

Subsidiary Legislation made under s. 18.

ENVIRONMENTAL LIABILITY REGULATIONS 2008

(LN. 2008/100)

Commencement **11.12.2008**

Amending enactments	Relevant current provisions	Commencement date
LN. 2009/081	Sch.	26.11.2009
2011/175	Sch.	29.9.2011

EU Legislation/International Agreements involved:

Directive 67/548/EEC	Directive 1999/45/EC
Directive 75/442/EEC	Directive 2000/60/EC
Directive 76/464/EEC	Directive 2000/60/EC
Directive 79/409/EEC	Directive 2000/76/EC
Directive 80/68/EEC	Directive 2001/18/ EC
Directive 84/360/EEC	Directive 2001/80/EC
Directive 85/337/EEC	Directive 2004/35/EC
Directive 90/219/EEC	Directive 2006/12/EC
Directive 91/414/EEC	Directive 2006/21/EC
Directive 91/689/EEC	Directive 2008/1/EC
Directive 92/43/EEC	Directive 2009/31/EC
Directive 93/75/EEC	Directive 2013/30/EU
Directive 94/55/EC	Regulation (EEC) No 259/93
Directive 96/49/EC	Regulation (EC) No 1013/2006
Directive 96/61/EC	
Directive 98/8/EC	
Directive 1999/31/EC	

the International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage;

the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage;

the International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage;

the International Convention of 3 May 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;

the Convention of 10 October 1989 on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels.

the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and the Brussels Supplementary Convention of 31 January 1963;

the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage;

the Convention of 12 September 1997 on Supplementary Compensation for Nuclear Damage;

the Joint Protocol of 21 September 1988 relating to the Application of the Vienna Convention and the Paris Convention;

the Brussels Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material.

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SCHEDULE

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In exercise of the powers conferred upon it by section 18 of the Environment Act 2005, and all other enabling powers, and in order to transpose Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of the environmental damage, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Environmental Liability Regulations 2008 and come into operation on the day of publication.

Interpretation.

2.(1) In these Regulations—

“activity” means any commercial activity, whether public or private and whether or not carried out for profit;

“baseline condition” means the condition at the time of the damage of the natural resources and services that would have existed had the environmental damage not occurred, estimated on the basis of the best information available;

“damage” means a measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly;

“conservation status of habitats” means 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; the conservation status of a natural habitat 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” means the sum of the influences acting on the species concerned that may affect the long term distribution

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and abundance of its populations; the conservation status of a species is favourable if–

- (a) 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) 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;

“the Directive” means Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of the environmental damage;

“Directive 79/409/EEC” means Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds;

“Directive 92/43/EEC” means Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;

“emission” means the release in the environment, as a result of human activities, of substances, preparations, organisms or micro-organisms;

“imminent threat of damage” means a sufficient likelihood that environmental damage will occur in the near future;

“Minister” means the Minister with responsibility for the Environment;

“natural habitats” means–

- (a) habitats of species–
 - (i) mentioned in Article 4(2) of Directive 79/409/EEC;
 - (ii) listed in Annex I to Directive 79/409/EEC;
 - (iii) listed in Annex II to Directive 92/43/EEC;
- (b) the natural habitats listed in Annex I of Directive 92/43/EEC;

- (c) the breeding sites or resting places of the species listed in Annex IV of Directive 92/43/EEC; and
- (d) any other habitat that the Government may designate for purposes equivalent to those laid down in Directive 79/409/EEC and Directive 92/43/EEC;

“natural resource” means—

- (a) protected species;
- (b) natural habitats;
- (c) water; and
- (d) land;

“preventive measures” means any measures taken in response to an event, act or omission that has created an imminent threat of environmental damage, with a view to preventing or minimising that damage;

“protected species” means—

- (a) the species mentioned in Article 4(2) of Directive 79/409/EEC;
- (b) the species listed in Annex I to Directive 79/409/EEC;
- (c) the species listed in Annexes II and IV to Directive 92/43/EEC;
- (d) any other species that the Government may designate for purposes equivalent to those laid down in Directive 79/409/EEC and Directive 92/43/EEC;
- (e) the species listed under Schedules 1, 2 and 3 of the Nature Protection Act;

“recovery”, including “natural recovery”, means, in the case of water, protected species and natural habitats the return of damaged natural resources and/or impaired services to baseline condition and in the case of land damage, the elimination of any significant risk of adversely affecting human health or the environment;

“responsible operator” means the operator of an activity;

“remedial measures” means any action, or combination of actions, including mitigating or interim measures to restore, rehabilitate or replace damaged natural resources and/or impaired services, or to provide an equivalent alternative to those resources or services as foreseen in Annex II of the Directive;

“services” and “natural resource service” means the functions performed by a natural resource for the benefit of another natural resource or the public;

“the Water Framework Directive” means Council Directive 2000/60/EC of 23 October 2000 establishing a framework for the Community action in the field of water policy;

“waters” means all waters covered by the Water Framework Directive, and “water” shall be construed accordingly.

(2) Expressions used in these Regulations that are also used in the Directive have the same meaning in these Regulations as they have in the Directive.

(3) A reference in these Regulations to a Community instrument is a reference to that instrument as amended from time to time.

(4) Annexes I to V to the Directive are reproduced, for information purposes only, in the Schedule to these Regulations.

Type of damage to which these Regulations apply.

3.(1) These Regulations apply to environmental damage, which is damage to—

- (a) protected species or natural habitats;
- (b) water; or
- (c) land,

as specified in this regulation.

(2) These Regulations apply to—

- (a) environmental damage caused by an activity listed in Annex III to the Directive and to any imminent threat of environmental damage occurring by reason of any of those activities; and

- (b) in the case of protected species or natural habitats, it also means damage, or the imminent threat of damage, caused by an activity other than those activities listed in Annex III to the Directive, whenever the operator has been at fault or negligent as to whether such damage would be caused.

(3) Subject to sub-regulation (6), environmental damage to protected species or natural habitats means any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of those habitats or species and the significance of those effects is to be assessed with reference to the baseline condition taking into account the criteria set out in Annex I to the Directive.

(4) Environmental damage to waters means any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential of waters to which the Water Framework Directive applies, with the exception of the damage referred to in regulation 6.

(5) Environmental damage to land means contamination of land that results in a significant risk of adverse effects on human health or the environment, with particular regard to land quality, through the direct or indirect introduction, in, on or under land of substances, preparations, organisms or micro-organisms.

(6) Environmental damage to protected species or natural habitats does not include previously identified adverse effects which result from an activity by an operator which was expressly authorised by the relevant authorities in accordance with enactments implementing Article 6(3) and (4) or Article 16 of Directive 92/43/EEC or Article 9 of Directive 79/409/EEC or, in the case of habitats and species not covered by Community law, in accordance with equivalent provisions in any enactment on nature conservation.

(7) Nothing in these Regulations shall be construed as giving a party a right of action for damages against another party, save where these Regulations expressly confer such a right.

Other legislation.

4.(1) These Regulations are without prejudice to any other enactment concerning damage to the environment.

(2) These Regulations are without prejudice to the right of any responsible operator to limit his liability in accordance with any enactment that gives

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effect to the Convention on Limitation of Liability for Maritime Claims (LLMC) 1976 as amended from time to time.

Exemptions.

5.(1) These Regulations do not apply in relation to environmental damage, or imminent threat of such damage, caused by–

- (a) an act of armed conflict, civil war, insurrection or hostilities;
- (b) a natural phenomenon of exceptional, inevitable and irresistible character;
- (c) activities the sole purpose of which is to protect from natural disasters;
- (d) an incident in respect of which liability or compensation falls within the scope of an international convention listed in Annex IV of the Directive where the application of that convention has been extended to Gibraltar;
- (e) activities covered by the Euratom Treaty;
- (f) an incident or activity in respect of which liability or compensation falls within the scope of an international instrument listed in Annex V of the Directive, where the application of that instrument has been extended to Gibraltar;
- (g) activities the main purpose of which is to serve the defence of Gibraltar or international security.

(2) These Regulations only apply to environmental damage or to an imminent threat of such damage caused by pollution of a diffuse character if it is possible to establish a causal link between the damage and the activities of individual responsible operators.

Exemption from water damage.

6.(1) Environmental damage to water does not include–

- (a) damage caused by a modification to the physical characteristics of a surface water body;
- (b) an alteration to the level of a body of groundwater, or

- (c) deterioration from high status to good status of a body of surface water resulting from new sustainable human development activities,

if all the conditions in sub-regulation (2) are fulfilled.

(2) The conditions are–

- (a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;
- (b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 of the Water Framework Directive and the objectives are reviewed every six years;
- (c) the reasons for those modifications or alterations are of overriding public interest, or the result of the damage is outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development; and
- (d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means which are a significantly better environmental option.

Competent Authority.

7.(1) The Minister, or such other person as the Minister may from time to time appoint by notice in the Gazette, shall be the competent authority who shall be responsible for the enforcement of these Regulations and whose duties and functions shall be as set out in these Regulations.

(2) Without prejudice to the generality of the foregoing, and to the provisions in these Regulations establishing duties and functions to be performed by the competent authority, the competent authority shall be entitled to–

- (a) require a responsible operator to–
 - (i) carry out his own assessment of the significance of the environmental damage, or imminent threat of such damage, which he has caused;

- (ii) determine which remedial measures should be taken with reference to Annex II; and
- (b) empower or require a third party to take the necessary preventive or remedial measures.

Preventing environmental damage

Preventing environmental damage.

8.(1) Where there is an imminent threat of environmental damage, or an imminent threat of damage which there are reasonable grounds to believe will become environmental damage, the responsible operator must immediately—

- (a) take all practicable steps to prevent the damage; and
- (a) (unless the threat has been eliminated) notify all relevant details to the competent authority.

(2) The competent authority may, at any time, serve a notice on the responsible operator that—

- (a) describes the threat;
- (b) specifies the measures required to prevent the damage;
- (c) requires the responsible operator to take those measures, or measures at least equivalent to them, within the period specified in the notice and in accordance with such instructions as may be specified in the notice;
- (d) requires the responsible operator to provide to the competent authority such information as the notice states.

(3) Failure to comply with sub-regulation (1) or a notice served under sub-regulation (2) is an offence.

Preventing further environmental damage.

9.(1) Where an activity has caused environmental damage, or has caused damage where there are reasonable grounds to believe that the damage is or will become environmental damage, the responsible operator must immediately—

- (a) take all practicable steps to prevent further damage, adverse effects on human health or further impairment of services;
 - (b) notify all relevant details to the competent authority; and
 - (c) (without prejudice to regulation 17(1)(a)), identify remedial measures to be taken in accordance with Annex II to the Directive and propose them to the competent authority.
- (2) The competent authority may, at any time, serve a notice on the responsible operator that—
- (a) describes the damage;
 - (b) specifies the practicable steps to be taken to prevent further damage, adverse effects on human health or the environment or further impairment of services;
 - (c) specifies the remedial measures to be taken;
 - (d) requires the responsible operator to take the practicable steps referred to in sub-paragraph (b), or steps at least equivalent to them, within the period specified in the notice;
 - (e) requires the responsible operator to take the remedial measures referred to in sub-paragraph (c), or measures at least equivalent to them, within the period specified in the notice, and in accordance with such instructions as may be specified in the notice;
 - (f) requires the responsible operator to provide supplementary information on any damage that has occurred.
- (3) Failure to comply with sub-regulation (1) or a notice served under sub-regulation (2) is an offence.

Remediation

Assessment of damage.

10. Where damage has been caused, and there are reasonable grounds for believing that it is, or may be, environmental damage, the competent authority must establish whether or not it is environmental damage and assess the significance of such damage.

Determining the responsible operator.

11.(1) If the competent authority decides that the damage is environmental damage it must identify the responsible operator whose activity caused or contributed to the damage, and notify the responsible operator that—

- (a) the damage is environmental damage;
- (b) the damage was caused or contributed by the activity of the responsible operator; and
- (c) the competent authority intends to serve a remediation notice on that responsible operator.

(2) The competent authority may withdraw the notification if it is satisfied that the notification should not have been served.

(3) A person served with a notification under sub-regulation (1) may appeal against it to the Supreme Court within 28 days of the notification.

(4) The grounds of appeal are—

- (a) the activity did not cause or contribute to the damage;
- (b) the competent authority has acted unreasonably in deciding that the damage is environmental damage;
- (c) the environmental damage or imminent threat of such damage resulted from compliance with an instruction from a public authority (except an instruction relating to an emission or incident caused by the responsible operator's own activities);
- (d) the responsible operator was not at fault or negligent and that the environmental damage was caused by an emission or activity expressly authorised by, and fully in accordance with the conditions of, an authorisation granted under an enactment giving effect to the Community instruments referred to in Annex III to the Directive as applied at the time;
- (e) the responsible operator was not at fault or negligent and the emission or activity was not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time when the emission was released or the activity took place;

- (f) the environmental damage or imminent threat of such damage was the result of an act of a third party and occurred despite the fact that the responsible operator took all appropriate safety measures.

Remediation notices.

12.(1) If the responsible operator does not appeal against a notification within 28 days, or if the appeal is unsuccessful, the competent authority must serve a remediation notice on the responsible operator.

(2) Before serving a remediation notice pursuant to sub-regulation (1), the competent authority must consult the responsible operator and permit him to propose remedial measures together with a time limit for doing so.

(3) In serving a remediation notice pursuant to sub-regulation (1), the competent authority must take into account any remedial measures proposed by the responsible operator but the notice may contain additional or different measures from those proposed.

(4) The measures must be in accordance with Annex II to the Directive.

(5) Before serving a remediation notice pursuant to sub-regulation (1), the competent authority must, so far as is practicable, invite—

- (a) any person mentioned in regulation 16(1); and
- (b) any person on whose land the remedial measures will be carried out,

to submit their observations and shall take such observations into account.

(6) The remediation notice must specify—

- (a) the damage;
- (b) the measures necessary for remediation of the damage, together with the reasons;
- (c) the period within which those steps must be taken; and
- (d) the right of appeal against the remediation notice.

(7) More than one remediation notice may be served in respect of one incident of environmental damage.

(8) Further remediation notices may be served at any time during remediation or, if remediation has not been achieved, at the end of the remediation period, requiring further or different remediation.

(9) Failure to comply with a remediation notice is an offence.

More than one instance of environmental damage.

13. Where several instances of environmental damage have occurred and the competent authority cannot ensure that the necessary remedial measures are taken at the same time, the competent authority may prioritise the order in which the remedial measures are implemented and shall do so having regard to the following factors—

- (a) the nature, extent and gravity of the various instances of environmental damage;
- (b) the possibilities of natural recovery; and
- (c) the existence of any risks to human health.

Appeal against the remediation notice.

14.(1) A responsible operator served with a remediation notice may appeal against it to the Supreme Court within 28 days of service of the notice.

(2) Unless the remediation notice consists of the proposals made by the responsible operator, the responsible operator may appeal against the notice on the grounds that the contents of the remediation notice are unreasonable and, notably, that measures other than those specified in the notice are more appropriate.

(3) The court may confirm the notice, or may quash it, and may, if appropriate, add further remedial measures necessitated by the lapse of time since the remediation notice was served.

(4) A remediation notice need not be complied with pending determination of an appeal unless the court directs otherwise.

Costs.

15.(1) The responsible operator is responsible for the costs it has incurred in relation to any remedial or preventive measures he has taken pursuant to these Regulations.

(2) The responsible operator is also responsible for the costs incurred by the competent authority in the following matters—

- (a) preparing a notice under regulations 8 or 9 and monitoring compliance with the notice;
- (b) assessing the damage (if the damage is environmental damage);
- (c) establishing who is the responsible operator;
- (d) establishing what remediation is appropriate; and
- (e) monitoring the remediation, both during and after the work.

(3) Costs include administrative, legal and enforcement costs, costs of data collection and other general costs.

Enforcement

Requests for action by interested parties.

16.(1) Any person who is—

- (a) affected or likely to be affected by environmental damage; or
- (b) otherwise has a sufficient interest,

may notify the competent authority of any environmental damage which is being, or has been, caused, or of which there is an imminent threat.

(2) A notification must be accompanied by—

- (a) a statement explaining the way the notifier will be affected by the damage, or the reason why the notifier has a sufficient interest; and
- (b) sufficient information to enable the competent authority to identify the location and nature of the incident.

(3) The competent authority must consider the notification and accompanying information and inform the notifier as to the action, if any, which it intends to take and provide its reasons together with a timetable.

(4) Before taking any decision, the competent authority must, if practicable—

- (a) notify the responsible operator concerned of the notification and the accompanying information; and
- (b) invite that responsible operator to submit comments on them.

(5) Sub-regulations (3) and (4) do not apply if—

- (a) the notifier is not likely to be affected or does not have a sufficient interest;
- (b) in the opinion of the competent authority, the information provided does not disclose any environmental damage or threat of environmental damage; or
- (c) as a result of the urgency of the situation, it is not practicable for the competent authority to comply with those sub-regulations.

(6) In this regulation a non-governmental organisation registered or established under the laws of Gibraltar which promotes environmental protection shall be deemed to have a sufficient interest for the purposes of sub-regulation (1)(b).

(7) A person referred to in sub-regulation (1) who has submitted a notification to the competent authority pursuant to this regulation may appeal against the decision taken by the competent authority pursuant to his notification.

(8) Such an appeal shall be made to the Supreme Court within the period of 21 days beginning with the date of service to that person of the decision referred to in sub-regulation (7).

Power for the competent authority to take steps to prevent, contain or remedy environmental damage or an imminent threat of such damage.

17.(1) Any duty on the responsible operator to take remedial or preventive measures may be carried out by the competent authority instead of that operator—

- (a) in the case of an emergency;

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- (b) if the responsible operator cannot be identified (and if such an operator is subsequently identified he shall bear the costs for the measures taken in accordance with this regulation); or
- (c) if the responsible operator fails to comply with a notice, whether or not an appeal is pending (and such an operator shall bear the costs for the measures taken in accordance with this regulation unless the appeal is successful).

(2) A responsible operator (or, where relevant, a third party who has caused the environmental damage or imminent threat of such damage) shall be liable for the damage caused and for any reasonable costs incurred by the competent authority in taking any reasonable action—

- (a) to prevent environmental damage under regulation 8 if the competent authority can establish that those steps were necessary to prevent environmental damage, and
- (b) to prevent further damage under regulation 9.

(3) No proceedings for the recovery of costs may be commenced by the competent authority under this regulation after a period of five years has elapsed since—

- (a) the completion of the measures to which the proceedings relate; or
- (b) the identification of the person responsible for the environmental damage or the imminent threat of such damage,

whichever is the later.

Recovery of costs in specified cases.

18.(1) A responsible operator who incurs costs under these Regulations may recover all or some of those costs from a third party who also caused the damage.

(2) When an operator acts in accordance with the instructions of a public authority, and as a result causes or threatens to cause environmental damage, and accordingly is obliged to take action under regulations 8 or 9 then, unless the instruction related to an emission or incident caused by the operator's own activities the operator may recover the costs of actions under those regulations from that public authority.

Provision of information to the competent authority.

19. The competent authority may require any person to provide relevant information and data in that person's possession to enable the competent authority to carry out its duties and functions under these Regulations, and failure to provide such information is an offence.

Costs recoverable from owner to be a charge on premises.

20.(1) Where any costs are recoverable under these Regulations from a person who is the owner of premises and the competent authority serves a notice on that person under this regulation—

- (a) the costs carry interest, at such reasonable rate as the competent authority may determine, from the date of service of the notice until the whole amount is paid; and
- (b) subject to the following provisions of this regulation, the costs and accrued interest are a charge on the premises.

(2) A notice served under this regulation must—

- (a) specify the amount of the costs that the competent authority claims is recoverable;
- (b) state the effect of sub-regulation (1) and the rate of interest determined by the competent authority under that sub-regulation; and
- (c) state the effect of sub-regulations (4) to (6).

(3) On the date on which the competent authority serves a notice on a person under this regulation the competent authority must also serve a copy of the notice on every other person who, to the knowledge of the competent authority, has an interest in the premises capable of being affected by the charge.

(4) Subject to any order under sub-regulation (7)(b) or (c) below, the amount of any costs specified in a notice under this regulation and the accrued interest is a charge on the premises—

- (a) as from the end of the period of twenty-one days beginning with the date of service of the notice, or

- (b) where an appeal is brought under sub-regulation (6) below, as from the final determination of the appeal,

until the costs and interest are recovered.

(5) For the purposes of sub-regulation (4), the withdrawal of an appeal has the same effect as a final determination of the appeal.

(6) A person served with a notice or copy of a notice under this regulation may appeal against the notice to the Supreme Court within the period of 21 days beginning with the date of service.

(7) On such an appeal the court may—

- (a) confirm the notice without modification,
- (b) order that the notice is to have effect with the substitution of a different amount for the amount originally specified in it, or
- (c) order that the notice is to be of no effect.

Penalties.

21.(1) A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction, to a fine not exceeding level five on the standard scale or to imprisonment for a term not exceeding three months or both; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

(2) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar person of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

that person is guilty of the offence as well as the body corporate.

(3) For the purposes of sub-regulation (2), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Financial security.

22. The Minister shall by notice published in the Gazette adopt measures to encourage the development of financial security instruments and markets by the appropriate economic and financial operators, including financial mechanisms in case of insolvency, with the aim of enabling operators to use financial guarantees to cover their responsibilities under these Regulations.

Transboundary Effects

Transboundary Effects.

23.(1) Where environmental damage occurs in Gibraltar and it affects, or it is likely to affect, a Member State, the competent authority shall provide the Government with such information as the Government may require to enable it to co-operate with the Member State affected or potentially affected with a view to ensuring that preventive and, where necessary, remedial action is taken.

(2) The Government shall forward to the competent authority for necessary action any information that has been forwarded to the Government by a Member State in relation to environmental damage that has occurred in that State and which has, or is likely to have, an effect in Gibraltar.

(3) Where the competent authority has identified environmental damage within Gibraltar which has not been caused within Gibraltar, it may make recommendations for the adoption of preventive or remedial measures and it may seek, in accordance with the provisions set out in these Regulations, to recover the costs it has incurred in relation to the adoption of preventive or remedial measures.

SCHEDULE

Regulations 3(2)(a)-(b), 3(3), 5(2)(d) and (f), 7(2)(a), 9(1)(c), 11(4)(d), 12(4)

This Schedule reproduces Annexes I to V of the Directive, for information purposes only.

**ANNEX I
CRITERIA REFERRED TO IN ARTICLE 2(1)(A)**

The significance of any damage that has adverse effects on reaching or maintaining the favourable conservation status of habitats or species has to be assessed by reference to the conservation status at the time of the damage, the services provided by the amenities they produce and their capacity for natural regeneration. Significant adverse changes to the baseline condition should be determined by means of measurable data such as:

- the number of individuals, their density or the area covered,
- the role of the particular individuals or of the damaged area in relation to the species or to the habitat conservation, the rarity of the species or habitat (assessed at local, regional and higher level including at Community level),
- the species' capacity for propagation (according to the dynamics specific to that species or to that population), its viability or the habitat's capacity for natural regeneration (according to the dynamics specific to its characteristic species or to their populations),
- the species' or habitat's capacity, after damage has occurred, to recover within a short time, without any intervention other than increased protection measures, to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.

Damage with a proven effect on human health must be classified as significant damage.

The following does not have to be classified as significant damage:

- negative variations that are smaller than natural fluctuations regarded as normal for the species or habitat in question,

- negative variations due to natural causes or resulting from intervention relating to the normal management of sites, as defined in habitat records or target documents or as carried on previously by owners or operators,
- damage to species or habitats for which it is established that they will recover, within a short time and without intervention, either to the baseline condition or to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.

ANNEX II REMEDYING OF ENVIRONMENTAL DAMAGE

This Annex sets out a common framework to be followed in order to choose the most appropriate measures to ensure the remedying of environmental damage.

1. Remediation of damage to water or protected species or natural habitats.

Remedying of environmental damage, in relation to water or protected species or natural habitats, is achieved through the restoration of the environment to its baseline condition by way of primary, complementary and compensatory remediation, where—

- (a) ‘Primary’ remediation is any remedial measure which returns the damaged natural resources and/or impaired services to, or towards, baseline condition;
- (b) ‘Complementary’ remediation is any remedial measure taken in relation to natural resources and/or services to compensate for the fact that primary remediation does not result in fully restoring the damaged natural resources and/or services;
- (c) ‘Compensatory’ remediation is any action taken to compensate for interim losses of natural resources and/or services that occur from the date of damage occurring until primary remediation has achieved its full effect;
- (d) ‘interim losses’ means losses which result from the fact that the damaged natural resources and/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. It does not consist of financial compensation to members of the public.

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

Remedying of environmental damage, in terms of damage to water or protected species or natural habitats, also implies that any significant risk of human health being adversely affected be removed.

1.1. *Remediation objectives*

Purpose of primary remediation.

1.1.1. The purpose of primary remediation is to restore the damaged natural resources and/or services to, or towards, baseline condition.

Purpose of complementary remediation.

1.1.2. Where the damaged natural resources and/or services do not return to their baseline condition, then complementary remediation will be undertaken. The purpose of complementary remediation is to provide a similar level of natural resources and/or services, including, as appropriate, at an alternative site, as would have been provided if the damaged site had been returned to its baseline condition. Where possible and appropriate the alternative site should be geographically linked to the damaged site, taking into account the interests of the affected population.

Purpose of compensatory remediation.

1.1.3. Compensatory remediation shall be undertaken to compensate for the interim loss of natural resources and services pending recovery. This compensation consists of additional improvements to protected natural habitats and species or water at either the damaged site or at an alternative site. It does not consist of financial compensation to members of the public.

1.2. *Identification of remedial measures*

Identification of primary remedial measures.

1.2.1. Options comprised of actions to directly restore the natural resources and services towards baseline condition on an accelerated time frame, or through natural recovery, shall be considered.

Identification of complementary and compensatory remedial measures.

1.2.2. When determining the scale of complementary and compensatory remedial measures, the use of resource-to-resource or service-to-service equivalence approaches shall be considered first. Under these approaches, actions that provide natural resources and/or services of the same type, quality and quantity as those damaged shall be considered first. Where this is not possible, then alternative natural resources and/or services shall be provided. For example, a reduction in quality could be offset by an increase in the quantity of remedial measures.

1.2.3. If it is not possible to use the first choice resource-to-resource or service-to-service equivalence approaches, then alternative valuation techniques shall be used. The competent authority may prescribe the method, for example monetary valuation, to determine the extent of the necessary complementary and compensatory remedial measures. If valuation of the lost resources and/or services is practicable, but valuation of the replacement natural resources and/or services cannot be performed within a reasonable time-frame or at a reasonable cost, then the competent authority may choose remedial measures whose cost is equivalent to the estimated monetary value of the lost natural resources and/or services.

The complementary and compensatory remedial measures should be so designed that they provide for additional natural resources and/or services to reflect time preferences and the time profile of the remedial measures. For example, the longer the period of time before the baseline condition is reached, the greater the amount of compensatory remedial measures that will be undertaken (other things being equal).

1.3. Choice of the remedial options

1.3.1. The reasonable remedial options should be evaluated, using best available technologies, based on the following criteria:

- The effect of each option on public health and safety,
- The cost of implementing the option,
- The likelihood of success of each option,

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- The extent to which each option will prevent future damage, and avoid collateral damage as a result of implementing the option,
- The extent to which each option benefits to each component of the natural resource and/or service,
- The extent to which each option takes account of relevant social, economic and cultural concerns and other relevant factors specific to the locality,
- The length of time it will take for the restoration of the environmental damage to be effective,
- The extent to which each option achieves the restoration of site of the environmental damage,
- The geographical linkage to the damaged site.

1.3.2. 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 and/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 and/or services as were foregone. This will be the case, for example, when the equivalent natural resources and/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 section 1.2.2.

1.3.3. Notwithstanding the rules set out in section 1.3.2. and in accordance with Article 7(3), the competent authority is entitled to 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.

2. Remediation of land damage.

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

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future use at the time of the damage, no longer poses any significant risk of adversely affecting human health. 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. Use shall be ascertained on the basis of the land use regulations, or other relevant regulations, in force, if any, when the damage occurred. If the use of the land is changed, all necessary measures shall be taken to prevent any adverse effects on human health.

If land use regulations, or other relevant regulations, are lacking, the nature of the relevant area where the damage occurred, taking into account its expected development, shall determine the use of the specific area.

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.

**ANNEX III
ACTIVITIES REFERRED TO IN ARTICLE 3(1) OF THE
DIRECTIVE.**

1. The operation of installations subject to permit in pursuance of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control. That means all activities listed in Annex I of Directive 96/61/EC with the exception of installations or parts of installations used for research, development and testing of new products and processes.

2. 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 75/442/EEC of 15 July 1975 on waste and Council Directive 91/689/EEC of 12 December 1991 on hazardous waste.

Those operations include, inter alia, the operation of landfill sites under Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste and the operation of incineration plants under Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste.

For the purpose of this Directive, Member States may decide that those operations shall not include the spreading of sewage sludge from urban waste water treatment plants, treated to an approved standard, for agricultural purposes.

3. All discharges into the inland surface water, which require prior authorization in pursuance of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances, discharged into the aquatic environment of the Community.
4. All discharges of substances into groundwater which require prior authorization in pursuance of Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances.
5. The discharge or injection of pollutants into surface water or groundwater which require a permit, authorisation or registration in pursuance of Directive 2000/60/EC.
6. Water abstraction and impoundment of water subject to prior authorisation in pursuance of Directive 2000/60/EC.
7. 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 of 27 June 1967 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous substances;
 - (b) dangerous preparations as defined in Article 2(2) of Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations;
 - (c) plant protection products as defined in Article 2(1) of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market;
 - (d) biocidal products as defined in Article 2(1)(a) of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market.
8. Transport by road, rail, inland waterways, sea or air of dangerous goods or polluting goods as defined either in Annex A to Council Directive

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94/55/EC of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road or in the Annex to Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail or as defined in Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods.

9. The operation of installations subject to authorisation in pursuance of Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants in relation to the release into air of any of the polluting substances covered by the aforementioned Directive.

10. Any contained use, including transport, involving genetically modified micro-organisms as defined by Council Directive 90/219/EEC of 23 April 1990 on the contained use of genetically modified micro-organisms.

11. 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.

12. Transboundary shipment of waste within, into or out of the European Union, requiring an authorisation or prohibited in the meaning of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community.

13. The management of extractive waste pursuant to Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries.

14. The operation of storage sites pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide.

15. The management of extractive waste pursuant to Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from the extractive industries.

**ANNEX IV
INTERNATIONAL CONVENTIONS REFERRED TO IN
ARTICLE 4(2) OF THE DIRECTIVE**

- (a) the International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage;

- (b) the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage;
- (c) the International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage;
- (d) the International Convention of 3 May 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;
- (e) the Convention of 10 October 1989 on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels.

ANNEX V

**INTERNATIONAL INSTRUMENTS REFERRED TO IN ARTICLE
4(4) OF THE DIRECTIVE.**

- (a) the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and the Brussels Supplementary Convention of 31 January 1963;
- (b) the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage;
- (c) the Convention of 12 September 1997 on Supplementary Compensation for Nuclear Damage;
- (d) the Joint Protocol of 21 September 1988 relating to the Application of the Vienna Convention and the Paris Convention;
- (e) the Brussels Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material.