

Department for Environment, Food and Rural Affairs

**Revised Transposition Note for the
implementation of 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
environmental damage**

March 2015

The Department for Environment, Food and Rural Affairs is implementing the changes to Directive 2004/35/EC on environmental liability (ELD), as introduced by Article 38 of Directive 2013/30/EU of 12 June 2013 on the safety of offshore oil and gas operations. These changes have been incorporated into the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 (S.I. 2015/810) which re-transposes the ELD. The Regulations come into effect on 19 July 2015.

The table below sets out how the various articles of the ELD have been transposed in the English domestic legislation.

Article	Objective	Implementation	Responsibility
2.1	Definition of environmental damage	Regulation 4	
2.2	Definition of 'damage'	Not necessary as normal English word.	
2.3	Definition of protected species and natural habitats	Regulation 2	
2.4	Definition of conservation status	Schedule 1 paragraphs 2 and 3	
2.5	Definition of waters (<i>marine waters now included by virtue of Article 38 of Directive 2013/30/EU on safety of offshore oil and gas operations and amending Directive 2004/35/EC</i>)	'Marine waters' defined in Regulation 2 and Regulation 4 now refers to surface water, groundwater and marine waters.	
2.6	Definition of operator	Regulation 2	
2.7	Definition of activity	Regulation 2	
2.8	Definition of emission	Not necessary	
2.9	Definition of imminent threat	Not necessary	

2.10	Definition of preventive measures	Not necessary	
2.11	Definition of remedial measures	Not necessary	
2.12	Definition of natural resource	Regulation 2	
2.13	Definition of services	Regulation 2	
2.14	Definition of 'baseline condition'	Do not use this term. See Schedule 1.	
2.15	Definition of recovery	Not necessary	
2.16	Definition of 'costs'	Regulations 24 and 25	
3	Imposes strict liability on annex III activities and fault based liability on other activities causing biodiversity damage	Regulation 5 and Schedule 2.	
4	Situations in which Directive does not apply (exceptions)	Regulation 8	
5.1	Duty on operator to take preventive action	Regulation 13	Operator
5.2	Duty to notify in cases of imminent threat	Regulation 13	Operator
5.3	Enforcing authority can require information	Regulation 32	Enforcing authority

5.3 (b)	Enforcing authority power to require action to deal with imminent threat	Regulation 13	Enforcing authority
5.3 (c)	Enforcing authority power to give instructions	Regulation 13	Enforcing authority
5.3 (d) and 6.2 (b) and (e)	Enforcing authority power to take necessary measures	Regulation 15	Enforcing authority
6.1(a)	Operator duty to take steps to control environmental damage	Regulation 14	Operator
6.1(b)	Duty to take remedial measures	Regulation 20	Operator
6.2 (a)	Enforcing authority may require information	Regulation 32	Enforcing authority
6.2 (c) and (d)	Enforcing authority may require operator to take measures	Regulation 14	Enforcing authority
6.3	Power for enforcing authority to take necessary measures	Regulation 15	Enforcing authority
7.1	Operator to submit remedial measures	Regulation 18	Operator
7.2	Enforcing authority to decide on appropriate remedial measures	Regulation 20	Enforcing authority
7.3	Enforcing authority may	Regulation 20(2)	Enforcing authority

	decide which instance of damage should be remediated first		
7.4	Enforcing authority must consult on remedial package	Regulation 20(1)	Enforcing authority
8.1	Operator to bear the costs of preventive and remedial measures	Duties in regulations 13,14 and 20 coupled with cost recovery provisions in regulations 24 and 25.	Operator
8.2	Recovery of costs	Regulations 24 and 25 and 27.	Enforcing authority
8.3(a)	Damage caused by third parties	Regulation 19(3)(f)	
8.3(b)	Compliance with an instruction from a public authority	Regulations 16 and 19(3)(c)	
8.4(a)	Permits	Regulation 19(3)(d) and Schedule 3	
8.4(b)	State of the art	Regulation 19(3)(e)	
9	Cost allocation in cases of multiparty causation	Regulation 18 and 28.	
10	Limitation period for recovery of costs	Regulation 26	
11.1	Enforcing authorities	Regulations 10 and 11	
11.2	Enforcing authority duty to identify operator	Regulations 17, 18 and 20	Enforcing authority

	and assess damage		
11.2	Operator duty to supply information to allow enforcing authority to assess damage and determine remedial measures	Regulation 32	Operator
11.3	Enforcing authority can arrange for others to take remedial measures	Remediation can be carried out by contractors, no provision in the regulations required.	
11.3	Enforcing authority can require third parties to take necessary remedial measures	Regulations impose obligations only on operators.	
11.4	Notices to contain grounds on which they are based	Guidance	
12	Interested party requests for action	Regulation 29	
13	Review procedures	No specific provision necessary. Judicial Review will be available.	
14	Financial security	No provision in the regulations	
15	Cooperation with other member states	No provision in the regulations	
17	Temporal application	Regulation 8(1)	

Annex I	Criteria for assessing significance of damage	Schedule 1	
Annex II	Guidance for choosing remedial measures	Schedule 4	
Para 1	Definitions of primary, compensatory and complementary remediation and of interim losses	Schedule 4	
Annex III	Activities for which strict liability applies.	Schedule 2	



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