

## **EXPLANATORY MEMORANDUM TO**

### **The Environmental Protection Act 1990 (Isles of Scilly) Order 2006**

**2006 No. 1381**

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 This Order applies Part 2A of the Environmental Protection Act 1990 to the Isles of Scilly, in so far as that Part applies in relation to harm attributable to radioactivity.

#### **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 normal 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 Regulations implementing the extension of Part 2A to include radioactivity include:

- The Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005 (2005 No. 3467)
- The Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006 (draft) (2006 No. XXX)
- The Contaminated Land (England) Regulations 2006 (draft) (2006 No. XXX)
- The Clean Neighbourhoods and Environment Act 2005 (Commencement No 2) (England) Order 2006

4.3 These regulations also transpose into law the requirements of Articles 48 and 53 of Council Directive 1996/29/Euratom 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.

4.4 Part 2A of the Environmental Protection Act 1990 does not apply to the Isles of Scilly. However, due to the need to fully transpose Articles 48 and 53 in the UK, application of the radioactive aspect of Part 2A is to be implemented in the Isles of Scilly through this Order. The Order also applies the Environment Agency's powers under section 108 of the Environment Act 1995 to the Isles of Scilly, in so far as those powers relate to Part 2A.

## **5. Extent**

5.1 This instrument applies to the Isles of Scilly.

## **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.

7.4 A consultation paper on the proposals was produced for the Council of the Isles of Scilly to discuss in September 2005. The Order was ratified by the Council in October 2005.

7.5 There has been little public interest in the proposals generally to include radioactivity. This is dealt with in more detail in the Explanatory Memorandum accompanying The Radioactively Contaminated Land (Modification of Enactments) (England) Regulations 2006.

## **8. Impact**

8.1 No impact from this order is expected since radioactive substances are not used on the Isles and a specific Regulatory Impact Assessment has not been prepared. A Regulatory Impact Assessment has been prepared for the main proposals and is attached to the Explanatory Memorandum mentioned in paragraph 7.5 above.

## **9. Contact**

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