

EXPLANATORY MEMORANDUM TO
THE RADIOACTIVE CONTAMINATED LAND (ENABLING POWERS AND
MODIFICATION OF ENACTMENTS) (ENGLAND) (AMENDMENT)
REGULATIONS 2018

2018 No. 429

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (“the Department”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Instrument amends the Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005¹ (S.I. 2005/3467) (“the 2005 Regulations”) and the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006² (S.I. 2006/1379) (“the 2006 Regulations”) to extend the modifications made to Part 2A of the Environmental Protection Act 1990³ by those two instruments. This Instrument makes minor amendments in both sets of regulations to the definition of remediation and other minor changes in order to transpose new requirements contained in the European Council Directive 2013/59/Euratom⁴, commonly referred to as the Basic Safety Standards Directive (“the Directive”). The Directive lays down basic safety standards for the protection against the dangers arising from exposure to ionising radiation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As the Instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This Instrument amends the 2005 and 2006 Regulations and is made in order to transpose new requirements set out in the Directive in relation to the exposure of the public to ionising radiation (“public exposures”). The Directive updates and simplifies existing arrangements for protection against the dangers arising from exposure to ionising radiation by consolidating 5 earlier directives and a European Commission recommendation into one directive⁵. In particular, it consolidates the Basic Safety

¹ https://www.legislation.gov.uk/ukxi/2005/3467/pdfs/ukxi_20053467_en.pdf

² http://www.legislation.gov.uk/ukxi/2006/1379/pdfs/ukxi_20061379_en.pdf

³ http://www.legislation.gov.uk/ukpga/1990/43/pdfs/ukpga_19900043_en.pdf

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0059&from=EN>

⁵ <http://www.ensreg.eu/nuclear-safety-regulation/eu-instruments/Basic-Safety-Standards-Directive>

Standards Directive (Council Directive 96/29/Euratom⁶) (“the 1996 Directive”) and the Directive on the control of high-activity sealed radioactive sources and orphan sources (Council Directive 2003/122/Euratom⁷) (“the HASS Directive”). As such, most of the public exposure requirements of the Directive are already implemented in existing UK legislation. The Directive also incorporates publications from the International Commission on Radiological Protection (ICRP), which were published in 2007⁸, and harmonises the Euratom regime with the International Basic Safety Standards issued by the International Atomic Energy Agency⁹. The Directive covers radiation protection for: workers, medical patients, emergency preparedness and response and public exposures. The transposition date is 6 February 2018.

- 4.2 Part 2A of the Environmental Protection Act 1990 (“the 1990 Act”) sets out a regime for the identification and remediation of contaminated land. Under s78YC of the 1990 Act, the normal regime does not apply with respect to harm or water pollution that is attributable to radioactivity. However, section 78YC confers powers on 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.
- 4.3 The 2005 Regulations make provision for Part 2A of the 1990 Act to have effect with modifications, for the purposes of the exercise of powers by the Secretary of State to make regulations or give guidance or directions in relation to harm which is attributable to radioactivity. The modifications applied by the 2005 Regulations enable the issuing of guidance or the making of regulations in relation to harm attributable to radioactivity. The 2006 Regulations make provision for Part 2A to have effect with modifications for the purpose of the identification and remediation of radioactive contaminated land.
- 4.4 This Instrument amends the modifications made by the 2006 Regulations to the definition of remediation in s78A(7A) of the EPA 1990. The amendments transpose the two new requirements contained in Article 73(1) (b) and (e) of the Directive which concern the content of protection strategies for the management of radioactive contaminated land. This Instrument also updates and replaces terminology in line with the new language in the Directive. Statutory Guidance on the radioactive contaminated land regime is also being updated in line with the new requirements in the Directive. Parallel amendments are made to the 2005 Regulations to align the Secretary of State’s powers to issue guidance and make regulations.
- 4.5 This instrument is part of a set of four which are being made by BEIS to transpose the public exposure and justification requirements of the Directive. The other instruments are:
 - the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2018¹⁰;
 - the Ionising Radiations (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018¹¹;

⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996L0029&from=EN>

⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0122&from=EN>

⁸ <http://www.icrp.org/publication.asp?id=ICRP%20Publication%20103>

⁹ http://www-pub.iaea.org/MTCD/Publications/PDF/Pub1578_web-57265295.pdf

¹⁰ 2018/428

¹¹ This instrument will be made on a separate date

- the Justification of Practices Involving Ionising Radiation (Amendment) Regulations 2018¹².

4.6 The European Scrutiny Committees were provided with an Explanatory Memorandum 14450/11 on 19 October 2011 concerning the Commission’s proposal for a Council Directive updating the basic safety standards for protection against the dangers arising from exposure to ionising radiation. Following correspondence between the Committees and the Minister, the Explanatory Memorandum was cleared by the Lords European Union Select Committee on 22 May 2013, and by the Commons European Scrutiny Select Committee on 2 July 2013.

4.7 A Transposition Note is submitted with this Explanatory Memorandum.

5. Extent and Territorial Application

5.1 This Instrument extends to England.

5.2 The territorial application of this Instrument is 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

What is being done and why

7.1 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

7.2 The Directive incorporates updated scientific methodologies and new learning from past experience. The United Kingdom is required to transpose the Directive. The standards within the Directive are internationally recognised as best practice and the UK is committed to maintaining the highest possible safety standards in relation to ionising radiation. The policy objective of this instrument is to ensure that members of the public are protected from exposure to ionising radiation in line with the requirements of the Directive and that the required standard of protection is achieved efficiently.

7.3 The Directive introduced a new requirement on Member States to ensure that protection strategies for managing land which is contaminated with radioactive material contain specific steps (Article 73.1). The 2006 Regulations together with the Radioactive Contaminated Land Statutory Guidance already meet most of the requirements of the Directive. Only a few minor changes have been identified in order to transpose new requirements under the Directive. The key changes are:

- The Directive introduced a new requirement on Member States to ensure that protection strategies include steps to identify members of the public affected

¹² 2018/430

by the radioactive contaminated land (article 73.1(b)). A new provision has been introduced in the 2006 Regulations amending the definition of remediation to reflect this.

- The Directive requires that protection strategies include assessment of the means available to affected members of the public for controlling their own exposure (article 73.1(e)). A new provision in the Regulations amending the definition of remediation reflects this.
- The term “intervention” is no longer used within the Directive. This term has been replaced with the new concept of “protective measure” and “remedial measures”, which are defined within the Directive and considered to be equivalent to “intervention”.
- Further updates have been made to reflect the new definitions in the Directive. The definitions of optimisation and justification have been updated to accord with the definitions in Article 5 of the Directive. The regulations now refer to “an emergency” which is defined in the Directive (rather than “a radiological emergency”). References to the 1996 Directive have been updated to refer to the 2013 Directive.

Consolidation

7.4 The Department does not intend to consolidate the relevant legislation at this time¹³.

8. Consultation outcome

8.1 The Department conducted a UK wide public consultation from 5 October to 15 November 2017 (6 weeks). The consultation asked 12 substantive questions, of which one focused on proposals related to the Radioactive Contaminated Land Regime. All comments were considered before finalising legislative amendments. The Department also hosted a consultation event where professional bodies, industry associations, private and public sector organisations were invited to hear presentations on the Department’s policy proposals and raise any concerns.

8.2 The Department has worked closely with the Environment Agency on the proposed amendments to the legislation and in preparing revised Statutory Guidance. The amendments to the Statutory Guidance will be minimal, and owing to their minor technical nature a targeted consultation was carried out. Following the UK wide consultation, a second targeted statutory¹⁴ consultation (for England and Wales) on the proposed amendments to the Radioactive Contaminated Land Statutory Guidance (which included a draft of the proposed amendments to the 2006 Regulations) ran from 3 January to 19 January 2018 (2 weeks). Consultees from the environmental regulators, technical experts, local authorities and landowners were invited to comment. The targeted consultation asked 3 substantive questions on the draft Guidance with regard to setting reference levels for existing exposure situations, the updated definition of remediation, and the tests of justification and optimisation. There was a further question relating to any other general comments on the proposed amendments.

¹³ BEIS has prepared an informal consolidation of the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006 which can be obtained by writing to the Nuclear Decommissioning and Radioactive Waste Policy Team, Department for Business, Energy & Industrial Strategy, 1 Victoria Street, London, SW1H 0ET.

¹⁴ See section 78YA of the Environmental Protection Act 1990.

- 8.3 The Department received 5 consultation responses to the targeted consultation from professional bodies, industry associations, private and public sector organisations engaged in radioactive substances activities from across England and Wales. All of the consultees supported the proposals, and some had minor suggestions to improve the text. All comments were considered when drafting the final version of the Statutory Guidance.
- 8.4 The full government response to the targeted consultation will be made available to consultees in due course.¹⁵

9. Guidance

- 9.1 The Radioactive Contaminated Land Statutory Guidance for England was last issued in 2012¹⁶ and sets out the duties on the relevant authority under the regime, and details how the different parts of the regime should be implemented. The Statutory Guidance document is published by the Department for Business, Energy & Industrial Strategy, and is supplemented by additional practical Guidance provided by Public Health England.
- 9.2 The Radioactive Contaminated Land Statutory Guidance for England is being updated to reflect the changes in policy and to the Regulations following the targeted consultation as discussed above¹⁷. In accordance with section 78YA(2) of the 1990 Act, a draft of the revised Statutory Guidance will be laid before Parliament at the end of April 2018.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector was deemed to be negligible so was not considered for the final analysis of impacts.
- 10.3 An Impact Assessment (IA) is not attached to this memorandum as the measures of all legislative changes required to transpose the public exposures aspects of the Directive have a net direct impact on business or civil society organisations of less than £5 million annually. This qualifies for a fast track process, which does not require an IA for better regulation purposes.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 This Instrument maintains the current regulatory regime to ensure the continued optimisation of protection of individuals against exposure to ionising radiation from Radioactive Contaminated Land. To date, no land in the UK has been designated as radioactive contaminated land under Part 2A of the EPA and therefore a fixed review period is not considered appropriate in this case. However, in the event that the duties

¹⁵ Additional copies will be available from the end of April from the Nuclear Decommissioning and Radioactive Waste Policy Team, Department for Business, Energy & Industrial Strategy, 1 Victoria Street, London, SW1H 0ET.

¹⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48325/4472-draft-statutory-guidance-covering-radioactive-cont.pdf

¹⁷ <https://www.gov.uk/government/publications/statutory-guidance-covering-radioactive-contaminated-land>

in this Instrument are triggered, the outcome will be subject to internal review by the Secretary of State in relation to England.

13. Contact

- 13.1 Emily James at the Department for Business, Energy and Industrial Strategy, telephone: 02072151186 or email: emily.james@beis.gov.uk, can answer any queries regarding the instrument.