

**EXPLANATORY MEMORANDUM TO**  
**THE RADIOACTIVE CONTAMINATED LAND (MODIFICATION OF**  
**ENACTMENTS) (ENGLAND) REGULATIONS 2006**

**2006 No. 1379**

**1.** This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 These Regulations make provision for Part 2A of the Environmental Protection Act 1990 to have effect with modifications for the purposes of the identification and remediation of radioactive contaminated land.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 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 for the limited purpose of modifying Part 2A so as to enable the Secretary of State to make regulations and guidance in relation to radioactive substances.

3.2 These Regulations (the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006) 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.

**4. Legislative Background**

4.1 Part 2A of the Environmental Protection Act 1990 sets out a regime for the identification and remediation of contaminated land. Under section 78YC of the Act 1990, the regime does not apply with respect to harm, or water pollution, which is attributable to radioactivity. However, this section does give powers to the Secretary of State to make regulations applying the Part 2A regime, with any necessary modifications, to situations where harm is attributable to radioactive contamination.

4.2 These Regulations make provision for Part 2A to have effect with modifications for the purpose of the identification and remediation of radioactive contaminated land. They also transpose into the law of England and Wales Articles 48 and 53 of the Basic Safety Standards Directive (Council Directive 96/29/Euratom of 13 May 1996 which lays down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation). They apply in relation to England only.

4.3 Other regulations required to implement the changes to the contaminated land regime are:

- The Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005 (SI 2005/3467)
- The Contaminated Land (England) Regulations 2006
- Statutory guidance
- The Clean Neighbourhoods and Environment Act 2005 (Commencement No2) (England) Order 2006
- The Environmental Protection Act 1990 (Isles of Scilly) Order 2006

4.4 In respect of defence sites, the legal basis for the extension of Part 2A to include radioactivity is purely domestic law, and not pursuant to the UK's obligations under Euratom.

4.5 These Regulations provide that Part 2A does not apply to land which is contaminated by reason of the presence of radioactive substances in so far as that presence results in damage to property, where that damage is caused in breach of a duty under the Nuclear Installations Act 1965 or under the law of any other Contracting Party to the Paris or Brussels Conventions on Third Party Liability in the Field of Nuclear Energy implementing those Conventions.

4.6 A Transposition Note is attached to this explanatory memorandum at Annex A.

## **5. Extent**

5.1 These Regulations apply in relation to England.

## **6. European Convention on Human Rights**

6.1 Ian Pearson has made the following statement regarding Human Rights:

In my view the provisions of the Radioactive Contaminated Land (Enactment of Modifications) (England) Regulations 2006 are compatible with the Convention rights.

## **7. Policy background**

7.1 Part 2A of the Environmental Protection Act 1990 came into force in England on 1 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".

7.2 The regime applies a risk-based approach, where risk is assessed on the basis of the current use and circumstances of the land, and appropriate action is taken. 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.

7.3 There has been a long standing ministerial commitment to extend Part 2A of the Environmental Protection Act 1990 to apply to land contaminated by radioactive substances. There is also a need to ensure that the UK complies with its obligations to transpose and implement articles 48 and 53 of Council Directive 96/29/Euratom.

7.4 Radioactive substances have been used in a wide variety of applications in the UK since the early part of the twentieth century. Any contamination arising from these activities is most likely to be the result of waste disposal practices adopted before the Radioactive Substances Act 1960 came into force in 1963. A recent study produced on behalf of the Environment Agency, Defra and the Welsh Assembly Government concluded that between 150 and 250 sites within England and Wales might have accommodated radioactive activities which could give rise to contaminated land. Whether or not a particular site could give rise to harm will depend upon its circumstances and the Environment Agency, as regulators of the Radioactive Substances Act 1993, believe that the actual number of such sites will only be a small percentage of this range of potential sites.

7.5 There has been little public interest in the proposals but there has been interest by industry and developers who want greater certainty about the contaminated land and remediation.

7.6 Consultation was carried out with local authorities, environmental regulators, industry and other stakeholders including radiological specialists and environmental groups. A full list of consultees and brief analysis of the consultation can be found on the Defra website at <http://www.defra.gov.uk/corporate/consult/epa-radioact/index.htm>

7.7 Consultees were generally in favour with the proposals. That is:

- a modification of the definition of contaminated land with respect to radioactivity;
- application to human receptors only;
- contaminated land by virtue of radioactivity to be treated as a type of “special site” and regulated by the Environment Agency;
- the duty of a local authority to inspect its area to be restricted to circumstances where there are reasonable grounds for believing land may be radioactively contaminated land;
- the need to follow the radiological principles of justification and optimisation when considering what remediation is reasonable;
- an additional duty to be placed on the enforcing authority to remediate in certain circumstances where lasting exposure has been identified and there is no other person liable for the remediation. Ensuring correct transposition of articles 48 and 53 of Council Directive 96/29/Euratom.

7.8 Opinion was divided on whether non-human receptors should be included in the regime and whether controlled waters should be included as a receptor at this time. However, Defra has taken the decision that significant harm to the wider environment and the pollution of controlled waters is not included in the extended regime at this time.

7.9 The changes in respect of radioactivity do not alter the way Part 2A works currently for non-radioactive contamination.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

## **9. Contact**

9.1 Chris Wilson at the Radioactive Substances Division of Defra (Zone 3/G27, Ashdown House, 123 Victoria Street, London); Tel: 020 7082 8475 or email: [chrisk.wilson@defra.gsi.gov.uk](mailto:chrisk.wilson@defra.gsi.gov.uk) can answer any queries regarding the instrument.

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## ANNEX A - TRANSPOSITION NOTE

Directive being transposed:

**Council Directive 96/29/Euratom** (OJ No. L159, 29.6.96, p.1) laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation:

- Article 48
- Article 53

There is existing transposing legislation, the Ionising Radiations Regulations 1999, the Nuclear Installations Act 1965 and the Radioactive Substances Act 1993. The Modification Regulations fill a transposition gap where no work activity takes place and there is no radioactive waste. They do not, however, cover situations where the Paris Convention applies to which further consideration is being given.

In so far as these regulations relate to defence activities, Euratom obligations are not relevant.

<b>Article</b>	<b>Purpose</b>	<b>Implementation</b>	<b>Comments</b>
48	To ensure the principles of justification, optimisation are followed in all intervention situations. An intervention is defined in the Directive as an 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.	Implemented by Regulation 7 of the 2006 Regulations.	Transposes the requirements of the principles of justification and optimisation of intervention into the regime for dealing with contaminated land.
53	Specific requirements for intervention in cases of lasting exposure resulting from the after-effects of a radiological emergency or a past practice to be followed: <ul style="list-style-type: none"> <li>• Area concerned is demarcated;</li> <li>• Arrangements for the monitoring of exposure are made;</li> <li>• Any appropriate intervention is implemented, taking account of the real characteristics of the situation;</li> <li>• Access to or use of land or buildings situated in the demarcated area is regulated</li> </ul>	Implemented by Regulation 7 and 13 of the 2006 Regulations and Regulation 4 of the Contaminated Land Regulations 2006.	Reg. 4 (section 78A(7)) modifies definition of remediation to include the specific requirements of the article. Requirements also implemented through the conditions of a remediation notice which are set out in Regulation 4 of the Contaminated Land Regulations 2006.  Reg. 13 (section 78N) imposes a duty on the enforcing authority to carry out remediation in certain circumstances.

# **EXPLANATORY MEMORANDUM TO THE RADIOACTIVE CONTAMINATED LAND (MODIFICATION OF ENACTMENTS) (ENGLAND) REGULATIONS 2006**

## **ANNEX B – REGULATORY IMPACT ASSESSMENT**

### **FINAL REGULATORY IMPACT ASSESSMENT (RIA)**

#### **1. EXTENSION OF PART 2A OF THE ENVIRONMENTAL PROTECTION ACT 1990 TO INCLUDE RADIOACTIVE CONTAMINATED LAND**

This partial regulatory impact assessment (RIA) considers the potential impacts of extending Part 2A of the Environmental Protection Act 1990 to include radioactive contaminated land. It applies to England only. Parallel proposals are being considered by the Welsh Assembly Government and the Scottish Executive.

A compliance cost assessment was produced for the regime established by Part 2A when the Environment Bill was introduced into Parliament in 1994. An RIA was subsequently produced in January 2000 for the Contaminated Land (England) Regulations 2000 and the Statutory Guidance in DETR Circular 02/2000.

#### **2. Purpose and intended effect of measure**

##### **(i) The objective**

To protect human health from risks associated with the legacy of radioactive contaminated land.

##### **(ii) The background**

Part 2A of the Environmental Protection Act 1990 (Part 2A) - which was inserted into the Environmental Protection Act 1990 by section 57 of the Environment Act 1995 – came into force in England on 1 April 2000 to help deal with the historic legacy of contaminated land. It focuses on the identification and remediation of land which is in such a condition by reason of contamination that it gives rise to significant harm or the significant possibility of significant harm to certain named receptors (including man), or gives rise to pollution of controlled waters or the likelihood of such pollution. The regime applies where such risks may arise through the current use and circumstances of the land. It does not apply to risks associated with changes in the use of land which require a specific grant of planning permission. The contaminated land regime, under Part 2A, consists of the following components:

- Part 2A, which sets out the general legislation.
- Statutory guidance contained in DETR Circular 02/2000 providing the detailed framework of the regime.
- The Contaminated Land (England) Regulations 2000 which provides for procedural matters such as the description of special sites, public registers, remediation notices and appeals.

By virtue of section 78YC of the Environmental Protection Act 1990, the regime does not apply in relation to harm, or pollution of controlled waters, so far as attributable to any radioactivity possessed by any substance. But under this section, the Secretary

of State does have the power to make regulations applying the Part 2A regime, with any necessary modifications, to harm or pollution of controlled waters attributable to radioactivity. There has been a longstanding ministerial commitment to extend Part 2A to radioactivity.

The key proposed changes in respect of radioactivity to be introduced in the extended regime are:

- a modification of the definition of contaminated land;
- application to human receptors only. Significant harm to the wider environment and the pollution of controlled waters is not included at this time;
- contaminated land by virtue of radioactivity will be treated as a type of “special site” and regulated by the Environment Agency;
- the duty of a local authority to inspect its area will be restricted to circumstances where there are reasonable grounds for believing land may be radioactively contaminated land;
- the need to follow the radiological principles of justification and optimisation when considering what remediation is reasonable;
- an additional duty will be placed on the enforcing authority to remediate in certain circumstances where lasting exposure has been identified and there is no other person liable for the remediation. This will ensure correct transposition of articles 48 and 53 of Council Directive 96/29/Euratom.

The UK has an obligation to implement Articles 48 and 53 of Title IX of Council Directive 96/29/EURATOM which lays down the basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation. Article 48 establishes general principles for intervention and Article 53 establishes specific requirements that Member States should ensure are undertaken in cases of “lasting exposure resulting from the after-effects of a radiological emergency, past practice or past work activity”. These specific requirements include ensuring any appropriate intervention is implemented. An intervention is defined in the Directive as “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”. The UK Government is under infraction and the Commission has made a recent application to the European Court of Justice for a declaration that the UK has failed to adopt all of the measures necessary to fulfil its obligations under Article 53. This could result in the imposition of considerable fines.

### **(iii) Risk assessment**

Radioactive substances have been used in a wide variety of applications in the UK since the early part of the twentieth century. Any contamination arising from these activities is most likely to be the result of waste disposal practices adopted before the Radioactive Substances Act 1960 came into force in 1963. This Act was replaced by the Radioactive Substances Act 1993. The Radioactive Substances Act 1993 sets

out a prior permission regime and is not a suitable vehicle for identifying and removing radiological risks to human health arising from contaminated land.

A recent study produced on behalf of the Environment Agency, Defra and the Welsh Assembly Government has suggested that radioactive substances might have been used, handled or disposed of on up to 50,000 sites within England and Wales. The study acknowledges that there are substantial uncertainties associated with this figure. Because of the nature and quantities of the radioactive substances involved, the vast majority of activities undertaken on these sites would not have resulted in the contamination of land and only a very small proportion of those sites are likely to be contaminated to such a degree that they could present a risk to human health, such that they would fall within the new definition of contaminated land, as set out in the proposed regulations and statutory guidance.

The study concluded that only between 150 and 250 sites within England and Wales might have accommodated such activities as to give rise to contaminated land. Whether or not a particular site could give rise to lasting exposure will depend upon its circumstances and the Environment Agency, as regulators of the Radioactive Substances Act, believe that the actual number of such sites within England and Wales will be only a small percentage of this 150-250 range of potential sites.

### **3. Options**

A number of alternative options exist for dealing with health risks arising from the historic legacy of radioactive contaminated land. The options considered here include:

1. do nothing;
2. modify Part 2A with local authorities having a general inspection duty;
3. modify Part 2A with local authorities having a “restricted” inspection duty;
4. amend the existing Radioactive Substances Act 1993 (RSA 93).

Option 1, do nothing, provides a baseline against which alternative regulatory options may be compared.

Option 2 would involve local authorities being required to adopt an approach to the inspection of their areas similar to that currently required under Part 2A for non-radioactive contaminated land: local authorities would be required to assemble information on historic industrial activities which involved radioactive substances undertaken within their areas, and evaluate the potential for receptors and pathways to be associated with the locations of those activities. Having identified that a particular area of land merited detailed inspection, a local authority would make arrangements with the Environment Agency for the Agency to carry out that detailed inspection on the grounds that, on its determination as contaminated land, the land would be a special site. Only minor modifications would be required to the statutory guidance.

Option 3 would involve the local authorities being required to take a more restricted approach to inspection. Instead of actively assembling and processing large

amounts of data on their areas, as under Option 2, a local authority would be required to inspect a particular area of land which the authority considers provides reasonable grounds for believing the land may be radioactive contaminated land. Having identified that there are reasonable grounds then, as with Option 2, a local authority would make arrangements with the Environment Agency for the Agency to carry out a detailed inspection of the land on the grounds that, on its determination as contaminated land, it would be a special site. The statutory guidance would require more extensive modification to Chapter B to explain the concept of “reasonable grounds”.

Option 4 would be limited to amending the RSA 93 to implement the requirements of Articles 48 and 53 only. Powers under section 78YC of the EPA 1990 or under section 2(2) of the European Communities Act 1972 could be used. However, the primary aim of RSA 93 is to ensure the control of radiation exposure resulting from radioactive wastes entering the environment through the application of a prior permission regime. The provisions required to implement a radioactive contaminated land regime would not sit comfortably within this framework because the focus of RSA 93 is on radioactive waste, rather than on the wider concept of land contamination. Because RSA 93 does not address remediation or the liability for remediation, Option 4 was discounted at an early stage and is not considered further in this RIA.

#### **4. Benefits**

##### ***Economic***

Option 1 would offer no obvious economic benefits.

Options 2 and 3 would, where a site is determined to be radioactive contaminated land, provide a framework for apportioning responsibility for its remediation between various persons. Under certain circumstances, this would remove much of the uncertainty about the potentially significant liabilities associated with such a site. Improved certainty about the condition of a property and the apportionment of liabilities should improve the efficiency of transactions involving such properties.

It may be the case, however, that the rate at which the economic benefits identified above are realised differs between Options 2 and 3. The approach to inspection provided by Option 2 may result in radioactive contaminated land sites being identified and subject to the necessary remediation over a shorter period of time than they would under the approach provided by Option 3. Furthermore, the approach offered by Option 3 may identify fewer sites. If this were the case, Option 2 would produce greater economic benefits than Option 3 purely because more sites would actually be remediated.

Options 2 and 3 may also result in indirect financial benefits to the environmental industries sector, by generating additional demand for investigation and remediation of land.

##### ***Environmental***

Option 1 would offer no obvious environmental benefits.

There are no clear environmental benefits for Options 2 or 3. However, the remediation of radioactive contaminated land may result in an indirect improvement to the local environment.

## ***Social***

Option 1 would offer no obvious social benefits in protecting the population from risks caused by the historical legacy of radioactive contaminated land.

Options 2 and 3 would result in reductions in the risks to human health arising from the historic legacy of radioactive contaminated land. Uncertainties as to the number of radioactive contaminated land sites within England or the number of people affected mean it is not possible to place a single value on the benefit derived by the reduction in lasting exposure produced by either option.

Both options would provide society with confidence that risks were being dealt with. However, Option 2 would be likely to provide local authorities and members of the public with more confidence that radioactive contaminated land would be identified and dealt with. Even in those local authority areas where no radioactive contaminated land is identified during the strategic inspection, there would be a degree of confidence that sites had not been overlooked. It is unlikely that a similar degree of confidence would be provided by the restricted approach to inspection offered by Option 3.

## **5. Costs**

### *Economic*

Economic costs may be divided into two categories: policy costs (i.e. the costs of meeting the policy objective; in this case, the cost of remediation of radioactive contaminated land sites to remove risks to human health) and implementation costs (i.e. the costs of implementing the particular approach selected to meet the policy objective; in this case, the costs of training regulatory staff to enforce the chosen regime, the costs of identifying radioactive contaminated land and the costs of enforcing remediation).

There are no policy or implementation costs associated with Option 1, since nothing would be done to meet the policy objective of removing risks from the legacy of radioactive contaminated land. However, Option 1 would fail to implement Articles 48 and 53 of the Directive and could incur economic costs through the referral of infraction proceedings against the UK to the European Court of Justice where the UK Government would be subject to considerable fines.

Without knowing the specific nature or number of radioactive contaminated land sites in England, it is not possible to produce comprehensive implementation and policy costs for their regulation under the approaches offered by Options 2 or 3. Policy costs would be comprised primarily of remediation costs and will depend upon the number and nature (which is likely to vary considerably) of sites in England. Indeed, the nature of a site can have a considerable impact on the cost of its remediation. Information obtained from a number of consultees during the production of this RIA, suggested that remediation costs could range from less than £20k to more than £10

million. Of the examples identified, it is suggested that the costs would be towards the lower end of the range.

Whilst there are considerable uncertainties associated with scale of the policy costs of Options 2 and 3, it is likely that they will be of the same order of magnitude since the number of sites requiring remediation will be similar and the remediation required will be the same. It may be the case that the total policy costs associated with Option 3 would be lower than those of Option 2, if the restricted approach to inspection failed to identify as many sites. In any case, the rate of identification and remediation of sites (and hence the rate at which policy costs would occur) under Option 3 is likely to be lower than that of Option 2.

Under Options 2 and 3, responsibility for paying for remediation would fall to the polluter or in instances where the polluter cannot be found, responsibility would pass to the current owner or occupier of the land. Under certain circumstances (e.g. cases of hardship, or where no appropriate person can be identified), the enforcing authority would become responsible for bearing some or all of the costs associated with the remediation.

It should be recognised that due to the historic nature of many of the activities likely to have caused land to be contaminated by radioactivity, identifying an appropriate person may be impossible in some cases and responsibility for remediation would fall to the enforcing authority and ultimately the public purse.

Estimates of the implementation costs for the first five years of the operation of the regulatory approaches provided by Options 2 and 3 were solicited from a sample of local authorities and the Environment Agency (see section 11); these are outlined in the table in Appendix A. The implementation costs associated with Option 2 are estimated to be between £7.5 million and £14.3 million (present value), whilst those associated with Option 3 are estimated to be between £4.3 million and £4.6 million (present value).

In arriving at these implementation costs, a number of assumptions were made about the operation of the regime (see the footnotes to the table in Appendix A). Whilst there is some considerable uncertainty associated with the upper and lower values of the estimated ranges, the uncertainty would not significantly affect the clear cost differences associated with the “full” and “restricted” inspection duty of a local authority.

### ***Environmental***

There are no environmental costs associated with Option 1. The Environment Agency has no evidence to date that suggests pollution arising from historic radioactive activities is impacting on environmental receptors.

The environmental costs associated with Options 2 and 3 are likely to be similar and restricted to those environmental impacts associated with the remediation of sites. Because the radiological principles of justification and optimisation will be applied in both options it means that the detriments associated with the remediation (including adverse environmental impacts) will not outweigh the benefits to be gained by the work and that the difference between the detriments and benefits will be maximised.

Furthermore, many remediation techniques will require authorisation under RSA 93 which may include conditions to minimise the adverse environmental impacts associated with them. As a consequence, the environmental costs associated with Options 2 and 3 are likely to be severely limited.

### **Social**

Under Option 1, society would continue to bear the social costs associated with the risks to human health arising from the historic legacy of radioactive contaminated land. Uncertainties as to the number of radioactive contaminated land sites within England or the number of people affected mean it is not possible to place a single value on this social cost.

Experience from the existing Part 2A regime suggests that property blight may occur as a direct and/or indirect consequence of the extension of the regime to include radioactivity. For Options 2 and 3, the identification of land as having the potential to be radioactive contaminated land may – in some circumstances - result in the land being blighted during the period up to its determination. Indeed, land determined as contaminated land may continue to be blighted during the period in which appropriate persons are identified and remediation is undertaken. The blight may also continue following remediation as a consequence of the determination remaining on the public register.

From the above, it seems likely that the approach offered by Option 2 could identify more potential sites and sooner than would be the case under Option 3. Option 2 may, therefore, result in more properties being blighted for longer periods than may be the case for Option 3. Whilst the potential for property blight under some circumstances is recognised, it is not possible to quantify the extent of its impact or the differences in the levels of blight that may be associated with Options 2 and 3. However, it is believed that the production of appropriate guidance on historic radioactive activities may help limit property blight under both options.

## **6. Equity and Fairness**

The distribution of radioactive contaminated land sites in England will, in part, depend upon the location of historic activities that used radioactive substances. Certain potentially contaminating industries are known to have been located in particular regions of the country. It is believed that the regime is likely to have a greater effect on communities in urban rather than rural areas because of the nature and distribution of the industries.

## **7. Consultation with small business: the Small Firms' Impact Test**

The impact of the existing Part 2A regime on small firms was considered in the RIA undertaken in January 2000. On the basis of consultation with three small firms (where it was possible to predict the effects of the regime), it was concluded that it would not affect the costs or competitive position of small firms. It is believed that the extension of the regime to include radioactivity would not affect the outcome of that impact test.

It is not envisaged that the proposals will affect the small business sector disproportionately. Whilst the costs borne by an individual small business, responsible for the investigation and remediation of a radioactive contaminated land site, may be higher than those of an equivalent non-radioactive contaminated land site, such a company would still be afforded the same level of protection against hardship (including closure or insolvency) as they are under the current regime. As a consequence, there should be no additional adverse impact to the small business sector. Comments from small business were sought in the recent public consultation, however, none were received.

## **8. Competition Assessment**

An initial competition filter test was undertaken to determine whether the proposals would have an effect on competition in affected markets. It was concluded that the proposals would have little or no effect on competition. The results are reproduced in Appendix B.

## **9. Enforcement and Sanctions**

The existing enforcement arrangements will be applied to the proposed extension of the regime to include radioactivity. As for any other special site under the Part 2A regime, the Environment Agency will be the enforcing authority. Failure to comply with a remediation notice, without reasonable excuse, will be an offence. On conviction, this offence would attract a lump sum fine, plus a daily fine for each day on which failure to comply with the remediation notice continues after conviction.

## **10. Monitoring and Review**

Defra will continue to monitor the operation of Part 2A closely, and will keep it under review, in consultation with the devolved administrations as appropriate. The Environment Agency will be required to produce the State of Contaminated Land Report including a section on radioactive contaminated land.

## **11. Consultation**

### **i) Within Government**

Defra has established a Steering Group to develop the proposals, comprising representatives from the Scottish Executive, the Welsh Assembly, the Environment Department of the Northern Ireland Office, the Food Standards Agency, the Environment Agency, the Scottish Environment Protection Agency, the Chartered Institute of Environmental Health, the Department of Trade and Industry, the Health and Safety Executive, the Ministry of Defence and the Health Protection Agency (formerly the National Radiological Protection Board).

### **ii) Public Consultation**

A limited consultation was carried out with thirty two selected local authorities, the Environment Agency and the Soil and Groundwater Technology Association (SAGTA), a key association of nineteen organisations dealing with contaminated land issues. The information gathered from this consultation exercise was used to inform the production of this RIA.

A three month written public consultation has also been undertaken. Those consulted included industry, regulators, professional bodies, environmental groups and interested individuals. A copy of the document and consultation analysis can be found on the Defra website.

## **12. Summary and Recommendation**

Option 1 would fail to fulfil the objective of removing risks arising from the historic legacy of radioactive contaminated land. Furthermore, it would result in the UK failing to comply with its obligations to implement Articles 48 and 53 of Council Directive 96/29/EURATOM. This would risk the imposition of considerable fines from the European Court of Justice.

Options 2 and 3 share many of the same costs and benefits. In particular, there is little to differentiate between them in terms of their environmental costs and benefits. The greater social benefit associated with Option 2, is the confidence it gives to society that all areas of radioactive contaminated land will be identified and dealt with over time. However, the economic costs involved are considerable in comparison with those of Option 3 (estimate of £7.5 -14.3 million compared with £4.3 - 4.6 million). Furthermore, Option 2 appears to have considerably more potential to cause property blight than does Option 3 and the significance of this form of economic and social cost cannot be ignored, particularly in urban areas where potentially contaminating activities were more prevalent.

When considering the potential failure of Option 3 to deliver confidence that all risks to human health have been identified and dealt with, the scale of the risk being addressed has to be borne in mind. It appears likely that the number of radioactive contaminated land sites in England is less than a couple of hundred and that the vast majority of these will already be known about by local authorities and the Environment Agency.

Whilst Option 2 may result in the identification and remediation of more sites than Option 3, and in a shorter period of time, the additional benefit that this would provide in terms of reductions in risk to human health is likely to be small. However, the costs associated with Option 2 (including implementation costs and potential for causing property blight) are substantially greater than those associated with Option 3 and are disproportionate to the risks being addressed.

Overall, the approach of Option 3 is considered to provide a more proportionate response to regulation in view of the scale and possible risks to human health posed by the legacy of radioactive contaminated land.

Option 3 is the preferred option.

### 13. Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

**Signed by the responsible Minister:** .....

**Date:** .....

**IAN PEARSON**  
**Minister for State**  
**Department for Environment, Food and Rural Affairs**

### Contact Point

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