

2007 No. 179

ENVIRONMENTAL PROTECTION

**The Radioactive Contaminated Land (Scotland)
Regulations 2007**

Made - - - - - *6th March 2007*

Laid before the Scottish Parliament *7th March 2007*

Coming into force in accordance with regulation 1(1) and (2)

The Scottish Ministers, in exercise of the powers conferred by sections 78A(9) and 78YC of the Environmental Protection Act 1990(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Radioactive Contaminated Land (Scotland) Regulations 2007 and, subject to paragraph (2), shall come into force on 30th October 2007.

(2) These Regulations come into force on 1st April 2007 for the purpose of the exercise by the Scottish Ministers of any power conferred by Part IIA of the 1990 Act (as modified by these Regulations) to make regulations or orders, give directions or issue guidance.

(3) In these Regulations “the 1990 Act” means the Environmental Protection Act 1990(a).

(4) These Regulations extend to Scotland only.

Extension and modification of Part IIA of the 1990 Act

2. Part IIA of the 1990 Act(b) is to have effect in relation to harm, or pollution of the water environment(c), so far as attributable to any radioactivity possessed by any substance, with the modifications set out in regulations 3 to 15.

Section 78A

3. In section 78A of the 1990 Act (preliminary)—

(a) in subsection (3), in paragraph (a), after “section” insert “78BC(4),”;

(a) 1990 c.43. Sections 78A to 78YC were inserted by section 57 of the Environment Act 1995 (c.25); “prescribed” and “regulations” are defined in section 78A(9). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) Part IIA was amended by S.S.I. 2005/658, regulation 2.

(c) The phrase “water environment” was substituted for “controlled waters” in Part IIA of the 1990 Act by S.S.I. 2005/658.

(b) for subsection (4) substitute–

“(4) Subject to subsection (4A) below, “harm” means lasting exposure to any person resulting from the after-effects of a radiological emergency, past practice or past work activity.”; **(a)**

(c) after subsection (7) insert–

“(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 or the water environment” shall include ensuring that–

- (a) any such area is demarcated;
- (b) arrangements for the monitoring of the harm or pollution are made;
- (c) any appropriate intervention is implemented; and
- (d) access to or use of land or the water environment or buildings situated in the demarcated area is regulated.”; and

(d) in subsection (9)–

(i) before the definition of “the appropriate Agency” insert–

““the 1965 Act” means the Nuclear Installations Act 1965 (c.57);”;

(ii) 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 work activity or past practice, but shall not include radon gas and any radionuclide present as a result of the radioactive decay of radon;”;

(iii) after the definition of “the water environment” insert–

“and any other word or expression used both in this Part and in Council Directive 96/29/Euratom of 13th May 1996, laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation **(b)** has the same meaning for the purposes of this Part as it has in that Directive”.

Section 78B

4. In section 78B of the 1990 Act (identification of contaminated land) after subsection (4) insert–

“(5) This section applies to land contaminated other than as a result of any radioactivity possessed by any substance.”.

5. After section 78B of the 1990 Act insert–

“Duty to advise the appropriate Agency about radioactive contaminated land

78BA. If at any time (whether or not in performing its functions under section 78B(1) above), a local authority considers that any contaminated land in its area may be contaminated as a result of any radioactivity possessed by any substance, it shall give notice of that fact to the appropriate Agency.

(a) Subsection (4A) was inserted by SSI 2005/658.

(b) O.J. No. L 159, 29.06.1996, p.1.

Identification of radioactive contaminated land

78BB. (1) Where the appropriate Agency considers that there are reasonable grounds for believing that land may be contaminated land as a result of any radioactivity possessed by any substance, it shall inspect that land for the purposes of identifying whether it is so contaminated and whether it requires designation as a special site under section 78BC below.

(2) The fact that substances have been or are present on the land shall not of itself be taken to be reasonable grounds for the purposes of subsection (1) above.

(3) The appropriate Agency shall advise the local authority in whose area the land is situated of the outcome of any inspection under subsection (1) above.

(4) In performing its functions under subsection (1) above, the appropriate Agency shall act in accordance with any guidance issued for the purpose in accordance with section 78YA below.

Designation of special sites

78BC. (1) If at any time (whether or not following a notification under section 78BA above or in performing its functions under section 78BB(1) above) it appears to the appropriate Agency that any contaminated land might be land which is contaminated as a result of any radioactivity possessed by any substance and which requires designation as a special site, the appropriate Agency—

- (a) shall decide whether or not the land is land which is required to be so designated; and
- (b) if it decides that the land is land which is required to be so designated, shall give notice of that decision to the relevant persons.

(2) For the purposes of this section, “the relevant persons” at any time in the case of any land are the persons who at that time fall within paragraphs (a) to (d) below, that is to say—

- (a) the local authority in whose area the land is situated;
- (b) the owner of the land;
- (c) any person who appears to the appropriate Agency to be in occupation of the whole or any part of the land; and
- (d) each person who appears to the appropriate Agency to be an appropriate person.

(3) Where the appropriate Agency makes a decision falling within paragraph (b) of subsection (1) above, the decision shall take effect on the day after the expiration of the period of twenty-one days beginning with the day on which the notice required by virtue of that paragraph is given to the relevant persons.

(4) Where a decision that any land is land which is required to be designated as a special site takes effect in accordance with subsection (3) above, the notice given under subsection (1)(b) above shall have effect, as from the time when the decision takes effect, as the designation of that land as such a site.”.

Section 78C

6. In section 78C of the 1990 Act (identification and designation of special sites), after subsection (10) insert—

“(11) Sub-sections (1) to (7) above apply to land contaminated other than as a result of any radioactivity possessed by any substance.”.

Section 78D

7. In section 78D of the 1990 Act (referral of special site decisions to the Scottish Ministers) after subsection (7) insert—

“(8) This section applies to land contaminated other than as a result of any radioactivity possessed by any substance.”.

Section 78E

8. In section 78E of the 1990 Act (duty of enforcing authority to require remediation of contaminated land etc.)–

- (a) in subsection (1), in paragraph (a), after “section” insert “78BC(4),”;
- (b) for subsection (4), substitute–

“(4) Subject to subsection (4A) below, the only things by way of remediation which the enforcing authority may do, or require to be done, under or by virtue of this Part are things which it considers reasonable, having regard to–

- (a) the cost which is likely to be involved; and
- (b) the seriousness of the harm or the pollution of the water environment in question.

(4A) Where remediation includes an intervention, that part of the remediation which consists of an intervention may only be considered reasonable–

- (a) where the reduction in detriment due to radiation is sufficient to justify any adverse effects and costs, including social costs, of the intervention; and
- (b) where the form, scale and duration of the intervention is optimised.

(4B) For the purpose of subsection (4A) above, the form, scale and duration of the intervention shall be taken to be optimised if the benefit of the reduction in health detriment less the detriment associated with the intervention is maximised.”; and

- (c) in subsection (5), in paragraph (c), after “(4)” insert “or (4A)”.

Section 78F

9. In section 78F(9) of the 1990 Act (determination of the appropriate person to bear responsibility for remediation), after “process” insert “or radioactive decay”.

Section 78H

10. In section 78H of the 1990 Act (restrictions and prohibitions on serving remediation notices)–

- (a) in subsection (3), after paragraph (a) insert–
 - “(aa) if a decision falling within paragraph (b) of section 78BC(1) above is made in relation to the contaminated land in question, the period of three months beginning with the day on which the notice required by virtue of that paragraph is given;”.
- (b) in subsection (5), in paragraph (a), after “78E(4)” insert “, (4A)”;
- (c) in subsection (6), after “78E(4)” insert “, (4A)”.

Section 78N

11. In section 78N of the 1990 Act (powers of the enforcing authority to carry out remediation)–

- (a) after subsection (1) insert–
 - “(1A) The enforcing authority shall exercise its power under subsection (1) above in any case falling within paragraph (c), (d), (e) or (f) of subsection (3) below.
 - (1B) The Scottish Ministers may make available to the enforcing authority a sum or sums 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) above 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.”; and
- (b) in subsection (4), after “78E(4)” insert “, (4A)”.

Section 78R

12. In section 78R(1) of the 1990 Act (registers), after paragraph (d) insert–

- “(da) notices under subsection (1)(b) of section 78BC above which have effect by virtue of subsection (4) of that section as the designation of any land as a special site;”.

Section 78X

13. In section 78X (supplementary provisions) of the 1990 Act (supplementary provisions), after subsection (5) insert–

- “(6) This section applies to land contaminated other than as a result of any radioactivity possessed by any substance.”.

Section 78YA

14. In section 78YA(4A) of the 1990 Act (supplementary provisions with respect to guidance by the Scottish Ministers), after “78B(2)” insert “, 78BB(4)”.

Section 78YB

15. In section 78YB of the 1990 Act (interaction of Part IIA with other enactments), after subsection (4), insert–

- “(5) This Part does not apply in respect of contaminated land within a nuclear site.
- (6) This Part does not apply in respect of 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) This Part does not apply to contaminated land which is in such a condition 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 the contaminated 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 the 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.

- (8) This Part does not apply in respect of contaminated land if–
- (a) action is required to be taken by a local authority under regulation 13(2) of the Radiation (Emergency Preparedness and Public Information) Regulations 2001(a); and
 - (b) that action would for the purposes of this Part amount to remediation of the relevant land.
- (9) In this section–
- “nuclear site” means any site in respect of which–
- (a) a nuclear site licence is for the time being in force; or
 - (b) after the revocation or surrender of that licence, the period of responsibility of the licensee has not come to an end;
- and “nuclear site licence”, “licensee”, “period of responsibility”, “relevant foreign law” and “relevant foreign operator” have the meanings given by the 1965 Act.”.

Modification of the Environment Act 1995

16. In section 108(15) (powers of enforcing authorities and persons authorised by them) of the Environment Act 1995(b)–

- (a) in the definition of “pollution control functions”, in relation to the Agency or SEPA, after paragraph (n), insert–
 - “(o) regulations made by virtue of section 78YC of the Environmental Protection Act 1990;”;and
- (b) in the definition of “pollution control functions”, in relation to a local enforcing authority, after paragraph (c), insert–
 - “or
 - (d) by or under regulations made by virtue of section 78YC of the Environmental Protection Act 1990;”.

Amendment of the Contaminated Land (Scotland) Regulations 2000

17. In regulation 2(1) of the Contaminated Land (Scotland) Regulations 2000(c) (land required to be designated as a special site) after paragraph (h) insert–

- “; and
- (i) land which is contaminated wholly or partly by virtue of any radioactivity possessed by any substance in, on or under that land.”.

ROSS FINNIE
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
6th March 2007

(a) S.I. 2001/2975.
(b) 1995 c.25.
(c) S.S.I. 2000/178 as amended by S.S.I. 2000/323, Schedule 10(2) paragraph 17(2)(b) and S.S.I. 2005/658, regulation 3.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part IIA of the Environmental Protection Act 1990 (“the 1990 Act”; “Part IIA”) sets out a regime for the identification and remediation of contaminated land. Section 78YC of the 1990 Act provides that regulations may give effect to Part IIA with modifications for the purpose of dealing with harm, or pollution of the water environment which is attributable to radioactivity possessed by any substances.

These Regulations, which apply to Scotland only, apply Part IIA of the 1990 Act in relation to such harm or pollution. These Regulations also make provision for Part IIA to have effect with modifications for the purpose of the identification and remediation of radioactive contaminated land.

These Regulations also transpose articles 48 and 53 of 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 (O.J. No. L 159, 29.06.1996, p.1).

Regulation 2 applies Part IIA of the 1990 Act in relation to such harm or pollution subject to the modifications in regulations 3 to 13.

Regulation 3 modifies various definitions in section 78A of the 1990 Act.

Regulation 4 amends section 78B of the 1990 Act so that the duty on a local authority under that section to identify contaminated land does not apply in relation to radioactive contamination. Instead, regulation 5 inserts a new section 78BA into the 1990 Act requiring the local authority to notify the appropriate Agency (which, in relation to Scotland, is SEPA) where it considers land may be subject to such contamination. Regulation 5 also inserts a new section 78BB into the 1990 Act requiring SEPA to inspect land where there are reasonable grounds for believing that it may be subject to such contamination, to identify such contaminated land and to advise the local authority of the outcome of such an inspection. Finally, regulation 5 also inserts a new section 78BC into the 1990 Act to require SEPA to designate land contaminated by radioactivity as a special site and sets out the procedure for notifying a designation.

Regulation 6 amends section 78C of the 1990 Act to disapply the normal procedures for designation and notification of special sites in consequence of the new section 78BC inserted by regulation 5.

Regulation 7 disapplies section 78D of the 1990 Act, the power to refer special site decisions to the Scottish Ministers, in consequence of the new section 78BC inserted by regulation 5.

Regulations 8(a) and 10 respectively amend section 78E(1) and section 78H(3) of the 1990 Act also in consequence of the new section 78BC of the 1990 Act inserted by regulation 5.

Regulation 8(b) restricts the discretion of an enforcing authority to determine what is reasonable by way of remediation for the purposes of section 78E(4) of the 1990 Act. The effect is to require the authority to weigh up the benefit of any intervention against the health detriment and costs arising from such intervention and to maximise the benefit from it. Regulation 8(c) gives the Scottish Ministers a power to issue guidance about this.

Regulation 11 amends section 78N of the 1990 Act so as to require the enforcing authority to carry out remediation itself in certain circumstances. It also gives the Scottish Ministers a power to fund such an authority for that purpose.

Regulation 12 amends section 78R(1) of the 1990 Act to ensure that the enforcing authority maintains a register regarding notices served under the new section 78BC(1)(b) inserted by regulation 5 of these Regulations.

Regulation 13 disapplies section 78X of the 1990 Act, the power to remediate contaminated land in one or more local authority areas, in consequence of the new section 78BC inserted by regulation 5.

Regulation 14 amends section 78YA(4A) of the 1990 Act to ensure that any guidance to be issued under the new section 78BB(3) (as inserted by regulation 5) is subject to parliamentary scrutiny.

Regulation 15 amends section 78YB of the 1990 Act to disapply the application of Part IIA of the 1990 Act in relation to radioactive contamination—

- (a) within nuclear sites licensed under the Nuclear Installations Act 1965 (“the 1965 Act”);
- (b) within sites which have nuclear installations and are used by or on behalf of the Secretary of State for Defence;
- (c) where action is taken to deal with that contamination in implementation of an emergency plan prepared pursuant to the Radiation (Emergency Preparedness and Public Information) Regulations 2001; and
- (d) resulting from a breach of certain duties under the 1965 Act or in related circumstances.

Regulation 16 ensures that the powers of SEPA under section 108 of the Environment Act 1995 to enter land and investigate matters which may have given rise to pollution, extends to its functions under Part IIA of the 1990 Act as it applies to harm or pollution of the water environment attributable to radioactivity.

Regulation 17 amends regulation 2(1) of the Contaminated Land (Scotland) Regulations 2000 to ensure that land contaminated by radioactivity falls within the category of land which, for the purposes of section 78(8) of the 1990 Act, may require designation as a special site.

A Regulatory Impact Assessment in relation to these Regulations has been placed in the library of the Scottish Parliament and copies can be obtained from the SEPA Sponsorship and Waste Division, Scottish Executive Environment and Rural Affairs Department (SEERAD), Victoria Quay, Leith, EH6 6QQ.

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