

2015 No. 1394 (W. 138)

**ENVIRONMENTAL
PROTECTION, WALES**

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

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.

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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(Prevention and Remediation)
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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 EU instruments referred to in the 2009 Regulations to

(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).

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) 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—

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

(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).

- (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

Minister for Natural Resources, one of the Welsh
Ministers

17 June 2015