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

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## STATUTORY INSTRUMENTS

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**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(1):

### **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(2) 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.

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(1) 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)).

(2) S.I. 2005/3467.

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**Interpretation of modifications**

<sup>F1</sup>4. ....

**F1** Reg. 4 revoked (10.12.2007) by [The Radioactive Contaminated Land \(Modification of Enactments\) \(England\) \(Amendment\) Regulations 2007 \(S.I. 2007/3245\)](#), regs. 1, 4

**Section 78A (preliminary)**

5.—<sup>F2</sup>(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, 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 7(1)(a) or (b) of that Act, the words “other than the licensee” or, in section 10(1) of that Act, the words “other than that 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.”.

(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
  - (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) 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;”;
  - (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 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;”;
  - [<sup>F3</sup>(e) after the definition of “unitary authority”, insert—
    - “and any other word or expression used both in this Part and in Council Directive 96/29/Euratom, laying down basic safety standards for the protection of the health

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of workers and the general public against the dangers arising from ionizing radiation has the same meaning for the purposes of this Part as it has in that Directive.”].

- F2** 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)**
- F3** Words in reg. 5(8)(e) substituted (6.4.2008) by [The Radioactive Contaminated Land \(Modification of Enactments\) \(England\) \(Amendment\) Regulations 2008 \(S.I. 2008/520\)](#), regs. 1, **2(2)**

### **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)**

[<sup>F49</sup>—(1) Section 78F (determination of the appropriate person to bear responsibility for remediation) has effect with the following modifications—

(a) after subsection (1), insert—

“(1A) In relation to any land contaminated by a nuclear occurrence, the Secretary of State is deemed to be the appropriate person.”;

(b) for subsection (2), substitute—

“(2) Except where subsection (1A) applies and subject to the following provisions of this section, any person, or any of the persons, who caused or knowingly permitted the substances, or any of the substances, by reason of which the contaminated land in question is such land to be in, on or under that land is an appropriate person.”; and

(c) in subsection (9), after “biological process”, insert “or radioactive decay”.]

**F4** Reg. 9 substituted (10.12.2007) by [The Radioactive Contaminated Land \(Modification of Enactments\) \(England\) \(Amendment\) Regulations 2007 \(S.I. 2007/3245\)](#), regs. 1, **3(3)**

### **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)**

[<sup>F511</sup> Section 78H (restrictions and prohibitions on serving remediation notices) has effect with the following modifications—

(a) in subsection (4) omit “, or serious pollution of controlled waters,”; and

(b) in paragraph (c) of subsection (5), after “the authority itself” insert “or the Secretary of State by virtue of section 78F(1A)”.]

**F5** Reg. 11 substituted (10.12.2007) by [The Radioactive Contaminated Land \(Modification of Enactments\) \(England\) \(Amendment\) Regulations 2007 \(S.I. 2007/3245\)](#), regs. 1, **3(4)**

**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.—<sup>F6</sup>(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), (f) or (g) of subsection (3).

(1B) In relation to any land which is not land contaminated by a nuclear occurrence, the Secretary of State may make available to the enforcing authority a sum 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.

(1C) In relation to any land contaminated by a nuclear occurrence, the Secretary of State shall make available to the enforcing authority a sum 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).”.

(4) In subsection (3)—

- (a) in paragraph (a), omit “, or serious pollution of controlled waters,”;
- (b) in paragraph (d), omit “78J or”;
- (c) at the end of paragraph (f), insert—

“;

(g) where section 78F(1A) applies”.

(5) In subsection (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.”].

**F6** Reg. 14 substituted (10.12.2007) by [The Radioactive Contaminated Land \(Modification of Enactments\) \(England\) \(Amendment\) Regulations 2007 \(S.I. 2007/3245\)](#), regs. 1, **3(5)**

### **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;

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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.—<sup>F7</sup>(1) Section 78YB (interaction of Part 2A with other enactments) has effect with the following modifications.

(2) In subsection (1)—

(a) in paragraph (a), omit the words “significant” and “, or pollution of controlled waters,”; and

(b) in paragraph (b), omit the words “or pollution”.

(3) After subsection (4) insert—

“(4A) Nothing in this Part applies in respect of land which, except for this subsection, would otherwise fall to be regarded as contaminated land within a nuclear site.

(4B) Nothing in this Part applies in respect of land which, except for this subsection, would otherwise fall to be regarded as contaminated land on a site—

(a) in respect of which there is no nuclear site licence in force; and

(b) which is used by or on behalf of the Secretary of State for Defence for a purpose which, if section 1 of the 1965 Act applied to the Crown, would require the authority of a nuclear site licence in respect of that site.

(4C) Nothing in this Part applies in respect of land which, except for this subsection, would otherwise fall to be regarded as contaminated land if—

(a) action is required to be taken by a local authority under paragraph (2) of regulation 13 (implementation of emergency plans) of the Radiation (Emergency Preparedness and Public Information) Regulations 2001; and

(b) that action would for the purposes of Part 2A amount to remediation of the relevant land.”

(4) For subsection 5, substitute—

“(5) In this section—

“enforcement action” means action under regulation 36, 37 or 42 of the Environmental Permitting (England and Wales) Regulations 2007 (in this subsection referred to as “the 2007 Regulations”);

“licensed site”, “nuclear site licence” and, in relation to a licensee, “period of responsibility” have the meaning given by section 26(1) of the 1965 Act;

“nuclear site” means any licensed site in respect of which, or part of which—

(a) a nuclear site licence is for the time being in force; or

(b) after the revocation or surrender of a nuclear site licence, the period of responsibility of the licensee has not come to an end; and

“regulated facility” has the meaning given in regulation 8 of the 2007 Regulations.”].

**F7** Reg. 17 substituted (6.4.2008) by [The Radioactive Contaminated Land \(Modification of Enactments\) \(England\) \(Amendment\) Regulations 2008 \(S.I. 2008/520\)](#), regs. 1, **2(3)**



## 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(3) 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;”;

(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;”.

## [<sup>F8</sup>Modification of the Contaminated Land (England) Regulations 2006

19. The Contaminated Land (England) Regulations 2006 apply with the modification that in regulation 7, after paragraph (1)(n) there is inserted—

“(na) that the enforcing authority itself has power, in a case falling within section 78N(3)(g), to do what is appropriate by way of remediation;”].

**F8** [Reg. 19](#) inserted (10.12.2007) by [The Radioactive Contaminated Land \(Modification of Enactments\) \(England\) \(Amendment\) Regulations 2007 \(S.I. 2007/3245\)](#), regs. 1, **3(7)**

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

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F9 SCHEDULE

Regulation 4

DIRECTIVE DEFINITIONS

**F9** Sch. revoked (10.12.2007) by [The Radioactive Contaminated Land \(Modification of Enactments\) \(England\) \(Amendment\) Regulations 2007 \(S.I. 2007/3245\)](#), regs. 1, 4

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**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 (OJNo. 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

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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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