

Explanatory Memorandum to the Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) Regulations 2018

This Explanatory Memorandum has been prepared by the Department for Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) Regulations 2018

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Cabinet Secretary for Environment, Planning & Rural Affairs
15 June 2018

1. Description

The primary purpose of the instrument is to amend the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006 (S.I. 2006/2988 (W. 277)) (“the 2006 Regulations”) to transpose parts of Council Directive 2013/59/EURATOM of 5 December 2013 (“the Directive”) relating to radioactive contaminated land.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

Late transposition of an EU obligation

Article 106 of the Directive requires Member States to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 February 2018. Delays to finalising these regulations following consultation have meant this deadline has not been met.

3. Legislative background

This Instrument amends the 2006 Regulations and is made in order to transpose new requirements set out in the Directive in relation to the exposure of the public to ionising radiation (“public exposures”). The Directive updates and simplifies existing arrangements for protection against the dangers arising from exposure to ionising radiation by consolidating 5 earlier directives and a European Commission recommendation into one directive. In particular, it consolidates the old Basic Safety Standards Directive (Council Directive 96/29/Euratom) (“the 1996 Directive”) and the Directive on the control of high-activity sealed radioactive sources and orphan sources (Council Directive 2003/122/Euratom) (commonly referred to as “the HASS Directive”). Given that the Directive is primarily a consolidation of existing EU law, most of the public exposure requirements of the Directive are already implemented in existing legislation. In addition to the public exposure provisions, the Directive also covers radiation protection for workers and medical patients, and emergency preparedness and response. The transposition date is 6 February 2018.

Part 2A of the Environmental Protection Act 1990 (“the 1990 Act”) sets out a regime for the identification and remediation of contaminated land. Under section 78YC of the 1990 Act, the normal regime does not apply with respect to harm or water pollution that is attributable to radioactivity. However, section 78YC confers powers on the Welsh Ministers to make regulations applying the Part 2A regime, in relation to Wales, with any necessary modifications, to situations where harm is attributable to radioactive contamination.

Originally functions of the Secretary of State, functions Part 2A were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by virtue of article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions 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. 32)

The 2006 Regulations make provision for Part 2A of the 1990 Act to have effect in relation to Wales with modifications, for the purposes of dealing with, harm so far as attributable to radioactive contamination.

This Instrument amends the modifications made by the 2006 Regulations to the definition of remediation in s78A(7A) of the EPA 1990. The amendments transpose the two new requirements contained in Article 73(1) (b) and (e) of the Directive which concern the content of protection strategies for the management of radioactive contaminated land. This Instrument also updates and replaces terminology in line with the new language in the Directive.

This Instrument also replaces certain references to the Secretary of State in the modifications made by the 2006 Regulations with references to the Welsh Ministers. This ensures that the relevant modified functions are exercisable by the Welsh Ministers, in line with the underlying functions within Part 2A EPA 1990.

This instrument is part of a set of four which are being made to transpose the public exposure requirements of the Directive. The other instruments, which have already been made, are:

- the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2018;
- the Ionising Radiations (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018
- the Justification of Practices Involving Ionising Radiation (Amendment) Regulations 2018

The Environmental Permitting Regulations were made on a composite basis by the National Assembly and the UK Government whilst the Ionising Radiations and Justification Regulations were made by the UK Government.

4. Purpose & intended effect of the legislation

The Directive introduced a new requirement on Member States to ensure that protection strategies for managing land which is contaminated with radioactive material contain specific steps (Article 73.1). The 2006 Regulations together with the Radioactive Contaminated Land Statutory Guidance, which is due to be updated, already meet most of the requirements of the Directive. Only a few minor changes have been identified in order to transpose new requirements under the Directive. The key changes are:

- the Directive introduced a new requirement on Member States to ensure that protection strategies include steps to identify members of the public affected by the radioactive contaminated land (article 73.1(b)). A new provision has been introduced in the 2006 Regulations amending the definition of remediation to reflect this.
- the Directive requires that protection strategies include assessment of the means available to affected members of the public for controlling their own

exposure (article 73.1(e)). A new provision in the Regulations amending the definition of remediation reflects this.

- the term “intervention” is no longer used within the Directive. This term has been replaced with the new concept of “protective measure” and remedial measures”, which are defined within the Directive and considered to be equivalent to “intervention”.
- further updates have been made to reflect the new definitions in the Directive. The definitions of optimisation and justification have been updated to accord with the definitions in Article 5 of the Directive. The regulations now refer to “an emergency” which is defined in the Directive (rather than “a radiological emergency”). References to the 1996 Directive have been updated to refer to the Directive.

It should be noted that currently there is no land designated as radioactively contaminated land in Wales.

5. Consultation

A 6 week, UK wide, public consultation was undertaken between 5 October and 15 November 2017. One of the consultation questions focussed on proposed changes to the radioactive contaminated land regime. All comments were considered before legislative amendments were finalised.

A second, targeted consultation specifically on the proposed amendments was conducted on an England and Wales basis and lasted for two weeks (3 January to 19 January 2018). This second consultation was targeted at the environmental regulators, technical experts, local authorities and land owners and asked three substantive questions on draft guidance with regard to setting reference levels for existing exposure situations, the updated definition of ‘remediation’ and the tests of justification and optimisation. There were five responses all of which supported the proposals and had minor suggestions to improve drafting. The full government response (on an England and Wales basis) will be made available to consultees in due course.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has not been completed for these Regulations. The Regulations implement the Basic Safety Standards Directive (2013/59/Euratom) and failure to implement would risk infraction proceedings against the UK and the associated costs.