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WELSH STATUTORY INSTRUMENTS

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**2018 No. 725 (W. 142)**

**ENVIRONMENTAL PROTECTION, WALES**

**The Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) Regulations 2018**

*Made* - - - - 13 June 2018  
*Laid before the National Assembly for Wales* - - 15 June 2018  
*Coming into force in accordance with regulation 1(2)*

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 78A(9) and 78YC of the Environmental Protection Act 1990(1).

**Title and Commencement**

1.—(1) The title of these Regulations is the Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) Regulations 2018.

(2) These Regulations come into force 21 days after the day they are made.

**Amendments to the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006**

2. The Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006(2) are amended in accordance with regulations 3 to 5.

3.—(1) Regulation 5 (section 78A (preliminary)) is amended as follows.

(2) In paragraph (2), in the substituted section 78A(2) (definition of contaminated land), for “Secretary of State” substitute “Welsh Ministers”.

(3) In paragraph (3), in the substituted section 78A(4) (definition of harm)—

(a) for “a radiological” substitute “an”;

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(1) 1990 c. 43. Sections 78A to 78YC were inserted by section 57 of the Environment Act 1995 (c. 25). Section 78YC was amended by S.I. 2010/675 and 2016/1154. See the definition of “prescribed” and “regulations” in section 78A(9). Functions of the Secretary of State under sections 78A and 78YC were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by virtue of article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(2) S.I. 2006/2988, amended by S.I. 2007/3250, 2008/521, 2010/2146, 2013/755 and 2016/1154. S.I. 2016/562 also makes amendments which are not yet in force.

- (b) after “activity” insert “(except in section 78E(4A)(a))”**(3)**.
- (4) In paragraph (4), in the substituted section 78A(5) (supplement to definition of harm - guidance), for “Secretary of State” substitute “Welsh Ministers”.
- (5) In paragraph (6), in the substituted section 78A(7) (definition of remediation), for “cognate expressions” substitute “references to remediating”.
- (6) In paragraph (6), in the substituted section 78A(7A) (supplemental definition of remediation) —
- (a) after paragraph (a), insert—
- “(aa) affected members of the public are identified;
- (ab) assessment of the means available to the individuals identified under paragraph (aa) for controlling their own exposure is made;”;
- (b) omit paragraph (c) and the “and” following it;
- (c) at the end of paragraph (d), omit the full stop and insert “; and”;
- (d) after paragraph (d), insert—
- “(e) any other appropriate protective or remedial measure is implemented.”
- (7) In paragraph (8)—
- (a) for paragraph (d), substitute—
- “(d) for the definition of “substance”, substitute—
- “substance” means, whether in solid or liquid form or in the form of a gas or vapour, any substance containing radionuclides which have resulted from the after-effects of an emergency or have been processed as part of a past practice or past work activity;”;
- (b) for paragraph (e), substitute—
- “(e) after the definition of “unitary authority”, insert—
- “and any other word or expression used both in this Part and in Council Directive 2013/59/Euratom, laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation and repealing Council Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom**(4)**, has the same meaning for the purposes of this Part as it has in that Directive.””
- 4.** In regulation 7(2) (section 78C (identification and designation of special sites)), in the substituted section 78C(10)(a), for “Secretary of State” substitute “Welsh Ministers”.
- 5.** In regulation 8(3) (section 78E (duty of enforcing authority to require remediation of contaminated land etc)), for the substituted section 78E(4A) and (4B), substitute—
- “(4A) Where remediation includes the implementation of a protective or remedial measure, that part of the remediation which consists of the implementation of any such measure may be considered reasonable only—
- (a) where the measure does more good than harm; and
- (b) where the form, scale and duration of the measure is optimised.

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(3) Section 78E of the Environmental Protection Act 1990 is modified by regulation 8(3) of the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006. Regulation 5 of these Regulations amends that modification.

(4) OJ No L 13, 17.01.2014, p. 1-73.

(4B) For the purpose of subsection (4A), the form, scale and duration of a protective or remedial measure shall be taken to be optimised if the magnitude of individual doses, the likelihood of exposure and the number of individuals exposed are kept as low as reasonably achievable taking into account the current state of technical knowledge and economic and societal factors.”

13 June 2018

*Lesley Griffiths*  
Cabinet Secretary for Energy, Planning and  
Rural Affairs, one of the Welsh Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006 (S.I. 2006/2988 (W. 277)) (“the 2006 Regulations”).

Part 2A of the Environmental Protection Act 1990 (c. 43) (“EPA 1990”) sets out a regime for the identification and remediation of contaminated land. The 2006 Regulations made provision for Part 2A to apply with modifications for the purpose of dealing with harm attributable to any radioactivity possessed by any substance.

These Regulations are part of a package of measures to transpose Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom (“the Directive”). These Regulations transpose requirements in Article 73(1) of the Directive and make amendments to reflect new definitions in the Directive.

Regulations 3 and 5 amend the modifications made by the 2006 Regulations to the definition of remediation in Part 2A EPA 1990 in order to implement obligations under Article 73(1)(b) and (e) of the Directive. Regulation 3 also amends references to Council Directive 96/29/Euratom which is replaced by the Directive and makes other amendments to reflect the new definitions of “emergency”, “protective measures”, “remedial measures”, “optimisation” and “justification” in the Directive.

These Regulations also replace certain references to the Secretary of State in the modifications made by the 2006 Regulations with references to the Welsh Ministers. The amendments made by regulations 3(2), 3(4) and 4 of these Regulations ensure that the relevant modified functions are exercisable by the Welsh Ministers, in line with the underlying functions within Part 2A EPA 1990.

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.