

THE EXTENSION OF PART 2A TO INCLUDE RADIOACTIVITY

Introduction

1. This advice note in the CLAN series applies to England only. It provides an update on the extension of Part 2A of the Environmental Protection Act 1990 to include radioactivity, following the public consultation exercise carried out between July and October 2005. More details will be provided in a new Defra document, currently being finalised for publication (see below). The Defra webpages on contaminated land are being progressively updated to reflect the changes. These webpages can be found at:

<http://www.defra.gov.uk/environment/land/contaminated/index.htm>

Coming into force date

2. With the completion of the statutory processes, the extended regime comes into force on **4 August 2006**.

New regulations and guidance

3. Regulations listed below have now been made and were laid before Parliament on 23 May 2006, with the exception of the enabling powers regulations which were made and laid last year as a paving measure. The new regulations, once in force, will extend Part 2A to include radioactivity, and update and replace the previous regulations. Weblinks have been included below for the various regulations.

4. Statutory Guidance is being issued by the Secretary of State in respect of the extended regime, the relevant chapters having been laid before Parliament recently under the terms of the Act.

5. A new document to replace DETR Circular 02/2000 on contaminated land is in preparation, which will provide further descriptive material on the regulations and other changes, and other updated material. This new document will include the full statutory guidance for Part 2A, as before, and is planned to be available later this summer. An on-line version will be provided on our webpages, in advance of the printed paper version, as soon as it becomes available.

6. A new Industry Profile has been published, and has been added to the contaminated land webpages. Work to finalise RCLEA – the technical guidance and software for assessing exposure on sites affected by radioactivity – is continuing and a further announcement will be made in due course. The consultation version of RCLEA documents are still available on the Defra webpages, in the interim.

The main Part 2A changes in brief

7. Main changes include:

- a modified definition of contaminated land in respect of radioactivity (please note that “modified” effectively means that in a case involving radioactivity, the original statutory provision has effect with modifications, while in all other cases it has effect just as before.
- radioactive substances are covered only insofar as human health is concerned: other receptors such as ecological systems or controlled waters are not covered with respect to radioactivity;
- the LA duty to inspect its area under Part 2A is modified in respect of radioactivity;
- “radioactive” contaminated land, if identified, will be a “special site”.

8. One further change concerns appeals. For **any** Part 2A remediation notice served on or after 4 August, appeal is to the Secretary of State. A remediation notice must tell recipients how to appeal, and so this change will directly affect the wording of any remediation notices which are planned to be served on or after that date.

Further details of the new regulations

9. Brief details of the regulations, with hyperlinks, are as follows. Printed copies are being sent to local authorities.

The Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006 (SI 2006/1379)

10. These regulations make provision for Part 2A to have effect with modifications for the purpose of the identification and remediation of radioactive contaminated land.

<http://www.opsi.gov.uk/si/si2006/20061379.htm>

The Contaminated Land (England) Regulations 2006 (SI 2006/1380)

11. These Regulations consolidate the provisions of the Contaminated Land (England) Regulations 2000 and the Contaminated Land (England) (Amendment) Regulations 2001, with further amendments. They make provision for an additional special site description of land which is contaminated land as a result of radioactive substances. They also remove provisions relating to appeals against remediation notices to a magistrates’ court. The 2000 and 2001 regulations are revoked from 4 August 2006.

<http://www.opsi.gov.uk/si/si2006/20061380.htm>

The Clean Neighbourhoods and Environment Act 2005 (Commencement No2) (England) Order 2006 (SI 2006/1361)

12. This Order brings into force section 104 of the Clean Neighbourhoods and Environment Act 2005 and Part 10 of Schedule 5 to that Act. These provisions amend section 78L of Part 2A, which relates to appeals against

remediation notices. They make the appellate authority the Secretary of State in relation to appeals against any remediation notice served on or after 4 August 2006. <http://www.opsi.gov.uk/si/si2006/20061361.htm>

The Environmental Protection Act 1990 (Isles of Scilly) Order 2006 (SI 2006/1381)

13. These regulations apply Part 2A to the Isles of Scilly, in so far as that Part applies in relation to harm attributable to radioactivity.

<http://www.opsi.gov.uk/si/si2006/20061381.htm>

The Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005 (SI 2005/3467)

14. These regulations apply the powers in Part 2A to make any regulations or orders, or give directions or issue guidance in respect of radioactive contaminated land. They are not directly relevant to the handling of cases by local authorities, but paved the way for the issue of the new regulations and guidance which are relevant. (These came into force on 20th January 2006.)

<http://www.opsi.gov.uk/si/si2005/20053467.htm>

Enquiries

15. Any enquiries (concerning England) should be sent by e-mail to Defra, at landquality.enquiries@defra.gsi.gov.uk.

LEQ/Defra July 2006

** an earlier version of this CLAN was circulated to local authorities only, in June. Some of the statutory instruments referred to had to be reissued, and so this revised and updated version of the CLAN note, with corrected SI details, has been prepared and will be given wider circulation.*