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STATUTORY INSTRUMENTS

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**2005 No. 3467**

**ENVIRONMENTAL PROTECTION, ENGLAND**

The Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005

*Made* - - - - 14th December 2005  
*Laid before Parliament* 19th December 2005  
*Coming into force* - - 20th January 2006

The Secretary of State makes the following Regulations in exercise of the powers conferred on her by sections 78A(9) and 78YC of the Environmental Protection Act 1990 <sup>M1</sup>:

**Marginal Citations**

**M1** 1990 c. 43. Sections 78A to 78YC were inserted by section 57 of the [Environment Act 1995 \(c. 25\)](#). See the definitions 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 \(c. 46\)](#)).

**Citation, commencement, application and interpretation**

1.—(1) These Regulations may be cited as the Radioactive Contaminated Land (Enabling Powers)(England) Regulations 2005 and come into force on 20th January 2006.

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

(3) In these Regulations—

<sup>F1</sup> ...

“Part 2A” means Part 2A of the Environmental Protection Act 1990;

“relevant harm” means harm so far as attributable to any radioactivity possessed by any substance; <sup>F2</sup> ...

<sup>F2</sup> ...

(4) For the purposes of paragraph (3) “the Directive” means Council Directive 96/29/Euratom <sup>M2</sup> 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 Schedule 2 “this Directive” has the same meaning.

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**Changes to legislation:** There are currently no known outstanding effects for the *The Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005*. (See end of Document for details)

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**Textual Amendments**

- F1** Words in reg. 1(3) omitted (18.4.2018) by virtue of [The Radioactive Contaminated Land \(Enabling Powers and Modification of Enactments\) \(England\) \(Amendment\) Regulations 2018 \(S.I. 2018/429\)](#), regs. 1(2), **2(2)(a)(i)**
- F2** Words in reg. 1(3) omitted (18.4.2018) by virtue of [The Radioactive Contaminated Land \(Enabling Powers and Modification of Enactments\) \(England\) \(Amendment\) Regulations 2018 \(S.I. 2018/429\)](#), regs. 1(2), **2(2)(a)(ii)**

**Marginal Citations**

- M2** OJ No L 159, 29.06.1996, p.1.

**Extension and modification of Part 2A**

2. For the purposes of the exercise by the Secretary of State of any power conferred by Part 2A to make regulations or orders, give directions or issue guidance in relation to relevant harm, Part 2A shall apply in relation to such harm, and shall have effect with the modifications made by Schedule 1 for the purpose of dealing with such harm.

**Interpretation of modifications**

<sup>F3</sup>3. ....

**Textual Amendments**

- F3** [Reg. 3](#) omitted (18.4.2018) by virtue of [The Radioactive Contaminated Land \(Enabling Powers and Modification of Enactments\) \(England\) \(Amendment\) Regulations 2018 \(S.I. 2018/429\)](#), regs. 1(2), **2(3)**

*Elliot Morley*  
Minister of State,  
Department for Environment, Food and Rural  
Affairs

## SCHEDULE 1

Regulation 2

### Modification of Part 2A

#### Section 78A: Preliminary

- 1.—(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 [<sup>F4</sup>an] emergency, past practice or past work activity [<sup>F5</sup>(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;

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and [F6 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;
- [F7(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;
- [F8(c) . . . . .
- (d) access to or use of land or buildings situated in the demarcated area is regulated [F9; and]
- [F10(e) any other appropriate protective or remedial measure is implemented.”].

(7) Subsection (8) is omitted.

[F11(8) In subsection (9)—

- (a) omit the definition of “controlled waters”;
- (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 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;”;
  - and
- (c) 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.”].

[F12(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”.”.]

Textual Amendments	
<b>F4</b>	Word in Sch. 1 para. 1(3) substituted (18.4.2018) by <a href="#">The Radioactive Contaminated Land (Enabling Powers and Modification of Enactments) (England) (Amendment) Regulations 2018 (S.I. 2018/429)</a> , regs. 1(2), <b>2(4)(a)(i)</b>
<b>F5</b>	Word in Sch. 1 para. 1(3) inserted (18.4.2018) by <a href="#">The Radioactive Contaminated Land (Enabling Powers and Modification of Enactments) (England) (Amendment) Regulations 2018 (S.I. 2018/429)</a> , regs. 1(2), <b>2(4)(a)(ii)</b>
<b>F6</b>	Word in Sch. 1 para. 1(6) substituted (18.4.2018) by <a href="#">The Radioactive Contaminated Land (Enabling Powers and Modification of Enactments) (England) (Amendment) Regulations 2018 (S.I. 2018/429)</a> , regs. 1(2), <b>2(4)(b)</b>
<b>F7</b>	Words in Sch. 1 para. 1(6) inserted (18.4.2018) by <a href="#">The Radioactive Contaminated Land (Enabling Powers and Modification of Enactments) (England) (Amendment) Regulations 2018 (S.I. 2018/429)</a> , regs. 1(2), <b>2(4)(c)(i)</b>

- F8** Words in Sch. 1 para. 1(6) omitted (18.4.2018) by virtue of [The Radioactive Contaminated Land \(Enabling Powers and Modification of Enactments\) \(England\) \(Amendment\) Regulations 2018 \(S.I. 2018/429\)](#), regs. 1(2), **2(4)(c)(ii)**
- F9** Word in Sch. 1 para. 1(6) inserted (18.4.2018) by [The Radioactive Contaminated Land \(Enabling Powers and Modification of Enactments\) \(England\) \(Amendment\) Regulations 2018 \(S.I. 2018/429\)](#), regs. 1(2), **2(4)(c)(iii)**
- F10** Words in Sch. 1 para. 1(6) inserted (18.4.2018) by [The Radioactive Contaminated Land \(Enabling Powers and Modification of Enactments\) \(England\) \(Amendment\) Regulations 2018 \(S.I. 2018/429\)](#), regs. 1(2), **2(4)(c)(iv)**
- F11** Sch. 1 para. 1(8) substituted (18.4.2018) by [The Radioactive Contaminated Land \(Enabling Powers and Modification of Enactments\) \(England\) \(Amendment\) Regulations 2018 \(S.I. 2018/429\)](#), regs. 1(2), **2(4)(d)**
- F12** Sch. 1 para. 1(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), **4**; 2020 c. 1, Sch. 5 para. 1(1)

### **Section 78B (Identification of contaminated land)**

**2.—(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)**

**3.—(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)**

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

(2) 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—

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

[<sup>F13</sup>(4A) Where remediation includes the implementation of a protective or remedial measure, that part of the remediation which consists of the implementation of any such measure may be considered reasonable only—

- (a) where the measure does more good than harm; and
- (b) where the form, scale and duration of the measure is optimised.

(4B) For the purpose of subsection (4A), the form, scale and duration of a protective or remedial measure shall be taken to be optimised if the magnitude of individual doses, the likelihood of exposure and the number of individuals exposed are kept as low as reasonably achievable taking into account the current state of technical knowledge and economic and societal factors.”].

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

**Textual Amendments**

**F13** Words in [Sch. 1 para. 4\(2\)](#) substituted (18.4.2018) by [The Radioactive Contaminated Land \(Enabling Powers and Modification of Enactments\) \(England\) \(Amendment\) Regulations 2018 \(S.I. 2018/429\)](#), regs. 1(2), **2(4)(e)**

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

**5.—(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 (4), omit “, or serious pollution of controlled waters,”.
- (4) 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.”.

**Textual Amendments**

**F14** [Sch. 2](#) omitted (18.4.2018) by virtue of [The Radioactive Contaminated Land \(Enabling Powers and Modification of Enactments\) \(England\) \(Amendment\) Regulations 2018 \(S.I. 2018/429\)](#), regs. 1(2), **2(5)**

## EXPLANATORY NOTE

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

Part 2A of the Environmental Protection Act 1990 (“Part 2A”) sets out a regime for the identification and remediation of contaminated land. Section 78YC provides that regulations may give effect to Part 2A with modifications for the purpose of dealing with harm which is attributable to radioactivity possessed by any substances.

By virtue of these Regulations, which apply in relation to England only, the powers in Part 2A to make any such regulations or order, or give directions or issue guidance may be exercised in relation to land contaminated by reason of radioactive substances in, on or under the land and for that limited purpose these Regulations provide for Part 2A to have effect with modifications. These Regulations thereby enable those powers to be exercised for the purpose of implementing Articles 48 and 53 of Council Directive 96/29/Euratom laying down basic safety standards etc (OJ No L 159, 29.06.1996, p.1).

A regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business in itself.

**Changes to legislation:**

There are currently no known outstanding effects for the The Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005.