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STATUTORY INSTRUMENTS

2006 No. 1379

ENVIRONMENTAL PROTECTION, ENGLAND

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

<i>Made</i>	- - - -	<i>17th May 2006</i>
<i>Laid before Parliament</i>		<i>23rd May 2006</i>
<i>Coming into force</i>	- -	<i>4th August 2006</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by sections 78A(9) and 78YC of the Environmental Protection Act 1990(a):

Citation, commencement and application

1.—(1) These Regulations may be cited as the Radioactive Contaminated Land (Modification of Enactments)(England) Regulations 2006 and come into force on 4th August 2006.

(2) These Regulations apply in relation to England only.

Interpretation

2.—(1) In these Regulations “Part 2A” means Part 2A of the Environmental Protection Act 1990.

(2) Unless otherwise indicated, any reference to a numbered section is to the section of the Environmental Protection Act 1990 which bears that number.

Extension and modification of Part 2A

3. In so far as not already applied(b) in relation to harm so far as attributable to any radioactivity possessed by any substance, Part 2A applies in relation to and for the purposes of dealing with such harm, and has effect with the modifications made by regulations 5 to 17.

Interpretation of modifications

4.—(1) The definitions set out in the Schedule (which reproduce definitions contained in Article 1 of the Directive) apply for the purpose of the interpretation of the modifications made by these Regulations to Part 2A.

(a) 1990 c. 43. Sections 78A to 78YC were inserted by section 57 of the Environment Act 1995 (c. 25). See the definition of “prescribed” and “regulations” in section 78A(9). The powers under these sections have been transferred in relation to Wales (see article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672)) and devolved to Scottish Ministers (see section 53 of the Scotland Act 1998 (c. 46)).

(b) S.I. 2005/3467.

(2) In this regulation and the Schedule, “the Directive” means Council Directive 96/29/Euratom^(a) laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation, and for the purposes of the Schedule “this Directive” has the same meaning.

(3) In the Schedule, any reference to a numbered “Article” or “Title” is a reference to the Article or Title of that number in the Directive.

Section 78A (preliminary)

5.—(1) Section 78A (preliminary) has effect with the following modifications.

(2) For subsection (2), substitute—

“(2) “Contaminated land” is any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that—

- (a) harm is being caused; or
- (b) there is a significant possibility of harm being caused;

and in determining whether any land appears to be such land, a local authority shall, subject to subsection (5) below, act in accordance with guidance issued by the Secretary of State in accordance with section 78YA below with respect to the manner in which that determination is to be made.”.

(3) For subsection (4), substitute—

“(4) “Harm” means lasting exposure to any person resulting from the after-effects of a radiological emergency, past practice or past work activity.”.

(4) For subsection (5), substitute—

“(5) The questions—

- (a) whether harm is being caused, and
- (b) whether the possibility of harm being caused is “significant”,

shall be determined in accordance with guidance issued for the purpose by the Secretary of State in accordance with section 78YA below.”.

(5) For subsection (6), substitute—

“(6) Without prejudice to the guidance that may be issued under subsection (5) above—

- (a) guidance under paragraph (a) of that subsection may make provision for different degrees and descriptions of harm;
- (b) guidance under paragraph (b) of that subsection may make provision for different degrees of possibility to be regarded as “significant” (or as not being “significant”) in relation to different descriptions of harm.”.

(6) For subsection (7), substitute—

“(7) “Remediation” means—

- (a) the doing of anything for the purpose of assessing the condition of—
 - (i) the contaminated land in question; or
 - (ii) any land adjoining or adjacent to that land;
- (b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land for the purpose—
 - (i) of preventing or minimising, or remedying or mitigating the effects of, any harm by reason of which the contaminated land is such land; or
 - (ii) of restoring the land to its former state; or

(a) OJ No. L 159, 29.06.1996, p.1.

- (c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land;

and cognate expressions shall be construed accordingly.

(7A) For the purpose of paragraph (b) of subsection (7) above, “the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land” shall include ensuring that—

- (a) any such area is demarcated;
- (b) arrangements for the monitoring of the harm are made;
- (c) any appropriate intervention is implemented; and
- (d) access to or use of land or buildings situated in the demarcated area is regulated.”.

(7) Subsection (8) is omitted.

(8) In subsection (9)—

- (a) omit the definitions of “controlled waters” and “pollution of controlled waters”; and
- (b) for the definition of “substance”, substitute—

““substance” means, whether in solid or liquid form or in the form of a gas or vapour, any substance which contains radionuclides which have resulted from the after-effects of a radiological emergency or which are or have been processed as part of a past practice or past work activity, but shall not include radon gas or the following radionuclides: Po-218, Pb-214, At-218, Bi-214, Rn-218, Po-214 and Tl-210;”.

Section 78B (identification of contaminated land)

6.—(1) Section 78B (identification of contaminated land) has effect with the following modifications.

(2) For subsection (1), substitute—

“(1) Where a local authority considers that there are reasonable grounds for believing that any land may be contaminated, it shall cause the land to be inspected for the purpose of—

- (a) identifying whether it is contaminated land; and
- (b) enabling the authority to decide whether the land is land which is required to be designated as a special site.

(1A) The fact that substances have been or are present on the land shall not of itself be taken to be reasonable grounds for the purposes of subsection (1).”.

Section 78C (identification and designation of special sites)

7.—(1) Section 78C (identification and designation of special sites) has effect with the following modifications.

(2) In subsection (10), for paragraphs (a) and (b), substitute—

“(a) whether land of the description in question appears to him to be land which is likely to be in such a condition, by reason of substances in, on or under the land that serious harm would or might be caused; or

- (b) whether the appropriate Agency is likely to have expertise in dealing with the kind of harm by reason of which land of the description in question is contaminated land.”.

Section 78E (duty of enforcing authority to require remediation of contaminated land etc)

8.—(1) Section 78E (duty of enforcing authority to require remediation of contaminated land etc) has effect with the following modifications.

(2) In subsection (2), omit “or waters”.

(3) For subsection (4), substitute—

“(4) Subject to subsection (4A), the only things by way of remediation which the enforcing authority may do, or require to be done, under or by virtue of this Part are things which it considers reasonable, having regard to—

- (a) the cost which is likely to be involved; and
- (b) the seriousness of the harm in question.

(4A) Where remediation includes an intervention, that part of the remediation which consists of an intervention may only be considered reasonable—

- (a) where the reduction in detriment due to radiation is sufficient to justify any adverse effects and costs, including social costs, of the intervention; and
- (b) where the form, scale and duration of the intervention is optimised.

(4B) For the purpose of subsection (4A), the form, scale and duration of the intervention shall be taken to be optimised if the benefit of the reduction in health detriment less the detriment associated with the intervention is maximised.”.

(4) In subsection (5), in paragraph (b), omit “, or waters are,”.

Section 78F (determination of the appropriate person to bear responsibility for remediation)

9. Subsection (9) of section 78F (determination of the appropriate person to bear responsibility for remediation) has effect with the insertion, after “biological process”, of “or radioactive decay”.

Section 78G (grant of, and compensation for, rights of entry etc)

10.—(1) Section 78G (grant of, and compensation for, rights of entry etc) has effect with the following modifications.

- (2) In subsection (2), for “any of the relevant land or waters”, substitute “any relevant land”.
- (3) In subsection (3), in paragraph (a), omit “or waters”.
- (4) In subsection (4), omit “, or serious pollution of controlled waters,”.
- (5) For subsection (7), substitute—

“(7) In this section, “relevant land” means—

- (a) the contaminated land in question; or
- (b) any land adjoining or adjacent to that land.”.

Section 78H (restrictions and prohibitions on serving remediation notices)

11. Subsection (4) of section 78H (restrictions and prohibitions on serving remediation notices) has effect with the omission of “, or serious pollution of controlled waters,”.

Section 78J (restrictions on liability relating to the pollution of controlled waters)

12. Section 78J is omitted.

Section 78K (liability in respect of contaminating substances which escape to other land)

13.—(1) Section 78K (liability in respect of contaminating substances which escape to other land) has effect with the following modifications.

(2) For subsection (3), substitute—

“(3) Where this subsection applies, no remediation notice shall require a person—

- (a) who is the owner or occupier of land A, and
- (b) who has not caused or knowingly permitted the substances in question to be in, on or under that land,

to do anything by way of remediation to any land (other than land of which he is the owner or occupier) in consequence of land A appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that harm is being caused, or there is a significant possibility of harm being caused.”.

(3) For subsection (4), substitute—

“(4) Where this subsection applies, no remediation notice shall require a person—

- (a) who is the owner or occupier of land A, and
- (b) who has not caused or knowingly permitted the substances in question to be in, on or under that land,

to do anything by way of remediation in consequence of any further land in, on or under which those substances or any of them appear to be or to have been present as a result of their escape from land A (“land B”) appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that harm is being caused, or there is a significant possibility of such harm being caused, unless he is also the owner or occupier of land B.”.

Section 78N (powers of the enforcing authority to carry out remediation)

14.—(1) Section 78N (powers of the enforcing authority to carry out remediation) has effect with the following modifications.

(2) In subsection (1), omit “or waters”.

(3) After subsection (1), insert—

“(1A) The enforcing authority shall exercise its power under subsection (1) in any case falling within paragraph (c), (d), (e) or (f) of subsection (3).

(1B) If the Secretary of State thinks fit, he may make available to the enforcing authority a sum or sums of money in respect of costs and expenses incurred or to be incurred by the enforcing authority (or by a person on its behalf) in relation to the exercise of its duty under subsection (1A) provided that—

- (a) the amount of such costs and expenses exceeds or is expected to exceed any reasonable provision for such costs and expenses made by the appropriate Agency; and
- (b) the total amount made available does not exceed the difference between the amount of such costs and expenses and the amount of such provision.”.

(4) In subsection (3)(a), omit “, or serious pollution of controlled waters,”.

(5) In subsections (3)(d) and (4)(d), omit “78J or”.

(6) For subsection (5), substitute—

“(5) In this section “the relevant land” means—

- (a) the contaminated land in question; or
- (b) any land adjoining or adjacent to that land.”.

Section 78P (recovery of, and security for, the cost of remediation by the enforcing authority)

15. Subsection (1) of section 78P (recovery of, and security for, the cost of remediation by the enforcing authority) has effect with the substitution for “sections 78J(7) and” of “section”.

Section 78X (supplementary provisions)

16.—(1) Section 78X (supplementary provisions) has effect with the following modifications.

(2) For subsection (1), substitute—

“(1) Where it appears to a local authority that two or more different sites, when considered together, are in such a condition, by reason of substances in, on or under the land, that—

- (a) harm is being caused, or
- (b) there is a significant possibility of harm being caused,

this Part shall apply in relation to each of those sites, whether or not the condition of the land at any of them, when considered alone, appears to the authority to be such that harm is being caused or there is a significant possibility of harm being caused.”.

(3) For subsection (2), substitute—

“(2) Where it appears to a local authority that any land outside, but adjoining or adjacent to, its area is in such a condition, by reason of substances in, on or under the land, that harm is being caused, or there is a significant possibility of harm being caused within its area—

- (a) the authority may, in exercising its functions under this Part, treat that land as if it were land situated within its area; and
- (b) except in this subsection, any reference—
 - (i) to land within the area of a local authority, or
 - (ii) to the local authority in whose area any land is situated,shall be construed accordingly;

but this subsection is without prejudice to the functions of the local authority in whose area the land is in fact situated.”.

Section 78YB (interaction of Part 2A with other enactments)

17.—(1) Section 78YB (interaction of Part 2A with other enactments) has effect with the following modifications.

(2) For subsection (1), substitute—

“(1) A remediation notice shall not be served if and to the extent that it appears to the enforcing authority that the powers of the appropriate Agency under section 27 above may be exercised in relation to the harm (if any) by reason of which the contaminated land in question is such land.”.

(3) In subsections (2), (2A) and (2B), for “significant harm, or pollution of controlled waters” substitute “harm”.

(4) After subsection (4), insert—

“(5) Nothing in this Part applies to land which is contaminated land by reason of the presence in, on or under that land of any substances, in so far as by reason of that presence damage to any property occurs, being—

- (a) damage caused in breach of any duty imposed by section 7, 8, 9 or 10 of the 1965 Act, or deemed to be so caused by section 12(2) of that Act;
- (b) damage which would have been so caused if, in section 7(1)(a) or (b) of the 1965 Act, the words “other than the licensee” or, in section 10(1) of that Act, the words “other than the operator” had not been enacted; or
- (c) damage in respect of which any relevant foreign operator or other person is liable under any relevant foreign law, or for which he would be so liable—
 - (i) but for any exclusion or limitation of liability applying by virtue of any provision of that law made for purposes corresponding to those of section 13(3) or (4)(a), 15, 16(1) and (2) or 18 of the 1965 Act; or
 - (ii) if any such relevant foreign law which does not contain provision made for purposes corresponding to those of section 13(4)(b) of the 1965 Act did contain such provision.

(6) In subsection (5)—

“the 1965 Act” means the Nuclear Installations Act 1965(a);
“relevant foreign law” and “relevant foreign operator” have the meanings given by the
1965 Act.”.

Modification of the Environment Act 1995

18.—(1) In its application in relation to harm so far as attributable to any radioactivity possessed by any substance, the Environment Act 1995(b) has effect with the modifications mentioned in paragraph (2).

(2) Subsection (15) of section 108 (powers of enforcing authorities and persons authorised by them) has effect with the following modifications—

(a) in the definition of “pollution control functions”, in relation to the Agency or SEPA, after paragraph (m), insert—

“(n) regulations made by virtue of section 78YC of the Environmental Protection Act 1990;” and

(b) in the definition of “pollution control functions”, in relation to a local enforcing authority, after paragraph (c), insert—

“or

(d) by or under regulations made by virtue of section 78YC of the Environmental Protection Act 1990;”.

17th May 2006

Ian Pearson
Minister of State,
Department for Environment, Food and Rural Affairs

(a) 1965 c. 57.
(b) 1995 c. 25.

DIRECTIVE DEFINITIONS

Activity (A): the activity, A, of an amount of a radionuclide in a particular energy state at a given time is the quotient of dN by dt , where dN is the expectation value of the number of spontaneous nuclear transitions from that energy state in the time interval dt :

$$A = \frac{dN}{dt}$$

the unit of activity is the becquerel.

Apprentice: a person receiving training or instruction within an undertaking with a view to exercising a specific skill.

Artificial sources: radiation sources other than natural radiation sources.

Becquerel (Bq): is the special name of the unit of activity. One becquerel is equivalent to one transition per second:

$$1 \text{ Bq} = 1 \text{ s}^{-1}.$$

Dose limits: maximum references laid down in Title IV for the doses resulting from the exposure of workers, apprentices and students and members of the public to ionizing radiation covered by this Directive that apply to the sum of the relevant doses from external exposures in the specified period and the 50-year committed doses (up to age 70 for children) from intakes in the same period.

Emergency exposure: an exposure of individuals implementing the necessary rapid action to bring help to endangered individuals, prevent exposure of a large number of people or save a valuable installation or goods, whereby one of the individual dose limits equal to that laid down for exposed workers could be exceeded. Emergency exposure shall apply only to volunteers.

Exposed workers: persons, either self-employed or working for an employer, subject to an exposure incurred at work from practices covered by this Directive and liable to result in doses exceeding one or other of the dose levels equal to the dose limits for members of the public.

Exposure: the process of being exposed to ionizing radiation.

Health detriment: an estimate of the risk of reduction in length and quality of life occurring in a population following exposure to ionizing radiations. This includes loss arising from somatic effects, cancer and severe genetic disorder.

Intake: the activities of radionuclides entering the body from the external environment.

Intervention: a human activity that prevents or decreases the exposure of individuals to radiation from sources which are not part of a practice or which are out of control, by acting on sources, transmission pathways and individuals themselves.

Ionizing radiation: the transfer of energy in the form of particles or electromagnetic waves of a wavelength of 100 nanometers or less or a frequency of 3×10^{15} Hertz or more capable of producing ions directly or indirectly.

Members of the public: individuals in the population, excluding exposed workers, apprentices and students during their working hours and individuals during the exposures referred to in Article 6(4)(a), (b) and (c).

Natural radiation sources: sources of ionizing radiation from natural terrestrial or cosmic origin.

Practice: a human activity that can increase the exposure of individuals to radiation from an artificial source, or from a natural radiation source where natural radionuclides are processed for their radioactive, fissile or fertile properties, except in the case of an emergency exposure.

Radioactive substance: any substance that contains one or more radionuclides the activity or concentration of which cannot be disregarded as far as radiation protection is concerned.

Radiological emergency: a situation that requires urgent action in order to protect workers, members of the public or the population either partially or as a whole.

Source: an apparatus, a radioactive substance or an installation capable of emitting ionizing radiation or radioactive substances.

Undertaking: any natural or legal person who carries out the practices or work activities referred to in Article 2 of this Directive and who has the legal responsibility under national law for such practices or work activities.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2A of the Environmental Protection Act 1990 (c. 43) (“Part 2A” of “the 1990 Act”) sets out a regime for the identification and remediation of contaminated land. The Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005 (S.I. 2005/3467) (“the Powers Regulations”) applied the powers under the 1990 Act to make regulations and guidance in relation to radioactive substances. These Regulations, which apply to England only, are made pursuant to the powers under Part 2A of the 1990 Act as modified by the Powers Regulations and make provision for Part 2A to have effect with modifications for the purpose of the identification and remediation of radioactive contaminated land other than in circumstances where the operator of a nuclear installation is liable under the Nuclear Installations Act 1965 (c. 57), or in related circumstances (see regulation 17).

These Regulations also transpose Articles 48 and 53 of Council Directive 1996/29/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 (OJ No. L 159, 29.06.1996, p.1).

Regulation 5 modifies, various definitions in section 78A of the 1990 Act.

Regulation 6 provides for section 78B of the 1990 Act to have effect with a modification to ensure that the local authority’s duty of inspection only applies in relation to land that it has reasonable grounds for believing may be contaminated.

Regulation 8 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 enforcing authority to weigh up the benefit of any intervention against the health detriment and costs arising from such intervention and maximise the benefit from such intervention.

Regulation 14 modifies section 78N of the 1990 Act so as to require the enforcing authority to carry out remediation itself in certain circumstances.

Regulation 17 provides that Part 2A does not apply where land is contaminated land by reason of substances being in on or under the land, in so far as by reason of that presence damage to any property occurs in breach of certain duties under the Nuclear Installations Act 1965, or in related circumstances.

Regulation 18 ensures that the powers of the Environment Agency or local authority under section 108 of the Environment Act 1995 (c. 25) extend to their functions under Part 2A as it applies to harm attributable to radioactivity.

A Regulatory Impact Assessment and a Transposition Note in relation to these Regulations have been prepared and placed in the library of each House of Parliament. Copies of each of these documents can be obtained from the Radioactive Substances Division, Department for Environment, Food and Rural Affairs, Zone 3/G27, Ashdown House, 123 Victoria Street, London, SW1E 6DE.

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