
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 214

ENVIRONMENTAL PROTECTION

**The Environmental Liability (Scotland)
Amendment Regulations 2015**

<i>Made</i>	- - - -	<i>26th May 2015</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>28th May 2015</i>
<i>Coming into force</i>	- -	<i>19th July 2015</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972⁽¹⁾ and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for the reference to [Directive 2008/56/EC](#) of the European Parliament and of the Council establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive)⁽²⁾ to be construed as a reference to that instrument as amended from time to time.

Citation and commencement

1. These Regulations may be cited as the Environmental Liability (Scotland) Amendment Regulations 2015 and come into force on 19th July 2015.

Amendments

2. The Environmental Liability (Scotland) Regulations 2009⁽³⁾ are amended in accordance with regulations 3 to 8.

3. In regulation 2(1) (interpretation)—

(a) after the definition of “[Directive 2001/18/EC](#)” insert—

(1) [1972 c.68](#). Section 2(2) was amended by the Scotland Act [1998 \(c.46\)](#) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act [2006 \(c.51\)](#) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act [2008 \(c.7\)](#) (“the 2008 Act”), Schedule, Part 1. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and amended by the 2008 Act, Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(2) OJ L 164, 25.6.2008, p.19.

(3) [S.S.I. 2009/266](#), as amended by [S.I. 2011/1043](#), [S.I. 2011/2131](#) and [S.S.I. 2011/116](#).

““Directive 2008/56/EC” means Directive 2008/56/EC of the European Parliament and of the Council establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive);”;

(b) after the definition of “genetically modified organisms” insert—

““marine waters” means waters classified as marine waters pursuant to Directive 2008/56/EC;”;

(c) for the definition of “waters” substitute—

““the water environment” has the meaning assigned to it by section 3(2) of the Water Environment and Water Services (Scotland) Act 2003(4).”.

4. For regulation 4(1)(b) (application) substitute—

“(b) “(b) water damage, caused by an activity listed in Schedule 1, which is—

(i) any damage that significantly adversely affects any or all of the—

(aa) ecological status;

(bb) chemical status;

(cc) quantitative status;

(dd) ecological potential,

of the water environment with the exception of adverse effects where Article 4(7) of Directive 2000/60/EC(5) applies; or

(ii) any damage that significantly adversely affects the environmental status of marine waters, in so far as particular aspects of the environmental status of the marine environment are not already addressed through Directive 2000/60/EC;”.

5. In regulation 5 (exemptions), after paragraph (f) insert—

“(fa) “(fa) environmental damage of the type defined in regulation 4(1)(b)(ii) to marine waters caused by an emission, event or incident that took place before 19th July 2015;”.

6. In regulation 7 (competent authority)—

(a) after paragraph (1)(b) omit “and”;

(b) for paragraph (1)(c), substitute—

“(c) “(c) to land or, in relation to environmental damage of the type defined in regulation 4(1)(b)(i), to the water environment, is the Scottish Environment Protection Agency; and

(d) to marine waters, in relation to environmental damage of the type defined in regulation 4(1)(b)(ii), is the Scottish Ministers.”; and

(c) in paragraph (5)(b), for “any waters” substitute “any part of the water environment or any marine waters”.

7. In regulation 11(4)(b) (identification and determination of remedial measures), for “any waters” substitute “any part of the water environment or any marine waters”.

8. In regulation 16 (grant of, and compensation for, rights of entry)—

(4) 2003 asp 3 (“the 2003 Act”). Section 3(2) of the 2003 Act defines “the water environment” as meaning “all surface water, groundwater and wetlands”. “Surface water”, “groundwater” and “wetland” are defined, respectively in section 3(3), (4) and (5) of the 2003 Act, and associated definitions are also defined in that section.

(5) OJ L 327, 22.12.2000, p.1, last amended by Commission Directive 2014/101/EU (OJ L 311, 31.10.2014, p.32).

- (a) in paragraph (1), for “land or waters” substitute “land, any part of the water environment or any marine waters”; and
- (b) in paragraph (2)(a), for “land or waters” substitute “land, any part of the water environment or any marine waters”.

St Andrew’s House, Edinburgh
26th May 2015

AILEEN McLEOD
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Liability (Scotland) Regulations 2009 (“the 2009 Regulations”) which implemented [Directive 2004/35/EC](#) of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage.

These Regulations implement Article 38 of Directive 2013/30/EU of the European Parliament and of the Council on the safety of offshore oil and gas operations which amends [Directive 2004/35/EC](#). Article 38 of Directive 2013/30/EU extends the definition of “environmental damage” to include damage that significantly adversely affects the environmental status of marine waters as defined in [Directive 2008/56/EC](#) of the European Parliament and of the Council establishing a framework for community action in the field of marine environmental policy, in so far as particular aspects of the environmental status of the marine environment are not already addressed through [Directive 2000/60/EC](#) of the European Parliament and of the Council of 23rd October 2000 establishing a framework for Community action in the field of water policy.

Regulation 4 amends regulation 4 of the 2009 Regulations to extend the application of the 2009 Regulations to include damage that significantly adversely affects the environmental status of marine waters as defined in [Directive 2008/56/EC](#), in so far as particular aspects of the environmental status of the marine environment are not already addressed through [Directive 2000/60/EC](#).

Regulation 5 amends regulation 5 of the 2009 Regulations to provide that those Regulations, as amended, do not apply to environmental damage of the type defined in regulation 4(1)(b)(ii) of the 2009 Regulations to marine waters caused by an emission, event or incident that took place before 19th July 2015.

Regulation 6(a) and (b) amends regulation 7 of the 2009 Regulations to provide that the Scottish Ministers are, for the purpose of those Regulations the competent authority in relation to instances of environmental damage of the type defined in regulation 4(1)(b)(ii) of the 2009 Regulations or in relation to an imminent threat of such damage to marine waters.

Consequential amendments to the 2009 Regulations are made by regulations 3, 6(c), 7 and 8.

A Transposition Note and Business and Regulatory Impact Assessment (BRIA) have been prepared in connection with these Regulations and placed in the Scottish Parliament Information Centre. Copies of the BRIA and the Transposition Note can be obtained from Marine Scotland, Marine Environment Team, 1A South, Victoria Quay, Edinburgh, EH6 6QQ, and are available on line at www.legislation.gov.uk.