



OFFERYNNAU STATUDOL
CYMRU

WELSH STATUTORY
INSTRUMENTS

2012 Rhif 283 (Cy.47)

2012 No. 283 (W.47)

**DIOGELU'R AMGYLCHEDD,
CYMRU**

**ENVIRONMENTAL
PROTECTION, WALES**

Rheoliadau Tir Halogedig (Cymru)
(Diwygio) 2012

The Contaminated Land (Wales)
(Amendment) Regulations 2012

NODYN ESBONIADOL

EXPLANATORY NOTE

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

(This note is not part of the Regulations)

Mae'r Rheoliadau hyn, sy'n gymwys o ran Cymru, yn diwygio Rheoliadau Tir Halogedig (Cymru) 2006 (O.S. 2006/2989 (Cy.278)) ("Rheoliadau 2006").

These Regulations, which apply in relation to Wales, amend the Contaminated Land (Wales) Regulations 2006 (S.I. 2006/2989 (W.278)) (the "2006 Regulations").

Mae rheoliad 2(2) yn diwygio'r amgylchiadau a nodir yn rheoliad 3(b) (llygru dyfroedd a reolir) o Reoliadau 2006 lle y mae'n ofynnol i dir halogedig, sy'n effeithio ar ddyfroedd a reolir, gael ei ddynodi yn safle arbennig. Mae'r diwygiad hwn yn cymryd ystyriaeth o ardaloedd gwarchoddedig o dan Gyfarwyddeb 2000/60/EC Senedd Ewrop a'r Cyngor sy'n sefydlu fframwaith ar gyfer gweithredu Cymunedol ym maes polisi dŵr (OJ Rhif L327, 22.12.00, t.1).

Regulation 2(2) amends the circumstances set out in regulation 3(b) (pollution of controlled waters) of the 2006 Regulations in which contaminated land affecting controlled waters is required to be designated as a special site. The amendment takes account of protected areas under Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy (OJ No L327, 22.12.00, p.1).

Mae rheoliad 2(2) hefyd yn diwygio rheoliad 3(c) (llygru dyfroedd a reolir) o Reoliadau 2006 i gymryd ystyriaeth o'r diffiniad a ddiweddarwyd o "controlled waters" yn adran 78A(9) o Ddeddf Diogelu'r Amgylchedd 1990 (p. 43).

Regulation 2(2) also amends regulation 3(c) (pollution of controlled waters) of the 2006 Regulations to take account of the updated definition of "controlled waters" in section 78A(9) of the Environmental Protection Act 1990 (c. 43).

Mae rheoliad 2(3) yn cyfyngu ar gymhwysiad rheoliad 11 (addasu hysbysiad adfer) o Reoliadau 2006 i apelau sy'n cael eu cychwyn cyn 6 Ebrill 2012. O ran yr apelau hynny, mae rheoliad 11 yn darparu ei bod yn ofynnol i Weinidogion Cymru, cyn iddynt addasu hysbysiad adfer mewn modd a fyddai'n llai ffafriol i'r apelydd neu i unrhyw berson arall y cyflwynwyd yr hysbysiad iddo, hysbysu'r personau hynny a chaniatáu iddynt gyflwyno sylwadau a chael eu gwranddo mewn perthynas â'r addasiad arfaethedig.

Regulation 2(3) limits the application of regulation 11 (modification of a remediation notice) of the 2006 Regulations to appeals commenced prior to 6 April 2012. In relation to those appeals, regulation 11 provides that, prior to the Welsh Ministers modifying a remediation notice in a way which would be less favourable to the appellant or any other person on whom that notice was served, the Welsh Ministers are required to notify those persons, and to permit them to make representations and to be heard in relation to the proposed modification.

Mae rheoliad 2(4) yn diwygio Atodlen 2 i Reoliadau 2006 i adlewyrchu'r newidiadau a achoswyd gan Orchymyn Trosglwyddo Swyddogaethau'r Tribiwnlysoedd (Tribiwnlys Tiroedd a Diwygiadau Amrywiol) 2009 (O.S. 2009/1307) a drosglwyddodd swyddogaethau'r Tribiwnlys Tiroedd i'r Uwch Dribiwnlys ac a ddiddymodd y Tribiwnlys Tiroedd. Mae rheoliad 2(4) hefyd yn diwygio paragraff 6(4) o Atodlen 2 i Reoliadau 2006 i ddileu'r cyfeiriadau at adran 2 a ddiddymwyd o Ddeddf Iawndal Tir 1961 (p. 33) ac yn darparu ar gyfer cymhwysiad priodol cyfeiriadau penodol.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar wneud Asesiadau Effaith Rheoleiddiol mewn perthynas â'r newidiadau i'r drefn tir halogedig. O ganlyniad, paratowyd asesiad effaith rheoleiddiol o'r costau a'r buddiannau sy'n debygol o ddeillio o gydymffurfio â'r newidiadau i'r drefn tir halogedig, gan gyfeirio at brif effeithiau'r Rheoliadau hyn. Mae copi ar gael gan: Yr Adran Amgylchedd a Datblygu Cynaliadwy, Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ. Nid oes asesiad effaith rheoleiddiol ar wahân wedi cael ei wneud ar gyfer y Rheoliadau hyn.

Regulation 2(4) amends Schedule 2 to the 2006 Regulations to reflect the changes brought about by the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307), which transferred the functions of the Lands Tribunal to the Upper Tribunal and abolished the Lands Tribunal. Regulation 2(4) also amends paragraph 6(4) of Schedule 2 to the 2006 Regulations to remove references to the repealed section 2 of the Land Compensation Act 1961 (c. 33) and to provide for the appropriate application of particular references.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to the changes to the contaminated land regime. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with the changes to the contaminated land regime, making reference to the main impacts of these Regulations. A copy can be obtained from the Department for Environment and Sustainable Development, Welsh Government, Cathays Park, Cardiff, CF10 3NQ. No separate regulatory impact assessment was made for these Regulations.

2012 Rhif 283 (Cy.47)

**DIOGELU'R AMGYLCHEDD,
CYMRU**

**Rheoliadau Tir Halogedig (Cymru)
(Diwygio) 2012**

Gwnaed 3 Chwefror 2012

*Gosodwyd gerbron Cynulliad
Cenedlaethol Cymru* 7 Chwefror 2012

Yn dod i rym 6 Ebrill 2012

Mae Gweinidogion Cymru yn gwneud y Rheoliadau hyn drwy arfer y pwerau a roddwyd gan adrannau 78C(8), (9) a (10), 78G(5) a (6) a 78L(4) a (5) o Ddeddf Diogelu'r Amgylchedd 1990(1) ac sydd bellach wedi eu breinio ynddynt hwy(2).

Cyn gwneud y Rheoliadau hyn, mae Gweinidogion Cymru wedi ymgynghori â'r Cyngor Cyfiawnder Gweinyddol a Thribiwnlysoedd, ac mae'r Cyngor hwnnw wedi ymgynghori â Phwyllgor Cymru a Phwyllgor yr Alban yn unol ag adran 44 o Ddeddf Tribiwnlysoedd, Llysoedd a Gorfodaeth 2007(3) a pharagraff 24 o Atodlen 7 iddi.

(1) 1990 p. 43. Mewnosodwyd adrannau 78C, 78G a 78L gan adran 57 o Ddeddf yr Amgylchedd 1995 (p. 25). Mae adran 78C(10) wedi'i diwygio'n rhagolygol gan adran 86 o Ddeddf Dŵr 2003 (p. 37). Diwygiwyd adran 78L(4) gan adran 104 o Ddeddf Cymdogaethau Glân a'r Amgylchedd 2005 (p. 16) a Rhan 10 o Atodlen 5 iddi. Gweler y diffiniad o "prescribed" a "regulations" yn adran 78A(9).

(2) Trosglwyddwyd swyddogaethau'r Ysgrifennydd Gwladol o dan adrannau 78C, 78G a 78L o Ddeddf Diogelu'r Amgylchedd 1990, i'r graddau y maent yn arferadwy o ran Cymru, i Gynulliad Cenedlaethol Cymru yn rhinwedd erthygl 2 o Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (O.S. 1999/672) ac Atodlen 1 iddo. Yn rhinwedd adran 162 o Ddeddf Llywodraeth Cymru 2006 (p. 32), a pharagraff 30 o Atodlen 11 iddi, trosglwyddwyd y swyddogaethau hynny wedyn i Weinidogion Cymru.

(3) 2007 p. 15. Mae'r termau Saesneg cyfatebol, sef "Welsh Committee" a "Scottish Committee", wedi eu diffinio ym mharagraff 28(1) o Atodlen 7 i'r Ddeddf honno.

2012 No. 283 (W.47)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Contaminated Land (Wales)
(Amendment) Regulations 2012**

Made 3 February 2012

*Laid before the National
Assembly for Wales* 7 February 2012

Coming into force 6 April 2012

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 78C(8), (9) and (10), 78G(5) and (6) and 78L(4) and (5) of the Environmental Protection Act 1990(1) and now vested in them(2).

Before making these Regulations, the Welsh Ministers have consulted the Administrative Justice and Tribunals Council, and that Council has consulted the Welsh Committee and the Scottish Committee, in accordance with section 44 of, and paragraph 24 of Schedule 7 to, the Tribunals, Courts and Enforcement Act 2007(3).

(1) 1990 c. 43. Sections 78C, 78G and 78L were inserted by section 57 of the Environment Act 1995 (c. 25). Section 78C(10) is prospectively amended by section 86 of the Water Act 2003 (c. 37). Section 78L(4) was amended by section 104 of, and Part 10 of Schedule 5 to, the Clean Neighbourhoods and Environment Act 2005 (c. 16). See the definition of "prescribed" and "regulations" in section 78A(9).

(2) The functions of the Secretary of State under sections 78C, 78G and 78L of the Environmental Protection Act 1990, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32) those functions were subsequently transferred to the Welsh Ministers.

(3) 2007 c. 15. The "Welsh Committee" and the "Scottish Committee" are defined in paragraph 28(1) of Schedule 7 to that Act.

Enwi, cychwyn a chymhwys

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Tir Halogedig (Cymru) (Diwygio) 2012 a deuant i rym ar 6 Ebrill 2012.

(2) Mae'r Rheoliadau hyn yn gymwys o ran Cymru.

Diwygiadau i Reoliadau Tir Halogedig (Cymru) 2006

2.—(1) Mae Rheoliadau Tir Halogedig (Cymru) 2006(1) wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 3 (llygru dyfroedd a reolir)—

(a) yn lle paragraff (b) rhodder—

"(b)pan fydd y tir yn effeithio ar ddyfroedd a reolir, ac o ganlyniad—

(i) nid yw'r dyfroedd hynny yn bodloni neu nad ydynt yn debygol o fodloni'r maen prawf ar gyfer y dosbarthiad sy'n gymwys i'r disgrifiad perthnasol o ddyfroedd a bennir mewn rheoliadau a wneir o dan adran 82 o Ddeddf Adnoddau Dŵr 1991(2) (dosbarthu ansawdd dyfroedd); neu

(ii) ar gyfer dyfroedd a reolir sydd wedi eu dynodi fel ardaloedd gwarchoddedig o dan Gyfarwyddeb 2000/60/EC Senedd Ewrop a'r Cyngor sy'n sefydlu fframwaith ar gyfer gweithredu Cymunedol ym maes polisi dŵr(3), nid yw'r dyfroedd hynny yn bodloni'r amcanion amgylcheddol sy'n gymwys iddynt o dan y Gyfarwyddeb honno (ac eithrio'r ardaloedd gwarchoddedig a restrir ym mharagraffau (i), (iv) a (v) o Atodiad IV i'r Gyfarwyddeb honno); neu"; a

(b) ym mharagraff (c)(ii), yn lle "o fewn strata tanddaearol", rhodder "mewn strata tanddaearol o fewn y parth dirlawnder".

(3) Yn rheoliad 11 (addasu hysbysiad adfer), ar ôl paragraff (2) mewnosoder—

"(3) Dim ond mewn perthynas ag apelau a wneir yn unol â rheoliad 8(1) cyn 6 Ebrill 2012 y mae'r rheoliad hwn yn gymwys."

(4) Yn Atodlen 2 (iawndal am hawliau mynediad etc)—

(a) ym mharagraff 5(3) yn lle "Tribiwnlys Tiroedd" rhodder "Uwch Dribiwnlys";

Title, commencement and application

1.—(1) The title of these Regulations is the Contaminated Land (Wales) (Amendment) Regulations 2012 and they come into force on 6 April 2012.

(2) These Regulations apply in relation to Wales.

Amendments to the Contaminated Land (Wales) Regulations 2006

2.—(1) The Contaminated Land (Wales) Regulations 2006(1) are amended as follows.

(2) In regulation 3 (pollution of controlled waters)—

(a) for paragraph (b) substitute—

"(b)controlled waters are being affected by the land and, as a result—

(i) those waters do not meet or are not likely to meet the criterion for classification applying to the relevant description of waters specified in regulations made under section 82 of the Water Resources Act 1991(2) (classification of quality of waters); or

(ii) for controlled waters that are designated as protected areas under Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(3), those waters do not meet the environmental objectives that apply to them under that Directive (excluding protected areas listed in paragraphs (i), (iv) and (v) of Annex IV to that Directive); or"; and

(b) in paragraph (c)(ii) for "within underground strata" substitute "in underground strata within the saturation zone".

(3) In regulation 11 (modification of a remediation notice), after paragraph (2) insert—

"(3) This regulation applies only in relation to appeals made in accordance with regulation 8(1) prior to 6 April 2012."

(4) In Schedule 2 (compensation for rights of entry etc)—

(a) in paragraph 5(3) for "Lands Tribunal" substitute "Upper Tribunal";

(1) O.S. 2006/2989 (Cy. 278), y mae diwygiadau iddo nad ydynt yn berthnasol i'r Rheoliadau hyn.

(2) 1991 p. 57.

(3) OJ Rhif L327, 22.12.00, t.1.

(1) S.I. 2006/2989 (W. 278), to which there are amendments not relevant to these Regulations.

(2) 1991 c. 57.

(3) OJ No L327, 22.12.00, p.1.

(b) ym mharagraffau 6(2)(c) a 6(3) yn lle "y Tribiwnlys Tiroedd" rhodder "yr Uwch Dribiwnlys"; ac

(c) yn lle paragraff 6(4), rhodder—

"(4) Mewn perthynas â phenderfynu unrhyw gwestiwn o'r fath, mae adran 4 o Ddeddf 1961 (costau)(1) i'w chymhwyso fel petai'r canlynol wedi eu gwneud—

(a) bod y cyfeiriad at adran 1 o'r Ddeddf honno yn gyfeiriad at is-baragraff (3) o'r paragraff hwn;

(b) bod y cyfeiriadau at yr awdurdod caffael yn gyfeiriadau at y person priodol; ac

(c) bod cyfeiriadau at yr hawlydd yn gyfeiriadau at y grantwr."

(b) in paragraphs 6(2)(c) and 6(3) for "Lands Tribunal" substitute "Upper Tribunal"; and

(c) for paragraph 6(4) substitute—

"(4) In relation to the determination of any such question, section 4 of the 1961 Act (costs)(1) applies as if—

(a) the reference to section 1 of that Act were a reference to sub-paragraph (3) of this paragraph;

(b) references to the acquiring authority were references to the appropriate person; and

(c) references to the claimant were references to the grantor."

John Griffiths

Gweinidog yr Amgylchedd a Datblygu Cynaliadwy, un o Weinidogion Cymru

Minister for Environment and Sustainable Development, one of the Welsh Ministers

3 Chwefror 2012

3 February 2012

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(1) 1961 p. 33. Diwygiwyd adran 4 gan baragraffau 36 a 39 o Atodlen 1 i Orchymyn Trosglwyddo Swyddogaethau'r Tribiwnlysoedd (Tribiwnlys Tiroedd a Diwygiadau Amrywiol) 2009 (O.S. 2009/1307).

(1) 1961 c. 33. Section 4 was amended by paragraphs 36 and 39 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307).

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