

**EXPLANATORY MEMORANDUM TO**  
**THE RADIOACTIVE CONTAMINATED LAND (ENABLING POWERS AND**  
**MODIFICATION OF ENACTMENTS) (ENGLAND) (AMENDMENT)**  
**REGULATIONS 2010**

**2010 No. 2147**

**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 (Enabling Powers) (England) Regulations 2005 (S.I. 2005/3467) (“the 2005 Regulations”) and the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006 (S.I. 2006/1379) (“the 2006 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 2005 and 2006 Regulations does not include radon (a naturally occurring radioactive gas) and any radionuclides present as a result of radioactive decay. This means that land which is contaminated by radon or its decay products cannot 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.

**5. Territorial Extent and Application**

5.1 This instrument applies to 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**

7.1 Part 2A of the Environmental Protection Act 1990 came into force in England in April 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 DETR Circular 02/200:*Contaminated Land*. The principles underlying the policy are those of sustainable development and “the polluter pays”. The Part 2A 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 2006 excluding circumstances where radiation arises from a nuclear occurrence. The Radioactive Contaminated Land (Modification of Enactments) (England) (Amendment) Regulations 2007 (S.I. 2007/3245) extended the modifications made by the 2006 Regulations to land contaminated by nuclear occurrences. 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 These regulations do not apply to small business.

## **12. Monitoring & review**

12.1 This will be considered as part of the wider 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.