
STATUTORY INSTRUMENTS

2016 No. 562

The Nuclear Installations (Liability for Damage) Order 2016

Cost of preventive measures

10. After section 11G of the 1965 Act (inserted by article 9) insert—

“Cost of preventive measures

11H Cost of preventive measures

(1) Where there is a breach of a duty imposed by section 7, 7B, 8, 9 or 10, a claim may be made for compensation under this Act in respect of the reasonable cost of preventive measures reasonably taken after the breach of duty.

(2) Subject to subsections (3) and (4), where there is a breach of a duty imposed by section 7, 7B, 8, 9 or 10, a claim may be made for compensation under this Act in respect of injury to a person or damage to property caused by—

- (a) preventive measures reasonably taken after the breach of duty by a person other than the person whose breach of duty it is, or
- (b) preventive measures taken after the breach of duty by the person whose breach of duty it is.

(3) The compensation that may be claimed under subsection (2)(a) does not include compensation in respect of so much of any injury or damage as is caused by an act or omission done maliciously or negligently.

(4) The compensation that may be claimed under subsection (2) does not include compensation in respect of damage to property where the property is such that damage to it would not constitute damage in breach of a duty imposed by—

- (a) section 7 (see section 7(1A)(b), (1C)(b), (3) and (3A)),
- (b) section 7B (see section 7(1A)(b), (1C)(b), (3) and (3A) as applied by section 7B),
- (c) section 8 (see section 7(1A)(b), (1C)(b), (3) and (3A) as applied by section 8),
- (d) section 9 (see section 7(1A)(b), (1C)(b), (3) and (3A) as applied by section 9), or
- (e) section 10 (see section 10(1)(b)),

as the case may be.

(5) The payment of compensation in respect of injury to a person or damage to property otherwise than under this Act by or on behalf of a person who takes preventive measures does not prevent the making of a claim under subsection (2) (subject to the exceptions in subsections (3) and (4)) if and to the extent that that payment does not make full compensation in respect of the injury or damage in question.

(6) A reference in subsection (1) or (2) to a preventive measure reasonably taken after a breach of duty includes a reference to such part of a preventive measure as is so taken.

(7) A preventive measure is a measure taken in order to minimise or prevent—

- (a) injury to a person or damage to property constituting a breach of a duty imposed by section 7, 7B, 8, 9 or 10, or
 - (b) significant impairment of the environment occasioning costs or losses in respect of which a claim under section 11A(1) or 11G(1) or paragraph 1 of Schedule 1A may be made.
- (8) A preventive measure is reasonably taken for the purposes of this section if taking that measure is appropriate and proportionate in the circumstances.
- (9) Where the breach of a duty under section 7(1E), 7B, 8, 9 or 10(1A) consists of an event that creates a grave and imminent threat of a breach of another duty under section 7, 7B, 8, 9 or 10, no preventive measure may be considered appropriate and proportionate unless it is possible for there to be at least one person, not being a person involved in the event, whose likely exposure if the threatened breach of duty were to happen would be in excess of one of the following—
- (a) an effective dose of 5 mSv in the period of one year beginning with the day on which the threatened breach of duty happens or begins to happen;
 - (b) an equivalent dose for the lens of the eye of 15 mSv in that period;
 - (c) an equivalent dose for the skin of 50 mSv in that period over 1 cm² area of skin, regardless of the area exposed.
- (10) In quantifying a person's likely exposure for the purposes of subsection (9), the effect of preventive measures taken to protect the person's health within 24 hours of the time when the event first creates the grave and imminent threat is to be disregarded.
- (11) In subsection (9)—
- (a) an effective dose is the sum of the effective dose to the whole body from external radiation and the committed effective dose from internal radiation;
 - (b) an equivalent dose for a particular human tissue or organ includes the committed equivalent dose to that tissue or organ from internal radiation;
 - (c) "external radiation", in relation to a person, means ionising radiation coming from outside the body of that person;
 - (d) "internal radiation", in relation to a person, means ionising radiation coming from inside the body of that person.
- (12) Subsection (9) does not apply in the case of—
- (a) preventive measures taken as regards a person involved in the event;
 - (b) preventive measures relating to the food supply.
- (13) For the purposes of subsections (9) and (12), a person is involved in such an event if—
- (a) where the event relates to a threatened breach of duty on a licensed site, the person is on the licensed site at any time when the event is happening,
 - (b) where the event relates to a threatened breach of duty involving nuclear matter in the course of carriage, the person is concerned with that carriage of nuclear matter at any time when the event is happening,
 - (c) where the event relates to a threatened breach of duty on a licensed site, the person is, after the event happens, on the licensed site for the purpose of taking preventive measures or taking part in an emergency response to the event, or
 - (d) where the event relates to a threatened breach of duty involving nuclear matter in the course of carriage, the person is at the place where the event is happening or

has happened for the purpose of taking preventive measures or taking part in an emergency response to the event.”