EXPLANATORY MEMORANDUM TO

THE RADIOACTIVE CONTAMINATED LAND (MODIFICATION OF ENACTMENTS) (ENGLAND) (AMENDMENT) REGULATIONS 2007

2007 No. 3245

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument amends the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006 (S.I. 2006/1379) ("the 2006 Regulations") so as to extend the modifications made by the 2006 Regulations to Part 2A of the Environmental Protection Act 1990 ("Part 2A" of "the 1990 Act") to land contaminated by a nuclear occurrence.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 There are none.

4. Legislative Background

4.1 Part 2A of the Environmental Protection Act 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) and the 2006 Regulations apply the powers under the 1990 Act to make regulations and guidance in relation to radioactive substances and make provision for Part 2A to have effect with modifications for the purpose of the identification and remediation of radioactive contaminated land.

4.2 However, the 2006 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 ("the Paris Convention"), by the Nuclear Installations Act 1965 (c. 57) or foreign law (in other words, they exclude land contaminated by a nuclear occurrence). This instrument amends the 2006 Regulations so as to apply the modified Part 2A to all radioactivity.

4.3 This instrument also completes for England the transposition of Articles 48 and 53 of the Basic Safety Standards Directive (Council Directive 96/29/Euratom of 13 May 1996 which lays down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation).

4.4 A Transposition Note is attached to this explanatory memorandum at Annex A.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Part 2A of the 1990 Act came into force in England on 1 April 2000 to provide an improved system for the identification and remediation of land where contamination is causing unacceptable risks to human health or the wider environment. The policy and priorities for contaminated land were set out in Annex 1 of the DETR Circular 02/2000: Contaminated Land. The principles underlying the policy are those of sustainable development and "the polluter pays".

7.2 The Part 2A regime applies a risk-based approach (where risk is assessed on the basis of the current use and circumstances of the land) and requires remediation action to be taken in relation to the land appropriate to the risk. The regime is not directed at assessing risks in relation to a future use of the land; that would require a specific grant of planning permission.

7.3 There has been a long standing ministerial commitment to extend Part 2A of the 1990 Act to land contaminated by radioactive substances and to complete the transposition of Articles 48 and 53 of the Basic Safety Standards Directive ("the Directive") to ensure that the UK can meet its obligations under that Directive.

7.4 During the consultation on the 2006 Regulations (which was carried out with local authorities, environmental regulators, industry and other stakeholders including radiological specialists and environmental groups), consultees were asked their views on whether and how the proposed extension of Part 2A should apply to incidents covered by the Paris Convention, including who should be liable to take and/or pay for the actions required by the extended regime.

7.5 A wide variety of views were expressed but the majority felt that Part 2A should apply but that liability should follow the Paris Convention requirement for the operator to be made liable. Under the Paris Convention such an approach would be dependent upon the provision of commercial insurance (or other financial guarantee) to underwrite the operator's liabilities. The 2006 Regulations extended Part 2A to radioactivity excluding circumstances in which the Paris Convention is in play while options for financial security were explored to meet Paris Convention requirements. Unfortunately, under pressure of infraction proceedings from the European Commission, we are now obliged to complete our transposition of the Directive or face punitive fines although it has still not proved possible to secure commercial insurance or to put in place another form of financial guarantee. This instrument therefore (along with counterpart instruments for Wales, Scotland and Northern Ireland) completes the transposition of the Directive allowing the UK to meet its obligations but does so by placing an obligation on the Secretary of State to deal with contamination arising from a nuclear occurrence, an

approach which avoids the financial guarantee difficulties but leaves open the option to address this at a later date when such provision can be made.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

Chris Wilson at the Department for Environment, Food and Rural Affairs Tel: 020 7328 1736 or e-mail: chris.k.wilson@defra.gsi.gov.uk can answer any queries regarding the instrument.

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ANNEX A - TRANSPOSITION NOTE

Directive being transposed:

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 ionising radiation (OJ No. L159, 29.6.96, p.1):

- Article 48
- Article 53

There is existing transposing legislation: the Nuclear Installations Act 1965, the Radioactive Substances Act 1993 (c. 12), the Ionising Radiations Regulations 1999 (S.I. 1999/3232), the Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005 (S.I. 2005/3467), the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006 (S.I. 2006/1379) and the Contaminated Land (England) Regulations 2006 (S.I. 2006/1380). This instrument completes the transposition in England by extending the modified Part 2A regime of the Environmental Protection Act to radioactive contamination arising from a nuclear occurrence.

In so far as these regulations relate to defence activities, Euratom obligations are not relevant.

Article	***Purpose***	***Implementation***	***Comments***
48	To ensure the principles of justification and optimisation are followed in all intervention situations. An intervention is defined in the Directive as an human activity that prevents or decreases the exposure of individuals to radiation from sources which are not part of a practice or which are out of control, by acting on sources, transmission pathways and individuals themselves.	Already implemented by regulation 8 of S.I. 2006/1379. By virtue of paragraphs (2) and (6) of regulation 3 of this instrument the Article 48 principles are extended to circumstances where contamination to land arises from a nuclear occurrence.	This has the effect of extending the requirements for intervention to be justified and optimised to circumstances where contamination to land arises from a nuclear occurrence.
53	Specific requirements for intervention in cases of lasting exposure resulting from the after-effects of a radiological emergency or a past practice to be followed: • Area concerned is demarcated; • Arrangements for the monitoring of exposure are made; • Any appropriate intervention is implemented, taking account of the real characteristics of the situation; • Access to or use of land or buildings situated in the demarcated area is regulated.	Already implemented by regulation 5 and 14 of S.I. 2006/1379 and regulation 4 of S.I. 2006/1380. By virtue of paragraphs (2) and (6) of regulation 3 of this instrument the Article 53 requirements are extended to circumstances where contamination to land arises from a nuclear occurrence and paragraphs (3) and (5) of regulation 3 require the Secretary of State to intervene in such circumstances.	This has the effect of extending the specific requirements for intervention to circumstances where contamination to land arises from a nuclear occurrence.