



RRC

# Sample Environmental Law and Case Law Guide

## ENVIRONMENTAL CIVIL SANCTIONS (ENGLAND) ORDER 2010 (SI 2010 NO. 1157)

The Order is made under Part 3 of the **Regulatory Enforcement Act 2008**. It allows the Environment Agency and Natural England to impose civil sanctions for offences stated in Schedule 5 of the Order. Civil sanctions include:

- **Variable monetary penalties** - the amount is determined by the regulator but must not exceed £250,000 in Wales whereas no cap is present in England.
- **Compliance notices** - a requirement to take steps to ensure that the offence does not continue or recur.
- **Restoration notices** - a requirement to take steps specified by the regulator to ensure that the position is as so far as is possible restored to how it would have been if the offence had not been committed.
- **Third-party undertaking** - where a notice is served a person may offer an undertaking to benefit any third party affected by the offence. The regulator may accept or reject this offer.

For all the above, the regulator is required to submit a notice of intent on a person who has committed an action leading to one of the listed civil sanctions. Objections may be raised within 28 days following the submission of a notice of intent (apart from third-party undertaking). After this period a final notice is served and appeal against the final notice may occur if it is based on error, the decision is legally wrong, a variable monetary penalty is excessive, the nature of the requirement is unreasonable (for non-monetary sanctions only) and any other reason. A person cannot be convicted of a criminal offence relating to the offence if a third-party undertaking is accepted or a notice is complied with.

A **stop notice** can also be issued; this is a notice prohibiting a person from continuing with an activity stated in the notice until the steps in the notice have been completed. A person has the right of appeal against the notice. Where a regulator is satisfied that a stop notice has been complied with, it must issue a completion certificate. Non-compliance with a stop notice on summary conviction can lead to a fine and/or six months in prison or on indictment an unlimited fine and/or two years in jail.

A regulator can impose a **fixed monetary penalty** on a person for offences stated in the Order to a maximum of £100 for an individual or £300 for a corporate body.

A regulator may also accept an **enforcement undertaking** where the regulator suspects that a person has committed an offence. If the regulator accepts the undertaking, the relevant person cannot be convicted of an offence under the Regulations. The regulator must issue a certificate when it is satisfied that an enforcement undertaking has been complied with. The relevant person can appeal against the decision not to give a certificate.

Schedule 5 identifies the types of civil sanction and the offences against various Acts of Parliament to which civil sanctions can be issued, such as parts of the **Wildlife and Countryside Act 1981**, **Water Industry Act 1991** and **Water Resources Act 1991**.

The **Environmental Civil Sanctions (Miscellaneous Amendments) (England) Regulations 2010** expanded civil sanctions specified in the Order to parts of the **Control of Pollution (Oil Storage) (England) Regulations 2001**, **Hazardous Waste (England and Wales) Regulations 2005** and the **Transfrontier Shipment of Waste Regulations 2007**.

## ENVIRONMENTAL DAMAGE (PREVENTION AND REMEDIATION) (ENGLAND) REGULATIONS 2015 (SI 2015 NO. 810) AS AMENDED

These Regulations apply to England and all waters one nautical mile seaward from the English baseline as well as other listed marine waters. Similar Regulations apply to Wales, Scotland and Northern Ireland. The Regulations are relatively detailed and consist of 35 regulations and six schedules. The following text concentrates on relevant sections and requirements.

Minor amendments introduced by the **Environmental Damage (Prevention and Remediation) (England) (Amendment) Regulations 2015** and the **Environmental Damage (Prevention and Remediation) (England) (Amendment) Regulations 2017 and 2019** have been included below.

### Part 1: Introductory Provisions

#### Regulation 2: Interpretation

'Activity' means any economic activity either public or private and whether or not the activity is undertaken for profit.

'Operator' means the person who operates or controls an activity, such as the holder of a permit or authorisation relating to that activity, or the person registering or notifying such an activity.

'Natural habitat' means habitats of species that are protected and listed, for example those that are defined in the **Conservation of Wild Birds Directive** whose natural range includes any part of the UK's territory.

'Natural resource' means:

- protected species;
- natural habitats;
- species or habitats on a Site of Special Scientific Interest (SSSI);
- water; and
- land.

'Protected species' means the species mentioned in **Directive 2009/147/EC** or **Directive 92/43/EEC** whose natural range includes any part of the UK's territory.

Powers are provided to Welsh Ministers in relation to environmental damage in Wales, except where the damage is caused by certain specified operations regulated on a UK-wide basis.

#### Regulation 4: Meaning of Environmental Damage

The Regulations are aimed at prevention and remediation of environmental damage with environmental damage being defined as damage to protected species, natural habitats, SSSIs, surface water, groundwater or land.

#### Regulation 5: Environmental Damage to which these Regulations Apply

The Regulations apply to damage caused by an activity stated in Schedule 2 (e.g. permitted installations, waste management operations, mining waste, discharges requiring authorisation, water abstractions, dangerous substances, transport, Genetically-Modified Organisms (GMOs) and transboundary shipment of waste).

If the operator has intended to cause environmental damage or was negligent, the Regulations apply to environmental damage to protected species, natural habitats or an SSSI.

#### Regulation 7: Other Legislation

The Regulations do not override any existing legislation [] the requirements of other legislation still apply.

### Regulation 8: Exemptions

The Regulations do not apply to:

- Damage that occurred before 1 March 2009.
- Damage after this date but caused by an incident or emissions that occurred before this time.
- Damage after this date that occurred from an activity that took place and ceased before that date.
- Acts of terrorism.
- Exceptional natural phenomena (if the operator of an activity took reasonable precautions to protect against damage caused by such an event).
- Activities that have the sole purpose to protect against natural disasters.
- Incidents in which liability or compensation falls within the scope of various international Conventions.
- Activities the main purpose of which is to serve national defence or international security.
- Radioactivity from an activity covered by the Treaty establishing the European Atomic Energy Community or caused by an incident or activity in respect of which liability or compensation falls within the scope of the Paris Convention of 29 July 1960 and the Brussels Supplementary Convention of 31 January 1963.
- Damage caused in the course of commercial sea fishing if all legislation relating to that fishing was complied with.
- Diffuse pollution if a causal link can be established between damage and specific activities.

### Regulation 9: Exclusion from Damage to Water

Damage to water does not include damage caused by new modifications to physical characteristics of surface water, alteration to level of a body of groundwater, reduction of a body of surface water from high to good resulting from sustainable human development within certain conditions (e.g. steps have been taken to mitigate impacts).

### Regulation 10: Enforcing Authorities under the Environmental Permitting (England and Wales) Regulations 2016

These Regulations are enforced in accordance with this Regulation if damage is caused by an activity that requires a permit or registration under the **Environmental Permitting (England and Wales) Regulations 2016**.

If either the Environment Agency or Natural Resources Wales is responsible for granting the permit, and the damage is to marine waters in the Welsh zone, or to a natural habitat or protected species or an SSSI in those waters, it is to be enforced by the Welsh Ministers. In all other cases the Environment Agency is the regulator.

If the local authority grants the permit, Part 2 is enforced by the local authority; Part 3 is enforced by the local authority if the damage is to land, by the Environment Agency if the damage is to water or by Natural England if the damage is to natural habitats or protected species or an SSSI. If a local authority in Wales is responsible for granting a permit, the Regulations are to be enforced by the Welsh Ministers if the damage is to marine waters in the Welsh zone, or to a natural habitat or protected species or an SSSI in those waters. In any other case the Environment Agency is the enforcement body.

### Regulation 11: Enforcing Authorities in Other Cases

If the damage is caused by an activity that does not require a permit or registration under the **Environmental Permitting (England and Wales) Regulations 2016**, the Regulations are enforced as below:

- Damage to water ☐ Environment Agency.
- Damage to surface water or groundwater - Environment Agency.
- Damage to marine waters ☐ Marine Management Organisation.
- Damage to natural habitats, protected species or SSSIs on land ☐ Natural England.
- Damage to natural habitats, protected species or SSSIs in water ☐ Environment Agency.

### Regulation 12: Enforcement

If there is more than one type of damage (such that there is more than one enforcing authority), the Regulations are enforced by any or all of the specified enforcing authorities. An enforcing authority may appoint any other enforcing authority to act on its behalf.

The Secretary of State may delegate to the Director of Public Prosecutions functions in relation to the prosecution of an offence under these Regulations.

## EU REGULATION NO. 2017/852 ON MERCURY

This Regulation provides export and import restrictions on mercury and mercury compounds within the UK (amended on UK exit from the EU by UK legislation such as the **Control of Mercury (Amendment) (EU Exit) Regulations 2019**). It largely implements the Minamata Convention on Mercury of 2013. Key requirements include:

- Export of mercury and several listed mercury compounds and mixtures is prohibited. The compounds are listed in Annex I with examples being Mercury (I) Chloride, Cinnabar Ore and Mercury (II) Nitrate. A derogation to this requirement is when the compound is used for laboratory-scale research or laboratory analysis.
- Import of mercury and listed mercury mixtures is prohibited for purposes other than disposal. These are listed in Annex I. Import of these substances may occur where the importing country has granted written consent under certain circumstances (e.g. the exporting party is not party to the Convention and the exported mercury is not from prohibited forms of primary mercury mining). Disposal will only be allowed when the exporting country cannot deal with the waste in its own country.
- The use of mercury and mercury compounds in listed manufacturing processes will be prohibited from dates stated in the Regulation.
- This does not include mercury-added products that are used for civil protection, military purposes, for research, calibration of instruments or for use as a reference standard.
- Limits are placed on the use of mercury in dental amalgam. A plan concerning measures that are going to be implemented to phase down the use of dental amalgam must be developed.
- Data on the amounts of mercury waste stored at certain industries (such as non-ferrous mining and smelting operations) and data on the amounts of mercury waste stored both before and after treatment must be sent to the competent authority on an annual basis.
- The information on the implementation of the Regulation must be made publicly available.

The Regulation is enforced by the **Control of Mercury (Enforcement) Regulations 2017**. These Regulations identify the competent authority for the amended EU Regulation as being the Environment Agency in England, SEPA in Scotland, Natural Resources Wales in Wales and in Northern Ireland the Department of Agriculture, Environment and Rural Affairs. The scale of penalties (e.g. civil sanctions) and other relevant UK provisions are identified in the Regulations.

## NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949

This Act established national parks and was first amended by the **Countryside Act 1968**, which empowered the Secretary of State to make grants to local authorities in respect of expenditure on provision of country parks, and amended the **1949 Act** to allow grants payable under that Act to be dealt with in the same way as grants made under the **1968 Act**. The memorandum set out the terms and conditions for payments under the two Acts in respect of expenditure on the following: National Parks' land and areas of outstanding natural beauty; the establishment of country parks and facilities therein; the countryside generally (including the above); and long-distance routes.

Part III of the **Environment Act 1995** redefined the purposes of national parks, established national park authorities and specified their general purposes and powers. The park authorities were required to construct management plans and operate planning authority functions under this legislation and also the **Wildlife and Countryside Act 1981**.

The **1949 Act** was also amended by the **Countryside and Rights of Way Act 2000**, which re-designated areas of outstanding beauty. Further amendments were made by the **Natural Environment and Rural Communities Act 2006**, in particular, the formation of Natural England.

## NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006

### Introduction

The Act implements key components of the Government's Rural Strategy and served to establish two new bodies; Natural England and the Commission for Rural Communities (Part 1). The remainder of the Act, on the whole, makes amendments to a number of legislative provisions.

### Part 1 - Natural England and the Commission for Rural Communities

#### Chapter 1 - Natural England

##### General Purpose

The Act established Natural England. The general purpose of Natural England is as follows:

- *"promoting nature conservation and protecting biodiversity,*
- *conserving and enhancing the landscape,*
- *securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment,*
- *promoting access to the countryside and open spaces and encouraging open-air recreation, and*
- *contributing in other ways to social and economic well-being through management of the natural environment."*

##### Main Functions

The organisation has review, research and advisory functions in addition to the power to institute criminal proceedings. They may also give financial assistance in the form of grants, loans or guarantees where it furthers its general purpose.

Natural England may also provide an information service and provide consultancy and training services. With the consent of the Secretary of State, Natural England can make charges for its services.

##### Management Agreements

Natural England can enter into Management Agreements, with a person who has an interest in land, in relation to the management or use of that land. Such a management agreement may include the imposition of obligations, restriction or undertaking of works or provision for the making of payments.

##### Experimental Schemes

After consultation with appropriate persons, Natural England may undertake experimental schemes on land to assist in furthering its general purpose or to promote such schemes.

#### Chapter 2 - Commission for Rural Communities

The Commission for Rural Communities was a body that was formed to provide advice to government on policies affecting people living and working in rural areas. It was abolished in March 2013 and its duties have been transferred to DEFRA.

### Part 2 - Nature Conservation in the UK

Part 2 confers functions on 'UK conservation bodies' (Natural England for England) for the purpose of nature conservation and promoting the understanding of nature conservation. These functions may be co-ordinated for issues of National or International importance. The conservation bodies have functions in relation to protected species listed under the **Wildlife and Countryside Act 1981**.

### Part 3 - Wildlife, etc.

Every public authority, whilst exercising its functions, is required to have consideration for conserving biodiversity.

The Secretary of State (for England) is required to publish a list of organisms and habitats of importance in conserving biodiversity.

The Secretary of State may make orders concerning pesticides that are harmful to wildlife. Possession of such pesticides, once an order has been made, constitutes an offence.

Amendments are made to the **Wildlife and Countryside Act 1981** to further protect:

- birds which re-use their nests;
- birds that are released as part of a re-population programme;

and to prevent the sale, possession or transport of invasive non-native species.

#### Part 4 - Sites of Special Scientific Interest

Amendments are made to the **Wildlife and Countryside Act 1981** to enhance powers, offences and penalties in relation to SSSIs.

#### Part 5 - National Parks and the Broads

Amendments are made to the **National Parks and Access to the Countryside Act 1949** in relation to criteria and procedures for designating national parks and members of national park authorities.