

Regulation 3

### Damage to species and natural habitats

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

1. In the case of protected species or natural habitats (other than damage in an area of special scientific interest to which paragraph 4 applies) the damage shall be such that it has a significant adverse effect on reaching or maintaining the favourable conservation status of the protected species and 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;
- (g) the capacity of the species or habitat to recover within a short time of the damage being caused to a condition which leads to its state at the time of the damage or better without any intervention other than increased protection measures.

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

2.—(1) A habitat's conservation status is 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.

- (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 habitats;
  - (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.

**Areas of special scientific interest**

- 4.—(1) In the case of an area of special scientific interest, the damage shall be to—
- (a) the species or habitats declared under Article 28(1) of the Environment (Northern Ireland) Order 2002<sup>(1)</sup>, or
  - (b) protected species or natural habitats.

(2) The damage shall 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 in an area of special scientific interest does not include damage caused by an act expressly authorised by the relevant authorities in accordance with the Conservation (Nature Habitats, etc.) Regulations (Northern Ireland) 1995<sup>(2)</sup> or the Wildlife (Northern Ireland) Order 1985<sup>(3)</sup> or the Environment (Northern Ireland) Order 2002.

## SCHEDULE 2

Regulation 3

## Activities causing damage

**Operation of permitted installations**

1. 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<sup>(4)</sup> (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**

2.—(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 Council Directive 2006/12/EC on waste<sup>(5)</sup> and Council Directive 91/689/EEC on hazardous waste<sup>(6)</sup>.

(2) The operation of landfill sites under Council Directive 1999/31/EC on the landfill of waste<sup>(7)</sup> and the operation of incineration plants under Directive 2000/76/EC of the European Parliament and of the Council on the incineration of waste<sup>(8)</sup>.

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

(1) S.I. 2002/3153 (N.I. 7)

(2) S.R. 1995 No. 380

(3) S.R. 1985 No. 171

(4) O.J. No. L24, 29.01.08, p.8

(5) O.J. No. L114, 27.4.06, p.9 (as last amended by Directive 2008/98/EC of the European Parliament and of the Council, O.J. No. L312, 22.11.08, p.3)

(6) O.J. No. L377, 31.12.91, p.20 (as last amended by Directive 2008/98/EC of the European Parliament and of the Council, O.J. No. L312, 22.11.08, p.3)

(7) O.J. No. L182, 16.7.99, p.1 (as last amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council, O.J. No. L311, 21.11.08, p.1)

(8) O.J. No. L332, 28.12.00, p.91 (as corrected in O.J. No. L145, 31.5.01, p.52)

## **Mining waste**

3. 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(**9**).

## **Discharges requiring authorisation**

4.—(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(**10**).

(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(**11**).

(3) All discharges or injections of pollutants into surface water or groundwater that require a permit, authorisation or registration under Directive [2000/60/EC](#)(**12**).

## **Water abstraction and impoundment**

5. Water abstraction and impoundment of water subject to prior authorisation in pursuance of Directive [2000/60/EC](#).

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

6. 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](#) on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous substances(**13**);
- (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(**14**);
- (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(**15**);
- (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(**16**).

## **Transport**

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

---

(9) O.J. No. L102, 11.04.06, p.15

(10) O.J. No. L64, 4.3.06, p.52

(11) O.J. No. L20, 26.1.80, p.43 (as amended by Council Directive [91/692/EC](#), O.J. No. L377, 31.12.91, p.48)

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

(13) O.J. No. L196, 16.8.67, p.1 (as last amended by Regulation (EC) No 2008/1272 of the European Parliament and of the Council, O.J. No. L353, 31.12.08, p.1)

(14) O.J. 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, O.J. No. L353, 31.12.08, p.1)

(15) O.J. No. L 230, 19.8.91, p.1 (as last amended by Commission Directive [2008/127/EC](#), O.J. No. L344, 20.12.08, p.89)

(16) O.J. No. L 123, 24.4.98, p.1 (as last amended by Directive [2008/31/EC](#) of the European Parliament and of the Council, O.J. No. L81, 20.3.08, p.57)

*Status: This is the original version (as it was originally made).*

- (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(**17**);
- (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(**18**);
- (c) Council Directive [93/75/EEC](#) concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods(**19**).

### Genetically modified organisms

8.—(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(**20**).

(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(**21**).

### Transboundary shipment of waste

9. 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 (**22**).

## SCHEDULE 3

Regulation 16

Permits, etc.

### Integrated pollution prevention and control

1. A permit granted under the Pollution Prevention and Control Regulations (Northern Ireland) 2003(**23**) for an activity listed in Annex 1 to Council Directive [96/61/EC](#) concerning integrated pollution prevention and control(**24**).

### Waste

2.—(1) A permit issued under the Pollution Prevention and Control Regulations (Northern Ireland) 2003 for the recovery and disposal of waste and hazardous waste, including the supervision of such operations and after-care of disposal sites and including a registered exempt waste operation, in pursuance of Council Directive [2006/12/EC](#) on waste and Council Directive [91/689/EEC](#) on hazardous waste.

(2) A licence or registration issued under the Waste Management Licensing Regulations (Northern Ireland) 2003(**25**) or the Hazardous Waste Regulations (Northern Ireland) 2005(**26**) for

(17) O.J. No. L 319, 12.12.94, p.7 (as last amended by Commission Directive [2006/89/EC](#), O.J. No. L305, 4.11.06, p.4)

(18) O.J. No. L 235, 17.9.96, p.25 (as last amended by Commission Directive [2006/90/EC](#), O.J. No. L305, 4.11.06, p.6)

(19) O.J. No. L 247, 5.10.93, p.19 (as last amended by Directive [2002/84/EC](#) of the European Parliament and of the Council, O.J. No. L324, 29.11.02, p.53)

(20) O.J. No. L117, 08.05.90, p.1 (as last amended by Commission Decision [2005/174/EC](#), O.J. No. L59, 5.3.05, p.20)

(21) O.J. No. L106, 17.04.01, p.1 (as last amended by Directive [2008/27/EC](#) of the European Parliament and of the Council, O.J. No. L81, 20.3.08, p.45)

(22) O.J. No. L190, 12.07.06, p.1 (as last amended by [Commission Regulation \(EC\) No 669/2008](#), O.J. No. L188, 16.7.08, p.7)

(23) [S.R. 2003 No. 46](#)

(24) O.J. No. L257, 10.10.96, p.26

(25) [S.R. 2003 No. 493](#)

the recovery and disposal of waste and hazardous waste, including the supervision of such operations and after-care of disposal sites and including a registered exempt waste operation, in pursuance of Council Directive [2006/12/EC](#) on waste and Council Directive [91/689/EEC](#) on hazardous waste.

(3) A licence granted under Part II of the Food and Environment Protection Act 1985(27) issued for the purpose of those Directives.

### **Landfill**

3. A permit granted under the Pollution Prevention and Control Regulations (Northern Ireland) 2003 for the operation of landfill sites under Council Directive [1999/31/EC](#) on the landfill of waste.

### **Incineration plants**

4. A permit granted under the Pollution Prevention and Control Regulations (Northern Ireland) 2003 for the operation of incineration plants under Directive [2000/76/EC](#) of the European Parliament and of the Council on the incineration of waste.

### **Discharges to water**

5. A water discharge consent under the Water (Northern Ireland) Order 1999(28) or a drought order under the Water and Sewerage Services (Northern Ireland) Order 2006(29).

### **Discharges to groundwater**

6. An authorisation under the Groundwater Regulations (Northern Ireland) 1998(30)

### **Water abstraction or impoundment**

7. A water abstraction or impoundment licence under the Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006(31).

### **Pesticides and biocides**

8. An approval of a pesticide under the Control of Pesticides Regulations (Northern Ireland) 1987(32) or the Plant Protection Products Regulations (Northern Ireland) 2005(33) or an authorisation of a biocidal product under, the Biocidal Products Regulations (Northern Ireland) 2001(34).

### **Genetically modified organisms**

9.—(1) An authorisation for the contained use of genetically modified organisms under the Genetically Modified Organisms (Contained Use) Regulations (Northern Ireland) 2001(35) or an

---

(26) S.R. 2005 No. 300

(27) 1985 c. 48

(28) S.I. 1999/662 (N.I. 6)

(29) S.I. 2006/3336 (N.I. 21)

(30) S.R. 1998 No. 401

(31) S.R. 2006 No. 482

(32) S.R. 1987 No. 414

(33) S.R. 2005 No. 526

(34) S.R. 2001 No. 422

(35) S.R. 2001 No. 295

*Status: This is the original version (as it was originally made).*

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<sup>(36)</sup>.

(2) A consent for the deliberate release of genetically modified organisms under Article 8(1) of the Genetically Modified Organisms (Northern Ireland) Order 1991<sup>(37)</sup> and the Genetically Modified Organisms (Deliberate Release) Regulations (Northern Ireland) 2003<sup>(38)</sup> 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<sup>(39)</sup>.

## SCHEDULE 4

Regulation 15

### 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.

#### Risk to human health

2. Remediation shall 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 shall 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.

<sup>(36)</sup> O.J. No. L268, 18.10.03, p.1 (as last amended by Regulation (EC) No 298/2008 of the European Parliament and of the Council, O.J. No. L97, 9.4.08, p.64)

<sup>(37)</sup> S.I. 1991/1714 (N.I. 19)

<sup>(38)</sup> S.R. 2003 No. 167

<sup>(39)</sup> O.J. No. L106, 17.4.01, p.1 (as last amended by Directive 2008/27/EC of the European Parliament and of the Council, O.J. No. L81, 20.3.08, p.45)

### **Compensatory remediation**

5.—(1) In addition, compensatory remediation shall 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 measures have taken effect.

(2) Compensatory remediation does not include financial compensation.

### **Choice of remediation**

6. The remediation options shall 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 site of the environmental damage; and
- (j) the geographical linkage to the damaged site.

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

7.—(1) If possible, complementary and compensatory remedial measures shall 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 shall 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 shall 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 condition at the time of the incident or that restore it more slowly may be chosen.

*Status: This is the original version (as it was originally made).*

(2) This decision can be taken only if the natural resources or services foregone at the primary site as a result of the decision are compensated for by increasing complementary or compensatory actions to provide a similar level of natural resources or services.

(3) This will be the case, for example, when the equivalent natural resources or services could be provided elsewhere at a lower cost.

(4) 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 shall 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 to human health.

(3) 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.

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

## SCHEDULE 5

Regulation 25

### 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 25 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 shall 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 shall 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 shall 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 is payable**

5. Compensation shall be 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 Land Acquisition and Compensation (NI) Order 1973(40), in pursuance of a notice of intention to vest served on the date on which the grant of the right was made;
- (c) damage to, or affection of, 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.

---

(40) S.I. 1973/1896 (N.I. 21)

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

6.—(1) The rules set out in Article 6 of the Land Compensation (Northern Ireland) Order 1982<sup>(41)</sup> (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 shall 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 shall be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee and shall, in either case, be applied as if it were proceeds of sale.

### **Determination of disputes**

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

(2) In relation to the determination of any such question of compensation, the provisions of Articles 4 and 5 of the Land Compensation (Northern Ireland) Order 1982 (procedure on references to the Lands Tribunal and costs) shall apply as if—

- (a) the reference in Article 4 of the Land Compensation (Northern Ireland) Order 1982 to Article 3 of that Order were a reference to sub-paragraph (1); and
- (b) references in Article 5 of the Land Compensation (Northern Ireland) Order 1982 to the acquiring authority were references to the person to whom the rights were granted.

---

<sup>(41)</sup> S.I. 1982/712 (N.I. 9)