

The Environmental Damage Regulations (EDR)

Regulations effective in all parts of the UK includes new concepts to make businesses that cause environmental damage responsible for the full consequences.

The regulations deal with serious environmental damage:

- Damage to protected species and their habitats including sites of Special Scientific Interest
- Damage to water (streams, rivers, ponds, lakes as well as underground water sources or groundwater)
- Damage to land with significant risk for human health

The regulations introduce some new remediation concepts including:

- **Primary remediation** means repairing environmental damage and may include a wide range of techniques to remove contaminants, restock, replant, and manage the recovery of a damaged area
- **Complementary remediation.** Sometimes a site may never recover (e.g. an ancient woodland is destroyed). The business may need to provide equally beneficial improvements at the site or at another site (e.g. improving other parts of the woodland or of another woodland altogether) to compensate for the fact that the primary remediation wasn't able to fully restore the natural resource or service within an acceptable timeframe
- **Compensatory remediation.** It may take years for a damaged area to recover (lost breeding grounds for example). The Business may then have to provide compensation to the environment for interim losses from the date the damage occurred until primary remediation has achieved its full effect. This could result in the business having to make extra improvements to the site, or to another site altogether

New Powers and Ways of Enforcement:

- The “Polluter Pays Principle” means that a business causing environmental damage (or the imminent threat of such damage) will be financially liable. This goes beyond merely cleaning up the pollution and means that businesses will be fully responsible for the environmental damage they cause
- The regulations can be enforced by various entities in all constituent parts of the UK. These include: Environment Agency, Natural England, Countryside Council for Wales, Scottish Environmental Protection Agency, Scottish Natural Heritage, Local Municipality Environmental Health Officers, Environment and Heritage Northern Ireland and Northern Irish Environment Agency
- The regulations introduce new rights for third parties (including Non Governmental Bodies such as Green Peace) to report suspected cases of environmental damage directly to enforcing bodies

Implications for businesses that cause such environmental damage

- **Act immediately.** As soon as businesses are aware of damage of this kind steps must be taken to prevent further damage and inform the authorities
- **Work with the authorities.** Businesses should submit their remediation proposals to the authorities including a complementary and compensatory remediation plan, before the authority issues a remediation notice

- **Emergency costs.** In an emergency situation the Authorities may take immediate action to prevent and recover these costs from the business responsible for causing the damage
- **Offences.** Failing to act immediately to prevent environmental damage is an offence according to environmental damage regulations. Fines are unlimited and in extreme cases prison sentences may be imposed. Where companies have committed an offence, individuals who consented to them such as directors or managers may also be guilty

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