Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

WELSH STATUTORY INSTRUMENTS

2009 No. 995 (W.81)

ENVIRONMENTAL PROTECTION, WALES

The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009

Made - - - -	*11 April 2009*
Laid before the National Assembly for Wales - -	*15 April 2009*
Coming into force - -	*6 May 2009*

The Welsh Ministers being designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] make these Regulations under the powers conferred by that section as read with paragraph 1A of Schedule 2 to that Act.

The Regulations make provision for a purpose mentioned in section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for the Community instruments referred to in these Regulations to be construed as references to those instruments as amended from time to time.

F1 The relevant designations are conferred by S.I. 2002/248, as amended by S.I. 2006/3329 (measures relating to the conservation of natural habitats and of wild fauna and flora); S.I. 2003/2901, as amended by S.I 2006/3329 (measures relating to water resources and measures relating to the control and regulation of the deliberate release, placing on the market and transboundary movements of genetically modified organisms); S.I. 2005/850, as amended by S.I 2006/3329 (measures relating to the prevention, reduction and elimination of pollution caused by waste and the management of packaging and packaging waste and measures relating to the prevention and limitation of the effects of accidents involving dangerous substances in so far as they relate to land-use planning policies and consents); and S.I. 2007/193 (measures relating to the prevention and remedying of land contamination).

F2 1972 c. 68. Paragraph 1A was inserted into Schedule 2 by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).

PART 1

Introductory provisions

Title, commencement and application

1.—(1) The title of these Regulations is the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009. They come into force on 6 May 2009.

(2) These Regulations apply in relation to Wales and the areas specified in regulation 6.

Interpretation

2.—(1) In these Regulations—

"activity" ("gweithgaredd") means any economic activity, whether public or private and whether or not carried out for profit;

[[F3]"baseline" ("*gwaelodlin*") means the baselines from which the breadth of the territorial sea is measured for the purposes of the Territorial Sea Act 1987;**]**

"groundwater" ("dŵr daear") means all water that is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil;

"local authority" ("awdurdod lleol") means a county council or a county borough council;

[[F3]"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;**]**

"natural habitat" ("*cynefin naturiol*") means—

(a) **[**[F4]the habitats of species mentioned in Article 4(2) of, or Annex I to, Council Directive 2009/147/EC on the conservation of wild birds or listed in Annex II to Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora;**]**

(b) the natural habitats listed in Annex I to Council Directive 92/43/EEC; and

(c) the breeding sites or resting places of the species listed in Annex IV to Council Directive 92/43/EEC;

"natural resource" ("adnoddyn naturiol") means—

(a) protected species;

(b) natural habitats;

(c) species or habitats on a site of special scientific interest for which the site has been notified under section 28 of the Wildlife and Countryside Act 1981 [F5];

(d) water; and

(e) land;

"operator" ("gweithredwr") means a person who operates or controls an activity, the holder of a permit or authorisation relating to that activity or the person registering or notifying such an activity;

[[F6]"protected species" (" rhywogaethau a warchodir ") means a species of a kind mentioned in Article 4(2) of Council Directive 2009/147/EC or listed in Annex I to that Directive or Annexes II and IV to Council Directive 92/43/EEC;**]**

"services" ("gwasanaethau") means the functions performed by a natural resource for the benefit of another natural resource or the public;

"Wales" ("Cymru") has the meaning given under section 158 of the Government of Wales Act 2006 [F7].

(2) Unless otherwise defined in these Regulations, expressions used in 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 [F8] have the same meaning in these Regulations.

(3) In relation to the deliberate release and placing on the market of genetically modified organisms, "operator" ("gweithredwr") and "responsible operator" ("gweithredwr cyfrifol") includes—

(a) the holder of a relevant consent issued under Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms [F9];

(b) the holder of a relevant consent for the deliberate release of genetically modified organisms granted by the Welsh Ministers under section 111(1) of the Environmental Protection Act 1990 [F10]; or

(c) the holder of a relevant authorisation issued under Regulation (EC) No 1829/2003 of the European Parliament and of the Council on genetically modified food and feed [F11].

F3 Words in reg. 2(1) inserted (19.7.2015) by The Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015 (S.I. 2015/1394), regs. 1(2), **2(2)**

F4 Words in reg. 2(1) substituted (18.12.2015) by The Environmental Damage (Prevention and Remediation) (Wales) (Amendment) (No.2) Regulations 2015 (S.I. 2015/1937), regs. 1(2), **3(a)**

F5 1981 c. 69. Part II of the Act (which includes section 28) was inserted by Schedule 9 to the Countryside and Rights of Way Act 2000 (c. 37) and subsequently amended by Schedule 11 to the Natural Environment and Rural Communities Act 2006 (c. 16).

F6 Words in reg. 2(1) substituted (18.12.2015) by The Environmental Damage (Prevention and Remediation) (Wales) (Amendment) (No.2) Regulations 2015 (S.I. 2015/1937), regs. 1(2), **3(b)**

F7 2006 c. 32.

F8 OJ No L 143, 30.4.2004, p. 56 as amended by Directive 2006/21/EC (OJ No L 102, 11.4.2006, p. 15).

F9 OJ No L 106, 17.4.2001, p. 1 as last amended by Directive 2008/27/EC of the European Parliament and of the Council (OJ No L 81, 20.3.2008, p. 45).

F10 1990 c. 43.

F11 OJ No L 268, 18.10.2003, p. 1 as last amended by Regulation (EC) No 298/2008 of the European Parliament and of the Council (OJ No L 97, 9.4.2008, p. 64).

References to Community instruments

3. Reference in these Regulations to Community instruments are references to those instruments as amended from time to time.

Meaning of "environmental damage"

4.—(1) These Regulations apply in relation to the prevention and remediation of environmental damage; and "environmental damage" ("difrod amgylcheddol") is damage to—

(a) protected species or natural habitats, or a site of special scientific interest,

(b) surface water or groundwater, [F12]...

[F13](c) . . . . . .

[[F14](c) marine waters, or

(d) land,**]**

as specified in this regulation.

(2) Environmental damage to protected species or natural habitats or a site of special scientific interest means damage of a kind specified in Schedule 1.

(3) Environmental damage to surface water means damage to a surface water body classified as such pursuant to Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy [F15] such that—

(a) a biological quality element listed in Annex V to that Directive,

(b) the level of a chemical listed in the legislation in Annex IX or a chemical listed in Annex X to that Directive, or

(c) a physicochemical quality element listed in Annex V to that Directive,

changes sufficiently to lower the status of the water body in accordance with Directive 2000/60/EC of the European Parliament and of the Council (whether or not the water body is in fact reclassified as being of lower status).

(4) Environmental damage to groundwater means any damage to a body of groundwater such that its conductivity, level or concentration of pollutants changes sufficiently to lower its status pursuant to Directive 2000/60/EC of the European Parliament and of the Council (and for pollutants Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration [F16]) (whether or not the body of groundwater is in fact reclassified as being of lower status).

[F17](5) . . . . . .

[[F18](5) Environmental damage to marine waters means damage to marine waters such that their environmental status is significantly adversely affected.

(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.**]**

F12 Word in reg. 4(1)(b) omitted (19.7.2015) by virtue of The Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015 (S.I. 2015/1394), regs. 1(2), **2(3)(a)(i)**

F13 Reg. 4(1)(c) omitted (19.7.2015) by virtue of The Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015 (S.I. 2015/1394), regs. 1(2), **2(3)(a)(ii)**

F14 Reg. 4(1)(c)(d) inserted (19.7.2015) by The Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015 (S.I. 2015/1394), regs. 1(2), **2(3)(a)(ii)**

F15 OJ No L 327, 22.12.2000, p. 1 as last amended by Directive 2008/105/EC of the European Parliament and of the Council (OJ No L 348, 24.12.2008, p. 84).

F16 OJ No L 372, 27.12.2006, p. 19.

F17 Reg. 4(5) omitted (19.7.2015) by virtue of The Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015 (S.I. 2015/1394), regs. 1(2), **2(3)(b)**

F18 Reg. 4(5)(6) inserted (19.7.2015) by The Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015 (S.I. 2015/1394), regs. 1(2), **2(3)(b)**

Environmental damage to which these Regulations apply

5.—(1) These Regulations apply in relation to environmental damage if it is caused by an activity in Schedule 2.

(2) In the case of environmental damage to protected species or natural habitats or a site of special scientific interest the Regulations also apply in relation to environmental damage caused by any other activity if the operator—

(a) intended to cause environmental damage; or

(b) was negligent as to whether environmental damage would be caused.

Areas of application

6.—(1) The damage must be in an area specified in the following table—

Type of damage	Area in which these Regulations apply
Damage to water	Wales and all water up to one nautical mile seaward from the baseline in Wales
[F19Damage to marine waters**]**	**[**F20All 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**]**
Damage in a site of special scientific interest	Wales
Damage to protected species or natural habitats	Wales
Damage to land	Wales

F21(2) . . . . . .

F19 Words in reg. 6(1) inserted (19.7.2015) by The Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015 (S.I. 2015/1394), regs. 1(2), **2(4)(a)(i)**

F20 Words in reg. 6(1) inserted (19.7.2015) by The Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015 (S.I. 2015/1394), regs. 1(2), **2(4)(a)(ii)**

F21 Reg. 6(2) omitted (19.7.2015) by virtue of The Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015 (S.I. 2015/1394), regs. 1(2), **2(4)(b)**

Other legislation

7.—(1) These Regulations are without prejudice to any other enactment concerning damage to the environment.

(2) They are without prejudice to the right of an operator to limit liability in accordance with the Convention on Limitation of Liability for Maritime Claims 1976 F22.

F22 The Convention is set out in Schedule 7 to the Merchant Shipping Act 1995 (c. 21).

Exemptions

8.—(1) These Regulations do not apply in relation to—

(a) damage that took place before the coming into force of these Regulations;

(b) damage that takes place after that date, or is threatened after that date, but is caused by an incident, event or emission that took place before that date; or