OFFERYNNAU STATUDOL CYMRU

WELSH STATUTORY INSTRUMENTS

2015 Rhif 1394 (Cy. 138)

2015 No. 1394 (W. 138)

DIOGELU'R AMGYLCHEDD, CYMRU

ENVIRONMENTAL PROTECTION, WALES

Rheoliadau Difrod Amgylcheddol (Atal ac Adfer) (Diwygio) Cymru 2015

The Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015

NODYN ESBONIADOL

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

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Difrod Amgylcheddol (Atal ac Adfer) (Cymru) 2009 (**1**) ("Rheoliadau 2009") sy'n gweithredu Cyfarwyddeb 2004/35/EC Senedd Ewrop a'r Cyngor ar atebolrwydd amgylcheddol o ran atal ac adfer difrod amgylcheddol(**2**) ("y Gyfarwyddeb Atebolrwydd Amgylcheddol").

Mae rheoliad 2 yn diwygio Rheoliadau 2009 i weithredu'r newidiadau i'r Gyfarwyddeb Atebolrwydd Amgylcheddol a gyflwynwyd gan Erthygl 38 o Gyfarwyddeb 2013/30/EU Senedd Ewrop a'r Cyngor ar ddiogelwch gweithrediadau olew a nwy alltraeth ac yn diwygio Cyfarwyddeb 2004/35/EC(**3**). Mae erthygl 38 o Gyfarwyddeb 2013/30/EU yn ymestyn y diffiniad o 'difrod amgylcheddol' a geir yn y Gyfarwyddeb Atebolrwydd Amgylcheddol i gynnwys difrod sy'n effeithio'n sylweddol andwyol ar statws amgylcheddol dyfroedd morol fel y'u diffinnir yng Nghyfarwyddeb 2008/56/EC Senedd Ewrop a'r Cyngor sy'n sefydlu fframwaith ar gyfer gweithredu cymunedol ym maes polisi amgylcheddol morol(**4**). Mae rheoliad 8 o Reoliadau 2009 yn cael ei ddiwygio i ddarparu cyfyngiadau amser mewn perthynas â difrod i

(**1**) O.S. 2009/995 (Cy. 81); O.S. 2011/556 a 971, 2012/630, 2013/775 (Cy. 90) yw'r offerynnau diwygio perthnasol.
(**2**) OJ Rhif L 143, 30.4.2004, t. 56, fel y'i diwygiwyd ddiwethaf gan Gyfarwyddeb 2013/30/EU (OJ Rhif. L 178, 28.6.2013, t. 66).
(**3**) OJ Rhif L 178, 28.6.2013, t. 66.
(**4**) OJ Rhif L 164, 25.6.2008, t. 19.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009(**1**) ("the 2009 Regulations") which implement Directive 2004/35/EC of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage(**2**) ("the Environmental Liability Directive").

Regulation 2 amends the 2009 Regulations to implement the changes to the Environmental Liability Directive introduced by Article 38 of Directive 2013/30/EU of the European Parliament and of the Council on safety of offshore oil and gas operations and amending Directive 2004/35/EC(**3**). Article 38 of Directive 2013/30/EU extends the definition of 'environmental damage' contained in the Environmental Liability Directive to include damage that significantly adversely affects the environmental status of marine waters as defined in Directive 2008/56/EC of the European Parliament and of the Council establishing a framework for community action in the field of marine environmental policy(**4**). Regulation 8 of the 2009 Regulations is amended to provide temporal limitations in relation to damage to

(**1**) S.I. 2009/995 (W. 81); relevant amending instruments are S.I. 2011/556 and 971, 2012/630, 2013/775 (W. 90).
(**2**) OJ No L 143, 30.4.2004, p. 56, as last amended by Directive 2013/30/EU (OJ No. L 178, 28.6.2013, p. 66).
(**3**) OJ No L 178, 28.6.2013, p. 66.
(**4**) OJ No L 164, 25.6.2008, p. 19.

ddyfroedd morol. Mae rheoliadau 10 ac 11 yn cael eu diwygio er mwyn pennu'r awdurdodau gorfodi ar gyfer difrod i ddyfroedd morol.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, paratowyd asesiad rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn yng Nghymru. Gellir cael copi gan Lywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ.

marine waters. Regulations 10 and 11 are amended in order to specify the enforcing authorities for damage to marine waters.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory assessment has been prepared as to the likely costs and benefits of complying with these Regulations in Wales. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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DIOGELU'R AMGYLCHEDD, CYMRU

Rheoliadau Difrod Amgylcheddol (Atal ac Adfer) (Diwygio) (Cymru) 2015

Gwnaed	*17 Mehefin 2015*
Gosodwyd gerbron Cynulliad Cenedlaethol Cymru	*19 Mehefin 2015*
Yn dod i rym	*19 Gorffennaf 2015*

Mae Gweinidogion Cymru wedi eu dynodi(**1**) at ddibenion adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972(**2**) mewn perthynas ag atal ac adfer difrod amgylcheddol ac yn gwneud y Rheoliadau hyn drwy arfer y pwerau a roddwyd gan yr adran honno fel y'i darllenir gyda pharagraff 1A o Atodlen 2 i'r Ddeddf honno(**3**).

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Difrod Amgylcheddol (Atal ac Adfer) (Cymru) 2009 ("Rheoliadau 2009")(**4**). Mae rheoliad 3 o Reoliadau 2009 yn darparu bod cyfeiriadau at offerynnau'r UE yn gyfeiriadau at yr offerynnau hynny fel y'u diwygir o dro i dro. Mae'r Rheoliadau hyn yn gwneud darpariaeth ar gyfer diben a grybwyllir yn adran 2(2) o Ddeddf 1972 a pharagraff 1A o Atodlen 2 i'r Ddeddf honno. At ddibenion Rheoliadau 2009 fel y maent yn cael effaith fel y'u diwygir gan y Rheoliadau hyn, mae'n ymddangos i Weinidogion Cymru ei bod yn

(**1**) O.S. 2014/1890.
(**2**) 1972 p. 68. Diwygiwyd adran 2(2) gan adran 27(1)(a) o Ddeddf Diwygio Deddfwriaethol a Rheoleiddiol 2006 (p. 51) a Rhan 1 o'r Atodlen i Ddeddf yr Undeb Ewropeaidd (Diwygio) 2008 (p. 7).
(**3**) Mewnosodwyd paragraff 1A yn Atodlen 2 gan adran 28 o Ddeddf Diwygio Deddfwriaethol a Rheoleiddiol 2006.
(**4**) O.S. 2009/995 (Cy. 81); O.S. 2011/556 a 971, 2012/630, 2013/775 (Cy. 90) yw'r offerynnau diwygio perthnasol.

2015 No. 1394 (W. 138)

ENVIRONMENTAL PROTECTION, WALES

The Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015

Made	*17 June 2015*
Laid before the National Assembly for Wales	*19 June 2015*
Coming into force	*19 July 2015*

The Welsh Ministers are designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to the prevention and remedy of environmental damage and make these Regulations in exercise of the powers conferred by that section as read with paragraph 1A of Schedule 2 to that Act(**3**).

These Regulations amend the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 ("the 2009 Regulations")(**4**). Regulation 3 of the 2009 Regulations provides that references to EU instruments are references to those instruments as amended from time to time. These Regulations make provision for a purpose mentioned in section 2(2) of, and paragraph 1A of Schedule 2 to, the 1972 Act. It appears to the Welsh Ministers that, for the purposes of the 2009 Regulations as they have effect as amended by these Regulations, it is expedient for the

(**1**) S.I. 2014/1890.
(**2**) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).
(**3**) Paragraph 1A was inserted into Schedule 2 by section 28 of the Legislative and Regulatory Reform Act 2006.
(**4**) S.I. 2009/995 (W. 81); relevant amending instruments are S.I. 2011/556 and 971, 2012/630, 2013/775 (W. 90).

hwylus i offerynnau'r UE y cyfeirir atynt yn Rheoliadau 2009 gael eu dehongli fel cyfeiriadau at yr offerynnau hynny fel y'u diwygir o dro i dro.

Enwi, cychwyn, cymhwyso a dehongli

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Difrod Amgylcheddol (Atal ac Adfer) (Diwygio) (Cymru) 2015.

(2) Daw'r Rheoliadau hyn i rym ar 19 Gorffennaf 2015 ac maent yn gymwys o ran Cymru.

(3) Yn y Rheoliadau hyn, mae i "Cymru" yr ystyr a roddir i "Wales" o dan adran 158 o Ddeddf Llywodraeth Cymru 2006(**1**).

Diwygiadau i Reoliadau Difrod Amgylcheddol (Atal ac Adfer) (Cymru) 2009

2.—(1) Mae Rheoliadau Difrod (Atal ac Adfer) (Cymru) 2009 wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 2(1) (dehongli), yn y man priodol yn nhrefn yr wyddor mewnosoder—

"ystyr "dyfroedd morol" ("*marine waters*") yw dyfroedd sy'n cael eu dosbarthu'n ddyfroedd morol yn unol â Chyfarwyddeb 2008/56/EC Senedd Ewrop a'r Cyngor sy'n sefydlu fframwaith ar gyfer gweithredu Cymunedol ym maes polisi amgylcheddol morol(**2**);";

"ystyr "gwaelodlin" ("*baseline*") yw'r gwaelodlinau y mesurir lled y môr tiriogaethol ohonynt at ddibenion Deddf Moroedd Tiriogaethol 1987(**3**);".

(3) Yn rheoliad 4 (ystyr "difrod amgylcheddol")—

(a) ym mharagraff (1)—

(i) yn is-baragraff (b) hepgorer yr ail "neu";

(ii) hepgorer is-baragraff (c) a mewnosoder—

"(c) dyfroedd morol, neu

(d) tir,"; a

(b) hepgorer paragraff (5) a mewnosoder—

"(5) Ystyr difrod amgylcheddol i ddyfroedd morol yw difrod i ddyfroedd morol sy'n effeithio'n sylweddol andwyol ar eu statws amgylcheddol.

(**1**) 2006 p. 32.
(**2**) OJ Rhif L 164, 25.6.2008, t. 19.
(**3**) 1987 p. 49.

EU instruments referred to in the 2009 Regulations to be construed as references to those instruments as amended from time to time.

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015.

(2) These Regulations come into force on 19 July 2015 and apply in relation to Wales.

(3) In these Regulations "Wales" has the meaning given under section 158 of the Government of Wales Act 2006(**1**).

Amendments to the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009

2.—(1) The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 are amended as follows.

(2) In regulation 2(1) (interpretation), in the appropriate place in alphabetical order insert—

""baseline" ("*gwaelodlin*") means the baselines from which the breadth of the territorial sea is measured for the purposes of the Territorial Sea Act 1987(**2**);";

""marine waters" ("*dyfroedd morol*") means waters classified as marine waters pursuant to Directive 2008/56/EC of the European Parliament and of the Council establishing a framework for Community action in the field of marine environmental policy(**3**);".

(3) In regulation 4 (meaning of "environmental damage")—

(a) in paragraph (1)—

(i) in sub-paragraph (b) omit the second "or";

(ii) omit sub-paragraph (c) and insert—

"(c) marine waters, or

(d) land,"; and

(b) omit paragraph (5) and insert—

"(5) Environmental damage to marine waters means damage to marine waters such that their environmental status is significantly adversely affected.

(**1**) 2006 c. 32.
(**2**) 1987 c. 49.
(**3**) OJ No L 164, 25.6.2008, p. 19.

(6) Ystyr difrod amgylcheddol i dir yw halogi'r tir â sylweddau, paratoadau, organeddau neu ficro-organeddau sy'n arwain at risg sylweddol o effeithiau andwyol ar iechyd dynol.”.

(4) Yn rheoliad 6 (yr ardaloedd lle mae'r Rheoliadau hyn yn gymwys)—

(a) ym mharagraff (1)—

(i) ar ôl y cofnod yn y tabl “Difrod i ddŵr” creer rhes newydd ac yn y golofn gyntaf (Y math o ddifrod) mewnosoder “Difrod i ddyfroedd morol”; a

(ii) yn y cofnod cyfatebol yn yr ail golofn (Yr ardal lle mae'r Rheoliadau hyn yn gymwys) mewnosoder—

“Yr holl ddyfroedd morol o fewn unrhyw un neu ragor o'r disgrifiadau a ganlyn—

(a) dyfroedd morol hyd at un filltir fôr tua'r môr o'r gwaelodlin yng Nghymru i'r graddau nad ydynt wedi cael sylw fel difrod i ddŵr eisoes;

(b) dyfroedd morol o un filltir fôr tua'r môr o'r gwaelodlin yng Nghymru, gan ymestyn i 12 milltir fôr o'r gwaelodlin yng Nghymru”; a

(b) hepgorer paragraff (2).

(5) Ar ôl rheoliad 8(1) (esemptiadau) mewnosoder—

“(1A) Mae paragraff (1) yn gymwys mewn perthynas â'r difrod i ddyfroedd morol fel petai “19 Gorffennaf 2015” wedi ei roi yn lle “i'r rheoliadau hyn ddod i rym” yn is-baragraff (a).”

(6) Yn rheoliad 10 (yr awdurdodau gorfodi o dan Reoliadau Caniatáu Amgylcheddol (Cymru a Lloegr) 2010)(**1**) hepgorer paragraff (3)(b)(iii) a mewnosoder—

“(iii) Gweinidogion Cymru, os yw'r difrod i ddyfroedd morol; a

(iv) Corff Adnoddau Naturiol Cymru, os yw'r difrod i gynefinoedd naturiol neu rywogaethau a warchodir neu safle o ddiddordeb gwyddonol arbennig.”

(7) Yn rheoliad 11(1) (Yr awdurdodau gorfodi mewn achosion eraill) ar ôl y cofnod yn y tabl “Difrod i ddŵr—” creer rhes newydd a mewnosoder—

(6) Environmental damage to land means contamination of land by substances, preparations, organisms or micro-organisms that results in a significant risk of adverse effects on human health.”.

(4) In regulation 6 (areas of application)—

(a) in paragraph (1)—

(i) after the entry in the table “Damage to water” create a new row and in the first column (Type of damage) insert “Damage to marine waters”; and

(ii) in the corresponding entry in the second column (Area in which these Regulations apply) insert—

“All marine waters within any of the following descriptions—

(a) marine waters up to one nautical mile seaward from the baseline in Wales so far as not already addressed as damage to water;

(b) marine waters from one nautical mile seaward from the baseline in Wales, extending out to 12 nautical miles from the baseline in Wales”; and

(b) omit paragraph (2).

(5) After regulation 8(1) (exemptions) insert—

“(1A) Paragraph (1) applies in relation to damage to marine waters as if, in sub-paragraph (a), for “the coming into force of these Regulations” there were substituted “19 July 2015”.”

(6) In regulation 10 (enforcing authorities under the Environmental Permitting (England and Wales) Regulations 2010)(**1**) omit paragraph (3)(b)(iii) and insert—

“(iii) the Welsh Ministers, if the damage is to marine waters; and

(iv) the Natural Resources Body for Wales, if the damage is to natural habitats or protected species or a site of special scientific interest.”

(7) In regulation 11(1) (enforcing authorities in other cases) after the entry in the table “Damage to water—” create a new row and insert—

(**1**) O.S. 2010/675; O.S. 2010/676, a 2172; 2011/988, 1043, 2043 a 2933; 2012/630 ac 811; 2013/390, 755 a 766, 2014/255 a 517 (Cy. 60) yw'r offerynnau diwygio perthnasol.

(**1**) S.I. 2010/675; relevant amending instruments are S.I. 2010/676, and 2172; 2011/988, 1043, 2043 and 2933; 2012/630 and 811; 2013/390, 755 and 766, 2014/255 and 517 (W. 60).

(a) yng ngholofn gyntaf y tabl (Y math o ddifrod amgylcheddol) “Difrod i ddyfroedd morol—”;

(b) yn y cofnod cyfatebol yn yr ail golofn (Man y difrod) mewnosoder “Yr holl ddyfroedd morol hyd at 12 milltir fôr o'r gwaelodlin yng Nghymru”; ac

(c) yn y cofnod cyfatebol yn y drydedd golofn (Yr awdurdod gorfodi) mewnosoder “Gweinidogion Cymru”.

(a) in the first column of the table (Type of environmental damage) “Damage to marine waters—”;

(b) in the corresponding entry in the second column (Area of damage) insert “All marine waters out to 12 nautical miles from the baseline in Wales”; and

(c) in the corresponding entry in the third column (Enforcing authority) insert “the Welsh Ministers”.

Carl Sargeant

Y Gweinidog Cyfoeth Naturiol, un o Weinidogion Cymru

17 Mehefin 2015

Minister for Natural Resources, one of the Welsh Ministers

17 June 2015

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