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STATUTORY INSTRUMENTS

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**2005 No. 3467**

**ENVIRONMENTAL PROTECTION, ENGLAND**

The Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005

<i>Made</i>	- - - -	<i>14th December 2005</i>
<i>Laid before Parliament</i>		<i>19th December 2005</i>
<i>Coming into force</i>	- -	<i>20th January 2006</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred on her by sections 78A(9) and 78YC of the Environmental Protection Act 1990<sup>(1)</sup>:

**Citation, commencement, application and interpretation**

1.—(1) These Regulations may be cited as the Radioactive Contaminated Land (Enabling Powers)(England) Regulations 2005 and come into force on 20th January 2006.

(2) These Regulations apply in relation to England only.

(3) In these Regulations—

“Article” means an Article of the Directive;

“Part 2A” means Part 2A of the Environmental Protection Act 1990;

“relevant harm” means harm so far as attributable to any radioactivity possessed by any substance; and

“Title” means a Title of the Directive.

(4) For the purposes of paragraph (3) “the Directive” means Council Directive 96/29/Euratom<sup>(2)</sup> laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation, and for the purposes of Schedule 2 “this Directive” has the same meaning.

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(1) 1990 c. 43. Sections 78A to 78YC were inserted by section 57 of the Environment Act 1995 (c. 25). See the definitions of “prescribed” and “regulations” in section 78A(9). The powers under these sections have been transferred in relation to Wales (see article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672)) and devolved to Scottish Ministers (see section 53 of the Scotland Act 1998 (c. 46)).

(2) OJ No L 159, 29.06.1996, p.1.

**Extension and modification of Part 2A**

2. For the purposes of the exercise by the Secretary of State of any power conferred by Part 2A to make regulations or orders, give directions or issue guidance in relation to relevant harm, Part 2A shall apply in relation to such harm, and shall have effect with the modifications made by Schedule 1 for the purpose of dealing with such harm.

**Interpretation of modifications**

3. The definitions set out in Schedule 2 (which reproduce definitions contained in Article 1) apply for the purpose of the interpretation of the modifications made by these Regulations to Part 2A.

*Elliot Morley*  
Minister of State,  
Department for Environment, Food and Rural  
Affairs

14th December 2005

SCHEDULE 1

Regulation 2

Modification of Part 2A

**Section 78A: Preliminary**

- 1.—(1) Section 78A (preliminary) has effect with the following modifications.
- (2) For subsection (2), substitute—
- “(2) “Contaminated land” is any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that—
- (a) harm is being caused; or
  - (b) there is a significant possibility of harm being caused;
- and in determining whether any land appears to be such land, a local authority shall, subject to subsection (5) below, act in accordance with guidance issued by the Secretary of State in accordance with section 78YA below with respect to the manner in which that determination is to be made.”.
- (3) For subsection (4), substitute—
- “(4) “Harm” means lasting exposure to any person resulting from the after-effects of a radiological emergency, past practice or past work activity.”.
- (4) For subsection (5), substitute—
- “(5) The questions—
- (a) whether harm is being caused; and
  - (b) whether the possibility of harm being caused is “significant”;
- shall be determined in accordance with guidance issued for the purpose by the Secretary of State in accordance with section 78YA below.”.
- (5) For subsection (6), substitute—
- “(6) Without prejudice to the guidance that may be issued under subsection (5) above—
- (a) guidance under paragraph (a) of that subsection may make provision for different degrees and descriptions of harm;
  - (b) guidance under paragraph (b) of that subsection may make provision for different degrees of possibility to be regarded as “significant” (or as not being “significant”) in relation to different descriptions of harm.”.

(6) For subsection (7), substitute—

“(7) “Remediation” means—

    - (a) the doing of anything for the purpose of assessing the condition of—
      - (i) the contaminated land in question; or
      - (ii) any land adjoining or adjacent to that land;
    - (b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land for the purpose—
      - (i) of preventing or minimising, or remedying or mitigating the effects of, any harm by reason of which the contaminated land is such land; or
      - (ii) of restoring the land to its former state; or
    - (c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land;

*Status: This is the original version (as it was originally made).*

and cognate expressions shall be construed accordingly.

(7A) For the purpose of paragraph (b) of subsection (7) above, “the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land” shall include ensuring that—

- (a) any such area is demarcated;
- (b) arrangements for the monitoring of the harm are made;
- (c) any appropriate intervention is implemented; and
- (d) access to or use of land or buildings situated in the demarcated area is regulated.”.

(7) Subsection (8) is omitted.

(8) In subsection (9)—

- (a) omit the definition of “controlled waters”; and
- (b) 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 which contains radionuclides which have resulted from the after-effects of a radiological emergency or which are or have been processed as part of a past practice or past work activity, but shall not include radon gas or the following radionuclides: Po-218, Pb-214, At-218, Bi-214, Rn-218, Po-214 and Tl-210;”.

#### **Section 78B (Identification of contaminated land)**

2.—(1) Section 78B (identification of contaminated land) has effect with the following modifications.

(2) For subsection (1), substitute—

“(1) Where a local authority considers that there are reasonable grounds for believing that any land may be contaminated, it shall cause the land to be inspected for the purpose of—

- (a) identifying whether it is contaminated land; and
- (b) enabling the authority to decide whether the land is land which is required to be designated as a special site.

(1A) The fact that substances have been or are present on the land shall not of itself be taken to be reasonable grounds for the purposes of subsection (1).”.

#### **Section 78C (Identification and designation of special sites)**

3.—(1) Section 78C (identification and designation of special sites) has effect with the following modifications.

(2) In subsection (10), for paragraphs (a) and (b), substitute—

- “(a) whether land of the description in question appears to him to be land which is likely to be in such a condition, by reason of substances in, on or under the land that serious harm would or might be caused; or
- (b) whether the appropriate Agency is likely to have expertise in dealing with the kind of harm by reason of which land of the description in question is contaminated land.”.

#### **Section 78E (Duty of enforcing authority to require remediation of contaminated land etc)**

4.—(1) Section 78E (duty of enforcing authority to require remediation of contaminated land etc) has effect with the following modifications.

(2) For subsection (4), substitute—

“(4) Subject to subsection (4A), the only things by way of remediation which the enforcing authority may do, or require to be done, under or by virtue of this Part are things which it considers reasonable, having regard to—

- (a) the cost which is likely to be involved; and
- (b) the seriousness of the harm in question.

(4A) Where remediation includes an intervention, that part of the remediation which consists of an intervention may only be considered reasonable—

- (a) where the reduction in detriment due to radiation is sufficient to justify any adverse effects and costs, including social costs, of the intervention; and
- (b) where the form, scale and duration of the intervention is optimised.

(4B) For the purpose of subsection (4A), the form, scale and duration of the intervention shall be taken to be optimised if the benefit of the reduction in health detriment less the detriment associated with the intervention is maximised.”.

(3) In subsection (5), in paragraph (b), omit “, or waters are,”.

### **Section 78G (Grant of, and compensation for, rights of entry etc)**

5.—(1) Section 78G (grant of, and compensation for, rights of entry etc) has effect with the following modifications.

(2) In subsection (2), for “any of the relevant land or waters”, substitute “any relevant land”.

(3) In subsection (4), omit “, or serious pollution of controlled waters,”.

(4) For subsection (7), substitute—

“(7) In this section, “relevant land” means—

- (a) the contaminated land in question; or
- (b) any land adjoining or adjacent to that land.”.

## SCHEDULE 2

Regulations 1(4) and 3

### DIRECTIVE DEFINITIONS

Activity (A): the activity, A, of an amount of a radionuclide in a particular energy state at a given time is the quotient of dN by dt, where dN is the expectation value of the number of spontaneous nuclear transitions from that energy state in the time interval dt:

$$A = \frac{dN}{dt}$$

the unit of activity is the becquerel.

Apprentice: a person receiving training or instruction within an undertaking with a view to exercising a specific skill.

Artificial sources: radiation sources other than natural radiation sources.

Becquerel (Bq): is the special name of the unit of activity. One becquerel is equivalent to one transition per second:

$$1 \text{ Bq} = 1 \text{ s}^{-1}.$$

*Status: This is the original version (as it was originally made).*

**Dose limits:** maximum references laid down in Title IV for the doses resulting from the exposure of workers, apprentices and students and members of the public to ionizing radiation covered by this Directive that apply to the sum of the relevant doses from external exposures in the specified period and the 50-year committed doses (up to age 70 for children) from intakes in the same period.

**Emergency exposure:** an exposure of individuals implementing the necessary rapid action to bring help to endangered individuals, prevent exposure of a large number of people or save a valuable installation or goods, whereby one of the individual dose limits equal to that laid down for exposed workers could be exceeded. Emergency exposure shall apply only to volunteers.

**Exposed workers:** persons, either self-employed or working for an employer, subject to an exposure incurred at work from practices covered by this Directive and liable to result in doses exceeding one or other of the dose levels equal to the dose limits for members of the public.

**Exposure:** the process of being exposed to ionizing radiation.

**Health detriment:** an estimate of the risk of reduction in length and quality of life occurring in a population following exposure to ionizing radiations. This includes loss arising from somatic effects, cancer and severe genetic disorder.

**Intake:** the activities of radionuclides entering the body from the external environment.

**Intervention:** a human activity that prevents or decreases the exposure of individuals to radiation from sources which are not part of a practice or which are out of control, by acting on sources, transmission pathways and individuals themselves.

**Ionizing radiation:** the transfer of energy in the form of particles or electromagnetic waves of a wavelength of 100 nanometers or less or a frequency of  $3 \times 10^{15}$  Hertz or more capable of producing ions directly or indirectly.

**Members of the public:** individuals in the population, excluding exposed workers, apprentices and students during their working hours and individuals during the exposures referred to in Article 6(4)(a), (b) and (c).

**Natural radiation sources:** sources of ionizing radiation from natural terrestrial or cosmic origin.

**Practice:** a human activity that can increase the exposure of individuals to radiation from an artificial source, or from a natural radiation source where natural radionuclides are processed for their radioactive, fissile or fertile properties, except in the case of an emergency exposure.

**Radioactive substance:** any substance that contains one or more radionuclides the activity or concentration of which cannot be disregarded as far as radiation protection is concerned.

**Radiological emergency:** a situation that requires urgent action in order to protect workers, members of the public or the population either partially or as a whole.

**Source:** an apparatus, a radioactive substance or an installation capable of emitting ionizing radiation or radioactive substances.

**Undertaking:** any natural or legal person who carries out the practices or work activities referred to in Article 2 of this Directive and who has the legal responsibility under national law for such practices or work activities.

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## EXPLANATORY NOTE

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

Part 2A of the Environmental Protection Act 1990 (“Part 2A”) sets out a regime for the identification and remediation of contaminated land. Section 78YC provides that regulations may give effect to Part 2A with modifications for the purpose of dealing with harm which is attributable to radioactivity possessed by any substances.

By virtue of these Regulations, which apply in relation to England only, the powers in Part 2A to make any such regulations or order, or give directions or issue guidance may be exercised in relation to land contaminated by reason of radioactive substances in, on or under the land and for that limited purpose these Regulations provide for Part 2A to have effect with modifications. These Regulations thereby enable those powers to be exercised for the purpose of implementing Articles 48 and 53 of Council Directive 96/29/Euratom laying down basic safety standards etc (OJ No L 159, 29.06.1996, p.1).

A regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business in itself.