Changes to legislation: *The Contaminated Land (Wales) Regulations 2006 is up to date with all changes known to be in force on or before 21 August 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

WELSH STATUTORY INSTRUMENTS

2006 No. 2989 (W.278)

ENVIRONMENTAL PROTECTION, WALES

The Contaminated Land (Wales) Regulations 2006

Made - - - -	*15 November 2006*
Coming into force - -	*10 December 2006*

The National Assembly for Wales ("the National Assembly"), in exercise of the powers conferred on the Secretary of State by sections 78A(9), 78C(8) to (10), 78E(1) and (6), 78G(5) and (6) [F1], 78L(4) [F2] and (5) and 78R(1), (2) and (8) of the Environmental Protection Act 1990 ("the 1990 Act") [F3] and which are now exercisable in relation to Wales by the National Assembly [F4], and those sections as applied in relation to harm, so far as attributable to any radioactivity possessed by any substance, by the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006 ("the Modification Regulations") [F5], makes the following Regulations:

F1 Section 78G(6) provides that regulations made under subsection 78G(5) may make such provision in relation to compensation as may be made by regulations by virtue of section 35A(4) of the 1990 Act in relation to compensation under that section.

F2 Subsection (4) of section 78L was amended by the Clean Neighbourhoods and Environment Act 2005 (c. 16), **sections 104** and 107, and Part 10 of Schedule 5.

F3 1990 c. 43. Sections 78A to 78YC were inserted by section 57 of the Environment Act 1995 (c. 25). *See* the definition of "prescribed" and "regulations" in section 78A(9).

F4 *See* article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

F5 S.I. 2006/2988 (W.277).

Modifications etc. (not altering text)

C1 Regulations applied (with modifications) by S.I. 2006/2988, reg. 19 (as inserted (10.12.2007) by The Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) Regulations 2007 (S.I. 2007/3250), regs. 1, **3(8)**)

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Contaminated Land (Wales) Regulations 2006 and they come into force on 10 December 2006.

(2) These Regulations apply in relation to Wales.

(3) In these Regulations, unless otherwise indicated—

(a) any reference to a numbered section is to the section of the 1990 Act which bears that number or, in relation to harm attributable to any radioactivity possessed by any substances, to that section as modified by the Modification Regulations; and

(b) in relation to harm, so far as attributable to any radioactivity possessed by any substances, any term defined by the 1990 Act has the meaning given to it by that Act as modified by the Modification Regulations.

Land required to be designated as a special site

2.—(1) Contaminated land of the following descriptions is prescribed for the purposes of section 78C(8) as land required to be designated as a special site—

(a) land affecting controlled waters in the circumstances specified in regulation 3;

(b) land which is contaminated land by reason of waste acid tars in, on or under the land;

(c) land on which any of the following activities have been carried on at any time—

(i) the purification (including refining) of crude petroleum or of oil extracted from petroleum, shale or any other bituminous substance except coal, or

(ii) the manufacture or processing of explosives;

(d) land on which a prescribed process designated for central control has been, or is being, carried on under an authorisation, where the process does not solely consist of things being done which are required by way of remediation;

(e) land on which an activity has been, or is being, carried on in a Part A(1) installation [F6]... under a permit, where the activity does not solely consist of things being done which are required by way of remediation;

[[F7](ea) land on which an activity has been carried on by means of Part A(1) mobile plant under a permit, where the activity did not solely consist of things being done which were required by way of remediation;**]**

(f) land within a nuclear site;

(g) land owned or occupied by or on behalf of—

(i) the Secretary of State for Defence,

(ii) the Defence Council,

(iii) an international headquarters or defence organisation, or

(iv) the service authority of a visiting force,

being land used for naval, military or air force purposes;

(h) land on which the manufacture, production or disposal of—

(i) chemical weapons,

(ii) any biological agent or toxin which falls within section 1(1)(a) of the Biological Weapons Act 1974 [F8] (restriction on development of biological agents and toxins), or

(iii) any weapon, equipment or means of delivery which falls within section 1(1)(b) of that Act (restriction on development of biological weapons),

has been carried on at any time;

(i) land comprising premises which are, or were, designated by the Secretary of State by an order made under section 1(1) of the Atomic Weapons Establishment Act 1991 [F9] (arrangements for development etc of nuclear devices);

(j) land to which section 30 of the Armed Forces Act 1996 [F10] (land held for the benefit of Greenwich Hospital) applies;

(k) land which is contaminated land wholly or partly by virtue of any radioactivity possessed by any substance in, on or under that land; and

(l) land which is—

(i) adjoining or adjacent to land of a description specified in any of sub-paragraphs (b) to (k), and

(ii) contaminated land by virtue of substances which appear to have escaped from land of such a description.

(2) For the purposes of paragraph (1)(b), "waste acid tars" are tars which—

(a) contain sulphuric acid;

(b) were produced as a result of the refining of benzole, used lubricants or petroleum; and

(c) are, or were, stored on land used as a retention basin for the disposal of such tars.

(3) In paragraph (1)(d), "authorisation" and "prescribed process" have the same meanings as in Part I of the 1990 Act (integrated pollution control and air pollution control by local authorities) and the reference to designation for central control is a reference to designation under section 2(4) (which provides for processes to be designated for central or local control).

[F11(4) In paragraph (1)(e), "Part A(1) installation" **[**F12has the same meaning as in the Environmental Permitting (England and Wales) Regulations 2016**]**, and "permit" has the same meaning as "environmental permit" in those Regulations**]**.

[F13(4A) In paragraph (1)(ea), "Part A(1) mobile plant" has the same meaning as in the Environmental Permitting (England and Wales) Regulations 2010 as those Regulations were in force on 26th February 2013, and "permit" has the same meaning as "environmental permit" in those Regulations as at that date.**]**

(5) In paragraph (1)(f), "nuclear site" means—

(a) any site in respect of which, or part of which, a nuclear site licence is for the time being in force; or

(b) any site in respect of which, or part of which, after the revocation or surrender of a nuclear site licence, the period of responsibility of the licensee has not come to an end.

(6) In paragraph (5), "nuclear site licence", "licensee" and "period of responsibility" have the meanings given by the Nuclear Installations Act 1965 F14.

(7) For the purposes of paragraph (1)(g), land used for residential purposes or by the Navy, Army and Air Force Institutes is to be treated as land used for naval, military or air force purposes only if the land forms part of a base occupied for naval, military or air force purposes.

(8) In paragraph (1)(g)—

F15"international headquarters" and "defence organisation" mean, respectively, any international headquarters, and any defence organisation, designated for the purposes of the International Headquarters and Defence Organisations Act 1964 ;

F16"service authority" and "visiting force" have the same meanings as in Part I of the Visiting Forces Act 1952 .

(9) In paragraph (1)(h), "chemical weapon" has the same meaning as in sub-section (1) of section 1 of the Chemical Weapons Act 1996 F17, disregarding sub-section (2) of that section.

F6 Words in reg. 2(1)(e) omitted (1.1.2017) by virtue of The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), **Sch. 29 para. 24(2)(a)(i)** (with regs. 1(3), 77-79, Sch. 4)

F7 Reg. 2(1)(ea) inserted (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), **Sch. 29 para. 24(2)(a)(ii)** (with regs. 1(3), 77-79, Sch. 4)
F8 1974 c. 6.
F9 1991 c. 46.
F10 1996 c. 46.
F11 Reg. 2(4) substituted (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 1(1)(b), **Sch. 21 para. 50** (with regs. 69-72)
F12 Words in reg. 2(4) substituted (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), **Sch. 29 para. 24(2)(a)(iii)** (with regs. 1(3), 77-79, Sch. 4)
F13 Reg. 2(4A) inserted (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), **Sch. 29 para. 24(2)(a)(iv)** (with regs. 1(3), 77-79, Sch. 4)
F14 1965 c. 57.
F15 1964 c. 5.
F16 1952 c. 67.
F17 1996 c. 6.

Pollution of controlled waters

3. The circumstances to which regulation 2(1)(a), refers are where—

(a) controlled waters which are, or are intended to be, used for the supply of drinking water for human consumption are being affected by the land and, as a result, require a treatment process or a change in such a process to be applied to those waters before use, so as to be regarded as wholesome within the meaning of Part 3 of the Water Industry Act 1991 [F18] (water supply);

[[F19](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 (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 **[**[F20]as last amended by Commission Directive 2014/101/EU**]**, 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**]**

(c) controlled waters are being affected by the land and—

(i) any of the substances by reason of which the pollution of the waters is being or is likely to be caused falls within any of the families or groups of substances listed in paragraph 1 of Schedule 1 to these Regulations, and

(ii) the waters, or any part of the waters, are contained **[**[F21]in underground strata within the saturation zone**]** which comprise wholly or partly any of the formations of rocks listed in paragraph 2 of Schedule 1 to these Regulations.

F18 1991 c. 56.
F19 Reg. 3(b) substituted (6.4.2012) by The Contaminated Land (Wales) (Amendment) Regulations 2012 (S.I. 2012/283), regs. 1(1), **2(2)(a)**
F20 Words in reg. 3(b)(ii) inserted (17.12.2018) by The Environment, Planning and Rural Affairs (Miscellaneous Amendments) (Wales) Regulations 2018 (S.I. 2018/1216), regs. 1(3), **7**

F21 Words in reg. 3(c)(ii) substituted (6.4.2012) by The Contaminated Land (Wales) (Amendment) Regulations 2012 (S.I. 2012/283), regs. 1(1), **2(2)(b)**

Content of remediation notices

4.—(1) A remediation notice must state (in addition to the matters required by section 78E(1) and (3))—

(a) the name and address of the person on whom the notice is served;

(b) the location and extent of the contaminated land to which the notice relates (in this regulation referred to as the "contaminated land in question") in sufficient detail to enable it to be identified, whether by reference to a plan or otherwise;

(c) the date of any notice which was given under section 78B(3) to the person on whom the remediation notice is served identifying the contaminated land in question as contaminated land;

(d) whether the enforcing authority considers the person on whom the notice is served is an appropriate person by reason of—

(i) having caused or knowingly permitted the substances, or any of the substances, by reason of which the contaminated land in question is contaminated land, to be in, on or under that land, or

(ii) being the owner or occupier of the contaminated land in question;

(e) particulars of the significant harm, harm or pollution of controlled waters by reason of which the contaminated land in question is contaminated land;

(f) the substances by reason of which the contaminated land in question is contaminated land and, if any of the substances have escaped from other land, the location of that other land;

(g) the enforcing authority's reasons for its decisions as to the things by way of remediation that the appropriate person is required to do, showing how any guidance issued by the National Assembly under section 78E(5) has been applied;

(h) where two or more persons are appropriate persons in relation to the contaminated land in question—

(i) that this is the case,

(ii) the name and address of each such person, and

(iii) the thing by way of remediation for which each such person bears responsibility;

(i) where two or more persons would, apart from section 78F(6), be appropriate persons in relation to any particular thing which is to be done by way of remediation, the enforcing authority's reasons for its determination as to whether any, and if so which, of them is to be treated as not being an appropriate person in relation to that thing, showing how any guidance issued by the National Assembly under section 78F(6) has been applied;

(j) where the remediation notice is required by section 78E(3) to state the proportion of the cost of a thing to be done by way of remediation which each of the appropriate persons in relation to that thing is liable to bear, the enforcing authority's reasons for the proportion which it has determined, showing how any guidance issued by the National Assembly under section 78F(7) has been applied;

(k) where known to the enforcing authority, the name and address of—

(i) the owner of the contaminated land in question, and

(ii) any person who appears to the enforcing authority to be in occupation of the whole or any part of the contaminated land in question;