



OFFERYNNAU STATUDOL
CYMRU

WELSH STATUTORY
INSTRUMENTS

2015 Rhif 1937 (Cy. 291)

2015 No. 1937 (W. 291)

**DIOGELU'R AMGYLCHEDD,
CYMRU**

**ENVIRONMENTAL
PROTECTION, WALES**

Rheoliadau Difrod Amgylcheddol
(Atal ac Adfer) (Cymru) (Diwygio)
(Rhif 2) 2015

The Environmental Damage
(Prevention and Remediation)
(Wales) (Amendment) (No.2)
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 ("Rheoliadau 2009") sy'n parhau i weithredu Cyfarwyddeb 2004/35/EC Senedd Ewrop a'r Cyngor ar atebolrwydd amgylcheddol o ran atal ac adfer difrod amgylcheddol.

Mae rheoliad 3 yn diwygio'r diffiniadau "cynefin naturiol" ("natural habitat") a "rhywogaethau a warchodir" ("protected species") i adlewyrchu'r ffaith bod Cyfarwyddeb 2009/147/EC yn cydgrynhoi ac yn disodli Cyfarwyddeb 79/407/EEC.

Mae rheoliad 4 yn diwygio paragraff 5 o Atodlen 1 i Reoliadau 2009 i ddiweddarau cyfeiriadau at ddeddfwriaeth y gellir awdurdodi gwneud difrod i rywogaethau a warchodir a chynefinoedd naturiol, a difrod ar safle o ddiddordeb gwyddonol arbennig, o dani.

Mae rheoliad 5 yn diweddarau'r rhestr o ddeddfwriaeth yr UE yn Atodlen 2 i Reoliadau 2009, sy'n cyfeirio at y gweithgareddau a fydd yn denu atebolrwydd caeth. Nid effeithir ar natur y gweithgareddau yn y rhestr.

Mae cyfeiriadau at holl ddeddfwriaeth yr UE, ac eithrio Cyfarwyddeb 2004/35/EC yn gyfeiriadau at ddeddfwriaeth fel y'i diwygir o dro i dro.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 ("the 2009 Regulations") which continue to 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.

Regulation 3 amends the definitions of "natural habitat" ("cynefin naturiol") and "protected species" ("rhywogaethau a warchodir") to reflect the consolidation and replacement of Directive 79/407/EEC by Directive 2009/147/EC.

Regulation 4 amends paragraph 5 of Schedule 1 to the 2009 Regulations to update references to legislation under which damage to protected species and natural habitats, and damage on a site of special scientific interest may be authorised.

Regulation 5 updates the list of EU legislation in Schedule 2 of the 2009 Regulations, by reference to which activities will attract strict liability. The nature of the activities captured in the list is not affected.

References to all EU legislation, other than Directive 2004/35/EC are references to legislation as amended from time to time.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar wneud Aseidiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ystyriwyd nad oedd yn angenrheidiol cynnal aseiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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**Rheoliadau Difrod Amgylcheddol
(Atal ac Adfer) (Cymru) (Diwygio)
(Rhif 2) 2015**

Gwnaed 24 Tachwedd 2015

*Gosodwyd gerbron Cynulliad Cenedlaethol
Cymru* 27 Tachwedd 2015

Yn dod i rym 18 Rhagfyr 2015

Mae Gweinidogion Cymru wedi eu dynodi(1) at ddibenion adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972 (“Deddf 1972”)(2) mewn perthynas ag atal ac adfer difrod amgylcheddol ac maent 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’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 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.

(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 ac fe’i diwygiwyd gan O.S. 2007/1388.

(4) O.S. 2009/995 (Cy. 81); yr offerynnau diwygio perthnasol yw O.S. 2011/556, 2011/971 (Cy. 141), 2012/630, 2013/755 (Cy. 90) a 2015/1394 (Cy. 138). Offerynnau diwygio eraill nad ydynt yn berthnasol i’r dibenion hyn yw O.S. 2011/1043 ac O.S. 2011/2131.

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**ENVIRONMENTAL
PROTECTION, WALES**

**The Environmental Damage
(Prevention and Remediation)
(Wales) (Amendment) (No.2)
Regulations 2015**

Made 24 November 2015

Laid before the National Assembly for Wales 27 November 2015

Coming into force 18 December 2015

The Welsh Ministers are designated(1) for the purposes of section 2(2) of the European Communities Act 1972 (“the 1972 Act”)(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). 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 as amended by these Regulations to be construed as references to those instruments as amended from time to time.

(1) S.I. 2014/1890.

(2) 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative 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 and amended by S.I. 2007/1388.

(4) S.I. 2009/995 (W.81); relevant amending instruments are S.I. 2011/556, 2011/971 (W.141), 2012/630, 2013/755 (W.90) and 2015/1394 (W. 138). Other amending instruments not relevant for these purposes are S.I. 2011/1043 and S.I. 2011/2131.

Enwi a chychwyn

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Difrod Amgylcheddol (Atal ac Adfer) (Cymru) (Diwygio) (Rhif 2) 2015.

(2) Daw'r Rheoliadau hyn i rym ar 18 Rhagfyr 2015.

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

2. Mae Rheoliadau Difrod (Atal ac Adfer) (Cymru) 2009 wedi eu diwygio yn unol â rheoliadau 3 i 5.

3. Yn rheoliad 2(1) (dehongli)—

(a) yn y diffiniad o “cynefin naturiol” (“natural habitat”) yn lle paragraff (a) rhodder—

“(a) cynefinoedd rhywogaethau a grybwyllir yn Erthygl 4(2) o Gyfarwyddeb y Cyngor 2009/147/EC ar warchod adar gwyllt(1), neu yn Atodiad I i'r Gyfarwyddeb honno, neu a restrir yn Atodiad II i Gyfarwyddeb y Cyngor 92/43/EEC ar warchod cynefinoedd naturiol a ffawna a fflora gwyllt(2);”;

(b) ar gyfer y diffiniad o “rhywogaethau a warchodir” (“protected species”) rhodder—

“ystyr “rhywogaethau a warchodir” (“protected species”) yw rhywogaethau o fath a grybwyllir yn Erthygl 4(2) o Gyfarwyddeb y Cyngor 2009/147/EC neu a restrir yn Atodiad I i'r Gyfarwyddeb honno neu Atodiadau II a IV i Gyfarwyddeb y Cyngor 92/43/EEC;”

Title and commencement

1.—(1) The title of these Regulations is the Environmental Damage (Prevention and Remediation) (Wales) (Amendment) (No.2) Regulations 2015.

(2) These Regulations come into force on 18 December 2015.

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

2. The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 are amended in accordance with regulations 3 to 5.

3. In regulation 2(1) (interpretation)—

(a) in the definition of “natural habitat” (“cynefin naturiol”) for paragraph (a) substitute—

“(a) 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(1) or listed in Annex II to Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(2);”;

(b) for the definition of “protected species” substitute (“rhywogaethau a warchodir”)—

““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;”

(1) OJ Rhif L 20, 26.01.2010, t.7; diwygiwyd gan Gyfarwyddeb y Cyngor 2013/17/EU (OJ Rhif L 158, 10.06.2013, t.193).

(2) OJ Rhif L 206, 22.07.1992, t.7; diwygiwyd ddiwethaf gan Gyfarwyddeb y Cyngor 2013/17/EU (OJ Rhif L 158, 10.06.2013, t.193).

(1) OJ No. L 20, 26.01.2010, p.7; amended by Council Directive 2013/17/EU (OJ No. L 158, 10.06.2013, p.193).

(2) OJ No. L 206, 22.07.1992, p.7; last amended by Council Directive 2013/17/EU (OJ No. L 158, 10.06.2013, p.193).

4. Yn Atodlen 1 (Difrod i rywogaethau a warchodir, cynefinoedd naturiol a safleoedd o ddi-ddordeb gwyddonol arbennig), yn lle paragraff 5 rhodder—

“5. Awdurdodiad pendant

Nid yw difrod i rywogaethau a warchodir neu gynefinoedd naturiol, a difrod i safle o ddi-ddordeb gwyddonol arbennig, yn cynnwys difrod a achoswyd gan weithred a awdurdodwyd yn bendant gan yr awdurdodau perthnasol yn unol â Rhan 2 o Ddeddf Bywyd Gwyllt a Chefn Gwlad 1981(1) neu Reoliadau Gwarchod Cynefinoedd a Rhywogaethau 2010(2).”

5. Yn Atodlen 2 (Gweithgareddau sy'n achosi difrod)—

- (a) yn lle paragraff 2 (Gweithredu gweithfeydd a ganiateir) rhodder—

“2. Gweithredu gweithfeydd a ganiateir

Gweithredu gweithfeydd sy'n ddarostyngedig i drwydded yn unol â Chyfarwydddeb 2010/75/EU Senedd Ewrop a'r Cyngor ynghylch allyriadau diwydiannol (dulliau integredig o atal a rheoli llygredd)(3).”

- (b) ym mharagraff 3(2) (Gweithrediadau rheoli gwastraff) yn lle'r geiriau “Gyfarwydddeb 2000/76/EC Senedd Ewrop a'r Cyngor ar hysgi gwastraff” rhodder “Gyfarwydddeb 2010/75/EU Senedd Ewrop a'r Cyngor ar allyriadau diwydiannol (dulliau integredig o atal a rheoli llygredd).”;
- (c) ym mharagraff 5(2) (Gollyngiadau y mae'n ofynnol cael awdurdodiad ar eu cyfer) ar ôl y gair “penodol” mewnosoder “neu Gyfarwydddeb 2006/118/EC Senedd Ewrop a'r Cyngor ar ddiogelu dŵr daear rhag llygredd a dirywiad(4)”;

4. In Schedule 1 (Damage to protected species, natural habitats and sites of special scientific interest), for paragraph 5 substitute—

“5. Express authorisation

Damage to a protected species or natural habitat, and damage to a site of special scientific interest, does not include damage caused by an act expressly authorised by the relevant authorities in accordance with Part 2 of the Wildlife and Countryside Act 1981(1) or the Conservation of Habitats and Species Regulations 2010(2).”

5. In Schedule 2 (Activities causing damage)—

- (a) for paragraph 2 (Operation of permitted installations) substitute—

“2. Operation of permitted installations

The operation of installations subject to permit in pursuance of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control)(3).”

- (b) in paragraph 3(2) (Waste management operations) for the words “Directive 2000/76/EC of the European Parliament and of the Council on the incineration of waste.” substitute “Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control).”;
- (c) in paragraph 5(2) (Discharges requiring authorisation) after the word “substances” in the second place it occurs, insert “or Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration(4)”;

(1) 1981 p. 69.

(2) O.S. 2010/490, diwygiwyd gan O.S. 2011/603, 2011/625, 2012/630, 2012/635, 2012/637, 2012/1927, 2013/755 (Cy. 90) ac O.S. 2015/377.

(3) OJ Rhif L 334, 17.12.2010, t.17.

(4) OJ Rhif L 372, 27.12.2006, t.19, diwygiwyd gan Gyfarwydddeb y Comisiwn 2014/80/EU (OJ Rhif L 182, 21.6.2014, t.52).

(1) 1981 c. 69.

(2) S.I. 2010/490, amended by S.I. 2011/603, 2011/625, 2012/630, 2012/635, 2012/637, 2012/1927, 2013/755 (W. 90) and S.I. 2015/377.

(3) OJ No L 334, 17.12.2010, p.17.

(4) OJ No. L 372, 27.12.2006. p.19, amended by Commission Directive 2014/80/EU (OJ No. L 182, 21.6.2014, p.52).

- (d) (ch) ym mharagraff 7(ch) (Sylweddau peryglus, cynhyrchion diogelu planhigion a chynhyrchion bywleiddiol) ar ôl y gair “farchnad”, mewnosoder “neu fel y’u diffinir yn Erthygl 3(1)(a) o Reoliad Rhif 528/2012 Senedd Ewrop a’r Cyngor ynghylch rhoi cynhyrchion bywleiddiol ar gael ar y farchnad a’r defnydd ohonynt(1)”.
- (e) yn lle paragraff 8 rhodder—

“8. Cludiant

Cludo ar hyd ffordd, rheilffordd, dyfrffyrdd mewndirol, ar y môr neu drwy’r awyr nwyddau peryglus; neu nwyddau llygru fel y’u diffinir yn—

- (a) Cyfarwyddeb 2002/59/EC Senedd Ewrop a’r Cyngor ar sefydlu system fonitro traffig a gwybodaeth llestrau Cymunedol(2); a
- (b) Cyfarwyddeb 2008/68/EC Senedd Ewrop a’r Cyngor ar gludo nwyddau peryglus ar y tir(3)”.
- (f) Yn Atodlen 2 ar ôl paragraff 10 mewnosoder—

“11. Gweithredu safleoedd storio carbon deuocsid

Gweithredu safleoedd storio carbon deuocsid yn unol â Chyfarwyddeb 2009/31/EC Senedd Ewrop a’r Cyngor ar storio daearegol o garbon deuocsid(4).”

- (d) in paragraph 7(d) (Dangerous substances, plant protection products and biocidal products) after the word “market”, insert “or as defined in Article 3(1)(a) of Regulation No. 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products(1)”.
- (e) for paragraph 8 substitute—

“8. Transport

Transport by road, rail, inland waterways, sea or air of dangerous goods; or polluting goods as defined in—

- (a) Directive 2002/59/EC of the European Parliament and of the Council establishing a Community vessel traffic monitoring and information system(2); and
- (b) Directive 2008/68/EC of the European Parliament and of the Council on the inland transport of dangerous goods(3) ”.
- (f) In Schedule 2 after paragraph 10 insert—

“11. Operation of carbon dioxide storage sites

The operation of storage sites pursuant to Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide(4).”

Carl Sargeant

Y Gweinidog Cyfoeth Naturiol, un o Weinidogion Cymru
24 Tachwedd 2015

Minister for Natural Resources, one of the Welsh Ministers
24 November 2015

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- (1) OJ Rhif L 167, 27.6.2012, t.1; diwygiwyd ddiwethaf gan Reoliad (UE) Rhif 334/2014 Senedd Ewrop a’r Cyngor (OJ Rhif L 103, 5.4.2014, t.22).
- (2) OJ Rhif L 208, 5.8.2002, t.10; diwygiwyd ddiwethaf gan Gyfarwyddeb y Comisiwn 2014/100/EU (OJ Rhif L 308, 29.10.2014, t.82).
- (3) OJ Rhif L 260, 30.9.2008, t.13; diwygiwyd ddiwethaf gan Benderfyniad Gweithredu’r Comisiwn 2015/974/EU (OJ Rhif L 157/53, 17.6.2015, t.53).
- (4) OJ Rhif L 140, 5.6.2009, t.114; diwygiwyd gan Gyfarwyddeb 2011/92/EU Senedd Ewrop a’r Cyngor (OJ Rhif L 26, 28.1.2012, t.1).

- (1) OJ No. L 167, 27.6.2012, p.1; last amended by Regulation (EU) No. 334/2014 of the European Parliament and of Council (OJ No. L 103, 5.4.2014, p.22).
- (2) OJ No. L 208, 5.8.2002, p.10; last amended by Commission Directive 2014/100/EU (OJ No. L 308, 29.10.2014, p.82).
- (3) OJ No. L 260, 30.9.2008, p.13; last amended by Commission Implementing Decision 2015/974/EU (OJ No L 157/53, 17.6.2015, p. 53).
- (4) OJ No. L 140, 5.6.2009, p.114; amended by Directive 2011/92/EU of the European Parliament and of the Council (OJ No. L 26, 28.1.2012, p.1).

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