

**EXPLANATORY MEMORANDUM TO  
THE ENVIRONMENTAL DAMAGE (PREVENTION AND REMEDIATION)  
(AMENDMENT) REGULATIONS 2009**

**2009 No. 3275**

1. This explanatory memorandum has been prepared by the Department for the Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The Environmental Damage (Prevention and Remediation) Regulations 2009 (hereafter ‘the Regulations’), which came into force on 1<sup>st</sup> March 2009, aim to prevent and remedy serious incidents of environmental damage.

- 2.2 This amendment to the Environmental Damage (Prevention and Remediation) Regulations 2009 (hereafter ‘the Amendment’) will correct a defect in the application provisions of the Regulations so that they properly extend to the seabed out to the limits of the continental shelf and anywhere other than the seabed out to the limits of the renewable energy zone around England.

- 2.3 The Amendment will also correct the Regulations for acts expressly authorised by wildlife legislation in the offshore area.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None.

4. **Legislative Context**

- 4.1 This is an amendment to the Environmental Damage (Prevention and Remediation) Regulations 2009. The Regulations transpose the Environmental Liability Directive (ELD) on environmental liability with regard to the prevention and remedying of environmental damage.

- 4.2 The proposed Amendment will correctly express the area of application of the Regulations around England by extending it out to the limits of the seabed of the continental shelf and anywhere other than the seabed out to the limits of the renewable energy zone, as required by the Directive.

- 4.3 In addition, the Amendment will correct the Regulations to ensure that any activities expressly authorised within the relevant provisions of the Habitats and Birds Directives are excluded from the definition of damage to protected species and natural habitats in the Regulations.

5. **Territorial Extent and Application**

5.1 This instrument applies to the marine environment from the coast out to the limits of the United Kingdom's jurisdiction.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- *What is being done and why*

7.1 The Environmental Damage (Prevention and Remediation) Regulations 2009, which came into force on 1<sup>st</sup> March 2009, implement the Environmental Liability Directive (ELD). The Directive aims to prevent and remedy serious incidents of damage to habitats and species protected by EU law and to habitats and species on sites of special scientific interest, as well as damage to water resources and land contamination that presents a threat to human health.

7.2 The ELD's definition of damage to protected species and natural habitats extends into the marine environment from the coast out to the limits of the United Kingdom's jurisdiction (i.e. 200 nautical miles from the coast and also to the seabed in parts of the continental shelf beyond this).

7.3 The original policy intention was to fully transpose these requirements including in territorial waters in England (i.e. the area from the coast out to 12 miles). It has since come to light that the Regulations inadvertently exclude them from applying in territorial waters.

7.4 The Amendment will correctly express the area of application of the Regulations around England by extending it out from the coast to the limits of the seabed of the continental shelf and anywhere other than the seabed out to the limits of the renewable energy zone, including the English territorial waters.

7.5 Environmental damage to protected species and natural habitats in ELD specifically excludes effects which result from acts expressly authorised by legislation implementing certain provisions of the Habitats or Birds Directives. The Regulations refer to the relevant provisions within national legislation, but only to that legislation which gives effect to the Habitats and Birds Directives on land and within territorial waters. They do not refer to the legislation giving effect to them in the offshore area.

7.6 The Amendment therefore extends the Directive's exclusions to cover two Regulations in the offshore area, as expressed in regulation 4 of the Amendment.

- *Consolidation*

7.7 The Department has no plans for consolidation.

## **8. Consultation outcome**

8.1 The Department did not consult on this Amendment, as the Amendment is a technical correction to the originally intended application provisions.

## **9. Guidance**

9.1 This Amendment does not require any changes to guidance (as this amendment does not change any of the current guidance nor infer any additional responsibility on any parties).

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 Whilst there will not be any monitoring of this specific Amendment, incident data return forms will provide an ongoing monitoring tool for the Regulations. A report will also be compiled on the implementation impact of the Regulations for the European Commission in 2013.

## **13. Contact**

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