
STATUTORY INSTRUMENTS

2016 No. 562

The Nuclear Installations (Liability for Damage) Order 2016

Cost of measures of reinstatement

8.—(1) After section 11 of the 1965 Act insert—

“Cost of measures of reinstatement

11A Cost of measures of reinstatement

(1) Where as a result of a breach of a duty imposed by section 7, 7B, 8, 9 or 10 there is significant impairment of the environment, a qualifying public authority may make a claim under this Act for compensation in respect of the reasonable cost of relevant measures of reinstatement relating to that impairment.

(2) Subsection (1) is subject to subsection (3) and sections 11B and 11D.

(3) Compensation is not payable by virtue of a claim under subsection (1) in respect of the cost of measures of reinstatement that benefit or would benefit property if 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.

(4) A public authority is a qualifying public authority, in relation to a particular significant impairment of the environment, if it may in the exercise of its functions—

- (a) take, or arrange for the taking of, measures of reinstatement relating to that impairment of the environment, or
- (b) pay (otherwise than under this Act) costs incurred by another public authority in taking, or arranging for the taking of, measures of reinstatement relating to that impairment.

(5) A measure of reinstatement relating to a significant impairment of the environment is a relevant measure of reinstatement relating to that impairment if, or to the extent that, it is a measure reasonably taken for the purpose of—

- (a) reinstating or restoring what has been destroyed or damaged in the environment, or
- (b) establishing the equivalent of what has been destroyed or damaged in the environment.

(6) A measure of reinstatement is reasonably taken for the purposes of this section if taking that measure is appropriate and proportionate in the circumstances.

(7) A reference in this section to the environment is a reference to the environment within the territorial limits of the United Kingdom, in or above the exclusive economic zone of the United Kingdom or on the continental shelf of the United Kingdom.

(8) In this section and sections 11B, 11D and 11E—

“holder of a public office” means—

- (a) a person holding an office under the Crown,
- (b) a person holding an office created or continued in existence by a public general Act or by legislation passed by the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, or
- (c) a person holding an office the remuneration in respect of which is paid out of money provided by Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly;

“local authority” means—

- (a) in relation to England, a county council, a district council, a parish council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly,
- (b) in relation to Scotland, a council constituted under section 2(1) of the Local Government etc. (Scotland) Act 1994,
- (c) in relation to Wales, a county council, a county borough council or a community council, or
- (d) in relation to Northern Ireland, a district council;

“public authority” means a holder of a public office or a public body in the United Kingdom;

“public body” includes a government department (including the Welsh Assembly Government, any part of the Scottish Administration and a Northern Ireland department) and a local authority.

11B Approval of measures of reinstatement

(1) Compensation under this Act is payable by virtue of a claim under section 11A(1) only if the claim relates to measures of reinstatement approved by—

- (a) the Secretary of State under this section, or
- (b) if a decision under this section is appealed under section 11D, the court that determines the appeal under section 11D.

(2) A qualifying public authority may apply to the Secretary of State for approval under this section before or after the measures of reinstatement are taken.

(3) The public authority must publish a notice of its application.

(4) The notice must be published in a manner that appears to the authority to be appropriate for bringing it to the attention of—

- (a) the person whose breach, or alleged breach, of a duty imposed by section 7, 7B, 8, 9 or 10 caused, or is alleged to have caused, the impairment of the environment;
- (b) in relation to any property that is or would be affected by the measures of reinstatement, any person who appears to the authority to have such interest in or right over that property as would entitle that person to claim for damage to property.

(5) A notice of an application for approval must specify the measures of reinstatement for which approval is sought.

(6) The Secretary of State may approve a measure of reinstatement under this section only if satisfied that—

- (a) there is significant impairment of the environment;
- (b) the measure is, in relation to that impairment, a relevant measure of reinstatement within the meaning of section 11A;
- (c) the amount claimed in respect of the cost of the measure is reasonable;
- (d) the public authority applying for approval in relation to a measure of reinstatement is a qualifying public authority within the meaning of section 11A as regards that measure.

(7) The Secretary of State may refuse to approve measures of reinstatement on the ground that the applicant, or the public authority whose costs the applicant has paid or proposes to pay, is or was not the appropriate public authority to take the measures or to arrange for them to be taken.

(8) The Secretary of State may approve some but not others of the measures to which the application relates.

(9) A decision by the Secretary of State under this section is not to be taken as determining—

- (a) whether or not there was a breach of a duty under section 7, 7B, 8, 9 or 10, or
- (b) whether or not the impairment of the environment arises out of or results from a breach of such a duty.

(10) The Secretary of State must publish a notice of a decision made under this section.

(11) For each of the measures of reinstatement to which the application relates, the notice of decision must—

- (a) if approval is refused, state whether or not approval is refused on the ground mentioned in subsection (7), and
- (b) except in a case where approval is refused on that ground, specify the reasons why the Secretary of State is or is not satisfied as to the matters in subsection (6).

(12) If the Secretary of State makes a claim for compensation under section 11A(1), the Secretary of State must appoint an independent person to carry out the functions of the Secretary of State under this section and sections 11C and 11D as regards approving measures of reinstatement.

(13) Approval by the appointed person is to be treated as approval by the Secretary of State for the purposes of subsection (1).

11C Representations

(1) Persons who satisfy the requirements of subsection (2) may make representations to the Secretary of State as regards the measures of reinstatement for which approval is sought by an application under section 11B.

(2) A person satisfies the requirements of this subsection if the person is—

- (a) the person whose breach, or alleged breach, of a duty imposed by section 7, 7B, 8, 9 or 10 caused, or is alleged to have caused, the impairment of the environment;
- (b) in relation to any property that is or would be affected by the measures of reinstatement, a person who has such interest in or right over that property as would entitle that person to claim for damage to property.

(3) The Secretary of State may invite other persons to make representations as regards the measures of reinstatement.

(4) The Secretary of State must publish a notice of the arrangements for making representations under this section in respect of an application under section 11B.

11D Appeals against decisions

(1) The following persons may appeal to the appropriate court against a decision of the Secretary of State on an application under section 11B—

- (a) where approval of a measure of reinstatement is refused, the public authority that applied for approval of the measure;
- (b) where approval of a measure of reinstatement is granted, the person whose breach, or alleged breach, of a duty imposed by section 7, 7B, 8, 9 or 10 caused, or is alleged to have caused, the impairment of the environment.

(2) A decision of the Secretary of State to refuse approval on the ground mentioned in section 11B(7) may not be appealed under this section.

(3) Subject to subsection (2), the court may on an appeal under this section determine whether or not to approve the measures of reinstatement to which the appeal relates.

(4) Section 11B(6) applies in relation to a determination of the court as it applies in relation to a decision of the Secretary of State under section 11B.

(5) The appropriate court is the court that has, or but for section 16(3E) would have had, jurisdiction in accordance with section 16C to determine a claim by virtue of section 7, 7B, 8, 9 or 10 for compensation under this Act in respect of the cost of the measures of reinstatement in question.

(6) A decision of a person appointed under section 11B(12) may be appealed in the same way as a decision of the Secretary of State.

11E Measures of reinstatement in the United Kingdom: claims under relevant foreign law

(1) This section applies if approval on the part of the United Kingdom is required by any relevant foreign law in connection with a claim under that law corresponding to such claim as may be made under paragraph 1 of Schedule 1A.

(2) Sections 11B to 11D are to apply in relation to such a claim under the relevant foreign law as they apply in relation to a claim under section 11A(1).

(3) Where sections 11B to 11D apply by virtue of subsection (2)—

- (a) references to a public authority are to be treated as including references to a person who is entitled, in the particular case, to take or arrange for the taking of such measures as give rise to a claim under the relevant foreign law for compensation,
- (b) references to a breach of a duty under section 7, 7B, 8, 9 or 10 are to be treated as references to the corresponding occasion of compensation under the relevant foreign law,
- (c) section 11B(6) is to be treated as requiring the Secretary of State to approve a measure of reinstatement only if satisfied that—
 - (i) the measure is such that the costs of taking the measure may be claimed under the relevant foreign law made for purposes corresponding to section 11A, if liability is established under the relevant foreign law, and
 - (ii) the person applying for approval is entitled to take or arrange for the taking of the measure,

- (d) references to the appropriate court are to be treated as references to the High Court of Justice, and
- (e) section 11B(7) is not to have effect if the person applying for approval is not a public authority.

11F Measures of reinstatement outside the United Kingdom: claims under this Act

11F Schedule 1A (approval of measures of reinstatement in places outside the United Kingdom) has effect.”

- (2) After Schedule 1 to the 1965 Act insert the Schedule 1A set out in Schedule 1 to this Order.