

**2009 No. 202**

**ENVIRONMENTAL PROTECTION**

**The Radioactive Contaminated Land (Scotland) Amendment  
Regulations 2009**

<i>Made</i> - - - -	<i>27th May 2009</i>
<i>Laid before the Scottish Parliament</i>	<i>28th May 2009</i>
<i>Coming into force</i> - -	<i>26th June 2009</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 78A(9) and 78YC of the Environmental Protection Act 1990(a) and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Radioactive Contaminated Land (Scotland) Amendment Regulations 2009 and come into force on 26th June 2009.

**Amendment of the Radioactive Contaminated Land (Scotland) Regulations 2007**

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

(2) In regulation 3 paragraph (a), after “insert” insert—

“(2ZA) Where this subsection applies, subsection (2) above does not apply and “contaminated land” means any land which appears to the appropriate Agency to be in such a condition, by reason of substances in, on or under the land, that—

- (i) significant harm is being caused or there is a significant possibility of such harm being caused; or
- (ii) significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused,

and, in determining whether any land appears to be such land, the appropriate Agency shall, subject to subsection (5) below, act in accordance with guidance issued by the Scottish Ministers in accordance with section 78YA below with respect to the manner in which that determination is to be made.

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(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). Section 78A was amended by S.S.I. 2005/658 regulations 2(2) and (3) and applied with modifications by S.S.I. 2007/179 regulation 3. Section 78YC was amended by S.S.I. 2005/658 regulation 2(2). The functions of the Secretary of State under sections 78A and 78YC were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.S.I. 2007/179, as amended by S.I. 2007/3240.

(2ZB) Subject to subsection (2ZC) below, subsection (2ZA) above applies in relation to–

- (i) harm; or
- (ii) pollution of the water environment;  
attributable to any radioactivity possessed by any substance.

(2ZC) Subsection (2ZA) above does not apply to land contaminated by a nuclear occurrence.”;”.

(3) In regulation 3(e)(iii)–

- (a) after “means,” insert “in relation to land contaminated by a nuclear occurrence,”;
- (b) insert after “radon” where second occurring–

“and other than in relation to land contaminated by a nuclear occurrence, means, whether in solid or liquid form or in the form of a gas or vapour, any substance containing radionuclides which have resulted from the after-effects of a radiological emergency or have been processed as part of a past practice or past work activity;”.

(4) For regulation 14, substitute–

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

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

St Andrew’s House,  
Edinburgh  
27th May 2009

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations further amend the Radioactive Contaminated Land (Scotland) Regulations 2007 (“the first 2007 Regulations”), as already amended by the Radioactive Contaminated Land (Scotland) (Amendment) Regulations 2007 (S.I. 2007/3240) (“the second 2007 Regulations”).

The first 2007 Regulations extended the contaminated land regime contained in Part IIA of the Environmental Protection Act 1990 (“the 1990 Act”) to most radioactive contaminated land, subject to certain modifications. The second 2007 Regulations further extended the provisions of Part IIA to land contaminated by a nuclear occurrence, again subject to modifications contained in those Regulations.

The current Regulations make two additional modifications in relation to radioactive contaminated land other than land contaminated by a nuclear occurrence. They provide for the Scottish Environment Protection Agency to determine whether such land is “contaminated land”. They also modify the definition of “substance” contained in the two sets of 2007 Regulations. Regulation 2(4) makes a consequential amendment to provisions relating to guidance issued by the Scottish Ministers.

No Regulatory Impact Assessment has been prepared for this instrument as it has no impact on the cost of business.

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