

2007 No. 3240

ENVIRONMENTAL PROTECTION, SCOTLAND

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

<i>Made</i>	- - - -	<i>12th 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 (Scotland) (Amendment) Regulations 2007 and come into force on 10th December 2007.

Interpretation

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

Amendments

3.—(1) The Radioactive Contaminated Land (Scotland) Regulations 2007(c) are amended as follows.

(2) For paragraph (3) of regulation 1, substitute—

“(3) In these Regulations—

“the 1990 Act” means the Environmental Protection Act 1990;

“the 1965 Act” means the Nuclear Installations Act 1965;

“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;

(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). The powers under these sections have been devolved to the Scottish Ministers (see section 53 of the Scotland Act 1998 (c. 46)). The Secretary of State’s power to make regulations under section 78YC is preserved by section 57(1) of the Scotland Act 1998 for the purpose of implementing obligations under Articles 48 and 53 of Council Directive 96/29/Euratom.

(b) As inserted by paragraphs (5) and (7) respectively of regulation 3 of these Regulations.

(c) S.S.I. 2007/179.

- (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; and

“licensee”, “relevant foreign law” and “relevant foreign operator” have the meanings given by section 26(1) of the 1965 Act.”.

(3) For regulation 2, substitute—

“Extension and modification of Part IIA of the 1990 Act

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

(2) Provisions relating to the water environment or pollution of the water environment in Part IIA of the 1990 Act do not have effect in relation to land contaminated by a nuclear occurrence.”.

(4) For regulation 3, substitute—

“Section 78A

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

(a) after subsection (2), insert—

“(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.”;

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

(c) 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.”;

(d) 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

(e) in subsection (9)—

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

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

(ii) 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.”;

(iii) 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;”;

(iv) 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 has the same meaning for the purposes of this Part as it has in that Directive.”.”.

(5) For regulation 9, substitute—

“Section 78F

9. In section 78F of the 1990 Act (determination of the appropriate person to bear responsibility for remediation)—

(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”.”.

(6) In regulation 10, for sub-paragraph (b), substitute—

“(b) in subsection (5)—

- (i) in paragraph (a), after “78E(4)” insert “, (4A)”; and

(ii) in paragraph (c), after “the authority itself” insert “or the Secretary of State by virtue of section 78F(1A)”;

(7) For regulation 11, substitute—

“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) 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 Scottish 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).”;

(b) in subsection (3), at the end of paragraph (f), insert—

“;

(g) where section 78F(1A) applies”;

(c) in subsection (4), after “78E(4)” insert “, (4A)”.

(8) For regulation 15, substitute—

“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 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; and

(b) that action would for the purposes of this Part amount to remediation of the relevant land.

(8) 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” and “period of responsibility”, have the meanings given by the 1965 Act.”.”.

(9) After regulation 17, insert—

“Modification of the Contaminated Land (Scotland) Regulations 2000

18. Regulation 7 of the Contaminated Land (Scotland) Regulations 2000 applies with the modification that 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;”.

Extension of the effect of the modification and amendment made by regulations 16 and 17 respectively

19. For the avoidance of doubt, the modification made by regulation 16 and the amendment made by regulation 17 also have effect in relation to land contaminated by a nuclear occurrence.”.

12th 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 IIA of the Environmental Protection Act 1990 (c. 43) (“Part IIA” of “the 1990 Act”) sets out a regime for the identification and remediation of contaminated land. In Scotland the Radioactive Contaminated Land (Scotland) Regulations 2007 (S.S.I. 2007/179) (“the 2007 Regulations”) apply the powers under the 1990 Act to make regulations and guidance in relation to radioactive substances and make provision for Part IIA to have effect with modifications for the purpose of the identification and remediation of radioactive contaminated land.

The 2007 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 (in other words, situations where radiation arises from a nuclear occurrence). The effect of these Regulations is to amend the 2007 Regulations so as to apply the modifications they make to Part IIA and to the Environment Act 1995 (c. 25) to all radioactivity (paragraphs (4) to (9) of regulation 3). Regulation 3(3) excludes provisions relating to the water environment or pollution of the water environment in Part IIA from having effect in relation to situations arising from a nuclear occurrence. These Regulations also apply the amendment made to the Contaminated Land (Scotland) Regulations 2000 (S.S.I. 2000/178) to all radioactivity and modify those Regulations so as to provide for a new ground of appeal against a remediation notice (regulation 3(9)).

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 2007 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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