

ENVIRONMENTAL DAMAGE (PREVENTION AND REMEDIATION) REGULATIONS 2009

The Environmental Damage (Prevention and Remediation) Regulations 2009 brought the requirements of the Environmental Liability Directive (Directive 2004/35/EC) into national law in England. They came into force on 1st March 2009 and introduce new obligations on many businesses, to prevent or put right any environmental damage that they are responsible for.

Existing liability regimes in the UK still apply and where they impose additional obligations to those in these Regulations, will still need to be complied with.

Not all types of damage are 'environmental damage'. Only:

- damage to protected species and natural habitats or in a site of special scientific interest; or
- damage to water; or
- land damage

and only for the more serious damage. Further details can be found in the Regulations themselves.
<http://www.legislation.gov.uk/ukxi/2009/153/contents/made>

IF YOU OWN OR RUN A BUSINESS, YOU NEED TO KNOW HOW THE REGULATIONS MAY AFFECT YOU

The Regulations are a 'backstop', only applying where something has gone wrong and there is an imminent threat or actual 'environmental damage'. By making sure that you already have appropriate pollution prevention measures to reduce risks to the environment in place, you can reduce the likelihood of ever being caught by the Regulations. An important first step is to comply with existing legislation.

Link to the government's Business link page:

<http://www.businesslink.gov.uk/bdotg/action/layer?topicId=1079433025>

Insurance

Insurance is not compulsory but you should check your existing policies. Where necessary, consider extending them or taking out other financial guarantees to cover any potential liabilities for damage to the environment.

What are my obligations as an operator?

If you are the operator of an economic activity and this activity causes some damage or a risk of damage to the environment, you must *take immediate action to prevent it getting any worse*. You must then notify the Enforcing Authority straight away.

Note - It is not the enforcing authority's duty to carry out the clean up

Failure to comply with the requirements of the Regulations may mean that you will be found to have committed an offence and penalties may apply.

If you are not sure whether environmental damage has occurred, you are advised to take the precautionary approach and take immediate action anyway and then inform the Enforcing Authority. They will be able to advise you what needs to be done next.

What is an operator?

The operator is the person, or company, who controls an activity, or who is in charge of it. Some activities may have more than one operator.

What is an economic activity?

This is a term which covers a variety of activities. It includes businesses but also many charitable and public sector activities. Purely domestic or recreational activities are not covered.

What are the enforcing authorities?

They are the bodies responsible for enforcing the regulations. In general terms they are:

- Environment Agency in relation to water damage;
- Natural England in relation to biodiversity;
- Local Authorities in relation to land damage.

If it is not possible to provide all details immediately, do not delay in contacting the Enforcing Authority; any additional information can be provided at a later date. If you are unsure which is the Enforcing Authority, any authority in Annex 11 of the Guidance can be contacted.

The Regulations and guidance provide more detail:

<http://www.defra.gov.uk/environment/quality/environmental-liability/>

Role of enforcing authority:

Once the authority is aware of a potential case, it must establish if it is 'environmental damage', identify a responsible operator and oversee the effective operation of the Regulations. *It is not the enforcing authority's duty to carry out the clean up* – the "polluter pays" principle applies.

REPORTING LAND DAMAGE TO COLCHESTER BOROUGH COUNCIL

Note: if you are an Operator you must take immediate steps to prevent damage or further damage – do not wait until you have spoken to Colchester Borough Council before doing this.

If you wish to report potential Environmental Damage to Colchester Borough Council, or if you are concerned about environmental damage being caused by someone else, please contact us as soon as possible:

Colchester Borough Council Environmental Control:

Tel: 01206 282581/2

E-mail: customerservicecentre@colchester.gov.uk

Post: Environmental and Protective Services,

PO Box 889,

Rowan House,

33 Sheepen Road,

Colchester,

CO3 3WG

FURTHER INFORMATION

DEFRA: <http://www.defra.gov.uk/environment/quality/environmental-liability/>