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STATUTORY INSTRUMENTS

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**2018 No. 429**

**ENVIRONMENTAL PROTECTION, ENGLAND**

**The Radioactive Contaminated Land (Enabling Powers and Modification of Enactments) (England) (Amendment) Regulations 2018**

<i>Made</i>	- - - -	<i>21st March 2018</i>
<i>Laid before Parliament</i>		<i>28th March 2018</i>
<i>Coming into force</i>		
<i>for the purpose of regulations 1 and 2</i>		<i>18th April 2018</i>
<i>for the purpose of regulation 3</i>		<i>22nd June 2018</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by section 78YC of the Environmental Protection Act 1990(1).

**Citation and commencement**

1.—(1) These Regulations may be cited as the Radioactive Contaminated Land (Enabling Powers and Modification of Enactments) (England) (Amendment) Regulations 2018.

(2) This regulation and regulation 2 come into force on 18th April 2018.

(3) Regulation 3 comes into force on 22nd June 2018.

**Amendment of the Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005**

2.—(1) The Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005(2) are amended as follows.

(2) In regulation 1 (citation, commencement, application and interpretation)—

(a) in paragraph (3)—

(i) omit the definition of “Article”;

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(1) 1990 c.43. Sections 78A to 78YC were inserted by section 57 of the Environment Act 1995 (c. 25). Section 78YC was amended by S.I. 2010/675 and 2016/1154. See the definition of “prescribed” and “regulations” in section 78A(9).

(2) S.I. 2005/3467 was amended by S.I. 2010/2147.

- (ii) omit the definition of “Title” and the “and” before it;
- (b) omit paragraph (4).
- (3) Omit regulation 3 (interpretation of modifications).
- (4) In Schedule 1 (modification of Part 2A)—
  - (a) in paragraph 1(3), in the substituted section 78A(4) (definition of harm)—
    - (i) for “a radiological” substitute “an”;
    - (ii) after “activity” insert “(except in section 78E(4A)(a)(3))”;
  - (b) in paragraph 1(6), in the substituted section 78A(7) (definition of remediation), for “cognate expressions” substitute “references to remediating”;
  - (c) in paragraph 1(6), in the substituted section 78A(7A) (supplemental definition of remediation)—
    - (i) after paragraph (a), insert—
      - “(aa) affected members of the public are identified;
      - (ab) assessment of the means available to the individuals identified under paragraph (aa) for controlling their own exposure is made;”;
    - (ii) omit paragraph (c) and the “and” following it;
    - (iii) at the end of paragraph (d) insert “; and”;
    - (iv) after paragraph (d), insert—
      - “(e) any other appropriate protective or remedial measure is implemented.”;
  - (d) for paragraph 1(8), substitute—
    - “(8) In subsection (9)—
      - (a) omit the definition of “controlled waters”;
      - (b) 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 containing radionuclides which have resulted from the after-effects of an emergency or have been processed as part of a past practice or past work activity;”;
        - and
      - (c) after the definition of “unitary authority”, insert—
        - “and any other word or expression used both in this Part and in Council Directive 2013/59/Euratom, laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom(4), has the same meaning for the purposes of this Part as it has in that Directive.”;
  - (e) in paragraph 4(2), for the substituted section 78E(4A) and (4B) (duty of enforcing authority to require remediation of contaminated land etc), substitute—
    - “(4A) Where remediation includes the implementation of a protective or remedial measure, that part of the remediation which consists of the implementation of any such measure may be considered reasonable only—
      - (a) where the measure does more good than harm; and

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(3) See the modification made to section 78E by regulation 2(4)(e) of these Regulations.

(4) OJ No L 13, 17.01.2014, p 1.

(b) where the form, scale and duration of the measure is optimised.

(4B) For the purpose of subsection (4A), the form, scale and duration of a protective or remedial measure shall be taken to be optimised if the magnitude of individual doses, the likelihood of exposure and the number of individuals exposed are kept as low as reasonably achievable taking into account the current state of technical knowledge and economic and societal factors.”.

(5) Omit Schedule 2 (directive definitions).

### **Amendment of the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006**

**3.—(1)** The Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006<sup>(5)</sup> are amended as follows.

(2) In regulation 5—

(a) in paragraph (3), in the substituted section 78A(4) (definition of harm)—

(i) for “a radiological” substitute “an”;

(ii) after “activity” insert “(except in section 78E(4A)(a)(6))”;

(b) in paragraph (6), in the substituted section 78A(7) (definition of remediation), for “cognate expressions” substitute “references to remediating”;

(c) in paragraph (6), in the substituted section 78A(7A) (supplemental definition of remediation)—

(i) after paragraph (a), insert—

“(aa) affected members of the public are identified;

(ab) assessment of the means available to the individuals identified under paragraph (aa) for controlling their own exposure is made;”;

(ii) omit paragraph (c) and the “and” following it;

(iii) at the end of paragraph (d), insert “; and”;

(iv) after paragraph (d), insert—

“(e) any other appropriate protective or remedial measure is implemented.”;

(d) in paragraph (8)—

(i) for sub-paragraph (d), substitute—

“(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 containing radionuclides which have resulted from the after-effects of an emergency or have been processed as part of a past practice or past work activity;”;

(ii) for sub-paragraph (e), substitute—

“(e) after the definition of “unitary authority”, insert—

“and any other word or expression used both in this Part and in Council Directive 2013/59/Euratom, laying down basic safety standards for protection against the dangers arising from exposure

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(5) [S.I. 2006/1379](#), amended by [S.I. 2007/3245](#), [2008/520](#), [2010/2147](#) and [2016/1154](#). [S.I. 2016/562](#) also makes amendments which are not yet in force.

(6) See the modification made to section 78E by regulation 3(3) of these Regulations.

to ionising radiation and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom, has the same meaning for the purposes of this Part as it has in that Directive.””.

(3) In regulation 8(3), for the substituted section 78E(4A) and (4B) (duty of enforcing authority to require remediation of contaminated land etc), substitute—

“(4A) Where remediation includes the implementation of a protective or remedial measure, that part of the remediation which consists of the implementation of any such measure may be considered reasonable only—

- (a) where the measure does more good than harm; and
- (b) where the form, scale and duration of the measure is optimised.

(4B) For the purpose of subsection (4A), the form, scale and duration of a protective or remedial measure shall be taken to be optimised if the magnitude of individual doses, the likelihood of exposure and the number of individuals exposed are kept as low as reasonably achievable taking into account the current state of technical knowledge and economic and societal factors.”.

*Richard Harrington*  
Parliamentary Under Secretary of State  
Department for Business, Energy and Industrial  
Strategy

21st March 2018

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## EXPLANATORY NOTE

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

These Regulations are part of a package of measures to transpose Council Directive 2013/59/Euratom of 5 December 2013 (“the Directive”) laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom. Most of the transposition measures are being dealt with by amending or replacing existing statutory instruments. These Regulations transpose some requirements in Article 73(1) of the Directive as well as making amendments to reflect new definitions in the Directive.

Part 2A of the Environmental Protection Act 1990 (c.43) (“EPA 1990”) sets out a regime for the identification and remediation of contaminated land. The Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005 (S.I. 2005/3467) (“the 2005 Regulations”) applied Part 2A of the EPA 1990 with modifications for the purposes of the exercise of the Secretary of State’s powers to make regulations, give directions or issue guidance in relation to harm attributable to radioactive substances. The Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006 (“the 2006 Regulations”) made provision for Part 2A to apply with modifications for the purpose of dealing with harm attributable to any radioactivity possessed by any substance.

These Regulations amend the 2005 and the 2006 Regulations.

Regulation 3 amends the modifications made by the 2006 Regulations to the definition of remediation in order to implement obligations under Article 73(1)(b) and (e) of the Directive. Regulation 3 also amends references to Council Directive 96/29/Euratom which is replaced by the Directive and makes other amendments to reflect the new definitions of “emergency”, “protective measures”, “remedial measures”, “optimisation” and “justification” in the Directive. Regulation 2 makes analogous amendments to the 2005 Regulations.

A transposition note is submitted with the Explanatory Memorandum which is available alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

A full impact assessment has not been produced for this instrument as no impact on the private, voluntary or public sector is foreseen.