EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL LIABILITY (PREVENTION AND REMEDIATION) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2009

SR 2009 No. 361

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under Section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

2.1. The Statutory Rule will amend the Environmental Liability (Prevention and Remediation) Regulations 2009 (SR 2009 No.252) ("the Principal Regulations") made on 29th June 2009 to address technical drafting issues commented upon by the Examiner of Statutory Rules in his First Report of the 2009/10 Session.

3. Background

3.1. The Principal Regulations transposed the provisions of the EC Environmental Liability Directive (2004/35/EC) with regard to the prevention and remedying of environmental damage.

3.2. The amending Regulations address the following issues raised by the Examiner of Statutory Rules: (a) "there is no provision similar to regulation 3 in the equivalent English Regulations with regard to “References to Community Instruments”"; (b) "Regulation 26 contains several references to a warrant but says nothing about the procedure for obtaining one"; and (c) "Regulation 29(1)(a) sets out penalties for offences under regulations 19,24 and 25. The formula used in regulation 25(a) for the fine in summary conviction is not correct".

4. Consultation

4.1. A first consultation on the main policy approaches to implementing the Directive was carried out between November 2006 and February 2007. A second consultation was carried out between March and May 2009. As the amending Regulations deal with relatively minor technical issues no further consultation is deemed necessary.

5. Equality Impact

5.1. The amending Regulations do not deal with substantive policy issues so the screening exercise carried out in respect of the Principal Regulations still stands. This screening exercise indicated that there was no reason to believe that any of the Section 75 groups would be more likely to be affected by the transposition of the Directive than any other group.

6. Regulatory Impact

6.1. The amending Regulations will have no effect on the Regulatory Impact Assessment carried out for the Principal Regulations.

7. Financial Implications

7.1. The amending Regulations will create no additional financial burden.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department considers that the Statutory Rule will be compliant with the European Convention on Human Rights.

9. EU Implications

9.1. There are no EU implications as a result of introducing the amending Regulations.

10. Parity or Replicatory Measure

10.1. The Principal Regulations essentially replicate the Environmental Damage (Prevention and Remediation) Regulations 2009 in England and are similar to the equvalent legislation in Scotland and Wales. The amending Regulations address technical drafting issues and maintain parity.

11. Additional Information

11.1. Karl Beattie at the Department of the Environment Tel: 028 9025 4789 or email: karl.beattie@doeni.gov.uk can answer any queries regarding the Regulations.