

STATUTORY INSTRUMENTS

2006 No. 1379

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

Section 78A (preliminary)

5.—^[F1](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.

(2A) “Land contaminated by a nuclear occurrence” means 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 that land has occurred, being—

- (a) damage caused in breach of any duty imposed by section 7, ^[F2]7B, 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 or would have been deemed by section 12(2) of the 1965 Act to have been so caused if, in section ^[F3]7(1A)(b) or (1C)(b) of that Act, the words “other than the licensee” or, in section ^[F4]10(1)(b) of that Act, the words “other than that operator” had not been enacted;
- ^[F5](ba) damage caused by preventive measures taken after a breach of a duty imposed by section 7, 7B, 8, 9 or 10 of the 1965 Act in respect of which a claim for compensation may be made under section 11H(2) of the 1965 Act or could have been made if section 11H(4) of the 1965 Act 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, ^[F6]16(1), (1ZA), (1ZB), (2), (3B) or (3C) 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.”.

(3) For subsection (4), substitute—

“(4) “Harm” means lasting exposure to any person resulting from the after-effects of ^[F7]an emergency, past practice or past work activity ^[F8](except in section 78E(4A)(a)).”.

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

and [^{F9}references to remediating] 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;
- [^{F10}(aa) affected members of the public are identified;
- (ab) assessment of the means available to the individuals identified under paragraph (aa) for controlling their own exposure is made;]
- (b) arrangements for the monitoring of the harm are made;
- [^{F11}(c)]
- (d) access to or use of land or buildings situated in the demarcated area is regulated [^{F12}; and]
- [^{F13}(e) any other appropriate protective or remedial measure is implemented.”].

(7) Subsection (8) is omitted.

(8) In subsection (9)—

- (a) before the definition of “the appropriate Agency”, insert—
 - ““the 1965 Act” means the Nuclear Installations Act 1965;”;

- (b) omit the definitions of “controlled waters” and “pollution of controlled waters”;
- (c) after the definition of “heritable security” insert—
- ““licensee”, “relevant foreign law” and “relevant foreign operator” have the meanings given by section 26(1) of the 1965 Act;”];

[^{F14}(d) 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 containing radionuclides which have resulted from the after-effects of an emergency or have been processed as part of a past practice or past work activity;”;

[^{F15}(e) after the definition of “unitary authority”, insert—

“and any other word or expression used both in this Part and in Council Directive 2013/59/Euratom, laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom, has the same meaning for the purposes of this Part as it has in that Directive.”].

[^{F16}(9) After subsection (9) insert—

“(9A) When reading Council Directive 2013/59/Euratom for the purposes of subsection (9), Article 4(43) of that Directive (definition of inspection) is to be read as if, for the words “any competent authority”, there were substituted “the enforcing authority”.”.]

- F1** Reg. 5 substituted (10.12.2007) by [The Radioactive Contaminated Land \(Modification of Enactments\) \(England\) \(Amendment\) Regulations 2007 \(S.I. 2007/3245\)](#), regs. 1, **3(2)**
- F2** Word in reg. 5(2) inserted (4.5.2016) by [The Nuclear Installations \(Liability for Damage\) Order 2016 \(S.I. 2016/562\)](#), arts. 1, 2, **Sch. 2 para. 9(2)(a)** (with art. 40)
- F3** Words in reg. 5(2) substituted (4.5.2016) by [The Nuclear Installations \(Liability for Damage\) Order 2016 \(S.I. 2016/562\)](#), arts. 1, 2, **Sch. 2 para. 9(2)(b)** (with art. 40)
- F4** Word in reg. 5(2) substituted (4.5.2016) by [The Nuclear Installations \(Liability for Damage\) Order 2016 \(S.I. 2016/562\)](#), arts. 1, 2, **Sch. 2 para. 9(2)(c)** (with art. 40)
- F5** Reg. 5(2) inserted (4.5.2016) by [The Nuclear Installations \(Liability for Damage\) Order 2016 \(S.I. 2016/562\)](#), arts. 1, 2, **Sch. 2 para. 9(2)(d)** (with art. 40)
- F6** Words in reg. 5(2) substituted (4.5.2016) by [The Nuclear Installations \(Liability for Damage\) Order 2016 \(S.I. 2016/562\)](#), arts. 1, 2, **Sch. 2 para. 9(2)(e)** (with art. 40)
- F7** Word in reg. 5(3) substituted (22.6.2018) by [The Radioactive Contaminated Land \(Enabling Powers and Modification of Enactments\) \(England\) \(Amendment\) Regulations 2018 \(S.I. 2018/429\)](#), regs. 1(3), **3(2)(a)(i)**
- F8** Words in reg. 5(3) inserted (22.6.2018) by [The Radioactive Contaminated Land \(Enabling Powers and Modification of Enactments\) \(England\) \(Amendment\) Regulations 2018 \(S.I. 2018/429\)](#), regs. 1(3), **3(2)(a)(ii)**
- F9** Words in reg. 5(6) substituted (22.6.2018) by [The Radioactive Contaminated Land \(Enabling Powers and Modification of Enactments\) \(England\) \(Amendment\) Regulations 2018 \(S.I. 2018/429\)](#), regs. 1(3), **3(2)(b)**
- F10** Words in reg. 5(6) inserted (22.6.2018) by [The Radioactive Contaminated Land \(Enabling Powers and Modification of Enactments\) \(England\) \(Amendment\) Regulations 2018 \(S.I. 2018/429\)](#), regs. 1(3), **3(2)(c)(i)**
- F11** Words in reg. 5(6) omitted (22.6.2018) by virtue of [The Radioactive Contaminated Land \(Enabling Powers and Modification of Enactments\) \(England\) \(Amendment\) Regulations 2018 \(S.I. 2018/429\)](#), regs. 1(3), **3(2)(c)(ii)**
- F12** Word in reg. 5(6) inserted (22.6.2018) by [The Radioactive Contaminated Land \(Enabling Powers and Modification of Enactments\) \(England\) \(Amendment\) Regulations 2018 \(S.I. 2018/429\)](#), regs. 1(3), **3(2)(c)(iii)**

Changes to legislation: There are currently no known outstanding effects for the *The Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, Section 5*. (See end of Document for details)

- F13** Words in reg. 5(6) inserted (22.6.2018) by *The Radioactive Contaminated Land (Enabling Powers and Modification of Enactments) (England) (Amendment) Regulations 2018 (S.I. 2018/429)*, regs. 1(3), **3(2)(c)(iv)**
- F14** Reg. 5(8)(d) substituted (22.6.2018) by *The Radioactive Contaminated Land (Enabling Powers and Modification of Enactments) (England) (Amendment) Regulations 2018 (S.I. 2018/429)*, regs. 1(3), **3(2)(d)(i)**
- F15** Reg. 5(8)(e) substituted (22.6.2018) by *The Radioactive Contaminated Land (Enabling Powers and Modification of Enactments) (England) (Amendment) Regulations 2018 (S.I. 2018/429)*, regs. 1(3), **3(2)(d)(ii)**
- F16** Reg. 5(9) inserted (31.12.2020) by *The Ionising Radiation (Environmental and Public Protection) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/24)*, regs. 1(1), **5**; 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation:

There are currently no known outstanding effects for the The Radioactive Contaminated Land (Modification of Enactments)(England) Regulations 2006, Section 5.