

SCHEDULE 3

Regulation 11(2)

REMEDIATION OF ENVIRONMENTAL DAMAGE

PART I

Application of Part I

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

Definitions

2. In this Part—

- (a) “primary remediation” means any remedial measure which returns the damaged natural resources or impaired services to, or towards, baseline condition;
- (b) “complementary remediation” means 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 services;
- (c) “compensatory remediation” means any action taken to compensate for interim losses of natural resources or services that occur from the date of damage occurring until primary remediation has achieved its full effect; and
- (d) “interim losses” means losses which result from the fact that the damaged natural resources or services are not able to perform their ecological functions or provide services to other natural resources or to the public until the primary or complementary measures have taken effect; and does not include financial compensation to the public.

Objectives

3.—(1) Environmental damage, in relation to water, protected species or natural habitats, shall be effected by the restoration of the environment to its baseline condition by—

- (a) primary remediation;
- (b) complementary remediation; and
- (c) compensatory remediation.

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

Risk to human health

4. The remedying of environmental damage, in relation to damage to water, protected species or natural habitats, shall result in the removal of any significant risk of human health being adversely affected.

Identification of remedial measures

5.—(1) In relation to primary remediation, actions to restore the natural resources and services towards baseline condition on an accelerated time-frame, or through natural recovery, shall be considered.

- (2) In relation to complementary and compensatory remediation—

Changes to legislation: There are currently no known outstanding effects for the The Environmental Liability (Scotland) Regulations 2009, SCHEDULE 3. (See end of Document for details)

- (i) if possible, complementary and compensatory remedial measures must provide natural resources or services of the same type, quality and quantity as those damaged;
- (ii) 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);
- (iii) 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;
- (iv) 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 is equivalent to the estimated monetary value of the lost natural resources or services;
- (v) in the case of complementary remediation at a new site, where possible and appropriate this site should be geographically linked to the damaged site.

Choice of remediation

6.—(1) The reasonable remedial options should be evaluated, using best available technologies, based on the following criteria—

- (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 to 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.

(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 or services foregone at the primary site as a result of the decision are compensated for by increasing complementary actions to provide a similar level of natural resources or services as were foregone. This will be the case, for example, when the equivalent natural resources or services could be provided elsewhere at a lower cost. These additional remedial measures shall be determined in accordance with the rules set out in paragraph 5(2).

(3) The competent authority may at any time 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.

PART II

1. This Part applies to damage to land.
2. 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.
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. Use shall be ascertained on the basis of any enactment relating to land use, or other relevant enactments, in force, when the damage occurred.
5. If the use of the land is changed, all necessary measures shall be taken to prevent any adverse effects on human health.
6. If there are no enactments which are relevant for the purposes of paragraph 4, the nature of the relevant area where the damage occurred, taking into account its expected development, shall determine the use of the specific area.
7. 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.

Changes to legislation:

There are currently no known outstanding effects for the The Environmental Liability (Scotland) Regulations 2009, SCHEDULE 3.