

**EXPLANATORY MEMORANDUM TO**  
**THE CONTAMINATED LAND (ENGLAND) REGULATIONS 2006**

**2006 No. 1380**

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 consolidate the provisions of the Contaminated Land (England) Regulations 2000 (SI 2000/227) and the Contaminated Land (England) (Amendment) Regulations 2001 (SI 2001/663) with amendments. They also set out provisions relating to the identification and remediation of contaminated land under Part 2A of the Environmental Protection Act 1990.

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

3.1 None.

**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 The Contaminated Land (England) Regulations 2000 provides for procedural matters of the regime such as the description of special sites, public registers, remediation notices and appeals.

4.3 These Regulations make provision for an additional description of contaminated land that is required to be designated as a special site: that is land which is contaminated land as a result of radioactivity in, on or under the land. They also remove provisions relating to appeals against remediation notices to a magistrates' court, as a result of amendments to section 78L of the Environmental Protection Act 1990 made by section 104 of the Clean Neighbourhoods and Environment Act 2005. As a result the appellate authority becomes the Secretary of State.

4.4 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 Radioactive Contaminated Land (Modification of Enactments) (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

## **5. Extent**

5.1 These Regulations apply 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 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.

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

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 There has been little public interest in the proposals.

## **8. Impact**

8.1 No regulatory impact assessment has been prepared in relation to these Regulations because there is no additional impact on public, private or voluntary sectors.

## **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: [chris.k.wilson@defra.gsi.gov.uk](mailto:chris.k.wilson@defra.gsi.gov.uk) can answer any queries regarding the instrument.