EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL DAMAGE (PREVENTION AND REMEDIATION) (AMENDMENT) REGULATIONS 2010

2010 No. 587

1. This explanatory memorandum has been prepared by the Department for the Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Environmental Damage (Prevention and Remediation) Regulations 2009 (hereafter 'the EDRs'), which came into force on 1st March 2009, aim to prevent and remedy serious incidents of environmental damage.

2.2 This amendment to the Environmental Damage (Prevention and Remediation) Regulations 2009 (hereafter 'the Amendment') will executively devolve enforcement of the EDRs in the Scottish offshore region to the Scottish Ministers, except in relation to reserved matters.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This is an amendment to the Environmental Damage (Prevention and Remediation) Regulations 2009. The EDRs transpose the Environmental Liability Directive on environmental liability with regard to the prevention and remedying of environmental damage.

4.2 The proposed Amendment will executively devolve enforcement of the EDRs in the Scottish offshore region to the Scottish Ministers, except in relation to reserved matters. This enforcement relates to significant environmental damage to species and habitats protected under the EU Habitats and Wild Birds Directives.

5. Territorial Extent and Application

5.1 This instrument applies to the Scottish offshore region, as defined in section 322 of the Marine and Coastal Access Act.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The Environmental Liability Directive aims to prevent and remedy serious incidents of damage to habitats and species protected by EU law and to habitats and species on sites of special scientific interest, as well as significant damage to water resources and land contamination that presents a threat to human health.

7.2 The Environmental Liability Directive's definition of damage to protected species and natural habitats extends into the marine environment from the coast out to the limits of the United Kingdom's jurisdiction (i.e. 200 nautical miles from the coast and also to the seabed in parts of the continental shelf beyond this).

7.3 The Calman report recommended executive devolution of conservation functions in offshore areas, which the UK Government accepts. To that end, the Amendment will executively devolve responsibility for enforcement of the prevention and remediation of environmental damage in the Scottish offshore region to the Scottish Ministers, when there is significant damage to species and habitats protected under the EU Habitats and Wild Birds Directives.

7.4 The Secretary of State will retain responsibility for enforcing the EDRs relating to the prevention and remediation of environmental damage caused by oil, gas and carbon dioxide storage activities, and the prevention of environmental damage caused by marine transport activities.

- ***Consolidation***

7.5 The Department has no plans for consolidation.

8. Consultation outcome

8.1 The Department did not undertake a public consultation, as the Amendment does not have an impact on external stakeholders. Other Government Departments, for whom this Amendment is relevant, were consulted and are content with the proposed approach.

9. Guidance

9.1 This Amendment does not require any changes to guidance, as this Amendment does not change any of the current guidance nor infer any additional responsibility on any parties.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Whilst there will not be any monitoring of this specific Amendment, incident data return forms will provide an ongoing monitoring tool for the EDRs. A report will also be compiled on the implementation impact of the EDRs for the European Commission in 2013. Regular meetings with UK authorities provide an additional level of monitoring.

13. Contact

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