

THE ENVIRONMENTAL DAMAGE REGULATIONS

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The issues

- The scope of the regulations
- Prevention
- Remediation
- Enforcement
- The relationship with the EPA regime



Background

- Pressure for harmonised regime across the EU
- The Directive
- Domestic implementation



Scope of the Regulations (1)



- Temporal scope and relationship with “historic” focus of the EPA regime
- Environmental damage to which Regulations apply:
 - “Schedule 2” activities
 - Deliberate/negligent harm to protected species or natural habitats



Scope of the Regulations (2)



- Schedule 2 activities
 - i. IPPC installations
 - ii. Waste management operations
 - iii. Mining waste
 - iv. Permitted discharges
 - v. Water abstraction
 - vi. Dangerous substances, plant protection products & biocidal products
 - vii. Transport of dangerous goods or polluting goods
 - viii. GMO
 - ix. Transboundary shipment of waste
 - x. CO2 storage



Scope of the Regulations (3)



- “Environmental damage”
 - Damage to protected species, natural habitats and SSSIs
 - Damage to surface water or groundwater
 - Damage to land



Duty to prevent environmental damage



- Regulation 13
 - Power to serve notice
 - Offence of failing to comply with notice
- Regulation 14: further environmental damage
- Powers of enforcing authority



Remediation



- Assessment of damage (regulation 17)
- Apportionment of liability (regulation 18)
- Appeals (regulation 19)
- Remediation notices (regulations 20 and 21)



Enforcement



- Costs
- Third party interventions
- Powers of enforcement
- Penalties



Relationship with EPA regime



- Temporal scope
- Meaning of damage
- Allocation of liability
- Different but complementary regimes?





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