

2007 No. 3250

ENVIRONMENTAL PROTECTION, WALES

The Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) Regulations 2007

<i>Made</i>	- - - -	<i>13th November 2007</i>
<i>Laid before Parliament</i>		<i>16th November 2007</i>
<i>Coming into force</i>	- -	<i>10th December 2007</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 78A(9) and 78YC of the Environmental Protection Act 1990(a):

Citation and commencement

1. These Regulations may be cited as the Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) Regulations 2007 and come into force on 10th December 2007.

Interpretation

2.—(1) In these Regulations “the 2006 Regulations” means the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006(b).

(2) Any reference to the Secretary of State in sections 78F(1A) and 78N(1C) of the Environmental Protection Act 1990(c) is not to be read as a reference to the Welsh Ministers in relation to Wales.

Amendments

3.—(1) The 2006 Regulations are amended as follows.

(2) In regulation 3, for “regulations 4 to 18”, substitute “regulations 5 to 17”.

(3) For regulation 5, substitute—

“Section 78A (preliminary)

5.—(1) Section 78A (preliminary) has effect with the following modifications.

(a) 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). In relation to Wales, the powers under these sections were transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 38). The Secretary of State’s power to act in relation to Wales under section 78YC is preserved by paragraph 5 of Schedule 3 to the Government of Wales Act 2006 for the purpose of implementing obligations under Articles 48 and 53 of Council Directive 96/29/Euratom.

(b) S.I. 2006/2988 (W.277).

(c) As inserted by paragraphs (4) and (6) respectively of regulation 3 of these Regulations.

(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;”;
- (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 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.”.”.

(4) For regulation 9, substitute—

“Section 78F (determination of the appropriate person to bear responsibility for remediation)

9.—(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”.”.

(5) For regulation 11, substitute—

“Section 78H (restrictions and prohibitions on serving remediation notices)

11. 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)”.”.

(6) For regulation 14, substitute—

“Section 78N (powers of the enforcing authority to carry out remediation)

14.—(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 Welsh Ministers 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.”.”.

(7) For regulation 17, substitute—

“Section 78YB (interaction of Part 2A with other enactments)

17.—(1) Section 78YB (interaction of Part 2A with other enactments) has effect with the following modifications.

(2) For subsection (1), substitute—

“(1) A remediation notice shall not be served if and to the extent that it appears to the enforcing authority that the powers of the appropriate Agency under section 27 above may be exercised in relation to the harm (if any) by reason of which the contaminated land in question is such land.”.

(3) In subsections (2), (2A) and (2B), for “significant harm, or pollution of controlled waters” substitute “harm”.

(4) After subsection (4) insert—

“(5) 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.

(6) 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.

(7) 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.

(8) In this section—

“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

“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.”.

(8) After regulation 18, insert—

“Modification of the Contaminated Land (Wales) Regulations 2006

19. The Contaminated Land (Wales) 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;”.

Revocations

4. Regulation 4 of, and the Schedule to, the 2006 Regulations are revoked.

13th November 2007

Phil Woolas
Minister of State
Department for Environment, Food and Rural Affairs

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. In Wales the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006 (S.I. 2006/2988 (W.277)) (“the 2006 Regulations”) apply the powers under the 1990 Act to make regulations and guidance in relation to radioactive substances and make provision for Part 2A to have effect with modifications for the purpose of the identification and remediation of radioactive contaminated land.

The 2006 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, by the Nuclear Installations Act 1965 (c. 57) or foreign law. The effect of these Regulations is to amend the 2006 Regulations so as to apply the modifications they make to Part 2A to all radioactivity (paragraphs (3) to (7) of regulation 3) and modify the Contaminated Land (Wales) Regulations 2006 (S.I. 2006/2989 (W.278)) to provide for a new ground of appeal against a remediation notice (regulation 3(8)).

These Regulations also implement obligations arising under 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 (OJ No. L 159, 29.06.1996, p.1).

A full regulatory impact assessment was produced in relation to the 2006 Regulations and that remains relevant to these Regulations. As such a further full regulatory impact assessment has not been produced for this instrument as no additional impact on the private or voluntary sectors is foreseen. A Transposition Note in relation to these Regulations has been prepared and placed in the library of each House of Parliament. Copies of this document can be obtained from the Radioactive Substances Division, Department for Environment, Food and Rural Affairs, Room 4C, Ergon House, Horseferry Road, London, SW1P 2AL.

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