

Consultation paper on Scottish Government guidance on protecting the public from radioactive contamination in land

**Including draft revised statutory guidance on
the Radioactive Contaminated Land (Scotland)
Regulations**

June 2018

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1. Introduction

1. The Radioactive Contaminated Land (Scotland) Regulations came into force on October 2007. The Regulations were subsequently amended and came into force on June 2009. The current Guidance (including Statutory Guidance) on the application of the Radioactive Contaminated Land (Scotland) Regulations (as amended) was published, following consultation, in March 2010.
2. The current Guidance gives a brief policy background to the Radioactive Contaminated Land (RCL) regime, detailed information about the regime in the RCL Regulations, and Statutory Guidance to the Scottish Environment Protection Agency (SEPA) on how to perform their duties and functions under the Regulations.
3. We are now consulting on revisions to this Guidance. These revisions have the following aims:
 - to respond to the Committee on Medical Aspects of Radiation in the Environment (COMARE)'s 15th Report on radium contamination in the area around Dalgety Bay, which drew lessons from SEPAs' consideration of radioactive contamination found at Dalgety Bay,
 - to reflect on experience with the operation of the wider set of measures for protecting the public from radioactive contamination in land, which relies on wider powers and duties of public bodies, with the formal role of SEPA under the RCL Regulations regime acting as a measure of last resort,
 - to ensure that there is explicit transposition of relevant elements of the EU Basic Safety Standards Directive (Council Directive 2013/59/Euratom), hereafter BSSD 2013.

4. This consultation paper will present revised draft sections to replace the *Introduction* and *Annex 1* of the current guidance. These sections are intended to improve the description of the set of measures for protecting the public from radioactive contamination in land in Scotland, which will involve description of powers and duties of public bodies that are broader than the RCL Regulations. These sections are not statutory guidance, and will not impose any new duties on any public bodies, including local authorities.
5. We shall also present a new draft section to be incorporated into Annex 3 of the Statutory Guidance, which will explicitly ensure that SEPA carries out their functions under the RCL Regulations in a way that ensures transposition of the BSSD 2013.
6. The transposition deadline for the BSSD 2013 has now passed. The Scottish Government regrets that it has not yet put in place the minor changes to the RCL regime that will ensure explicit transposition. This delay will have no significant impact on individuals or communities as:-
 - Scotland already has a mature RCL regime, and effective planning and public health systems;
 - The changes to the regime are minor, and will only take effect when an individual area is being considered as potential RCL;
 - No area of land is currently under formal consideration under the regulations as potential RCL.
7. The Scottish Government will work with SEPA to ensure that, should any decision or action be considered that could be affected by the provisions of BSSD 2013 prior to the revision of the regime, any necessary steps will be taken to ensure that the provisions of BSSD 2013 have effect.

1.1 COMARE report

8. The Committee on Medical Aspects of Radiation in the Environment (COMARE) published a report on 19 May 2014, reviewing the radium contamination in the area around Dalgety Bay. The report covers the history of the site, the type and extent of the contamination, the recent investigations and the cancer epidemiology for the area. The report also

considered the implications for other similarly contaminated sites. The report made a number of recommendations that were acted on by government and regulators. Since the time of publication of the report, a programme of remediation has commenced.

9. The report recommended a UK-wide list of land which is known to have been, or thought to be potentially, contaminated with radium. Following consideration with the other UK administrations, we shall not be taking forward this recommendation at this time, although we are responding to the concerns raised. There are a number of problems with making the recommendation operational, in particular it would not be possible to put on such a public register land that had not been robustly shown to be contaminated, as this could unnecessarily blight the land and its value. No area of land has been declared as RCL under the Regulations, and there is currently no other robust process available to assess land for a public register. We believe that it is more important that all information about possible contamination with radioactivity is collected and stored where it will be considered should any proposal for use of that land come forward. There are separate processes for identifying areas where potential contamination is believed to be an immediate threat to public health. Moreover, it is clear that Dalgety Bay was a rare, and perhaps unique case, because of the interaction of contamination with coastal realignment and erosion.
10. As set out in the revised guidance, there are systems and processes that can ensure that information about land with potential radioactive contamination is managed and used as necessary to mitigate risks. The revised guidance will promote best practice in the collection, storage and use of this information.

1.2 Experience with the RCL regime and wider measures

11. This section considers experience with the operation of the set of measures for the protection of the public from radioactive contamination in land since the passing of the RCL Regulations. This set of measures is not a single operational system, but the combined effect of actions taken under various powers and duties, largely by SEPA and local authorities, to protect the public from exposures. SEPA has carried out valuable work through meetings with local authority representatives to gain a good understanding of the practical operation of this set of

measures. However, our understanding of the interaction of planning functions and the RCL system is not complete, and we would welcome comments on the accuracy of the description of current practice contained in this section.

12. Since the introduction of the RCL Regulations, no land in Scotland has been designated as Radioactive Contaminated Land. The RCL Regulations regime has, however, led to the investigation of some areas of land. There was one case where the steps to determination set out in the regulations were undertaken by SEPA (the Dalgety Bay case, as discussed above), however the outcome was a voluntary agreement to remediate the land, without a formal regulatory determination of responsibility.
13. The RCL Regulations are based on the wider contaminated land regime. Both regimes deal with the identification of contaminated land, the assignment of responsibility and the arrangements to require remediation. Both regimes have, in practice, been regarded as back stops – with the major protection of the public from any contamination in land coming from other measures, notably the planning system, rather than from formal designation of the land as contaminated. Very few areas of land have been declared to be Contaminated Land under the Contaminated Land regulations, and in many local authorities the Contaminated Land register has no entries. The position for RCL is therefore not out of line with the experience with the wider Contaminated Land regime.
14. The wider contaminated land regime is found in Part IIA of the Environmental Protection Act 1990. The RCL regulations modify the Part IIA regime, providing separate provisions for the identification of contaminated land and the assignment of responsibility. However, the provisions for remediation are only amended to provide coverage of radioactive contamination and are otherwise shared. For this reason, some parts of the guidance issued for land with contamination, such as Planning Advice Note 33, would be relevant to any land declared to be RCL.
15. There is a significant difference between the RCL regime and the wider Contaminated Land regime in that, in the wider regime, local authorities have a duty to carry out surveys of their area to identify contaminated land. Under the RCL regime, they have the narrower duty to inform SEPA

should they become aware of an area of land they believe is potentially contaminated with radioactivity.

16. Local Authorities have responsibility under the development control regime to ensure that land is suitable for its proposed use. This is complementary to the local authority duty under Part IIA to collate data on historic land uses for land in its current use, and the use of this database in the consideration of proposed changes of use. Planning Advice Note 33 provides advice, good practice and information on the development of contaminated land.
17. In most instances, where land is undisturbed there is no risk to the public from any contamination contained within the land. Local authorities maintain databases of information that they have about potential contamination of areas of land, and best practice is for this to include information on potential radioactive contamination. SEPA retains management information about sites where concerns have been raised about radioactive contamination and where they have their own information about concerns. This includes information on sites where it has carried out investigations in the past. This information is used to inform possible further investigations and SEPA's response to any proposed changes of use for the land. However, this information is not a list of sites with radioactive contamination. Any application for planning permission to develop land will be checked against the local authority's database of known concerns and previous use of the land, and appropriate requirements to investigate the land for contamination, and deal with the contamination if necessary, will be included in any permission to develop the land. It was never intended that the RCL Regime would cover land once it is under development, as it is then covered by planning controls and the radioactive substances regime for any radioactive waste management.

1.3 The Basic Safety Standards Directive 2013

18. The Basic Safety Standards Directive 2013 includes a number of provisions for the protection of the public from what are termed "existing exposure situations." These measures were due to be brought into effect by the transposition deadline of 6 February 2018. The UK Government is negotiating to take the UK out of the Euratom Community. The law that is in force on the date when the UK leaves the

Euratom Community, which will include measures to transpose the BSSD, will continue to have effect unless and until it is changed.

19. The proposals of the four UK administrations for the transposition of the “existing exposure situations” measures in the BSSD were subject to public consultation in the *Consultation on implementing the Euratom Basic Safety Standards Directive: requirements for radiological protection of the public in existing and planned exposure situations and for the justification of practices involving ionising radiation*. An existing exposure situation in the BSSD is a situation of exposure which already exists when a decision on the need for control needs to be taken.
20. A brief summary of these proposals, as they effect the development of this draft guidance is given below.

Article 7 – Reference levels

21. Article 7 of the BSSD 2013 introduces a new requirement to establish reference levels. For a given exposure situation, reference levels specify the residual dose above which it is judged inappropriate to allow exposures to occur. Reference levels relate to the exposure of individuals from a single source (e.g. contamination of the environment). They provide a guideline rather than an absolute limit that must not be exceeded and so perform the role of informing optimisation decisions about the types of protection actions that may be appropriate in different situations. They can be viewed as a tool for supporting the practical implementation of the optimisation principle and ensuring greater clarity for all relevant stakeholders.
22. The BSSD has introduced a new requirement that Member States must set reference levels for existing exposure situations. Optimisation of protection must give priority to exposures above the reference level and continue to be implemented below it. The BSSD recognises that the values chosen for reference levels will depend on the type of exposure situation. The choice of reference levels should take into account radiological protection requirements and any relevant criteria relating to wider social implications. For public exposure, guidance on setting of reference levels is set out in Annex I of the BSSD. For existing exposures arising from contaminated land (including as a result of an emergency incident which has been declared ended) a reference level of 3 mSv/ y committed effective dose (and equivalent dose criteria) is already used

in practice in Scotland and detailed in the RCL statutory guidance as the “harm threshold” for identifying RCL. The 3mSv/y significant harm threshold is complemented by committed effective dose limits for the significant possibility of significant harm of 100mSv in a single exposure event, and of 10Gy/hr as an absorbed dose on contact with contamination. In addition the RCL regimes already embed the concepts of justification and optimisation required by the BSSD 2013 through the establishment and use of reference levels.

Article 73.1 – Contaminated areas

23. Article 73.1 covers the management of contaminated areas, aiming to ensure that Member States’ optimised protection strategies for such areas include, where applicable, a set of specified components listed within this Article. As applied to legacy land, this article needs to be reflected in the application of the RCL Regulations. We believe that most elements are already covered, but will place an explicit requirement on SEPA to consider Article 73.1 in carrying out their functions under the Regulations. In particular, we shall need to be explicit about the Reference levels.

Article 73.2 – Contaminated areas

24. Article 73.2 addresses the situation whereby a Member State has decided to allow habitation and a resumption of social and economic activities in an area with long-lasting contamination. This relates primarily to any future contaminated areas that may arise as a result of a radiation emergency incident, after the emergency exposure situation is declared ended. It can also not be ruled out that a Member State might decide to allow habitation on an existing contaminated area that has arisen from past activities. Given the situation where the decision described above has been made, Article 73.2 requires Member States to ensure, in consultation with stakeholders, that arrangements are in place, as necessary, for the ongoing control of the exposure situation with the ultimate aim of establishing living conditions that can be considered as normal.

25. The Scottish Government does not consider that there are any circumstances where the resumption of normal living conditions as described in Article 73.2 would be allowed on land while it was continuing to be determined to be Radioactive Contaminated Land. It is, however, noted in the Guidance that there are provisions of Article 73.2 that would be have to be fulfilled in that situation.

Article 100.1 – Existing exposure situations

26. Article 100.1 relates to the programmes that Member States are required to have in place for existing exposure situations. Specifically Article 100.1 introduces a new requirement for Member States; where there is indication or evidence of an existing exposure that cannot be disregarded from a radiation protection point of view, Member States must ensure that measures are taken to identify and evaluate the exposure and determine any associated public exposures arising from it. In relation to existing exposures due to contamination of areas by residual radioactive material from past work activities and practices, we propose that transposition of Article 100.1 will be achieved using the current RCL regimes and corresponding statutory guidance. We consider the 3 mSv/y RCL committed effective dose intervention level established in the RCL regime, with the complementary committed effective dose constraints, to be at an appropriate level to identify existing exposure situations that cannot be disregarded from a radiation protection point of view.

Article 102.4 – Implementation of strategies

27. Article 102.4 relates to the implementation of strategies for the management of existing exposure situations. Specifically Article 102.4 requires that Member States must regularly carry out actions to evaluate and review remedial and protective measures, and provide information and guidance to any populations exposed to contamination.

28. The RCL regime transposes the component parts of 102.4, however there is currently no requirement relating to the regularity with which these activities should occur. The Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018 includes measures for the provision of information to the public parts of Article 102.4.

29. To ensure that the transposition of the BSSD is clear and transparent, we propose to add a chapter to the Statutory Guidance to SEPA on the RCL Regulations, which will ensure that the Regulations are interpreted and enforced in line with the provisions of the BSSD. A draft of the new chapter BB is presented in this consultation paper.

30. For the situations covered by the RCL Regulations and Guidance, historic contamination and potentially the clean up after localised contamination from activities involving radioactive substances, the Regulations and Guidance are the strategy for the management of existing exposure situations that is required by the BSSD. The appropriate Reference Level in terms of Article 7 is 3 mSv/year, which is the same as the harm threshold specified in the Regulations. This limit is complimented by the committed effective dose limits for significant possibility of harm. The 3 mSv/y value will therefore continue to be the threshold at which land is sufficiently contaminated to fall under the regime in the RCL regulations. The application of this Reference Level does not change the maximum permitted level of exposure that will be required by SEPA of developers on land considered under the planning regime, which will remain at 0.3 mSv/y.

31. The RCL Regulations, with the amended Guidance, will ensure that, for any land that is judged to be RCL under the Regulations, the remediation demanded by SEPA is the Optimised Protection Strategy for that land.

Possible need for amendments to RCL Regulations

32. The RCL Regulations need to be amended to change the reference to the old BSSD to the new BSSD in force. In England and Wales, the government has decided to amend their equivalent regulations, to clarify some definitions. Their amending regulations are The Radioactive Contaminated Land (Enabling Powers and Modification of Enactments) (England) (Amendment) Regulations 2018.

33. Our current judgement is that it will be sufficient to amend the statutory guidance in order to ensure that the regulations are interpreted in line with the BSSD 2013. However, this will be subject to final legal review following consultation and, if necessary to give legal certainty, we shall bring forward equivalent amendments to our regulations. We would welcome any views on whether amendments to the regulations are necessary.

The Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018

34. The Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018 make provision for elements of the BSSD 2013 that could not be readily accommodated within existing regulations. These are a UK set of regulations that make provisions for both reserved and devolved matters, to match the pre-existing split of responsibilities. There are two provisions with relevance to the RCL regime – the obligation to set reference levels for the restoration of land after contamination in different circumstances, and for the provision of information to the public on measures to protect themselves from contamination from a designated site.

Reference Levels for decisions under the RCL Regulations

35. Our proposals at this time are to retain the current thresholds in the existing RCL Guidance in the revised Guidance, and therefore as the Reference Levels for the purpose of BSSD 2013. The 3mSv/y significant harm threshold is complemented by committed effective dose limits for the significant possibility of significant harm of 100mSv in a single exposure event, and of 10Gy/hr as an absorbed dose on contact with contamination.

36. However, a change in the significant harm threshold, and therefore the Reference Level, to 1mSv/y would make little practical difference to the potential for land to be judged as radioactively contaminated, and could bring the regime better into alignment with best international practice on land with potential radioactive contamination. The Scottish Government will consider this further with SEPA, informed by the wider advice that we shall be receiving on Reference Levels for other situations. We would welcome views on the desirability of changing the harm thresholds in the RCL regime.

2. Proposed amendments to the RCL Guidance

37. The first change we propose to make is to change the title of the Guidance to make clear that it covers a description of, and best practice guidance on, the wider use of powers and duties that ensures the protection of the public from radioactive contamination in land. The statutory guidance on the RCL regulations themselves will form a part of this wider guidance. The proposed new title is:

Scottish Government guidance on protecting the public from radioactive contamination in land.

Incorporating statutory guidance on the Radioactive Contaminated Land (Scotland) Regulations 2007 (as amended)

2.1 Proposed replacement content of Introduction and Annex 1

“Introduction

1.1. This is the Scottish Government’s guidance on protecting the public from radioactive contamination in land. It consists of these elements:-

- the rest of this Introduction section contains a description of, and best practice guidance on, the measures to protect the public in Scotland from radioactive contamination in land;
- Annex 1 presents a flow chart for an overview of the process that can lead to the identification of radioactive contaminated land;
- Annex 2 is a detailed technical description of the regime put in place by the RCL Regulations; and
- Annex 3 contains the Statutory Guidance on the Radioactive Contaminated Land (RCL) Regulations. The Statutory Guidance is issued under the Environmental Protection Act 1990.

Policy background

Objective of the regime

1.2. The aim of this guidance, and of the measures to detect and control radioactive contamination in land, is the protection of human health and of the wider environment.

Prevention

1.3. Radioactive contaminated land, like other types of contaminated land, is evidence of past failures to manage the environmental impact of activities. The first priority of the Scottish Government's policy on land contamination is to prevent the creation of new contamination. SEPA operates the radioactive substances regulatory regime, including the regulation of solid radioactive waste management and of liquid and gaseous emissions. In addition, the Office for Nuclear Regulation regulates safety on nuclear sites and the transportation of nuclear materials. These regimes ensure that there are no planned emissions of radioactivity that could cause future contamination to land, and mitigate as far as possible the risks of any accidental releases.

Polluter pays

1.4. An important principle for Scottish Government environmental policy is that the polluter should pay for the prevention and remediation of contamination, wherever the responsible polluter can be identified.

Protecting the public from radioactive contamination in land

1.5. The public is protected from radioactive contamination in land through a set of measures, underpinned by the regime set out in the RCL Regulations. This set of measures is not a single operational system, but the combined effect of actions taken under various powers and duties, mainly by SEPA and local authorities, to protect the public from exposures.

1.6. The RCL Regulations are based on the regulations that put in place the wider contaminated land regime. Both sets of regulations deal with the identification of contaminated land, the assignment of responsibility and the arrangements to require remediation. In both regimes, the formal regulatory process of designating land has, in practice, been regarded as a back stop. In both regimes, the major protection of the public from any contamination in land has come from other measures, notably the planning system, rather than from formal designation of land as contaminated.

1.7. The wider contaminated land regime is found in Part IIA of the Environment Protection Act 1990. The RCL regulations modify the Part IIA regime, providing separate provisions for the identification of contaminated land and the assignment of responsibility. However, the provisions for remediation are only amended to provide coverage of radioactive contamination and are otherwise shared. For this reason, some parts of the guidance issued for land with contamination, such as Planning Advice Note 33, would be relevant to any land declared to be RCL.

1.8. There is a significant difference between the RCL regime and the wider Contaminated Land regime in that, in the wider regime, local authorities have a duty to carry out surveys of their area to identify contaminated land. Under the RCL regime, they have the narrower duty to inform SEPA should they become aware of an area of land they believe is potentially contaminated with radioactivity.

1.9. Local Authorities have responsibility under the development control regime to ensure that land is suitable for its proposed use. This is complementary to the local authority duty under Part IIA to collate data on historic land uses for land in its current use and the use of this database in planning consultations for its proposed use. Planning Advice Note 33 provides advice, good practice and information on the development of contaminated land.

1.10. In most instances, where land is undisturbed there is no risk to the public from any contamination contained within the land, which is why the planning system can be so effective in preventing harm. It was never intended that the RCL Regime would cover land once it is under development, as it is then covered by planning controls and the radioactive substances regime for any radioactive waste management.

Outline of steps to protect the public from radioactive contamination in land

Collection and storage of information

1.11. The important first step in protecting the public from radioactive contamination in land is the collection and storage of information about where there is potential for such contamination. Unlike for the wider contaminated land regime, local authorities have no duty to survey their areas for situations of potential radioactive contamination. However, good practice in local authorities is to store any information they have about potential radioactive contamination on internal databases, alongside such information for other contamination. In most instances, sites of concern from a radioactive contamination perspective will have the potential for multiple types of contamination, so will in any case be flagged. In many instances, these are not sites which have been investigated and contamination found. Rather they are sites that, because of their history and other factors, are deemed worthy of consideration, as required under Part IIA, or should they be subject to a planning application for a development or change of use.

1.12. SEPA retains management information about sites where concerns have been raised about radioactive contamination and where they have their own information about concerns. This includes information on sites where it has carried out investigations in the past. This information is used to inform possible further investigations and SEPA's response to any proposed changes of use for the land. However, this information is not a list of sites with radioactive contamination.

Planning powers

1.13. Local Authorities have responsibility under the development control regime to ensure that land is suitable for its proposed use. This is complementary to the local authority duty under Part IIA to collate data on historic land uses for land in its current use, and the use of this database in the consideration of proposed changes of use. In the absence of specific information, local authorities will use judgment as to the likelihood of contamination from the nature of the site and the previous site use. Local authorities can place conditions on developers, including investigating and cleaning up any contamination. SEPA are consulted as statutory consultees with regard to sites that are designated Part IIA Contaminated Land or RCL, and will be able to comment on applications, and make recommendations if appropriate on the

nature of planning conditions. Planning conditions will reflect the proposed use of the land. It is best practice in the interests of protecting public health for planning authorities to consult SEPA on planning applications for brownfield sites where there is evidence or suspicion of previous use of radioactive substances, and pay due account to advice received from SEPA in response.

Investigation of land

1.14. There may be occasions when local authorities or other agents decide to initiate investigations of land to test for contamination with radiation. This may be land where development is foreseen in the near future, or land where there is not yet sufficient information to make a report to SEPA under the provisions of the RCL Regulations.

1.15. Inspections will generally be carried out by contractors for local authorities, and it is important that the work is correctly specified to be effective. SEPA can provide advice and has produced guidance to planning authorities and contractors on the commissioning of investigations for Contaminated Land and Radioactive Contaminated Land.

Reporting RCL concerns to SEPA

1.16. Local Authorities have a duty under the RCL Regulations to notify SEPA of land that is potentially contaminated with radioactivity. In making such notifications, local authorities must have due regard to SEPA needing the following reasonable grounds to inspect:

- Substance identified as being present on Land;
- Receptors identified as being present on Land; and
- Possibility of dose criteria being exceeded.

SEPA's investigation of land

1.17. Once SEPA has information, from reports from a local authority or other sources, about areas of land with potential radioactive contamination, they will commence their own investigations into the land.

1.18. If reasonable grounds criteria are satisfied, inspection will include the collation of documentary evidence, a site visit with radiological walkover if deemed necessary and, if justified, an intrusive investigation. Where reasonable grounds exist and an investigation has been carried out, SEPA must inform the local authority of the outcome.

1.19. Section 5 of the RCL guidance describes in greater detail the process for investigating Radioactive Contaminated Land.

SEPA taking formal steps under RCL Regulations

1.20. Following inspection of the land, SEPA can make a determination as to whether the land meets the criteria to be declared as radioactive contaminated land. There are similar considerations for this decision as for the equivalent decision for other contaminated land. Considerations include, the physical extent of the land, consistency with other statutory bodies, a risk assessment to establish that there is Significant Harm or Significant Possibility of Significant Harm. Part 4 of the RCL Guidance describes in greater detail the process of making a Determination.

Opportunity for voluntary remediation

1.21. The provisions with respect to remediation under the RCL Regulations match those in the wider contaminated land regime, and so existing guidance on remediation can be applied to both regimes.

1.22. SEPA may decide that the owner of the land, or any other person who might be liable for remediation, can carry out remediation on a voluntary basis. In these circumstances, a voluntary agreement should be agreed by the person(s) who might be liable for remediation and SEPA. A voluntary agreement should contain provisions to remediate land in a safe, transparent and timely manner. Local authorities and health authorities must be consulted on any agreement.

Naming of Appropriate Person and requirement to remediate

1.23. In the event that no voluntary agreement can be reached, or if SEPA decides for other reasons that the voluntary remediation is not appropriate, the RCL Regulations give powers for SEPA to name the Appropriate Person and require remediation. The provisions with respect to remediation under the RCL Regulations generally match those in the wider contaminated land regime, and so existing guidance on remediation can be applied to both regimes.

Summary of the roles of public bodies

Scottish Ministers

1.24. Scottish Ministers have responsibilities relevant to the protection of the public from radioactive contamination, including:

- maintaining the policy and legal framework for protecting the Scotland's environment and public health;
- issuing guidance on the planning system, on the Contaminated Land regime and statutory guidance under the Radioactive Contaminated Land (Scotland) Regulations 2007; and
- considering Environmental appeals by people on whom remediation notices are served by SEPA.

Scottish Environment Protection Agency

1.25. SEPA is the environmental regulator for Scotland, including for all devolved radioactive substances regimes in Scotland.

1.26. The Regulatory Reform (Scotland) Act 2014 introduced a general purpose for SEPA, as follows:

(1) SEPA is to carry out the functions conferred on it by or under this Act or any other enactment for the purpose of protecting and improving the environment (including managing natural resources in a sustainable way).

(2) In carrying out its functions for that purpose *SEPA* must, except to the extent that it would be inconsistent with subsection (1) to do so, contribute to-

(a) improving the health and well-being of people in Scotland, and

(b) achieving sustainable economic growth

The Scottish Government has issued guidance on the interpretation of this provision.

1.27. SEPA has a range of functions under the RCL Regulations, which are set out in detail in this Guidance. These functions include responsibility for identifying, inspecting, determining, designating and securing remediation of Radioactive Contaminated Land. SEPA is the Regulator of Radioactive Contaminated Land Part IIA sites and the Regulator under the Environmental Authorisations (Scotland) Regulations 2018 with respect to the accumulation and disposal of radioactive waste.

Local Authorities

1.28. Local authorities are the lead authority on matters relating to the wider Contaminated Land regime. Their formal roles under the RCL Regulations are more limited in nature. Local authorities have a duty under the RCL Regulations to notify SEPA of land potentially contaminated with radioactivity. In making such notifications, local authorities must have due regard to SEPA needing the following reasonable grounds to inspect:

- Substance identified as being present on Land;
- Receptors identified as being present on Land; and
- Possibility of dose criteria being exceeded.

1.29. Local authorities have other powers, duties and functions that contribute to the set of measures that ensures the protection of the public from radioactive contamination in land. Local authorities have key responsibilities as planning authorities to control the development of land that might have contamination, including with radioactivity. Local authorities consult SEPA as they carry out their planning functions including on Strategic Environmental Assessments, Development Plans and certain Planning Applications.

1.30. Local authorities have responsibilities for public health under the Public Health Act (Scotland) Act 2008, which specifies responsibilities to protect the public from contamination, including with radioactivity.

The implementation of measures from the Basic Safety Standards Directive (BSSD) 2013

1.31. There are measures in the BSSD 2013 that are relevant to the radioactive contaminated land regime. The RCL regime is our transposition of these measures for the types of situation that the regulations cover – historic contamination, and clear up after contamination of areas of land following activities involving radiation.

1.32. The relevant measures in the BSSD are:

Article 7, having reference to the appropriate reference level set by the Scottish Ministers, which for actions under the RCL Regulations is 3 mSv/year, aligned with the significant harm threshold, which is complemented by committed effective dose limits for the significant possibility of significant harm of 100mSv in a single exposure event, and of 10Gy/hr as an absorbed dose on contact with contamination;

Article 73(1) in determining the conditions for remediation of a contaminated area;

Article 100, and the related Annex XVII with respect to planning and carrying out inspections; and

Article 102, in the carrying out of their functions with respect to the RCL Regulations and the wider objectives set out in the Guidance on protecting the public from radioactive contamination in land, which expresses the Scottish Government's strategy in line with Article 101.

1.33. The Scottish Government does not consider that there are any circumstances where the resumption of normal living conditions as described in Article 73(2) would be allowed on land that was determined to be Radioactive Contaminated Land. It is, however, noted that there are provisions of Article in 73(2) that would be have to be fulfilled in that situation.

1.34. To ensure an effective transposition of these measures, the relevant part of these articles are included in the Statutory Guidance on the RCL Regulations in Chapter BB.

Restrictions to the regime

1.35. For the purposes of the RCL regime, it was intended that all land is covered by that regime with two exceptions.

Civil Nuclear sites

1.36. The first is that part of a site, owned or occupied by a nuclear site operator, for which a nuclear-site licence is in place. This is because there are sufficient regulatory controls already in place through the Office of the Nuclear Regulatory to require remediation if necessary.

Defence sites

1.37. The second exception covers land used by or on behalf of the Secretary of State for Defence for a purpose which, if section 1 of the Nuclear Installations Act 1965 applied to the Crown, would require a nuclear site licence to be in place.”

2.2 Proposed additional chapter to Statutory Guidance

38. We propose the following additional chapter, to appear after the existing Chapter B, to ensure a full and transparent transposition of the relevant measures from BSSD 2013.

“Chapter BB

In carrying out their duties and functions under the RCL Regulations, in line with the Statutory Guidance on these regulations, the relevant guidance on Contaminated Land, and the Scottish Government Guidance on protecting the public from radioactive contamination in land, SEPA shall ensure that they act in accordance with the provisions of the Euratom Basic Safety Standards Directive 2013.

In particular, SEPA shall ensure that they act in accordance with:

Article 7, having reference to the appropriate reference level set by the Scottish Ministers, which for actions under the RCL Regulations is 3 mSv/year, aligned with the significant harm threshold, which is complemented by committed effective dose limits for the significant possibility of significant harm of 100mSv in a single exposure event, and of 10Gy/hr as an absorbed dose on contact with contamination.

Article 73(1) in determining the conditions for remediation of a contaminated area;

Article 100, and the related Annex XVII with respect to planning and carrying out inspections;

Article 102, in the carrying out of their functions with respect to the RCL Regulations and the wider objectives set out in the Guidance on protecting the public from radioactive contamination in land, which expresses the Scottish Government’s strategy in line with Article 101.

The Scottish Government does not consider that there are any circumstances where the resumption of normal living conditions as described in Article 73(2) would be allowed on land that was determined to be Radioactive Contaminated Land.”

3. Impact Assessment

39. The Scottish Government does not believe that these proposed amendments will have any significant negative impacts on equality, on businesses or on the environment. In promoting the more effective and coordinated use of existing powers and duties, these amendments to the guidance should enable better outcomes. We would welcome any comments on impacts that you believe these proposals will have on yourself or on groups in society. You can consider these impacts under the following headings.

Equality

40. The Scottish Government is committed to promoting equality and removing or minimising disadvantage which may be experienced by different groups of people.

41. We have a legal duty to consider the impact of policies on people who may be differently affected in relation to the “protected characteristics” under the Equality Act 2010. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Business

42. The Guidance does not directly impose new regulatory burdens on businesses, charities or the voluntary sector.

Environmental

43. The Environmental Assessment (Scotland) Act 2005 ensures those public plans that are likely to have a significant impact on the environment are assessed and measures to prevent or reduce adverse impacts are sought, where possible, prior to implementation of the plan in question.

Privacy

44. The Scottish Government is mindful that proposals which require people to share information are likely to have impacts in respect of privacy. The Guidance will not directly require any individual or organisation to disclose personal or commercially sensitive information if they are not content to do so.

4. Responding to this consultation

45. We are inviting responses to this consultation by 21 August 2018.

46. Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/environment-forestry/radioactive-contamination>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 21 August 2018.

47. If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Radioactive Waste and Nuclear Decommissioning Team
Scottish Government
Area 3-H South
Victoria Quay
Edinburgh
EH6 6QQ

Handling your response

48. If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

49. All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and

would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

50.If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

51.To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

Next steps in the process

52.Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

53.Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

54.If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at charles.stewartroper@gov.scot.

Scottish Government consultation process

55.Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

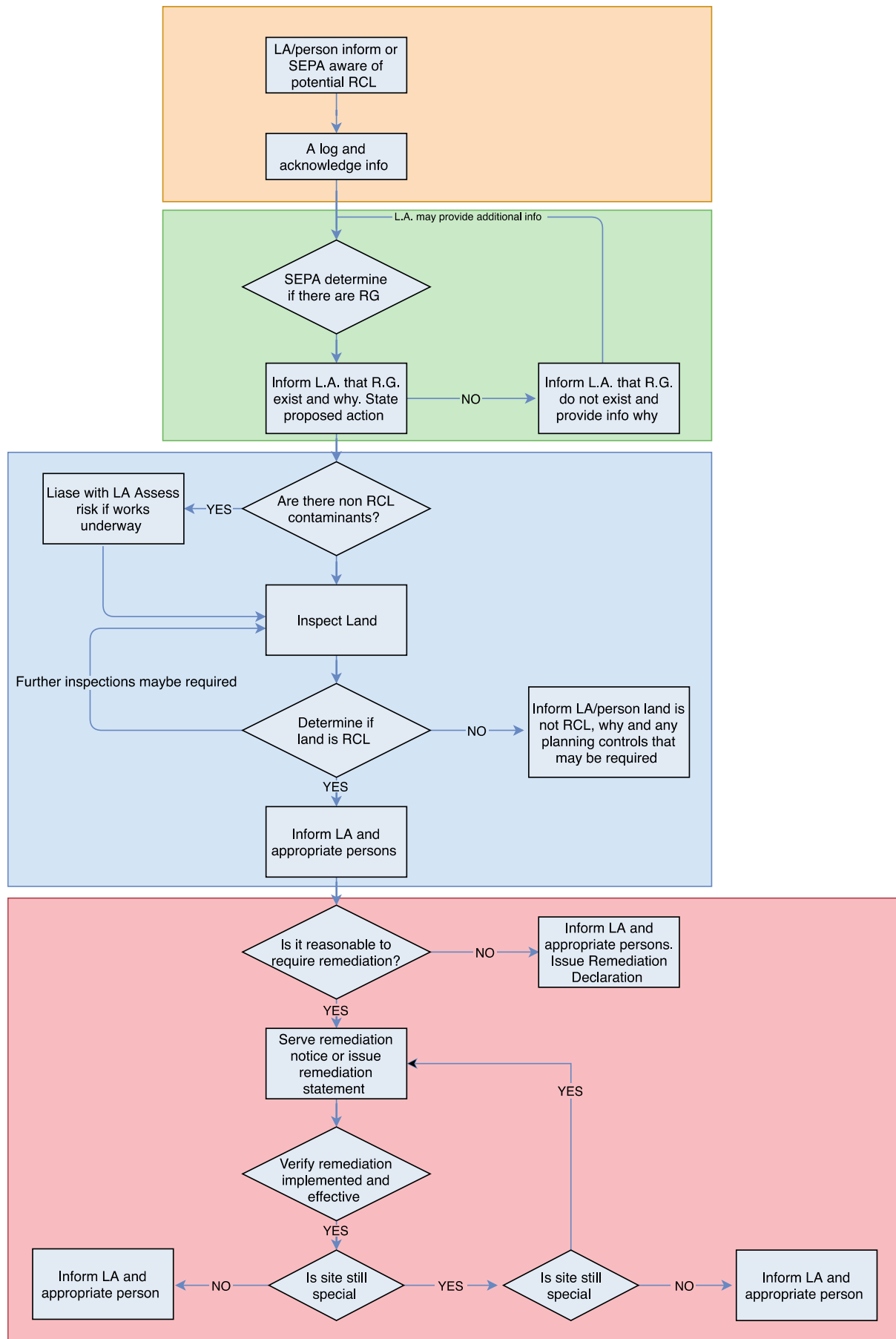
56.You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

57.Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

58. While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Annex 1 – Overview of Radioactive Contaminated Land Process





Scottish Government
Riaghaltas na h-Alba
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