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WELSH STATUTORY
INSTRUMENTS

2018 Rhif 725 (Cy. 142)

2018 No. 725 (W. 142)

**DIOGELU'R AMGYLCHEDD,
CYMRU**

**ENVIRONMENTAL
PROTECTION, WALES**

Rheoliadau Tir a Halogwyd yn
Ymbelydrol (Addasu Deddfiadau)
(Cymru) (Diwygio) 2018

The Radioactive Contaminated
Land (Modification of Enactments)
(Wales) (Amendment) Regulations
2018

NODYN ESBONIADOL

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Tir a Halogwyd yn Ymbelydrol (Addasu Deddfiadau) (Cymru) 2006 (O.S. 2006/2988 (Cy. 277)) ("Rheoliadau 2006").

These Regulations amend the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006 (S.I. 2006/2988 (W. 277)) ("the 2006 Regulations").

Mae Rhan 2A o Ddeddf Diogelu'r Amgylchedd 1990 (p. 43) ("DDA 1990") yn nodi cyfundrefn ar gyfer adnabod tir halogedig a'i adfer. Gwnaeth Rheoliadau 2006 ddarpariaeth i Ran 2A fod yn gymwys, gydag addasiadau, at ddiben ymdrin â niwed y gellir ei briodoli i unrhyw ymbelydredd sy'n perthyn i unrhyw sylwedd.

Part 2A of the Environmental Protection Act 1990 (c. 43) ("EPA 1990") sets out a regime for the identification and remediation of contaminated land. The 2006 Regulations made provision for Part 2A to apply with modifications for the purpose of dealing with harm attributable to any radioactivity possessed by any substance.

Mae'r Rheoliadau hyn yn rhan o becyn o fesurau i drosi Cyfarwyddeb y Cyngor 2013/59/Euratom dyddiedig 5 Rhagfyr 2013 sy'n gosod safonau diogelwch sylfaenol ar gyfer diogelu rhag y peryglon sy'n codi o ddod i gysylltiad ag ymbelydredd ìoneiddio, ac yn diddymu Cyfarwyddebau 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom a 2003/122/Euratom ("y Gyfarwyddeb"). Mae'r Rheoliadau hyn yn trosi rhai o ofnyion Erthygl 73(1) o'r Gyfarwyddeb yn ogystal â gwneud diwygiadau i adlewyrchu diffiniadau newydd yn y Gyfarwyddeb.

These Regulations are part of a package of measures to transpose Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom ("the Directive"). These Regulations transpose requirements in Article 73(1) of the Directive and make amendments to reflect new definitions in the Directive.

Mae rheoliadau 3 a 5 yn diwygio'r addasiadau a wnaed gan Reoliadau 2006 i'r diffiniad o adfer yn Rhan 2A o DDA 1990 er mwyn gweithredu rhwymedigaethau o dan Erthygl 73(1)(b) a (e) o'r Gyfarwyddeb. Mae rheoliad 3 hefyd yn diwygio cyfeiriadau at Gyfarwyddeb y Cyngor 96/29/Euratom a ddisodlir gan y Gyfarwyddeb, ac yn gwneud diwygiadau eraill i adlewyrchu'r diffiniadau newydd o "emergency", "protective measures", "remedial measures", "optimisation" a "justification" yn y Gyfarwyddeb.

Mae'r Rheoliadau hyn hefyd yn diwygio cyfeiriadau penodol at yr Ysgrifennydd Gwladol yn yr addasiadau a wnaed gan Reoliadau 2006 fel eu bod yn lle hynny yn cyfeirio at Weinidogion Cymru. Mae'r diwygiadau a wneir gan reoliadau 3(2), 3(4) a 4 o'r Rheoliadau hyn yn sicrhau bod y swyddogaethau penodol fel y'u haddasir yn arferadwy gan Weinidogion Cymru, yn gyson â'r swyddogaethau sylfaenol yn Rhan 2A DDA 1990.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Aseidiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ystyriwyd nad oedd yn angenrheidiol cynnal asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

Regulations 3 and 5 amend the modifications made by the 2006 Regulations to the definition of remediation in Part 2A EPA 1990 in order to implement obligations under Article 73(1)(b) and (e) of the Directive. Regulation 3 also amends references to Council Directive 96/29/Euratom which is replaced by the Directive and makes other amendments to reflect the new definitions of "emergency", "protective measures", "remedial measures", "optimisation" and "justification" in the Directive.

These Regulations also replace certain references to the Secretary of State in the modifications made by the 2006 Regulations with references to the Welsh Ministers. The amendments made by regulations 3(2), 3(4) and 4 of these Regulations ensure that the relevant modified functions are exercisable by the Welsh Ministers, in line with the underlying functions within Part 2A EPA 1990.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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Rheoliadau Tir a Halogwyd yn
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(Cymru) (Diwygio) 2018

The Radioactive Contaminated
Land (Modification of Enactments)
(Wales) (Amendment) Regulations
2018

Gwnaed 13 Mehefin 2018

Made 13 June 2018

*Gosodwyd gerbron Cynulliad Cenedlaethol
Cymru* 15 Mehefin 2018

Laid before the National Assembly for Wales
15 June 2018

Yn dod i rym yn unol â rheoliad 1(2)

*Coming into force in accordance with
regulation 1(2)*

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir gan adrannau 78A(9) a 78YC o Ddeddf Diogelu'r Amgylchedd 1990(1), yn gwneud y Rheoliadau a ganlyn.

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 78A(9) and 78YC of the Environmental Protection Act 1990(1).

Enwi a Chychwyn

Title and Commencement

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Tir a Halogwyd yn Ymbelydrol (Addasu Deddfiadau) (Cymru) (Diwygio) 2018.

1.—(1) The title of these Regulations is the Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) Regulations 2018.

(2) Daw'r Rheoliadau hyn i rym 21 o ddiwrnodau ar ôl y diwrnod y'u gwneir.

(2) These Regulations come into force 21 days after the day they are made.

(1) 1990 p. 43. Mewnosodwyd adrannau 78A i 78YC gan adran 57 o Ddeddf yr Amgylchedd 1995 (p. 25). Diwygiwyd adran 78YC gan O.S. 2010/675 a 2016/1154. Gweler y diffiniad o "prescribed" a "regulations" yn adran 78A(9). Trosglwyddwyd swyddogaethau'r Ysgrifennydd Gwladol o dan adrannau 78A a 78YC, i'r graddau yr oeddent yn arferadwy o ran Cymru, i Gynulliad Cenedlaethol Cymru gan erthygl 3(1) o Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (O.S. 1999/672). Mae'r swyddogaethau hynny bellach yn arferadwy gan Weinidogion Cymru yn rhinwedd adran 162 o Ddeddf Llywodraeth Cymru 2006 (p. 32) a pharagraff 30 o Atodlen 11 iddi (p. 32).

(1) 1990 c. 43. Sections 78A to 78YC were inserted by section 57 of the Environment Act 1995 (c. 25). Section 78YC was amended by S.I. 2010/675 and 2016/1154. See the definition of "prescribed" and "regulations" in section 78A(9). Functions of the Secretary of State under sections 78A and 78YC were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by virtue of article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

Diwygio Rheoliadau Tir a Halogwyd yn Ymbelydrol (Addasu Deddfiadau) (Cymru) 2006

2.—(1) Mae Rheoliadau Tir a Halogwyd yn Ymbelydrol (Addasu Deddfiadau) (Cymru) 2006(1) wedi eu diwygio yn unol â rheoliadau 3 i 5.

3.—(1) Mae rheoliad 5 (adran 78A (rhagarweiniol)) wedi ei ddiwygio fel a ganlyn.

(2) Ym mharagraff (2), yn yr adran 78A(2) a amnewidiwyd (diffiniad o dir halogedig), yn lle “Secretary of State” rhodder “Welsh Ministers”.

(3) Ym mharagraff (3), yn yr adran 78A(4) a amnewidiwyd (diffiniad o niwed)—

- (a) yn lle “a radiological” rhodder “an”;
- (b) ar ôl “activity” mewnosoder “(except in section 78E(4A)(a))”(2).

(4) Ym mharagraff (4), yn yr adran 78A(5) a amnewidiwyd (atodiad i'r diffiniad o niwed - canllawiau), yn lle “Secretary of State” rhodder “Welsh Ministers”.

(5) Ym mharagraff (6), yn yr adran 78A(7) a amnewidiwyd (diffiniad o adfer), yn lle “cognate expressions” rhodder “references to remediating”.

(6) Ym mharagraff (6), yn yr adran 78A(7A) a amnewidiwyd (diffiniad atodol o adfer)—

- (a) ar ôl paragraff (a), mewnosoder—
 - “(aa) affected members of the public are identified;
 - (ab) assessment of the means available to the individuals identified under paragraph (aa) for controlling their own exposure is made;”;
- (b) hepgorer paragraff (c) a'r “and” ar ei ôl;
- (c) ar ddiwedd paragraff (d), hepgorer yr atalnod llawn a mewnosoder “; and”;
- (d) ar ôl paragraff (d), mewnosoder—
 - “(e) any other appropriate protective or remedial measure is implemented.”

(7) ym mharagraff (8)—

- (a) yn lle paragraff (d), rhodder—

Amendments to the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006

2. The Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006(1) are amended in accordance with regulations 3 to 5.

3.—(1) Regulation 5 (section 78A (preliminary)) is amended as follows.

(2) In paragraph (2), in the substituted section 78A(2) (definition of contaminated land), for “Secretary of State” substitute “Welsh Ministers”.

(3) In paragraph (3), in the substituted section 78A(4) (definition of harm)—

- (a) for “a radiological” substitute “an”;
- (b) after “activity” insert “(except in section 78E(4A)(a))”(2).

(4) In paragraph (4), in the substituted section 78A(5) (supplement to definition of harm - guidance), for “Secretary of State” substitute “Welsh Ministers”.

(5) In paragraph (6), in the substituted section 78A(7) (definition of remediation), for “cognate expressions” substitute “references to remediating”.

(6) In paragraph (6), in the substituted section 78A(7A) (supplemental definition of remediation)—

- (a) after paragraph (a), insert—
 - “(aa) affected members of the public are identified;
 - (ab) assessment of the means available to the individuals identified under paragraph (aa) for controlling their own exposure is made;”;
- (b) omit paragraph (c) and the “and” following it;
- (c) at the end of paragraph (d), omit the full stop and insert “; and”;
- (d) after paragraph (d), insert—
 - “(e) any other appropriate protective or remedial measure is implemented.”

(7) n paragraph (8)—

- (a) for paragraph (d), substitute—

(1) O.S. 2006/2988, a ddiwygiwyd gan O.S. 2007/3250, 2008/521, 2010/2146, 2013/755 a 2016/1154. Mae O.S. 2016/562 hefyd yn gwneud diwygiadau nad ydynt mewn grym eto.

(2) Mae rheoliad 5 o'r Rheoliadau hyn yn diwygio rheoliad 8(3) o Reoliadau Tir a Halogwyd yn Ymbelydrol (Addasu Deddfiadau) (Cymru) 2006, sy'n addasu adran 78E o Ddeddf Diogelu'r Amgylchedd 1990.

(1) S.I. 2006/2988, amended by S.I. 2007/3250, 2008/521, 2010/2146, 2013/755 and 2016/1154. S.I. 2016/562 also makes amendments which are not yet in force.

(2) Section 78E of the Environmental Protection Act 1990 is modified by regulation 8(3) of the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006. Regulation 5 of these Regulations amends that modification.

“(d) for the definition of “substance”, substitute—

“substance” means, whether in solid or liquid form or in the form of a gas or vapour, any substance containing radionuclides which have resulted from the after-effects of an emergency or have been processed as part of a past practice or past work activity;”;

(b) yn lle paragraff (e), rhodder—

“(e) after the definition of “unitary authority”, insert—

“and any other word or expression used both in this Part and in Council Directive 2013/59/Euratom, laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation and repealing Council Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom(1), has the same meaning for the purposes of this Part as it has in that Directive.””

4. Yn rheoliad 7(2) (adran 78C (adnabod a dynodi safleoedd arbennig)), yn yr adran 78C(10)(a) a amnewidiwyd, yn lle “Secretary of State” rhodder “Welsh Ministers”.

5. Yn rheoliad 8(3) (adran 78E (dyletswydd ar yr awdurdod gorfodi i wneud adfer tir halogedig yn ofynnol etc)), yn lle'r adran 78E(4A) a (4B) a amnewidiwyd, rhodder—

“(4A) Where remediation includes the implementation of a protective or remedial measure, that part of the remediation which consists of the implementation of any such measure may be considered reasonable only—

(a) where the measure does more good than harm; and

(b) where the form, scale and duration of the measure is optimised.

(4B) For the purpose of subsection (4A), the form, scale and duration of a protective or remedial measure shall be taken to be optimised if the magnitude of individual doses, the likelihood of exposure and the number of individuals exposed are kept as low as reasonably achievable taking into account the current state of technical knowledge and economic and societal factors.”

“(d) for the definition of “substance”, substitute—

“substance” means, whether in solid or liquid form or in the form of a gas or vapour, any substance containing radionuclides which have resulted from the after-effects of an emergency or have been processed as part of a past practice or past work activity;”;

(b) for paragraph (e), substitute—

“(e) after the definition of “unitary authority”, insert—

“and any other word or expression used both in this Part and in Council Directive 2013/59/Euratom, laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation and repealing Council Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom(1), has the same meaning for the purposes of this Part as it has in that Directive.””

4. In regulation 7(2) (section 78C (identification and designation of special sites)), in the substituted section 78C(10)(a), for “Secretary of State” substitute “Welsh Ministers”.

5. In regulation 8(3) (section 78E (duty of enforcing authority to require remediation of contaminated land etc)), for the substituted section 78E(4A) and (4B), substitute—

“(4A) Where remediation includes the implementation of a protective or remedial measure, that part of the remediation which consists of the implementation of any such measure may be considered reasonable only—

(a) where the measure does more good than harm; and

(b) where the form, scale and duration of the measure is optimised.

(4B) For the purpose of subsection (4A), the form, scale and duration of a protective or remedial measure shall be taken to be optimised if the magnitude of individual doses, the likelihood of exposure and the number of individuals exposed are kept as low as reasonably achievable taking into account the current state of technical knowledge and economic and societal factors.”

(1) OJ Rhif L 13, 17.01.2014, t. 1-73

(1) OJ No L 13, 17.01.2014, p. 1-73.

Lesley Griffiths

Ysgrifennydd y Cabinet dros Ynni, Cynllunio a
Materion Gwledig, un o Weinidogion Cymru
13 Mehefin 2018

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Cabinet Secretary for Energy, Planning and Rural
Affairs, one of the Welsh Ministers
13 June 2018

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