

EXPLANATORY MEMORANDUM TO

The Part 2A Statutory Guidance on Radioactive Contaminated Land (Wales)

This Explanatory Memorandum has been prepared by the Department for Environment and Sustainable Development and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and accordance with Standing Order 27.14

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Statutory Guidance on Radioactive Contaminated Land (Wales) 2012.

Name of Minister: J Griffiths

Date: September 2012

Description

1. Part 2A of the Environmental Protection Act 1990 (as it applies to harm attributable to radioactivity) requires Local Authorities to find “contaminated land” (referred to as radioactive contaminated land in this Memorandum and the Statutory Guidance) and ensures that “reasonable” remediation is undertaken where such land is found. The purpose of the Statutory Guidance is to explain key parts of the 1990 Act, and to set legally binding rules on how they should be applied by the regulator. Its main purpose is to:
 - Explain how local authorities should decide whether land is radioactive contaminated land
 - Explain how local authorities should go about implementing the Regime
 - Explain how the regulator (always the Environment Agency in the case of radioactive contaminated land) should ensure that remediation requirements are “reasonable”
 - Elaborate on specific aspects of the liability arrangements where more than one party is liable.
2. This Statutory Guidance applies only to radioactive contamination of land. Non-radioactive contamination of land is covered by separate Statutory Guidance issued by the Minister for the Environment and Sustainable Development.

Matters of special interest to the Constitutional and Legislative Affairs Committee

3. This Statutory Guidance has been scored in accordance the Welsh Government’s Welsh Language Scheme and does require translation due to the length, the technical nature and limited target audience of the document.
4. Section 78YA of the Environmental Protection Act 1990, as amended by Section 57 of the Environment Act 1995, requires that before the Statutory Guidance may be issued a draft of the Guidance must be laid before the Assembly and the Guidance may not be issued until after the period of 40 days beginning with the day on which draft is laid. In the reckoning of this period, no account may be taken of any time during which the Assembly is dissolved or prorogued or during which it is adjourned for more than four days

Legislative Background

5. Part 2A of the Environmental Protection Act 1990 (“Part 2A”) provides the legislative framework for the non-radioactive contaminated land regime in England, Wales and Scotland. Section 78YC of the

Environmental Protection Act 1990 gives powers to the Secretary of State to make regulations applying the Part 2A regime, with any necessary modifications, for the purpose of dealing with harm attributable to radioactivity. These powers have been exercised in the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006¹ to establish a legal framework for dealing with radioactive contaminated land in Wales

6. Both contaminated land regimes provide for contaminated land to be identified and dealt with in a risk-based manner. Under the non-radioactive contaminated land regime local authorities are the primary enforcing authorities under Part 2A and are required to identify contaminated land in their areas and deal with land where the risks of contamination to human health and the environment are unacceptable. The Environment Agency is the secondary regulator for land designated as “special sites”. Land that is radioactive contaminated land qualifies as a “special site”. This means that, although local authorities are required to identify radioactive contaminated land in their areas, the Environment Agency rather than local authorities will be responsible for dealing with the land.
7. The requirement for the Statutory Guidance is specified in Section 78YA of the Environmental Protection Act 1990, as amended by Section 57 of the Environment Act 1995 (as it applies to harm attributable to radioactivity).

Territorial Extent and Application

8. This Statutory Guidance applies to Wales only. Similar guidance has been made by the Secretary for State for Energy and Climate Change in relation to England.

Policy background

9. The Statutory Guidance on both radioactive contaminated land and non-radioactive contaminated land is currently contained in a single document issued by the Department for Environment, Food and Rural Affairs (Defra). It has been decided by Defra to revise the Statutory Guidance on non-radioactive contaminated land in order to remove “regulatory creep” and increase regulatory certainty. In addition, to make both guidances simpler and easier to understand, it has been decided to separate them and to have two stand-alone documents.
10. This Statutory Guidance follows the new format of the revised Statutory Guidance for non-radioactive contaminated land. However, the difficulties with regard to “regulatory creep” and uncertainty that were

¹ SI 2006/12988 These Regulations have been amended by the Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) Regulations 2007 (SI 2007/3250); the Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) Regulations 2008 (SI 2008/521) and the Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) Regulations 2010 (SI 2010/2146)

considered to apply to the non-radioactive contaminated land regime do not apply in the case of the radioactive contaminated land regime. Therefore this Statutory Guidance does not alter the substance of the current Statutory Guidance on radioactive contaminated land, for example, the tests for determining whether land is radioactively contaminated in the legal sense remain the same, but purely separates the guidance from that of non radioactive contaminated land.

Consultation

11. A 12 week consultation was launched by Defra and the Welsh Government on 21 December 2010 on proposals to update the contaminated land regimes in England and Wales. There were 112 responses to the consultation from interested parties including local authorities, consultants/contractors, industry, lawyers and academics. Supplementary meetings also took place with interested parties during and after the consultation period. There was general support overall for the proposals including the proposal to issue separate Statutory Guidance on radioactive contaminated land. The consultation document stated that there was no plan to have a separate consultation on this guidance and the Welsh Government decided not to hold a separate formal public consultation on the new statutory RCL guidance because:

- The specific rules on radioactive land were subject to full public consultation in 2006.
- No substantive changes are planned for the rules on radioactivity, other than some of the wider changes already consulted on; and,
- The proposed amendments to the Contaminated Land (Wales) Regulations 2006 which were consulted on are of a minor nature.

Guidance

12. Information on how the existing Statutory Guidance is being changed will be made available on the Welsh Government website at <http://wales.gov.uk>

Regulatory Impact Assessment

13. A Regulatory Impact Assessment has not been prepared as the Regulations will impose no significant costs on the public or private sectors, charities, the voluntary sector and the business sector.

Impact

14. The impact on businesses, charities, the public sector and the voluntary sector is expected to be negligible because this document replaces the existing Statutory Guidance with no material changes to the substance of the radioactive contaminated land regime. No land has been designated as radioactively contaminated in Wales.

Monitoring & review

15. Review of this Statutory Guidance will be considered in parallel with DECC's and Defra's overall review of policy on the contaminated land regime in October 2016.