

EXPLANATORY MEMORANDUM TO
THE RADIOACTIVE CONTAMINATED LAND (ENABLING POWERS)
(ENGLAND) REGULATIONS 2005

2005 No. 3467

1. This explanatory memorandum has been prepared by the Department for Environment Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations allow the Secretary of State to make regulations and orders, to give directions and to issue statutory guidance under Part 2A of the Environmental Protection Act 1990 in respect of land contaminated by radioactive substances.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Part 2A of the Environmental Protection Act 1990 sets out a regime for the identification and remediation of contaminated land. Under section 78YC of the Act 1990, the normal regime does not apply with respect to harm, or water pollution, which is attributable to radioactivity. However, this section does give powers to the Secretary of State to make regulations applying the Part 2A regime, with any necessary modifications, to situations where harm is attributable to radioactive contamination.

4.2 These regulations only apply Part 2A in relation to harm attributable to radioactivity, in so far as Part 2A confers or relates to any power to make regulations or an order, or give directions or issue guidance. For that limited purpose, they provide for Part 2A to have effect with modifications.

4.3 These regulations are required to give the power to make the substantive provisions extending Part 2A to radioactivity which are to be included in the following proposed regulations:

- The Radioactive Contaminated Land (Modification of Enactments)(England) Regulations 2006
- The Contaminated Land (England) Regulations 2006
- Statutory guidance

4.4 The Radioactive Contaminated Land (Modification of Enactments)(England) Regulations 2006 will also transpose into law the requirements of Articles 48 and 53 of the Basic Safety Standards Directive (Council Directive 96/29/Euratom of 13 May

1996 which lays down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation). A Transposition Note will accompany the explanatory memorandum for these regulations.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Part 2A of the Environmental Protection Act 1990 came into force in England on 1 April 2000 to address the historical legacy of contaminated land. The policy and priorities for contaminated land were set out in the policy paper, Framework for Contaminated Land published in 1994 and in Annex 1 of the DETR Circular 02/200:Contaminated Land. The principles underlying the policy are those of sustainable development and “the polluter pays”.

7.2 The regime applies where there are human health and wider environment concerns, assessed on the basis of the current use and the relevant circumstances of the land. The regime is not directed at assessing risks in relation to a future use of the land that would require a specific grant of planning permission.

7.3 There has been a long standing ministerial commitment to extend Part 2A of the Environmental Protection Act 1990 to apply to land contaminated by radioactive substances. There is also a need to ensure that the UK complies with its obligations to transpose and implement articles 48 and 53 of Council Directive 96/29/Euratom.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies or the public sector.

9. Contact

Chris Wilson at the Radioactive Substances Division of Defra (Zone 3/G27, Ashdown House, 123 Victoria Street, London) Tel: 020 7082 8475 or email: chrisk.Wilson@defra.gsi.gov.uk can answer any queries regarding the instrument.