

**EXPLANATORY MEMORANDUM TO**  
**THE RADIOACTIVE CONTAMINATED LAND (SCOTLAND) (AMENDMENT)**  
**REGULATIONS 2010**

**2010 No. 2153**

**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 (Scotland) Regulations 2007 (S.S.I. 2007/179) (“the 2007 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 2007 Regulations did not originally include radon (a naturally occurring radioactive gas) and any radionuclides present as a result of its radioactive decay. This meant that land which was contaminated by radon or its decay products could not 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.

4.2 The Radioactive Contaminated Land (Scotland) Regulations 2009 (S.S.I. 2009/202) re-defined “substance”, removing the exclusion for radon and its decay products, for non-nuclear occurrences where they are the result of the after-effects of a radiological emergency or a past activity. These Regulations re-define the definition for nuclear and non-nuclear occurrences.

**5. Territorial Extent and Application**

5.1 This instrument applies to Scotland.

**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 IIA of the 1990 Act came into force in Scotland in July 2000 to provide an improved system for the identification and remediation of land where contamination is causing unacceptable risks to human health or the wider environment. The policy and priorities for contaminated land were set out in Annex 1 of the SERAD Circular 1/2000 dated 12 July 2000. The principles underlying the policy are those of sustainable development and “the polluter pays”. The Part IIA regime applies a risk-based approach (where risk is assessed on the basis of the current use and circumstances of the land) and requires remediation action to be taken 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 regime was extended to land contaminated by radioactive substances in 2007 by virtue of Regulations laid before the Scottish Parliament, but excluding circumstances where radiation arises from a nuclear occurrence. The Radioactive Contaminated Land (Scotland) Regulations 2007 (S.I. 2007/3240) extended the modifications made by the earlier 2007 Regulations to land contaminated by all radioactivity. This completed the transposition of Articles 48 and 53 of the Basic Safety Standards Directive (96/29/Euratom).

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

## **8. Consultation outcome**

8.1 The regulations extending Part 2A to radioactivity were the subject of widespread consultation. 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 The Regulations do not apply to small business.

## **12. Monitoring & review**

12.1 These Regulations will be monitored and reviewed as part of the Part 2A 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](mailto:Fiona.shand@decc.gsi.gov.uk) can answer any queries regarding the instrument.