

2012 No. 283 (W. 47)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Contaminated Land (Wales)
(Amendment) Regulations 2012**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in relation to Wales, amend the Contaminated Land (Wales) Regulations 2006 (S.I. 2006/2989 (W.278)) (the “2006 Regulations”).

Regulation 2(2) amends the circumstances set out in regulation 3(b) (pollution of controlled waters) of the 2006 Regulations in which contaminated land affecting controlled waters is required to be designated as a special site. The amendment takes account of 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 (OJ No L327, 22.12.00, p1).

Regulation 2(2) also amends regulation 3(c) (pollution of controlled waters) of the 2006 Regulations to take account of the updated definition of “controlled waters” in section 78A(9) of the Environmental Protection Act 1990 (c. 43).

Regulation 2(3) limits the application of regulation 11 (modification of a remediation notice) of the 2006 Regulations to appeals commenced prior to 6 April 2012. In relation to those appeals, regulation 11 provides that, prior to the Welsh Ministers modifying a remediation notice in a way which would be less favourable to the appellant or any other person on whom that notice was served, the Welsh Ministers are required to notify those persons, and to permit them to make representations and to be heard in relation to the proposed modification.

Regulation 2(4) amends Schedule 2 to the 2006 Regulations to reflect the changes brought about by the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I.

2009/1307), which transferred the functions of the Lands Tribunal to the Upper Tribunal and abolished the Lands Tribunal. Regulation 2(4) also amends paragraph 6(4) of Schedule 2 to the 2006 Regulations to remove references to the repealed section 2 of the Land Compensation Act 1961 (c. 33) and to provide for the appropriate application of particular references.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to the changes to the contaminated land regime. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with the changes to the contaminated land regime, making reference to the main impacts of these Regulations. A copy can be obtained from the Department for Environment and Sustainable Development, Welsh Government, Cathays Park, Cardiff, CF10 3NQ. No separate regulatory impact assessment was made for these Regulations.

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**The Contaminated Land (Wales)
(Amendment) Regulations 2012**

Made *3 February 2012*

Laid before the National Assembly for Wales

7 February 2012

Coming into force *6 April 2012*

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 78C(8), (9) and (10), 78G(5) and (6) and 78L(4) and (5) of the Environmental Protection Act 1990⁽¹⁾ and now vested in them⁽²⁾.

Before making these Regulations, the Welsh Ministers have consulted the Administrative Justice and Tribunals Council, and that Council has consulted the Welsh Committee and the Scottish Committee, in accordance with section 44 of, and paragraph 24 of Schedule 7 to, the Tribunals, Courts and Enforcement Act 2007⁽³⁾.

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- (1) 1990 c. 43. Sections 78C, 78G and 78L were inserted by section 57 of the Environment Act 1995 (c. 25). Section 78C(10) is prospectively amended by section 86 of the Water Act 2003 (c. 37). Section 78L(4) was amended by section 104 of, and Part 10 of Schedule 5 to, the Clean Neighbourhoods and Environment Act 2005 (c. 16). See the definition of “prescribed” and “regulations” in section 78A(9).
- (2) The functions of the Secretary of State under sections 78C, 78G and 78L of the Environmental Protection Act 1990, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32) those functions were subsequently transferred to the Welsh Ministers.
- (3) 2007 c. 15. The “Welsh Committee” and the “Scottish Committee” are defined in paragraph 28(1) of Schedule 7 to that Act.

Title, commencement and application

1.—(1) The title of these Regulations is the Contaminated Land (Wales) (Amendment) Regulations 2012 and they come into force on 6 April 2012.

(2) These Regulations apply in relation to Wales.

Amendments to the Contaminated Land (Wales) Regulations 2006

2.—(1) The Contaminated Land (Wales) Regulations 2006⁽¹⁾ are amended as follows.

(2) In regulation 3 (pollution of controlled waters)—

(a) for paragraph (b) substitute—

“(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⁽²⁾ (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⁽³⁾, 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”;

and

(b) in paragraph (c)(ii) for “within underground strata” substitute “in underground strata within the saturation zone”.

(3) In regulation 11 (modification of a remediation notice), after paragraph (2) insert—

“(3) This regulation applies only in relation to appeals made in accordance with regulation 8(1) prior to 6 April 2012.”

(4) In Schedule 2 (compensation for rights of entry etc)—

(1) S.I. 2006/2989 (W. 278), to which there are amendments not relevant to these Regulations.

(2) 1991 c. 57.

(3) OJ No L327, 22.12.00, p.1.

- (a) in paragraph 5(3) for “Lands Tribunal” substitute “Upper Tribunal”;
- (b) in paragraphs 6(2)(c) and 6(3) for “Lands Tribunal” substitute “Upper Tribunal”; and
- (c) for paragraph 6(4) substitute—
 - “(4) In relation to the determination of any such question, section 4 of the 1961 Act (costs)(1) applies as if—
 - (a) the reference to section 1 of that Act were a reference to sub-paragraph (3) of this paragraph;
 - (b) references to the acquiring authority were references to the appropriate person; and
 - (c) references to the claimant were references to the grantor.”

John Griffiths

Minister for Environment and Sustainable
Development, one of the Welsh Ministers

3 February 2012

(1) 1961 c. 33. Section 4 was amended by paragraphs 36 and 39 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307).