

## Environmental Liability Regulations

In December 2008 the Minister for Environment signed the [European Communities \(Environmental Liability\) Regulations 2008 \(SI 547 of 2008\)](#), transposing the [European Environmental Liability Directive](#) (ELD).

The Regulations place obligations on operators to prevent environmental damage and, where such damage has occurred, the operator is required to control, contain, remove or manage contaminants or causes of damage. 'Environmental damage' includes damage to protected species and natural habitats, water and land damage. Although liability provisions vary depending on the activity concerned, there are other indirect implications across many activities.

The majority of obligations entered into force from 1 April 2009. The [Department of Environment, Heritage and Local Government](#) (DEHLG) will issue guidance on the regulations shortly.

The Environmental Liability Directive contains a number of discretionary provisions, which require primary legislation from the Oireachtas. Of particular concern for industry is the discretion that allows the application of the permit and state-of-art defence. The permit defence would exempt operators from liability where the operator demonstrates that the damage was caused by activity/emission expressly authorised by a regulatory authority: IPPC licensed activities, for example. IBEC has identified this as a core requirement for industry, and has raised the matter in various written submissions to the DEHLG. The Act is likely to be passed in the first half of this year.

The transposition of the ELD has implications for licensed activities through the provision of Environmental Liability Risk Assessments (ELRA), Closure Restoration and Aftercare Management Plans (CRAMP) and Residual Management Plans (RMP) and their associated Financial Provisions (FP).

To date, 20 member states have transposed the ELD into national law. The remaining seven have all been referred to the European Court of Justice. The Commission says it expects most member states to have completed transposition by summer.

Source: IBEC 2009