

EXPLANATORY MEMORANDUM TO
THE RADIOACTIVE CONTAMINATED LAND REGULATIONS (NORTHERN
IRELAND) (AMENDMENT) REGULATIONS 2010

2010 No. 2145

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument re-defines the definition of “substance” removing the exclusion for radon and its decay products laid down in the Radioactive Contaminated Land Regulations (Northern Ireland) 2006 (S.R. (NI) 2006/345) (“the 2006 Regulations”).

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

3.1 None.

4. Legislative Context

4.1 The definition of “substance” laid down in the 2006 Regulations does not include radon (a naturally occurring radioactive gas) and any radionuclides present as a result of radioactive decay. This means that land which is contaminated by radon or its decay products cannot be treated as radioactively contaminated. During the assessment of land contaminated by the remnants of radium luminised paint, the significance of radon and its decay products to the radiological assessment was raised by the Scottish Environment Protection Agency. Radon is the immediate decay product of radium and if it is not included in the radiological assessment land which has the potential to cause harm could not be determined as contaminated land and remediated under the Part 2A regime. This amendment therefore redefines “substance”, removing the exclusion for radon and its decay products where they are the result of the after-effects of a radiological emergency or a past activity.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland.

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 The 2006 Regulations came into operation in Northern Ireland in September 2006. Those Regulations implement obligations arising under Articles 48 and 53 of the

Basic Safety Standards Directive (“the Directive”) by providing a system for the identification of, and intervention on, land causing lasting exposure to human beings resulting from the effects of the aftermath of a radiological emergency, past practice or past work activity. The Directive, as implemented by the 2006 Regulations, applies a risk-based approach (where risk is assessed on the basis of the current use and circumstances of the land) and requires an intervention in relation to the land appropriate to the risk. 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. The principles of sustainable development and “the polluter pays” are also reflected in the regime. However, those Regulations excluded circumstances where civil liability for damage to the land is regulated, for the purposes of the Paris Convention on third party liability in the field of nuclear energy, by the Nuclear Installations Act 1965 or foreign law (in other words, situations where the radiation arises from a nuclear occurrence). The Radioactive Contaminated Land Regulations (Northern Ireland) (Amendment) Regulations 2007 (S.I. 2007/3236) amended the 2006 Regulations so as to extend their application to all radioactivity and completes the transposition of Articles 48 and 53 in Northern Ireland.

7.2 The department does not intend to consolidate the relevant legislation at this stage.

8. Consultation outcome

8.1 The amendment being made by these Regulations is minor and consultation was limited to the devolved Administrations and the environmental regulators. These stakeholders supported the amendment.

9. Guidance

9.1 No guidance is necessary but the change in definition will be highlighted on the website.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 These Regulations do not apply to small business.

12. Monitoring & review

12.1 This will be considered in the wider contaminated land review process.

13. Contact

Fiona Shand at the Department of Energy and Climate Change Tel: 0300 068 6108 or e-mail: Fiona.shand@decc.gsi.gov.uk can answer any queries regarding the instrument.