

EXPLANATORY MEMORANDUM TO
THE RADIOACTIVE CONTAMINATED LAND REGULATIONS (NORTHERN
IRELAND) (AMENDMENT) REGULATIONS 2007

2007 No. 3236

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 instrument amends the Radioactive Contaminated Land Regulations (Northern Ireland) 2006 (S.R. (NI) 2006 No 345) (“the 2006 Regulations”) so as to extend those Regulations to land contaminated by a nuclear occurrence.

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

3.1 There are none.

4. Legislative Background

4.1 The 2006 Regulations implement obligations arising under 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). However, those Regulations exclude circumstances where civil liability for damage to the land is regulated, for the purposes of the Paris Convention on third party liability in the field of nuclear energy (“the Paris Convention”), by the Nuclear Installations Act 1965 (“the 1965 Act”) or foreign law (in other words, situations where the radiation arises from a nuclear occurrence). This instrument amends the 2006 Regulations so as to extend their application to all radioactivity and completes the transposition of Articles 48 and 53 in Northern Ireland.

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

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland.

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 The 2006 Regulations came into operation in Northern Ireland on 22 September 2006. Those Regulations implement obligations arising under Articles 48 and 53 of the Basic Safety Standards Directive (“the Directive”) by providing a system for the identification of, and intervention on, land causing lasting exposure to human beings resulting from the effects of the aftermath of a radiological emergency, past practice or past works.

7.2 The Directive, as implemented by the 2006 Regulations, applies a risk-based approach (where risk is assessed on the basis of the current use and circumstances of the land) and requires an intervention in relation to the land appropriate to the risk. 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. The principles of sustainable development and “the polluter pays” are also reflected in the regime.

7.3 The 2006 Regulations do not however, cover situations where lasting exposure results from the aftermath of a nuclear occurrence. This is because, in those circumstances (other than the State assuming liability) the Paris Convention requires liability to be channelled to the nuclear operator and for there to be commercial insurance (or other financial guarantee) to underwrite the operator’s liabilities. The 2006 Regulations therefore, excluded situations in which lasting exposure is caused by radioactivity arising in circumstances in which the Paris Convention is in play allowing options for financial security to be explored to meet Paris Convention requirements.

7.4 Unfortunately, under pressure of infraction proceedings from the European Commission, we are now obliged to complete our transposition of the Directive or face punitive fines although it has still not proved possible to secure commercial insurance or to put in place another form of financial guarantee. This instrument therefore (along with counterpart instruments for England, Wales and Scotland) completes the transposition of the Directive by amending the 2006 Regulations to cover all radioactivity. This allows the UK to meet its obligations to fully transpose the Directive but does so by placing an obligation on the Secretary of State to deal with contamination arising from a nuclear occurrence, an approach which avoids the financial guarantee difficulties but leaves open the option to address this at a later date when such provision can be made.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

Chris Wilson at the Department for Environment, Food and Rural Affairs Tel: 020 7328 1736 or e-mail: chris.k.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 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation (OJ No. L159, 29.6.96, p.1):

- Article 48
- Article 53

There is existing transposing legislation: the Nuclear Installations Act 1965, the Radioactive Substances Act 1993 (c.12), the Ionising Radiations Regulations (Northern Ireland) 2000 (S.R. (NI) 2000 No 375) and the Radioactive Contaminated Land Regulations (Northern Ireland) 2006 (S.R. (NI) 2006 No 345) (“the 2006 Regulations”). This instrument completes the transposition in Northern Ireland by extending the application of the 2006 Regulations to lasting exposure arising from a nuclear occurrence.

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

<i>Article</i>	<i>Purpose</i>	<i>Implementation</i>	<i>Comments</i>
48	To ensure the principles of justification and 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.	Already implemented by regulation 3 of S.R. (NI) 2006 No 345. By virtue of regulation 2 of this instrument the Article 48 principles are extended to circumstances where lasting exposure arises from a nuclear occurrence.	This has the effect of extending the requirements for intervention to be justified and optimised to circumstances where lasting exposure arises from a nuclear occurrence.
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"> • Area concerned is demarcated; • Arrangements for the monitoring of exposure are made; • Any appropriate intervention is implemented, taking account of the real characteristics of the situation; • Access to or use of land or buildings situated in the demarcated area is regulated. 	Already implemented by Regulation 3 of S.R. (NI) 2006 No 345. By virtue of regulation 2 of this instrument the Article 53 requirements are extended to circumstances where lasting exposure arises from a nuclear occurrence and requires the State to intervene in such circumstances.	This has the effect of extending the specific requirements for intervention to circumstances where lasting exposure arises from a nuclear occurrence.