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## EXPLANATORY NOTE

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

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

These Regulations, which apply to Scotland only, apply Part IIA of the 1990 Act in relation to such harm or pollution. These Regulations also make provision for Part IIA to have effect with modifications for the purpose of the identification and remediation of radioactive contaminated land.

These Regulations also transpose articles 48 and 53 of Council Directive 96/29/Euratom laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation (O.J. No. L 159, 29.06.1996, p.1).

Regulation 2 applies Part IIA of the 1990 Act in relation to such harm or pollution subject to the modifications in regulations 3 to 13.

Regulation 3 modifies various definitions in section 78A of the 1990 Act.

Regulation 4 amends section 78B of the 1990 Act so that the duty on a local authority under that section to identify contaminated land does not apply in relation to radioactive contamination. Instead, regulation 5 inserts a new section 78BA into the 1990 Act requiring the local authority to notify the appropriate Agency (which, in relation to Scotland, is SEPA) where it considers land may be subject to such contamination. Regulation 5 also inserts a new section 78BB into the 1990 Act requiring SEPA to inspect land where there are reasonable grounds for believing that it may be subject to such contamination, to identify such contaminated land and to advise the local authority of the outcome of such an inspection. Finally, regulation 5 also inserts a new section 78BC into the 1990 Act to require SEPA to designate land contaminated by radioactivity as a special site and sets out the procedure for notifying a designation.

Regulation 6 amends section 78C of the 1990 Act to disapply the normal procedures for designation and notification of special sites in consequence of the new section 78BC inserted by regulation 5.

Regulation 7 disapplies section 78D of the 1990 Act, the power to refer special site decisions to the Scottish Ministers, in consequence of the new section 78BC inserted by regulation 5.

Regulations 8(a) and 10 respectively amend section 78E(1) and section 78H(3) of the 1990 Act also in consequence of the new section 78BC of the 1990 Act inserted by regulation 5.

Regulation 8(b) restricts the discretion of an enforcing authority to determine what is reasonable by way of remediation for the purposes of section 78E(4) of the 1990 Act. The effect is to require the authority to weigh up the benefit of any intervention against the health detriment and costs arising from such intervention and to maximise the benefit from it. Regulation 8(c) gives the Scottish Ministers a power to issue guidance about this.

Regulation 11 amends section 78N of the 1990 Act so as to require the enforcing authority to carry out remediation itself in certain circumstances. It also gives the Scottish Ministers a power to fund such an authority for that purpose.

Regulation 12 amends section 78R(1) of the 1990 Act to ensure that the enforcing authority maintains a register regarding notices served under the new section 78BC(1)(b) inserted by regulation 5 of these Regulations.

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

Regulation 13 disapplies section 78X of the 1990 Act, the power to remediate contaminated land in one or more local authority areas, in consequence of the new section 78BC inserted by regulation 5.

Regulation 14 amends section 78YA(4A) of the 1990 Act to ensure that any guidance to be issued under the new section 78BB(3) (as inserted by regulation 5) is subject to parliamentary scrutiny.

Regulation 15 amends section 78YB of the 1990 Act to disapply the application of Part IIA of the 1990 Act in relation to radioactive contamination—

- (a) within nuclear sites licensed under the Nuclear Installations Act 1965 (“the 1965 Act”);
- (b) within sites which have nuclear installations and are used by or on behalf of the Secretary of State for Defence;
- (c) where action is taken to deal with that contamination in implementation of an emergency plan prepared pursuant to the Radiation (Emergency Preparedness and Public Information) Regulations 2001; and
- (d) resulting from a breach of certain duties under the 1965 Act or in related circumstances.

Regulation 16 ensures that the powers of SEPA under section 108 of the Environment Act 1995 to enter land and investigate matters which may have given rise to pollution, extends to its functions under Part IIA of the 1990 Act as it applies to harm or pollution of the water environment attributable to radioactivity.

Regulation 17 amends regulation 2(1) of the Contaminated Land (Scotland) Regulations 2000 to ensure that land contaminated by radioactivity falls within the category of land which, for the purposes of section 78(8) of the 1990 Act, may require designation as a special site.

A Regulatory Impact Assessment in relation to these Regulations has been placed in the library of the Scottish Parliament and copies can be obtained from the SEPA Sponsorship and Waste Division, Scottish Executive Environment and Rural Affairs Department (SEERAD), Victoria Quay, Leith, EH6 6QQ.