



# Environmental Protection Act 1990

## 1990 CHAPTER 43

### <sup>F1</sup>[PART IIA

#### CONTAMINATED LAND

##### Textual Amendments

- F1** Pt. 2A (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57, (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

##### Modifications etc. (not altering text)

- C1** Pt. IIA (ss. 78A-78YC) modified (1.2.1996) by 1995 c. 25, s. 5(5)(e), (with ss. 115, 117); S.I. 1996/186, art.2.  
Pt. IIA (ss. 78A-78YC) modified (1.4.1996) by 1995 c. 25, s. 33(5)(e), (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3.
- C2** Pt. IIA (ss. 78A-78YC) applied (with modifications) (E.) (20.1.2006) by The Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005 (S.I. 2005/3467), regs. 1(4), 2, 3, Schs. 1, 2 (as amended (29.9.2010) by S.I. 2010/2147, regs. 1(2), 2(2) and (18.4.2018) by S.I. 2018/429, regs. 1(2), 2(4))
- C3** Pt. IIA (ss. 78A-78YC) applied (with modifications) (E.) (4.8.2006) in so far as not already applied by S.I. 2005/3467 by The Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006 (S.I. 2006/1379), regs. 3-17, Sch. (as amended: (10.11.2007) by S.I. 2007/3245, reg. 3; (6.4.2008) by S.I. 2008/520, regs. 1, 2, 3; (23.8.2010 and 30.9.2010) by S.I. 2010/2147, regs. 1(2), 3, 4; (coming into force in accordance with art. 1(2)-(5) of the amending S.I.) by The Nuclear Installations (Liability for Damage) Order 2016 (S.I. 2016/562), art. 1(2), Sch. 2 para. 9 (with art. 40); (22.6.2018) by S.I. 2018/429, regs. 1(3), 3; (22.5.2019) by The Radiation (Emergency Preparedness and Public Information) Regulations 2019 (S.I. 2019/703), reg. 1(1), Sch. 10 para. 6 (with reg. 3))  
Pt. IIA (ss. 78A-78YC) extended (Isles of Scilly) (with modifications) (4.8.2006) by The Environmental Protection Act 1990 (Isles of Scilly) Order 2006 (S.I. 2006/1381), art. 2
- C4** Pt. IIA (ss. 78A-78YC) applied (with modifications) (W.) (16.11.2006 for certain purposes and otherwise 10.12.2006) by The Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006 (S.I. 2006/2988), regs. 1, 3-17, Sch. (as amended: (10.12.2007) by S.I. 2007/3250,

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- reg. 3** (with **reg. 2**); (6.4.2008) by S.I. 2008/521, **regs. 2(3)**, 3; (30.9.2010) by S.I. 2010/2146, **regs. 1**, 2, 3; (coming into force in accordance with art. 1(2)-(5) of the amending S.I.) by The Nuclear Installations (Liability for Damage) Order 2016 (S.I. 2016/562), art. 1(2), **Sch. 2 para. 10** (with art. 40); (4.7.2018) by S.I. 2018/725, **regs. 1(2)**, 3-5; (22.5.2019) by The Radiation (Emergency Preparedness and Public Information) Regulations 2019 (S.I. 2019/703), **reg. 1(1)**, **Sch. 10 para. 7** (with **reg. 3**)
- C5** Pt. IIA (ss. 78A-78YC) applied (with modifications) (S.) (1.4.2007 for certain purposes, 30.10.2007 otherwise) by The Radioactive Contaminated Land (Scotland) Regulations (S.S.I. 2007/179), **regs. 1(1)(2)**, 2-15 (as amended: (10.12.2007) by S.I. 2007/3240, **reg. 3** (with **reg. 2**); (26.6.2009) by S.S.I. 2009/202, **regs. 1**, 2; (30.9.2010) by S.I. 2010/2153, **regs. 1**, 2, 3; (coming into force in accordance with art. 1(2)-(5) of the amending S.I.) by The Nuclear Installations (Liability for Damage) Order 2016 (S.I. 2016/562), art. 1(2), **Sch. 2 para. 11** (with art. 40); (22.5.2019) by The Radiation (Emergency Preparedness and Public Information) Regulations 2019 (S.I. 2019/703), **reg. 1(1)**, **Sch. 10 para. 8** (with **reg. 3**)

## <sup>F2</sup>78A Preliminary. **E+W**

- (1) The following provisions have effect for the interpretation of this Part.
- (2) “Contaminated land” is any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that—
  - (a) significant harm is being caused or there is a significant possibility of such harm being caused; or
  - <sup>F3</sup>(b) significant pollution of controlled waters is being caused or there is a significant possibility of such pollution being caused;]
 and, in determining whether any land appears to be such land, a local authority shall, subject to subsection (5) below, act in accordance with guidance issued by the Secretary of State in accordance with section 78YA below with respect to the manner in which that determination is to be made.
- (3) A “special site” is any contaminated land—
  - (a) which has been designated as such a site by virtue of section 78C(7) or 78D(6) below; and
  - (b) whose designation as such has not been terminated by the appropriate Agency under section 78Q(4) below.
- (4) “Harm” means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property.
- (5) The questions—
  - (a) what harm [<sup>F4</sup>or pollution of controlled waters] is to be regarded as “significant”,
  - (b) whether the possibility of significant harm [<sup>F5</sup>or of significant pollution of controlled waters] being caused is “significant”,
  - <sup>F6</sup>(c) .....
 shall be determined in accordance with guidance issued for the purpose by the Secretary of State in accordance with section 78YA below.

*Status: Point in time view as at 08/03/2016.*

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- (6) Without prejudice to the guidance that may be issued under subsection (5) above, guidance under paragraph (a) of that subsection may make provision for different degrees of importance to be assigned to, or for the disregard of,—
- (a) different descriptions of living organisms or ecological systems<sup>[F7]</sup>, or of poisonous, noxious or polluting matter or solid waste matter];
  - (b) different descriptions of places <sup>[F8]</sup>or controlled waters, or different degrees of pollution]; or
  - (c) different descriptions of harm to health or property, or other interference;
- and guidance under paragraph (b) of that subsection may make provision for different degrees of possibility to be regarded as “significant” (or as not being “significant”) in relation to different descriptions of significant harm <sup>[F9]</sup>or of significant pollution].
- (7) “Remediation” means—
- (a) the doing of anything for the purpose of assessing the condition of—
    - (i) the contaminated land in question;
    - (ii) any controlled waters affected by that land; or
    - (iii) any land adjoining or adjacent to that land;
  - (b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose—
    - (i) of preventing or minimising, or remedying or mitigating the effects of, any significant harm, or any <sup>[F10]</sup>significant] pollution of controlled waters, by reason of which the contaminated land is such land; or
    - (ii) of restoring the land or waters to their former state; or
  - (c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters;
- and cognate expressions shall be construed accordingly.
- (8) Controlled waters are “affected by” contaminated land if (and only if) it appears to the enforcing authority that the contaminated land in question is, for the purposes of subsection (2) above, in such a condition, by reason of substances in, on or under the land, that <sup>[F11]</sup>significant pollution of those waters is being caused or there is a significant possibility of such pollution being caused].
- (9) The following expressions have the meaning respectively assigned to them—
- “the appropriate Agency” means—
- (a) in relation to England <sup>F12</sup>..., the Environment Agency;
  - (b) in relation to Scotland, the Scottish Environment Protection Agency;
  - (c) <sup>[F13]</sup>in relation to Wales, the Natural Resources Body for Wales;
- “appropriate person” means any person who is an appropriate person, determined in accordance with section 78F below, to bear responsibility for any thing which is to be done by way of remediation in any particular case;
- “charging notice” has the meaning given by section 78P(3)(b) below;
- “controlled waters”—
- (a) in relation to England and Wales, has the same meaning as in Part III of the <sup>M1</sup>Water Resources Act 1991 <sup>[F14]</sup>except that “ground waters” does not include waters contained in underground strata but above the saturation zone]; and
  - (b) in relation to Scotland, has the same meaning as in section 30A of the <sup>M2</sup>Control of Pollution Act 1974;

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“creditor” has the same meaning as in the <sup>M3</sup>Conveyancing and Feudal Reform (Scotland) Act 1970;

“enforcing authority” means—

- (a) in relation to a special site, the appropriate Agency;
- (b) in relation to contaminated land other than a special site, the local authority in whose area the land is situated;

“heritable security” has the same meaning as in the <sup>M4</sup>Conveyancing and Feudal Reform (Scotland) Act 1970;

“local authority” in relation to England and Wales means—

- (a) any unitary authority;
- (b) any district council, so far as it is not a unitary authority;
- (c) the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;

and in relation to Scotland means a council for an area constituted under section 2 of the <sup>M5</sup>Local Government etc. (Scotland) Act 1994;

“notice” means notice in writing;

“notification” means notification in writing;

“owner”, in relation to any land in England and Wales, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or, where the land is not let at a rack rent, would be so entitled if it were so let;

“owner”, in relation to any land in Scotland, means a person (other than a creditor in a heritable security not in possession of the security subjects) for the time being entitled to receive or who would, if the land were let, be entitled to receive, the rents of the land in connection with which the word is used and includes a trustee, factor, guardian or curator and in the case of public or municipal land includes the persons to whom the management of the land is entrusted;

“pollution of controlled waters” means the entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Secretary of State;

“remediation declaration” has the meaning given by section 78H(6) below;

“remediation notice” has the meaning given by section 78E(1) below;

“remediation statement” has the meaning given by section 78H(7) below;

“required to be designated as a special site” shall be construed in accordance with section 78C(8) below;

“substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

“unitary authority” means—

- (a) the council of a county, so far as it is the council of an area for which there are no district councils;
- (b) the council of any district comprised in an area for which there is no county council;
- (c) the council of a London borough;
- (d) the council of a county borough in Wales.

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### Textual Amendments

- F2** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2
- F3** S. 78A(2)(b) substituted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(2)(a), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F4** Words in s. 78A(5)(a) inserted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(2)(b)(i), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F5** Words in s. 78A(5)(b) inserted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(2)(b)(ii), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F6** S. 78A(5)(c) repealed (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(2)(b)(iii), 105(3), Sch. 9 Pt. 3; S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F7** Words in s. 78A(6)(a) inserted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(2)(c)(i), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F8** Words in s. 78A(6)(b) inserted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(2)(c)(ii), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F9** Words in s. 78A(6) inserted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(2)(c)(iii), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F10** Word in s. 78A(7)(b)(i) inserted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(2)(d), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F11** Words in s. 78A(8) substituted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(2)(e), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F12** Words in s. 78A(9) omitted (1.4.2013) by virtue of The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 216(a) (with Sch. 7)
- F13** Words in s. 78A(9) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 216(b) (with Sch. 7)
- F14** In s. 78A(9) in definition of "controlled waters" words inserted (1.10.2004 for E. and 11.11.2004 for W.) by Water Act 2003 (c. 37), ss. 86(2)(f), 105; S.I. 2004/2528, art. 2(q) (with art. 4, Sch.); S.I. 2004/2916, art. 2(e)

### Commencement Information

- I1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland

### Marginal Citations

- M1** 1991 c. 57.  
**M2** 1974 c. 40.  
**M3** 1970 c. 35.  
**M4** 1970 c. 35.  
**M5** 1994 c. 39.

## <sup>F2</sup><sup>F1</sup>78A Preliminary. **S**

- (1) The following provisions have effect for the interpretation of this Part.
- (2) "Contaminated land" is any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that—
  - (a) significant harm is being caused or there is a significant possibility of such harm being caused; or

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- [<sup>F70</sup>(b) significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused.]
- and, in determining whether any land appears to be such land, a local authority shall, subject to subsection (5) below, act in accordance with guidance issued by the Secretary of State in accordance with section 78YA below with respect to the manner in which that determination is to be made.
- (3) A “special site” is any contaminated land—
- (a) which has been designated as such a site by virtue of section 78C(7) or 78D(6) below; and
  - (b) whose designation as such has not been terminated by the appropriate Agency under section 78Q(4) below.
- (4) [<sup>F71</sup>Subject to sub section (4A), “harm”] means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property.
- [ “Harm”, in relation to the water environment has the same meaning as in section 20(6)<sup>F72</sup>(4A) of the Water Environment and Water Services (Scotland) Act 2003.]
- (5) The questions—
- (a) what harm [<sup>F73</sup>or pollution of the water environment] is to be regarded as “significant”,
  - (b) whether the possibility of significant harm [<sup>F74</sup>or of significant pollution of the water environment] being caused is “significant”,
  - (c) <sup>F75</sup> .....
- shall be determined in accordance with guidance issued for the purpose by the Secretary of State in accordance with section 78YA below.
- (6) Without prejudice to the guidance that may be issued under subsection (5) above, guidance under paragraph (a) of that subsection may make provision for different degrees of importance to be assigned to, or for the disregard of,—
- (a) different descriptions of living organisms or ecological systems [<sup>F76</sup>or substances which may give rise to pollution;]
  - (b) different descriptions of places [<sup>F77</sup>or of the water environment, or different degrees of pollution]; or
  - (c) different descriptions of harm to health or property, or other interference;
- and guidance under paragraph (b) of that subsection may make provision for different degrees of possibility to be regarded as “significant” (or as not being “significant”) in relation to different descriptions of significant harm [<sup>F78</sup>or of significant pollution].
- (7) “Remediation” means—
- (a) the doing of anything for the purpose of assessing the condition of—
    - (i) the contaminated land in question;
    - (ii) [<sup>F79</sup>the water environment] affected by that land; or
    - (iii) any land adjoining or adjacent to that land;
  - (b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or [<sup>F80</sup>the water environment] for the purpose—
    - (i) of preventing or minimising, or remedying or mitigating the effects of, any significant harm, or any [<sup>F81</sup>significant] pollution of [<sup>F82</sup>the

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- water environment], by reason of which the contaminated land is such land; or
- (ii) of restoring the land or [<sup>F83</sup>water environment to its] former state; or
- (c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or [<sup>F84</sup>the water environment];
- and cognate expressions shall be construed accordingly.
- (8) [<sup>F85</sup>The water environment is]“affected by” contaminated land if (and only if) it appears to the enforcing authority that the contaminated land in question is, for the purposes of subsection (2) above, in such a condition, by reason of substances in, on or under the land, that [<sup>F86</sup>significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused].
- (9) The following expressions have the meaning respectively assigned to them—
- “the appropriate Agency” means—
- (a) in relation to England <sup>F12</sup>..., the Environment Agency;
- (b) in relation to Scotland, the Scottish Environment Protection Agency;
- (c) [<sup>F13</sup>in relation to Wales, the Natural Resources Body for Wales;]
- “appropriate person” means any person who is an appropriate person, determined in accordance with section 78F below, to bear responsibility for any thing which is to be done by way of remediation in any particular case;
- “charging notice” has the meaning given by section 78P(3)(b) below;
- <sup>F87</sup> .....
- “creditor” has the same meaning as in the <sup>M3</sup>Conveyancing and Feudal Reform (Scotland) Act 1970;
- “enforcing authority” means—
- (a) in relation to a special site, the appropriate Agency;
- (b) in relation to contaminated land other than a special site, the local authority in whose area the land is situated;
- “heritable security” has the same meaning as in the <sup>M4</sup>Conveyancing and Feudal Reform (Scotland) Act 1970;
- “local authority” in relation to England and Wales means—
- (a) any unitary authority;
- (b) any district council, so far as it is not a unitary authority;
- (c) the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;
- and in relation to Scotland means a council for an area constituted under section 2 of the <sup>M5</sup>Local Government etc. (Scotland) Act 1994;
- “notice” means notice in writing;
- “notification” means notification in writing;
- “owner”, in relation to any land in England and Wales, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or, where the land is not let at a rack rent, would be so entitled if it were so let;
- “owner”, in relation to any land in Scotland, means a person (other than a creditor in a heritable security not in possession of the security subjects) for the time being entitled to receive or who would, if the land were let, be entitled to receive, the rents of the land in connection with which the word

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is used and includes a trustee, factor, guardian or curator and in the case of public or municipal land includes the persons to whom the management of the land is entrusted;

[<sup>F88</sup>“pollution”, in relation to the water environment, means the direct or indirect introduction, as a result of human activity, of substances into the water environment, or any part of it, which may give rise to any harm]

<sup>F89</sup>

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Secretary of State;

“remediation declaration” has the meaning given by section 78H(6) below;

“remediation notice” has the meaning given by section 78E(1) below;

“remediation statement” has the meaning given by section 78H(7) below;

“required to be designated as a special site” shall be construed in accordance with section 78C(8) below;

“substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

“unitary authority” means—

- (a) the council of a county, so far as it is the council of an area for which there are no district councils;
- (b) the council of any district comprised in an area for which there is no county council;
- (c) the council of a London borough;
- (d) the council of a county borough in Wales.

[<sup>F90</sup>“the water environment” has the same meaning as in section 3 of the Water Environment and Water Services (Scotland) Act 2003]]

### Textual Amendments

- F2** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2
- F12** Words in s. 78A(9) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 216\(a\)](#) (with Sch. 7)
- F13** Words in s. 78A(9) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 216\(b\)](#) (with Sch. 7)
- F70** S. 78A(2)(b) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(a\)](#)
- F71** Words in s. 78A(4) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(b\)](#)
- F72** S. 78A(4A) inserted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(c\)](#)
- F73** Words in s. 78A(5)(a) inserted (S.) (21.12.2005) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(d\)\(i\)](#)
- F74** Words in s. 78A(5)(b) inserted (S.) (21.12.2005) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(d\)\(ii\)](#)
- F75** S. 78A(5)(c) deleted (S.) (21.12.2005) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(d\)\(iii\)](#)
- F76** Words in s. 78A(6)(a) inserted (S.) (21.12.2005) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(e\)\(i\)](#)



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- F77** Words in s. 78A(6)(b) inserted (S.) (21.12.2005) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(e\)\(ii\)](#)
- F78** Words in s. 78A(6) inserted (S.) (21.12.2005) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(e\)\(iii\)](#)
- F79** Words in s. 78A(7)(a)(ii) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(f\)](#)
- F80** Words in s. 78A(7)(b) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(g\)](#)
- F81** Word in s. 78A(7)(b)(i) inserted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(h\)](#)
- F82** Words in s. 78A(7)(b)(i) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(2\)](#)
- F83** Words in s. 78A(7)(b)(ii) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(i\)](#)
- F84** Words in s. 78A(7)(c) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(j\)](#)
- F85** Words in s. 78A(8) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(k\)\(i\)](#)
- F86** Words in s. 78A(8) from "pollution" to the end deleted and substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(k\)\(ii\)](#)
- F87** In s. 78A(9) definition of "controlled waters" deleted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(l\)\(i\)\(aa\)](#)
- F88** In s. 78A(9) definition of "pollution" inserted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(l\)\(i\)\(ii\)](#)
- F89** In s. 78A(9) definition of "pollution of controlled waters" deleted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(l\)\(i\)\(bb\)](#)
- F90** In s. 78A(9) definition of "the water environment" inserted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(l\)\(ii\)](#)

#### Commencement Information

- I3** This version of this provision extends to Scotland only; a separate version has been created for England and Wales

#### Marginal Citations

- M3** 1970 c. 35.  
**M4** 1970 c. 35.  
**M5** 1994 c. 39.

#### **F1578B Identification of contaminated land.**

- (1) Every local authority shall cause its area to be inspected from time to time for the purpose—
  - (a) of identifying contaminated land; and
  - (b) of enabling the authority to decide whether any such land is land which is required to be designated as a special site.
- (2) In performing its functions under subsection (1) above a local authority shall act in accordance with any guidance issued for the purpose by the Secretary of State in accordance with section 78YA below.
- (3) If a local authority identifies any contaminated land in its area, it shall give notice of that fact to—

*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) the appropriate Agency;
  - (b) the owner of the land;
  - (c) any person who appears to the authority to be in occupation of the whole or any part of the land; and
  - (d) each person who appears to the authority to be an appropriate person;
- and any notice given under this subsection shall state by virtue of which of paragraphs (a) to (d) above it is given.
- (4) If, at any time after a local authority has given any person a notice pursuant to subsection (3)(d) above in respect of any land, it appears to the enforcing authority that another person is an appropriate person, the enforcing authority shall give notice to that other person—
- (a) of the fact that the local authority has identified the land in question as contaminated land; and
  - (b) that he appears to the enforcing authority to be an appropriate person.

#### Textual Amendments

**F15** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

#### <sup>F16</sup>78C Identification and designation of special sites. **E+W**

- (1) If at any time it appears to a local authority that any contaminated land in its area might be land which is required to be designated as a special site, the authority—
- (a) shall decide whether or not the land is land which is required to be so designated; and
  - (b) if the authority decides that the land is land which is required to be so designated, shall give notice of that decision to the relevant persons.
- (2) For the purposes of this section, “the relevant persons” at any time in the case of any land are the persons who at that time fall within paragraphs (a) to (d) below, that is to say—
- (a) the appropriate Agency;
  - (b) the owner of the land;
  - (c) any person who appears to the local authority concerned to be in occupation of the whole or any part of the land; and
  - (d) each person who appears to that authority to be an appropriate person.
- (3) Before making a decision under paragraph (a) of subsection (1) above in any particular case, a local authority shall request the advice of the appropriate Agency, and in making its decision shall have regard to any advice given by that Agency in response to the request.
- (4) If at any time the appropriate Agency considers that any contaminated land is land which is required to be designated as a special site, that Agency may give notice of that fact to the local authority in whose area the land is situated.

*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) Where notice under subsection (4) above is given to a local authority, the authority shall decide whether the land in question—
- (a) is land which is required to be designated as a special site, or
  - (b) is not land which is required to be so designated,
- and shall give notice of that decision to the relevant persons.
- (6) Where a local authority makes a decision falling within subsection (1)(b) or (5)(a) above, the decision shall, subject to section 78D below, take effect on the day after whichever of the following events first occurs, that is to say—
- (a) the expiration of the period of twenty-one days beginning with the day on which the notice required by virtue of subsection (1)(b) or, as the case may be, (5)(a) above is given to the appropriate Agency; or
  - (b) if the appropriate Agency gives notification to the local authority in question that it agrees with the decision, the giving of that notification;
- and where a decision takes effect by virtue of this subsection, the local authority shall give notice of that fact to the relevant persons.
- (7) Where a decision that any land is land which is required to be designated as a special site takes effect in accordance with subsection (6) above, the notice given under subsection (1)(b) or, as the case may be, (5)(a) above shall have effect, as from the time when the decision takes effect, as the designation of that land as such a site.
- (8) For the purposes of this Part, land is required to be designated as a special site if, and only if, it is land of a description prescribed for the purposes of this subsection.
- (9) Regulations under subsection (8) above may make different provision for different cases or circumstances or different areas or localities and may, in particular, describe land by reference to the area or locality in which it is situated.
- (10) Without prejudice to the generality of his power to prescribe any description of land for the purposes of subsection (8) above, the Secretary of State, in deciding whether to prescribe a particular description of contaminated land for those purposes, may, in particular, have regard to—
- (a) whether land of the description in question appears to him to be land which is likely to be in such a condition, by reason of substances in, on or under the land that—
    - (i) serious harm would or might be caused, or
    - (ii) serious pollution of controlled waters would [<sup>F17</sup>or might be caused]; or
  - (b) whether the appropriate Agency is likely to have expertise in dealing with the kind of significant harm, or [<sup>F18</sup>significant] pollution of controlled waters, by reason of which land of the description in question is contaminated land.

#### Textual Amendments

**F16** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

**F17** Words in s. 78C(10)(a)(ii) substituted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(3)(a), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2

*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**F18** Word in s. 78C(10)(b) inserted (E.W.) (6.4.2012) by [Water Act 2003 \(c. 37\)](#), **ss. 86(3)(b)**, 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2

#### Commencement Information

**I2** This version of this provision extends to England and Wales only; a separate version has been created for Scotland

### <sup>F16</sup><sup>F1</sup>78C Identification and designation of special sites. **S**

- (1) If at any time it appears to a local authority that any contaminated land in its area might be land which is required to be designated as a special site, the authority—
  - (a) shall decide whether or not the land is land which is required to be so designated; and
  - (b) if the authority decides that the land is land which is required to be so designated, shall give notice of that decision to the relevant persons.
- (2) For the purposes of this section, “the relevant persons” at any time in the case of any land are the persons who at that time fall within paragraphs (a) to (d) below, that is to say—
  - (a) the appropriate Agency;
  - (b) the owner of the land;
  - (c) any person who appears to the local authority concerned to be in occupation of the whole or any part of the land; and
  - (d) each person who appears to that authority to be an appropriate person.
- (3) Before making a decision under paragraph (a) of subsection (1) above in any particular case, a local authority shall request the advice of the appropriate Agency, and in making its decision shall have regard to any advice given by that Agency in response to the request.
- (4) If at any time the appropriate Agency considers that any contaminated land is land which is required to be designated as a special site, that Agency may give notice of that fact to the local authority in whose area the land is situated.
- (5) Where notice under subsection (4) above is given to a local authority, the authority shall decide whether the land in question—
  - (a) is land which is required to be designated as a special site, or
  - (b) is not land which is required to be so designated,
 and shall give notice of that decision to the relevant persons.
- (6) Where a local authority makes a decision falling within subsection (1)(b) or (5)(a) above, the decision shall, subject to section 78D below, take effect on the day after whichever of the following events first occurs, that is to say—
  - (a) the expiration of the period of twenty-one days beginning with the day on which the notice required by virtue of subsection (1)(b) or, as the case may be, (5)(a) above is given to the appropriate Agency; or
  - (b) if the appropriate Agency gives notification to the local authority in question that it agrees with the decision, the giving of that notification;
 and where a decision takes effect by virtue of this subsection, the local authority shall give notice of that fact to the relevant persons.

*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (7) Where a decision that any land is land which is required to be designated as a special site takes effect in accordance with subsection (6) above, the notice given under subsection (1)(b) or, as the case may be, (5)(a) above shall have effect, as from the time when the decision takes effect, as the designation of that land as such a site.
- (8) For the purposes of this Part, land is required to be designated as a special site if, and only if, it is land of a description prescribed for the purposes of this subsection.
- (9) Regulations under subsection (8) above may make different provision for different cases or circumstances or different areas or localities and may, in particular, describe land by reference to the area or locality in which it is situated.
- (10) Without prejudice to the generality of his power to prescribe any description of land for the purposes of subsection (8) above, the Secretary of State, in deciding whether to prescribe a particular description of contaminated land for those purposes, may, in particular, have regard to—
  - (a) whether land of the description in question appears to him to be land which is likely to be in such a condition, by reason of substances in, on or under the land that—
    - (i) serious harm would or might be caused, or
    - [<sup>F91</sup>(ii) serious pollution of the water environment would or might be caused;]
  - (b) whether the appropriate Agency is likely to have expertise in dealing with the kind of significant harm, or [<sup>F92</sup>significant] pollution of [<sup>F93</sup>the water environment], by reason of which land of the description in question is contaminated land.]

#### Textual Amendments

- F16** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2
- F91** S. 78C(10)(a)(ii) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005](#) (S.S.I. 2005/658), regs. 1, 2(4)(a)
- F92** Word in s. 78C(10)(b) inserted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005](#) (S.S.I. 2005/658), regs. 1, 2(4)(b)
- F93** Words in s. 78C(10)(b) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005](#) (S.S.I. 2005/658), regs. 1, 2(2)

#### Commencement Information

- I4** This version of this provision extends to Scotland only; a separate version has been created for England and Wales

### <sup>F19</sup>78D Referral of special site decisions to the Secretary of State.

- (1) In any case where—
  - (a) a local authority gives notice of a decision to the appropriate Agency pursuant to subsection (1)(b) or (5)(b) of section 78C above, but
  - (b) before the expiration of the period of twenty-one days beginning with the day on which that notice is so given, that Agency gives the local authority notice

*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

that it disagrees with the decision, together with a statement of its reasons for disagreeing,

the authority shall refer the decision to the Secretary of State and shall send to him a statement of its reasons for reaching the decision.

- (2) Where the appropriate Agency gives notice to a local authority under paragraph (b) of subsection (1) above, it shall also send to the Secretary of State a copy of the notice and of the statement given under that paragraph.
- (3) Where a local authority refers a decision to the Secretary of State under subsection (1) above, it shall give notice of that fact to the relevant persons.
- (4) Where a decision of a local authority is referred to the Secretary of State under subsection (1) above, he—
  - (a) may confirm or reverse the decision with respect to the whole or any part of the land to which it relates; and
  - (b) shall give notice of his decision on the referral—
    - (i) to the relevant persons; and
    - (ii) to the local authority.
- (5) Where a decision of a local authority is referred to the Secretary of State under subsection (1) above, the decision shall not take effect until the day after that on which the Secretary of State gives the notice required by subsection (4) above to the persons there mentioned and shall then take effect as confirmed or reversed by him.
- (6) Where a decision which takes effect in accordance with subsection (5) above is to the effect that at least some land is land which is required to be designated as a special site, the notice given under subsection (4)(b) above shall have effect, as from the time when the decision takes effect, as the designation of that land as such a site.
- (7) In this section “the relevant persons” has the same meaning as in section 78C above.

#### Textual Amendments

**F19** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

#### <sup>F20</sup>78E **Duty of enforcing authority to require remediation of contaminated land etc.** **E** **+W**

- (1) In any case where—
  - (a) any land has been designated as a special site by virtue of section 78C(7) or 78D(6) above, or
  - (b) a local authority has identified any contaminated land (other than a special site) in its area,

the enforcing authority shall, in accordance with such procedure as may be prescribed and subject to the following provisions of this Part, serve on each person who is an appropriate person a notice (in this Part referred to as a “remediation notice”) specifying what that person is to do by way of remediation and the periods within which he is required to do each of the things so specified.



*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) Different remediation notices requiring the doing of different things by way of remediation may be served on different persons in consequence of the presence of different substances in, on or under any land or waters.
- (3) Where two or more persons are appropriate persons in relation to any particular thing which is to be done by way of remediation, the remediation notice served on each of them shall state the proportion, determined under section 78F(7) below, of the cost of doing that thing which each of them respectively is liable to bear.
- (4) The only things by way of remediation which the enforcing authority may do, or require to be done, under or by virtue of this Part are things which it considers reasonable, having regard to—
  - (a) the cost which is likely to be involved; and
  - (b) the seriousness of the harm, or <sup>F21</sup>[of the] pollution of controlled waters, in question.
- (5) In determining for any purpose of this Part—
  - (a) what is to be done (whether by an appropriate person, the enforcing authority or any other person) by way of remediation in any particular case,
  - (b) the standard to which any land is, or waters are, to be remediated pursuant to the notice, or
  - (c) what is, or is not, to be regarded as reasonable for the purposes of subsection (4) above,the enforcing authority shall have regard to any guidance issued for the purpose by the Secretary of State.
- (6) Regulations may make provision for or in connection with—
  - (a) the form or content of remediation notices; or
  - (b) any steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of a remediation notice.

#### Extent Information

- E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F20** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2
- F21** Words in s. 78E(4)(b) inserted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(4), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2

### <sup>F20</sup><sup>F1</sup>78EDuty of enforcing authority to require remediation of contaminated land etc. **S**

- (1) In any case where—
  - (a) any land has been designated as a special site by virtue of section 78C(7) or 78D(6) above, or
  - (b) a local authority has identified any contaminated land (other than a special site) in its area,

*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

the enforcing authority shall, in accordance with such procedure as may be prescribed and subject to the following provisions of this Part, serve on each person who is an appropriate person a notice (in this Part referred to as a “remediation notice”) specifying what that person is to do by way of remediation and the periods within which he is required to do each of the things so specified.

- (2) Different remediation notices requiring the doing of different things by way of remediation may be served on different persons in consequence of the presence of different substances in, on or under any land or [<sup>F94</sup>the water environment].
- (3) Where two or more persons are appropriate persons in relation to any particular thing which is to be done by way of remediation, the remediation notice served on each of them shall state the proportion, determined under section 78F(7) below, of the cost of doing that thing which each of them respectively is liable to bear.
- (4) The only things by way of remediation which the enforcing authority may do, or require to be done, under or by virtue of this Part are things which it considers reasonable, having regard to—
  - (a) the cost which is likely to be involved; and
  - (b) the seriousness of the harm, or [<sup>F95</sup>of the] pollution of [<sup>F96</sup>the water environment], in question.
- (5) In determining for any purpose of this Part—
  - (a) what is to be done (whether by an appropriate person, the enforcing authority or any other person) by way of remediation in any particular case,
  - (b) the standard to which any land is, or waters are [<sup>F97</sup>, or the water environment is], to be remediated pursuant to the notice, or
  - (c) what is, or is not, to be regarded as reasonable for the purposes of subsection (4) above,

the enforcing authority shall have regard to any guidance issued for the purpose by the Secretary of State.
- (6) Regulations may make provision for or in connection with—
  - (a) the form or content of remediation notices; or
  - (b) any steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of a remediation notice.]

#### Extent Information

- E11** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

- F20** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2
- F94** Words in s. 78E(2) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005](#) (S.S.I. 2005/658), regs. 1, 2(5)(a)
- F95** Words in s. 78E(4)(b) inserted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005](#) (S.S.I. 2005/658), regs. 1, 2(5)(b)



*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F96** Words in s. 78E(4)(b) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, 2(2)
- F97** Words in s. 78E(5)(b) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, 2(5)(c)

**F22 78F Determination of the appropriate person to bear responsibility for remediation.**

- (1) This section has effect for the purpose of determining who is the appropriate person to bear responsibility for any particular thing which the enforcing authority determines is to be done by way of remediation in any particular case.
- (2) Subject to the following provisions of this section, any person, or any of the persons, who caused or knowingly permitted the substances, or any of the substances, by reason of which the contaminated land in question is such land to be in, on or under that land is an appropriate person.
- (3) A person shall only be an appropriate person by virtue of subsection (2) above in relation to things which are to be done by way of remediation which are to any extent referable to substances which he caused or knowingly permitted to be present in, on or under the contaminated land in question.
- (4) If no person has, after reasonable inquiry, been found who is by virtue of subsection (2) above an appropriate person to bear responsibility for the things which are to be done by way of remediation, the owner or occupier for the time being of the contaminated land in question is an appropriate person.
- (5) If, in consequence of subsection (3) above, there are things which are to be done by way of remediation in relation to which no person has, after reasonable inquiry, been found who is an appropriate person by virtue of subsection (2) above, the owner or occupier for the time being of the contaminated land in question is an appropriate person in relation to those things.

[ But where the contaminated land is owned or occupied by the Crown by virtue of its <sup>F23</sup>(5A) having vested as *bona vacantia* in the Crown, or its having fallen to the Crown as *ultimus haeres*, the Crown is not an appropriate person under subsection (4) or (5) for the purposes of this Part.]

- (6) Where two or more persons would, apart from this subsection, be appropriate persons in relation to any particular thing which is to be done by way of remediation, the enforcing authority shall determine in accordance with guidance issued for the purpose by the Secretary of State whether any, and if so which, of them is to be treated as not being an appropriate person in relation to that thing.
- (7) Where two or more persons are appropriate persons in relation to any particular thing which is to be done by way of remediation, they shall be liable to bear the cost of doing that thing in proportions determined by the enforcing authority in accordance with guidance issued for the purpose by the Secretary of State.
- (8) Any guidance issued for the purposes of subsection (6) or (7) above shall be issued in accordance with section 78YA below.
- (9) A person who has caused or knowingly permitted any substance (“substance A”) to be in, on or under any land shall also be taken for the purposes of this section to have caused or knowingly permitted there to be in, on or under that land any

*Status: Point in time view as at 08/03/2016.*

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substance which is there as a result of a chemical reaction or biological process affecting substance A.

- (10) A thing which is to be done by way of remediation may be regarded for the purposes of this Part as referable to the presence of any substance notwithstanding that the thing in question would not have to be done—
- (a) in consequence only of the presence of that substance in any quantity; or
  - (b) in consequence only of the quantity of that substance which any particular person caused or knowingly permitted to be present.

#### Textual Amendments

- F22** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2
- F23** S. 78F(5A) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), ss. 45(2), 61(2); S.S.I. 2014/160, art. 2(1)(2), sch.

#### <sup>F24</sup>78G Grant of, and compensation for, rights of entry etc. **E+W**

- (1) A remediation notice may require an appropriate person to do things by way of remediation, notwithstanding that he is not entitled to do those things.
- (2) Any person whose consent is required before any thing required by a remediation notice may be done shall grant, or join in granting, such rights in relation to any of the relevant land or waters as will enable the appropriate person to comply with any requirements imposed by the remediation notice.
- (3) Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult every person who appears to the authority—
  - (a) to be the owner or occupier of any of the relevant land or waters, and
  - (b) to be a person who might be required by subsection (2) above to grant, or join in granting, any rights,
 concerning the rights which that person may be so required to grant.
- (4) Subsection (3) above shall not preclude the service of a remediation notice in any case where it appears to the enforcing authority that the contaminated land in question is in such a condition, by reason of substances in, on or under the land, that there is imminent danger of serious harm, or serious pollution of controlled waters, being caused.
- (5) A person who grants, or joins in granting, any rights pursuant to subsection (2) above shall be entitled, on making an application within such period as may be prescribed and in such manner as may be prescribed to such person as may be prescribed, to be paid by the appropriate person compensation of such amount as may be determined in such manner as may be prescribed.
- (6) Without prejudice to the generality of the regulations that may be made by virtue of subsection (5) above, regulations by virtue of that subsection may make such provision in relation to compensation under this section as may be made by regulations by virtue of subsection (4) of section 35A above in relation to compensation under that section.

*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (7) In this section, “relevant land or waters” means—
- (a) the contaminated land in question;
  - (b) any controlled waters affected by that land; or
  - (c) any land adjoining or adjacent to that land or those waters.

#### Extent Information

**E2** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

**F24** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

### <sup>F24</sup><sup>F1</sup> 78G Grant of, and compensation for, rights of entry etc. **S**

- (1) A remediation notice may require an appropriate person to do things by way of remediation, notwithstanding that he is not entitled to do those things.
- (2) Any person whose consent is required before any thing required by a remediation notice may be done shall grant, or join in granting, such rights in relation to any of the relevant land or [<sup>F98</sup>water environment] as will enable the appropriate person to comply with any requirements imposed by the remediation notice.
- (3) Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult every person who appears to the authority—
  - (a) to be the owner or occupier of any of the relevant land or [<sup>F99</sup>water environment], and
  - (b) to be a person who might be required by subsection (2) above to grant, or join in granting, any rights, concerning the rights which that person may be so required to grant.
- (4) Subsection (3) above shall not preclude the service of a remediation notice in any case where it appears to the enforcing authority that the contaminated land in question is in such a condition, by reason of substances in, on or under the land, that there is imminent danger of serious harm, or serious pollution of [<sup>F100</sup>the water environment], being caused.
- (5) A person who grants, or joins in granting, any rights pursuant to subsection (2) above shall be entitled, on making an application within such period as may be prescribed and in such manner as may be prescribed to such person as may be prescribed, to be paid by the appropriate person compensation of such amount as may be determined in such manner as may be prescribed.
- (6) Without prejudice to the generality of the regulations that may be made by virtue of subsection (5) above, regulations by virtue of that subsection may make such provision in relation to compensation under this section as may be made by regulations by virtue of subsection (4) of section 35A above in relation to compensation under that section.

<sup>F101</sup>(7) In this section, “relevant land or water environment” means—

*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) the contaminated land in question;
- (b) the water environment affected by that land; or
- (c) any land adjoining or adjacent to that land or water environment.]]

#### Extent Information

**E12** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

- F24** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2
- F98** Words in s. 78G(2) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, 2(6)(a)
- F99** Words in s. 78G(3)(a) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, 2(6)(b)
- F100** Words in s. 78G(4) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, 2(2)
- F101** S. 78G(7) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, 2(6)(c)

#### <sup>F25</sup>78H Restrictions and prohibitions on serving remediation notices. **E+W**

- (1) Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult—
  - (a) the person on whom the notice is to be served,
  - (b) the owner of any land to which the notice relates,
  - (c) any person who appears to that authority to be in occupation of the whole or any part of the land, and
  - (d) any person of such other description as may be prescribed,
 concerning what is to be done by way of remediation.
- (2) Regulations may make provision for, or in connection with, steps to be taken for the purposes of subsection (1) above.
- (3) No remediation notice shall be served on any person by reference to any contaminated land during any of the following periods, that is to say—
  - (a) the period—
    - (i) beginning with the identification of the contaminated land in question pursuant to section 78B(1) above, and
    - (ii) ending with the expiration of the period of three months beginning with the day on which the notice required by subsection (3)(d) or, as the case may be, (4) of section 78B above is given to that person in respect of that land;
  - (b) if a decision falling within paragraph (b) of section 78C(1) above is made in relation to the contaminated land in question, the period beginning with the making of the decision and ending with the expiration of the period of three months beginning with—

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*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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- (i) in a case where the decision is not referred to the Secretary of State under section 78D above, the day on which the notice required by section 78C(6) above is given, or
    - (ii) in a case where the decision is referred to the Secretary of State under section 78D above, the day on which he gives the notice required by subsection (4)(b) of that section;
  - (c) if the appropriate Agency gives a notice under subsection (4) of section 78C above to a local authority in relation to the contaminated land in question, the period beginning with the day on which that notice is given and ending with the expiration of the period of three months beginning with—
    - (i) in a case where notice is given under subsection (6) of that section, the day on which that notice is given;
    - (ii) in a case where the authority makes a decision falling within subsection (5)(b) of that section and the appropriate Agency fails to give notice under paragraph (b) of section 78D(1) above, the day following the expiration of the period of twenty-one days mentioned in that paragraph; or
    - (iii) in a case where the authority makes a decision falling within section 78C(5)(b) above which is referred to the Secretary of State under section 78D above, the day on which the Secretary of State gives the notice required by subsection (4)(b) of that section.
- (4) Neither subsection (1) nor subsection (3) above shall preclude the service of a remediation notice in any case where it appears to the enforcing authority that the land in question is in such a condition, by reason of substances in, on or under the land, that there is imminent danger of serious harm, or serious pollution of controlled waters, being caused.
- (5) The enforcing authority shall not serve a remediation notice on a person if and so long as any one or more of the following conditions is for the time being satisfied in the particular case, that is to say—
  - (a) the authority is satisfied, in consequence of section 78E(4) and (5) above, that there is nothing by way of remediation which could be specified in a remediation notice served on that person;
  - (b) the authority is satisfied that appropriate things are being, or will be, done by way of remediation without the service of a remediation notice on that person;
  - (c) it appears to the authority that the person on whom the notice would be served is the authority itself; or
  - (d) the authority is satisfied that the powers conferred on it by section 78N below to do what is appropriate by way of remediation are exercisable.
- (6) Where the enforcing authority is precluded by virtue of section 78E(4) or (5) above from specifying in a remediation notice any particular thing by way of remediation which it would otherwise have specified in such a notice, the authority shall prepare and publish a document (in this Part referred to as a “remediation declaration”) which shall record—
  - (a) the reasons why the authority would have specified that thing; and
  - (b) the grounds on which the authority is satisfied that it is precluded from specifying that thing in such a notice.
- (7) In any case where the enforcing authority is precluded, by virtue of paragraph (b), (c) or (d) of subsection (5) above, from serving a remediation notice, the responsible

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person shall prepare and publish a document (in this Part referred to as a “remediation statement”) which shall record—

- (a) the things which are being, have been, or are expected to be, done by way of remediation in the particular case;
  - (b) the name and address of the person who is doing, has done, or is expected to do, each of those things; and
  - (c) the periods within which each of those things is being, or is expected to be, done.
- (8) For the purposes of subsection (7) above, the “responsible person” is—
- (a) in a case where the condition in paragraph (b) of subsection (5) above is satisfied, the person who is doing or has done, or who the enforcing authority is satisfied will do, the things there mentioned; or
  - (b) in a case where the condition in paragraph (c) or (d) of that subsection is satisfied, the enforcing authority.
- (9) If a person who is required by virtue of subsection (8)(a) above to prepare and publish a remediation statement fails to do so within a reasonable time after the date on which a remediation notice specifying the things there mentioned could, apart from subsection (5) above, have been served, the enforcing authority may itself prepare and publish the statement and may recover its reasonable costs of doing so from that person.
- (10) Where the enforcing authority has been precluded by virtue only of subsection (5) above from serving a remediation notice on an appropriate person but—
- (a) none of the conditions in that subsection is for the time being satisfied in the particular case, and
  - (b) the authority is not precluded by any other provision of this Part from serving a remediation notice on that appropriate person,
- the authority shall serve a remediation notice on that person; and any such notice may be so served without any further endeavours by the authority to consult persons pursuant to subsection (1) above, if and to the extent that that person has been consulted pursuant to that subsection concerning the things which will be specified in the notice.

#### Extent Information

- E3** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F25** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

### <sup>F25</sup>[<sup>F1</sup>78H] Restrictions and prohibitions on serving remediation notices. **S**

- (1) Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult—
- (a) the person on whom the notice is to be served,

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*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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- (b) the owner of any land to which the notice relates,
  - (c) any person who appears to that authority to be in occupation of the whole or any part of the land, and
  - (d) any person of such other description as may be prescribed,concerning what is to be done by way of remediation.
- (2) Regulations may make provision for, or in connection with, steps to be taken for the purposes of subsection (1) above.
- (3) No remediation notice shall be served on any person by reference to any contaminated land during any of the following periods, that is to say—
  - (a) the period—
    - (i) beginning with the identification of the contaminated land in question pursuant to section 78B(1) above, and
    - (ii) ending with the expiration of the period of three months beginning with the day on which the notice required by subsection (3)(d) or, as the case may be, (4) of section 78B above is given to that person in respect of that land;
  - (b) if a decision falling within paragraph (b) of section 78C(1) above is made in relation to the contaminated land in question, the period beginning with the making of the decision and ending with the expiration of the period of three months beginning with—
    - (i) in a case where the decision is not referred to the Secretary of State under section 78D above, the day on which the notice required by section 78C(6) above is given, or
    - (ii) in a case where the decision is referred to the Secretary of State under section 78D above, the day on which he gives the notice required by subsection (4)(b) of that section;
  - (c) if the appropriate Agency gives a notice under subsection (4) of section 78C above to a local authority in relation to the contaminated land in question, the period beginning with the day on which that notice is given and ending with the expiration of the period of three months beginning with—
    - (i) in a case where notice is given under subsection (6) of that section, the day on which that notice is given;
    - (ii) in a case where the authority makes a decision falling within subsection (5)(b) of that section and the appropriate Agency fails to give notice under paragraph (b) of section 78D(1) above, the day following the expiration of the period of twenty-one days mentioned in that paragraph; or
    - (iii) in a case where the authority makes a decision falling within section 78C(5)(b) above which is referred to the Secretary of State under section 78D above, the day on which the Secretary of State gives the notice required by subsection (4)(b) of that section.
- (4) Neither subsection (1) nor subsection (3) above shall preclude the service of a remediation notice in any case where it appears to the enforcing authority that the land in question is in such a condition, by reason of substances in, on or under the land, that there is imminent danger of serious harm, or serious pollution of [<sup>F102</sup>the water environment], being caused.

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- (5) The enforcing authority shall not serve a remediation notice on a person if and so long as any one or more of the following conditions is for the time being satisfied in the particular case, that is to say—
- (a) the authority is satisfied, in consequence of section 78E(4) and (5) above, that there is nothing by way of remediation which could be specified in a remediation notice served on that person;
  - (b) the authority is satisfied that appropriate things are being, or will be, done by way of remediation without the service of a remediation notice on that person;
  - (c) it appears to the authority that the person on whom the notice would be served is the authority itself; or
  - (d) the authority is satisfied that the powers conferred on it by section 78N below to do what is appropriate by way of remediation are exercisable.
- (6) Where the enforcing authority is precluded by virtue of section 78E(4) or (5) above from specifying in a remediation notice any particular thing by way of remediation which it would otherwise have specified in such a notice, the authority shall prepare and publish a document (in this Part referred to as a “remediation declaration”) which shall record—
- (a) the reasons why the authority would have specified that thing; and
  - (b) the grounds on which the authority is satisfied that it is precluded from specifying that thing in such a notice.
- (7) In any case where the enforcing authority is precluded, by virtue of paragraph (b), (c) or (d) of subsection (5) above, from serving a remediation notice, the responsible person shall prepare and publish a document (in this Part referred to as a “remediation statement”) which shall record—
- (a) the things which are being, have been, or are expected to be, done by way of remediation in the particular case;
  - (b) the name and address of the person who is doing, has done, or is expected to do, each of those things; and
  - (c) the periods within which each of those things is being, or is expected to be, done.
- (8) For the purposes of subsection (7) above, the “responsible person” is—
- (a) in a case where the condition in paragraph (b) of subsection (5) above is satisfied, the person who is doing or has done, or who the enforcing authority is satisfied will do, the things there mentioned; or
  - (b) in a case where the condition in paragraph (c) or (d) of that subsection is satisfied, the enforcing authority.
- (9) If a person who is required by virtue of subsection (8)(a) above to prepare and publish a remediation statement fails to do so within a reasonable time after the date on which a remediation notice specifying the things there mentioned could, apart from subsection (5) above, have been served, the enforcing authority may itself prepare and publish the statement and may recover its reasonable costs of doing so from that person.
- (10) Where the enforcing authority has been precluded by virtue only of subsection (5) above from serving a remediation notice on an appropriate person but—
- (a) none of the conditions in that subsection is for the time being satisfied in the particular case, and



*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) the authority is not precluded by any other provision of this Part from serving a remediation notice on that appropriate person,
- the authority shall serve a remediation notice on that person; and any such notice may be so served without any further endeavours by the authority to consult persons pursuant to subsection (1) above, if and to the extent that that person has been consulted pursuant to that subsection concerning the things which will be specified in the notice.]

#### Extent Information

**E13** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

**F25** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

**F102** Words in s. 78H(4) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005](#) (S.S.I. 2005/658), regs. 1, 2(2)

### <sup>F26</sup>78J Restrictions on liability relating to the pollution of controlled waters. **E+W**

- (1) This section applies where any land is contaminated land by virtue of paragraph (b) of subsection (2) of section 78A above (whether or not the land is also contaminated land by virtue of paragraph (a) of that subsection).
- (2) Where this section applies, no remediation notice given in consequence of the land in question being contaminated land shall require a person who is an appropriate person by virtue of section 78F(4) or (5) above to do anything by way of remediation to that or any other land, or any waters, which he could not have been required to do by such a notice had paragraph (b) of section 78A(2) above (and all other references to pollution of controlled waters) been omitted from this Part.
- (3) If, in a case where this section applies, a person permits, has permitted, or might permit, water from an abandoned mine or part of a mine—
  - (a) to enter any controlled waters, or
  - (b) to reach a place from which it is or, as the case may be, was likely, in the opinion of the enforcing authority, to enter such waters,no remediation notice shall require him in consequence to do anything by way of remediation (whether to the contaminated land in question or to any other land or waters) which he could not have been required to do by such a notice had paragraph (b) of section 78A(2) above (and all other references to pollution of controlled waters) been omitted from this Part.
- (4) Subsection (3) above shall not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.
- (5) In determining for the purposes of subsection (4) above whether a mine or part of a mine became abandoned before, on or after 31st December 1999 in a case where the mine or part has become abandoned on two or more occasions, of which—

*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) at least one falls on or before that date, and
- (b) at least one falls after that date,

the mine or part shall be regarded as becoming abandoned after that date (but without prejudice to the operation of subsection (3) above in relation to that mine or part at, or in relation to, any time before the first of those occasions which falls after that date).

- (6) Where, immediately before a part of a mine becomes abandoned, that part is the only part of the mine not falling to be regarded as abandoned for the time being, the abandonment of that part shall not be regarded for the purposes of subsection (4) or (5) above as constituting the abandonment of the mine, but only of that part of it.
- (7) Nothing in subsection (2) or (3) above prevents the enforcing authority from doing anything by way of remediation under section 78N below which it could have done apart from that subsection, but the authority shall not be entitled under section 78P below to recover from any person any part of the cost incurred by the authority in doing by way of remediation anything which it is precluded by subsection (2) or (3) above from requiring that person to do.
- (8) In this section “mine” has the same meaning as in the <sup>M6</sup>Mines and Quarries Act 1954.

#### Extent Information

- E4** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F26** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

#### Marginal Citations

- M6** 1954 c. 70.

### <sup>F26</sup><sup>F1</sup>78J Restrictions on liability relating to the pollution of controlled waters. **S**

- (1) This section applies where any land is contaminated land by virtue of paragraph (b) of subsection (2) of section 78A above (whether or not the land is also contaminated land by virtue of paragraph (a) of that subsection).
- (2) Where this section applies, no remediation notice given in consequence of the land in question being contaminated land shall require a person who is an appropriate person by virtue of section 78F(4) or (5) above to do anything by way of remediation to that or any other land, or [<sup>F103</sup>the water environment], which he could not have been required to do by such a notice had paragraph (b) of section 78A(2) above (and all other references to pollution of [<sup>F104</sup>the water environment]) been omitted from this Part.
- (3) If, in a case where this section applies, a person permits, has permitted, or might permit, water from an abandoned mine or part of a mine—
  - (a) to enter [<sup>F105</sup>the water environment], or
  - (b) to reach a place from which it is or, as the case may be, was likely, in the opinion of the enforcing authority, to enter [<sup>F106</sup>the water environment],

*Status: Point in time view as at 08/03/2016.*

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no remediation notice shall require him in consequence to do anything by way of remediation (whether to the contaminated land in question or to any other land [<sup>F107</sup>or the water environment]) which he could not have been required to do by such a notice had paragraph (b) of section 78A(2) above (and all other references to pollution of [<sup>F104</sup>the water environment]) been omitted from this Part.

(4) Subsection (3) above shall not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.

(5) In determining for the purposes of subsection (4) above whether a mine or part of a mine became abandoned before, on or after 31st December 1999 in a case where the mine or part has become abandoned on two or more occasions, of which—

- (a) at least one falls on or before that date, and
- (b) at least one falls after that date,

the mine or part shall be regarded as becoming abandoned after that date (but without prejudice to the operation of subsection (3) above in relation to that mine or part at, or in relation to, any time before the first of those occasions which falls after that date).

(6) Where, immediately before a part of a mine becomes abandoned, that part is the only part of the mine not falling to be regarded as abandoned for the time being, the abandonment of that part shall not be regarded for the purposes of subsection (4) or (5) above as constituting the abandonment of the mine, but only of that part of it.

(7) Nothing in subsection (2) or (3) above prevents the enforcing authority from doing anything by way of remediation under section 78N below which it could have done apart from that subsection, but the authority shall not be entitled under section 78P below to recover from any person any part of the cost incurred by the authority in doing by way of remediation anything which it is precluded by subsection (2) or (3) above from requiring that person to do.

(8) In this section “mine” has the same meaning as in the <sup>M6</sup>Mines and Quarries Act 1954.]

#### Extent Information

**E14** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

**F26** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

**F103** Words in s. 78J(2) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, 2(7)(a)

**F104** Words in s. 78J(2)(3) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, 2(2)

**F105** Words in s. 78J(3)(a) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, 2(7)(b)

**F106** Words in s. 78J(3)(b) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, 2(7)(c)

**F107** Words in s. 78J(3) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, 2(7)(d)

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### Marginal Citations

M6 1954 c. 70.

## <sup>F27</sup>78K **Liability in respect of contaminating substances which escape to other land.** **E**

**+W**

- (1) A person who has caused or knowingly permitted any substances to be in, on or under any land shall also be taken for the purposes of this Part to have caused or, as the case may be, knowingly permitted those substances to be in, on or under any other land to which they appear to have escaped.
- (2) Subsections (3) and (4) below apply in any case where it appears that any substances are or have been in, on or under any land (in this section referred to as “land A”) as a result of their escape, whether directly or indirectly, from other land in, on or under which a person caused or knowingly permitted them to be.
- (3) Where this subsection applies, no remediation notice shall require a person—
  - (a) who is the owner or occupier of land A, and
  - (b) who has not caused or knowingly permitted the substances in question to be in, on or under that land,

to do anything by way of remediation to any land or waters (other than land or waters of which he is the owner or occupier) in consequence of land A appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that significant harm<sup>F28</sup>, or significant pollution of controlled waters, is being caused, or there is a significant possibility of such harm or pollution being caused].

- (4) Where this subsection applies, no remediation notice shall require a person—
  - (a) who is the owner or occupier of land A, and
  - (b) who has not caused or knowingly permitted the substances in question to be in, on or under that land,

to do anything by way of remediation in consequence of any further land in, on or under which those substances or any of them appear to be or to have been present as a result of their escape from land A (“land B”) appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that significant harm<sup>F29</sup>, or significant pollution of controlled waters, is being caused, or there is a significant possibility of such harm or pollution being caused], unless he is also the owner or occupier of land B.

- (5) In any case where—
  - (a) a person (“person A”) has caused or knowingly permitted any substances to be in, on, or under any land,
  - (b) another person (“person B”) who has not caused or knowingly permitted those substances to be in, on or under that land becomes the owner or occupier of that land, and
  - (c) the substances, or any of the substances, mentioned in paragraph (a) above appear to have escaped to other land,

no remediation notice shall require person B to do anything by way of remediation to that other land in consequence of the apparent acts or omissions of person A, except to the extent that person B caused or knowingly permitted the escape.

*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) Nothing in subsection (3), (4) or (5) above prevents the enforcing authority from doing anything by way of remediation under section 78N below which it could have done apart from that subsection, but the authority shall not be entitled under section 78P below to recover from any person any part of the cost incurred by the authority in doing by way of remediation anything which it is precluded by subsection (3), (4) or (5) above from requiring that person to do.
- (7) In this section, “appear” means appear to the enforcing authority, and cognate expressions shall be construed accordingly.

#### Extent Information

- E5** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F27** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2
- F28** Words in s. 78K(3) substituted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(5), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F29** Words in s. 78K(4) substituted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(5), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2

### <sup>F27</sup><sup>F1</sup> **78K** Liability in respect of contaminating substances which escape to other land. **S**

- (1) A person who has caused or knowingly permitted any substances to be in, on or under any land shall also be taken for the purposes of this Part to have caused or, as the case may be, knowingly permitted those substances to be in, on or under any other land to which they appear to have escaped.
- (2) Subsections (3) and (4) below apply in any case where it appears that any substances are or have been in, on or under any land (in this section referred to as “land A”) as a result of their escape, whether directly or indirectly, from other land in, on or under which a person caused or knowingly permitted them to be.
- (3) Where this subsection applies, no remediation notice shall require a person—
- who is the owner or occupier of land A, and
  - who has not caused or knowingly permitted the substances in question to be in, on or under that land,
- to do anything by way of remediation to any land [<sup>F108</sup>or the water environment] (other than land [<sup>F108</sup>or the water environment] of which he is the owner or occupier) in consequence of land A appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that significant harm [<sup>F109</sup>, or significant pollution of the water environment, is being caused, or there is a significant possibility of such harm or pollution being caused].
- (4) Where this subsection applies, no remediation notice shall require a person—
- who is the owner or occupier of land A, and

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(b) who has not caused or knowingly permitted the substances in question to be in, on or under that land,

to do anything by way of remediation in consequence of any further land in, on or under which those substances or any of them appear to be or to have been present as a result of their escape from land A (“land B”) appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that significant harm<sup>F110</sup>, or significant pollution of the water environment, is being caused, or there is a significant possibility of such harm or pollution being caused], unless he is also the owner or occupier of land B.

(5) In any case where—

- (a) a person (“person A”) has caused or knowingly permitted any substances to be in, on, or under any land,
- (b) another person (“person B”) who has not caused or knowingly permitted those substances to be in, on or under that land becomes the owner or occupier of that land, and
- (c) the substances, or any of the substances, mentioned in paragraph (a) above appear to have escaped to other land,

no remediation notice shall require person B to do anything by way of remediation to that other land in consequence of the apparent acts or omissions of person A, except to the extent that person B caused or knowingly permitted the escape.

(6) Nothing in subsection (3), (4) or (5) above prevents the enforcing authority from doing anything by way of remediation under section 78N below which it could have done apart from that subsection, but the authority shall not be entitled under section 78P below to recover from any person any part of the cost incurred by the authority in doing by way of remediation anything which it is precluded by subsection (3), (4) or (5) above from requiring that person to do.

(7) In this section, “appear” means appear to the enforcing authority, and cognate expressions shall be construed accordingly.]

#### Extent Information

**E15** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

**F27** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

**F108** Words in s. 78K(3) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005](#) (S.S.I. 2005/658), regs. 1, [2\(8\)\(a\)\(i\)](#)

**F109** Words in s. 78K(3) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005](#) (S.S.I. 2005/658), regs. 1, [2\(8\)\(a\)\(ii\)](#)

**F110** Words in s. 78K(4) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005](#) (S.S.I. 2005/658), regs. 1, [2\(8\)\(b\)](#)



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<sup>F30</sup>**78L Appeals against remediation notices. E+W**

- (1) A person on whom a remediation notice is served may, within the period of twenty-one days beginning with the day on which the notice is served, appeal against the notice—
- [<sup>F31</sup>(a) if it was served by a local authority in England [<sup>F32</sup>or by the Environment Agency] , to the Secretary of State;
  - (b) if it was served by a local authority in Wales [<sup>F33</sup>or by the Natural Resources Body for Wales] , to the National Assembly for Wales;]
- and in the following provisions of this section “the appellate authority” means [<sup>F34</sup>the Secretary of State or the National Assembly for Wales, as the case may be].
- (2) On any appeal under subsection (1) above the appellate authority—
- (a) shall quash the notice, if it is satisfied that there is a material defect in the notice; but
  - (b) subject to that, may confirm the remediation notice, with or without modification, or quash it.
- (3) Where an appellate authority confirms a remediation notice, with or without modification, it may extend the period specified in the notice for doing what the notice requires to be done.
- (4) Regulations may make provision with respect to—
- (a) the grounds on which appeals under subsection (1) above may be made;
  - (b) <sup>F35</sup> . . . . .
  - (c) the procedure on an appeal under subsection (1) above <sup>F36</sup> . . . .
- (5) Regulations under subsection (4) above may (among other things)—
- (a) include provisions comparable to those in section 290 of the <sup>M7</sup>Public Health Act 1936 (appeals against notices requiring the execution of works);
  - (b) prescribe the cases in which a remediation notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;
  - (c) prescribe the cases in which the decision on an appeal may in some respects be less favourable to the appellant than the remediation notice against which he is appealing;
  - (d) prescribe the cases in which the appellant may claim that a remediation notice should have been served on some other person and prescribe the procedure to be followed in those cases;
  - (e) make provision as respects—
    - (i) the particulars to be included in the notice of appeal;
    - (ii) the persons on whom notice of appeal is to be served and the particulars, if any, which are to accompany the notice; and
    - (iii) the abandonment of an appeal;
  - (f) make different provision for different cases or classes of case.
- (6) This section, <sup>F37</sup> . . . , is subject to section 114 of the <sup>M8</sup>Environment Act 1995 (delegation or reference of appeals etc).

**Extent Information**

**E6** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F30** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2
- F31** S. 78L(1)(a)(b) substituted (E.W.) (16.3.2006 for certain purposes for W. and 10.12.2006 otherwise for W. and 4.8.2006 for certain purposes in relation to E.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 104(2), 108 (with s. 104(6)(7)); S.I. 2006/768, arts. 3, 4; S.I. 2006/1361, art. 2(1) (subject to art. 2(2)); S.I. 2006/2989
- F32** Words in s. 78L(1)(a) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 217(2) (with Sch. 7)
- F33** Words in s. 78L(1)(b) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 217(3) (with Sch. 7)
- F34** Words in s. 78L(1) substituted (E.W.) (16.3.2006 for certain purposes for W. and 10.12.2006 otherwise for W. and 4.8.2006 for certain purposes in relation to E.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 104(3), 108 (with s. 104(6)(7)); S.I. 2006/768, arts. 3, 4; S.I. 2006/1361, art. 2(1) (subject to art. 2(2)); S.I. 2006/2989
- F35** S. 78L(4)(b) repealed (E.W.) (16.3.2006 for certain purposes for W. and 10.12.2006 otherwise for W. and 4.8.2006 for certain purposes in relation to E.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 104(4)(a), 107, 108, Sch. 5 Pt. 10 (with s. 104(6)(7)); S.I. 2006/768, arts. 3, 4; S.I. 2006/1361, art. 2(1) (subject to art. 2(2)); S.I. 2006/2989
- F36** Words in s. 78L(4)(c) repealed (E.W.) (16.3.2006 for certain purposes for W. and 10.12.2006 otherwise for W. and 4.8.2006 for certain purposes in relation to E.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 104(4)(b), 107, 108, Sch. 5 Pt. 10 (with s. 104(6)(7)); S.I. 2006/768, arts. 3, 4; S.I. 2006/1361, art. 2(1) (subject to art. 2(2)); S.I. 2006/2989
- F37** Words in s. 78L(6) repealed (E.W.) (16.3.2006 for certain purposes for W. and 10.12.2006 otherwise for W. and 4.8.2006 for certain purposes in relation to E.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 104(5), 107, 108, Sch. 5 Pt. 10 (with s. 104(6)(7)); S.I. 2006/768, arts. 3, 4; S.I. 2006/1361, art. 2(1) (subject to art. 2(2)); S.I. 2006/2989

### Modifications etc. (not altering text)

- C6** S. 78L: power to delegate certain functions conferred (1.4.1996) by 1995 c. 25, s.114 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

### Marginal Citations

- M7** 1936 c. 49.  
**M8** 1995 c. 25.

## <sup>F30</sup><sup>F1</sup> 78L Appeals against remediation notices. **S**

- (1) A person on whom a remediation notice is served may, within the period of twenty-one days beginning with the day on which the notice is served, appeal against the notice—
- (a) if it was served by a local authority, to a magistrates' court or, in Scotland, to the sheriff by way of summary application; or
  - (b) if it was served by the appropriate Agency, to the Secretary of State;
- and in the following provisions of this section “the appellate authority” means the magistrates' court, the sheriff or the Secretary of State, as the case may be.
- (2) On any appeal under subsection (1) above the appellate authority—
- (a) shall quash the notice, if it is satisfied that there is a material defect in the notice; but



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- (b) subject to that, may confirm the remediation notice, with or without modification, or quash it.
- (3) Where an appellate authority confirms a remediation notice, with or without modification, it may extend the period specified in the notice for doing what the notice requires to be done.
- (4) Regulations may make provision with respect to—
  - (a) the grounds on which appeals under subsection (1) above may be made;
  - (b) the cases in which, grounds on which, court or tribunal to which, or person at whose instance, an appeal against a decision of a magistrates' court or sheriff court in pursuance of an appeal under subsection (1) above shall lie; or
  - (c) the procedure on an appeal under subsection (1) above or on an appeal by virtue of paragraph (b) above.
- (5) Regulations under subsection (4) above may (among other things)—
  - (a) include provisions comparable to those in section 290 of the <sup>M7</sup>Public Health Act 1936 (appeals against notices requiring the execution of works);
  - (b) prescribe the cases in which a remediation notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;
  - (c) prescribe the cases in which the decision on an appeal may in some respects be less favourable to the appellant than the remediation notice against which he is appealing;
  - (d) prescribe the cases in which the appellant may claim that a remediation notice should have been served on some other person and prescribe the procedure to be followed in those cases;
  - (e) make provision as respects—
    - (i) the particulars to be included in the notice of appeal;
    - (ii) the persons on whom notice of appeal is to be served and the particulars, if any, which are to accompany the notice; and
    - (iii) the abandonment of an appeal;
  - (f) make different provision for different cases or classes of case.
- (6) This section, so far as relating to appeals to the Secretary of State, is subject to section 114 of the <sup>M8</sup>Environment Act 1995 (delegation or reference of appeals etc).]

#### Textual Amendments

**F30** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

#### Modifications etc. (not altering text)

**C6** S. 78L: power to delegate certain functions conferred (1.4.1996) by 1995 c. 25, s.114 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

**C11** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Marginal Citations

**M7** 1936 c. 49.

*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**M8** 1995 c. 25.

**<sup>F38</sup>78M Offences of not complying with a remediation notice.**

- (1) If a person on whom an enforcing authority serves a remediation notice fails, without reasonable excuse, to comply with any of the requirements of the notice, he shall be guilty of an offence.
- (2) Where the remediation notice in question is one which was required by section 78E(3) above to state, in relation to the requirement which has not been complied with, the proportion of the cost involved which the person charged with the offence is liable to bear, it shall be a defence for that person to prove that the only reason why he has not complied with the requirement is that one or more of the other persons who are liable to bear a proportion of that cost refused, or was not able, to comply with the requirement.
- (3) Except in a case falling within subsection (4) below, a person who commits an offence under subsection (1) above shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale and to a further fine of an amount equal to [<sup>F39</sup>one-tenth of level 5 on the standard scale][<sup>F39</sup>one-tenth of the greater of £5,000 or level 4 on the standard scale] for each day on which the failure continues after conviction of the offence and before the enforcing authority has begun to exercise its powers by virtue of section 78N(3)(c) below.
- (4) A person who commits an offence under subsection (1) above in a case where the contaminated land to which the remediation notice relates is industrial, trade or business premises shall be liable on summary conviction to [<sup>F40</sup>a fine not exceeding £20,000 or such greater sum as the Secretary of State may from time to time by order substitute][<sup>F40</sup>a fine] and to a further fine of an amount equal to one-tenth of that sum for each day on which the failure continues after conviction of the offence and before the enforcing authority has begun to exercise its powers by virtue of section 78N(3)(c) below.
- (5) If the enforcing authority is of the opinion that proceedings for an offence under this section would afford an ineffectual remedy against a person who has failed to comply with any of the requirements of a remediation notice which that authority has served on him, that authority may take proceedings in the High Court or, in Scotland, in any court of competent jurisdiction, for the purpose of securing compliance with the remediation notice.
- (6) In this section, “industrial, trade or business premises” means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purpose of manufacturing.
- (7) No order shall be made under subsection (4) above unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

**Textual Amendments**

**F38** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000)

*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

- F39** Words in s. 78M(3) substituted (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 3 para. 6\(3\)](#) (with reg. 5(1))
- F40** Words in s. 78M(4) substituted (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 4 para. 22\(4\)](#) (with reg. 5(1))

**<sup>F41</sup>78N Powers of the enforcing authority to carry out remediation. E+W**

- (1) Where this section applies, the enforcing authority shall itself have power, in a case falling within paragraph (a) or (b) of section 78E(1) above, to do what is appropriate by way of remediation to the relevant land or waters.
- (2) Subsection (1) above shall not confer power on the enforcing authority to do anything by way of remediation if the authority would, in the particular case, be precluded by section 78YB below from serving a remediation notice requiring that thing to be done.
- (3) This section applies in each of the following cases, that is to say—
  - (a) where the enforcing authority considers it necessary to do anything itself by way of remediation for the purpose of preventing the occurrence of any serious harm, or serious pollution of controlled waters, of which there is imminent danger;
  - (b) where an appropriate person has entered into a written agreement with the enforcing authority for that authority to do, at the cost of that person, that which he would otherwise be required to do under this Part by way of remediation;
  - (c) where a person on whom the enforcing authority serves a remediation notice fails to comply with any of the requirements of the notice;
  - (d) where the enforcing authority is precluded by section 78J or 78K above from including something by way of remediation in a remediation notice;
  - (e) where the enforcing authority considers that, were it to do some particular thing by way of remediation, it would decide, by virtue of subsection (2) of section 78P below or any guidance issued under that subsection,—
    - (i) not to seek to recover under subsection (1) of that section any of the reasonable cost incurred by it in doing that thing; or
    - (ii) to seek so to recover only a portion of that cost;
  - (f) where no person has, after reasonable inquiry, been found who is an appropriate person in relation to any particular thing.
- (4) Subject to section 78E(4) and (5) above, for the purposes of this section, the things which it is appropriate for the enforcing authority to do by way of remediation are—
  - (a) in a case falling within paragraph (a) of subsection (3) above, anything by way of remediation which the enforcing authority considers necessary for the purpose mentioned in that paragraph;
  - (b) in a case falling within paragraph (b) of that subsection, anything specified in, or determined under, the agreement mentioned in that paragraph;
  - (c) in a case falling within paragraph (c) of that subsection, anything which the person mentioned in that paragraph was required to do by virtue of the remediation notice;

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- (d) in a case falling within paragraph (d) of that subsection, anything by way of remediation which the enforcing authority is precluded by section 78J or 78K above from including in a remediation notice;
  - (e) in a case falling within paragraph (e) or (f) of that subsection, the particular thing mentioned in the paragraph in question.
- (5) In this section “the relevant land or waters” means—
- (a) the contaminated land in question;
  - (b) any controlled waters affected by that land; or
  - (c) any land adjoining or adjacent to that land or those waters.

#### Extent Information

- E7** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F41** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

### <sup>F41</sup><sup>F1</sup>78NPowers of the enforcing authority to carry out remediation. **S**

- (1) Where this section applies, the enforcing authority shall itself have power, in a case falling within paragraph (a) or (b) of section 78E(1) above, to do what is appropriate by way of remediation to the relevant land or [<sup>F111</sup>the water environment].
- (2) Subsection (1) above shall not confer power on the enforcing authority to do anything by way of remediation if the authority would, in the particular case, be precluded by section 78YB below from serving a remediation notice requiring that thing to be done.
- (3) This section applies in each of the following cases, that is to say—
  - (a) where the enforcing authority considers it necessary to do anything itself by way of remediation for the purpose of preventing the occurrence of any serious harm, or serious pollution of [<sup>F112</sup>the water environment], of which there is imminent danger;
  - (b) where an appropriate person has entered into a written agreement with the enforcing authority for that authority to do, at the cost of that person, that which he would otherwise be required to do under this Part by way of remediation;
  - (c) where a person on whom the enforcing authority serves a remediation notice fails to comply with any of the requirements of the notice;
  - (d) where the enforcing authority is precluded by section 78J or 78K above from including something by way of remediation in a remediation notice;
  - (e) where the enforcing authority considers that, were it to do some particular thing by way of remediation, it would decide, by virtue of subsection (2) of section 78P below or any guidance issued under that subsection,—
    - (i) not to seek to recover under subsection (1) of that section any of the reasonable cost incurred by it in doing that thing; or
    - (ii) to seek so to recover only a portion of that cost;

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- (f) where no person has, after reasonable inquiry, been found who is an appropriate person in relation to any particular thing.
- (4) Subject to section 78E(4) and (5) above, for the purposes of this section, the things which it is appropriate for the enforcing authority to do by way of remediation are—
- (a) in a case falling within paragraph (a) of subsection (3) above, anything by way of remediation which the enforcing authority considers necessary for the purpose mentioned in that paragraph;
  - (b) in a case falling within paragraph (b) of that subsection, anything specified in, or determined under, the agreement mentioned in that paragraph;
  - (c) in a case falling within paragraph (c) of that subsection, anything which the person mentioned in that paragraph was required to do by virtue of the remediation notice;
  - (d) in a case falling within paragraph (d) of that subsection, anything by way of remediation which the enforcing authority is precluded by section 78J or 78K above from including in a remediation notice;
  - (e) in a case falling within paragraph (e) or (f) of that subsection, the particular thing mentioned in the paragraph in question.
- [<sup>F113</sup>(5) In this section “relevant land or water environment” means—
- (a) the contaminated land in question;
  - (b) the water environment affected by that land; or
  - (c) any land adjoining or adjacent to that land or that water environment.]]

#### Extent Information

**E16** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

- F41** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2
- F111** Words in s. 78N(1) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, 2(9)(a)
- F112** Words in s. 78N(3)(a) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, 2(2)
- F113** S. 78N(5) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, 2(9)(b)

#### <sup>F42</sup>**78P Recovery of, and security for, the cost of remediation by the enforcing authority.**

- (1) Where, by virtue of section 78N(3)(a), (c), (e) or (f) above, the enforcing authority does any particular thing by way of remediation, it shall be entitled, subject to sections 78J(7) and 78K(6) above, to recover the reasonable cost incurred in doing it from the appropriate person or, if there are two or more appropriate persons in relation to the thing in question, from those persons in proportions determined pursuant to section 78F(7) above.

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- (2) In deciding whether to recover the cost, and, if so, how much of the cost, which it is entitled to recover under subsection (1) above, the enforcing authority shall have regard—
- (a) to any hardship which the recovery may cause to the person from whom the cost is recoverable; and
  - (b) to any guidance issued by the Secretary of State for the purposes of this subsection.
- (3) Subsection (4) below shall apply in any case where—
- (a) any cost is recoverable under subsection (1) above from a person—
    - (i) who is the owner of any premises which consist of or include the contaminated land in question; and
    - (ii) who caused or knowingly permitted the substances, or any of the substances, by reason of which the land is contaminated land to be in, on or under the land; and
  - (b) the enforcing authority serves a notice under this subsection (in this Part referred to as a “charging notice”) on that person.
- (4) Where this subsection applies—
- (a) the cost shall carry interest, at such reasonable rate as the enforcing authority may determine, from the date of service of the notice until the whole amount is paid; and
  - (b) subject to the following provisions of this section, the cost and accrued interest shall be a charge on the premises mentioned in subsection (3)(a)(i) above.
- (5) A charging notice shall—
- (a) specify the amount of the cost which the enforcing authority claims is recoverable;
  - (b) state the effect of subsection (4) above and the rate of interest determined by the authority under that subsection; and
  - (c) state the effect of subsections (7) and (8) below.
- (6) On the date on which an enforcing authority serves a charging notice on a person, the authority shall also serve a copy of the notice on every other person who, to the knowledge of the authority, has an interest in the premises capable of being affected by the charge.
- (7) Subject to any order under subsection (9)(b) or (c) below, the amount of any cost specified in a charging notice and the accrued interest shall be a charge on the premises—
- (a) as from the end of the period of twenty-one days beginning with the service of the charging notice, or
  - (b) where an appeal is brought under subsection (8) below, as from the final determination or (as the case may be) the withdrawal, of the appeal,
- until the cost and interest are recovered.
- (8) A person served with a charging notice or a copy of a charging notice may appeal against the notice to [<sup>F43</sup>the county court] within the period of twenty-one days beginning with the date of service.
- (9) On an appeal under subsection (8) above, the court may—
- (a) confirm the notice without modification;

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- (b) order that the notice is to have effect with the substitution of a different amount for the amount originally specified in it; or
  - (c) order that the notice is to be of no effect.
- (10) Regulations may make provision with respect to—
- (a) the grounds on which appeals under this section may be made; or
  - (b) the procedure on any such appeal.
- (11) An enforcing authority shall, for the purpose of enforcing a charge under this section, have all the same powers and remedies under the <sup>M9</sup>Law of Property Act 1925, and otherwise, as if it were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.
- (12) Where any cost is a charge on premises under this section, the enforcing authority may by order declare the cost to be payable with interest by instalments within the specified period until the whole amount is paid.
- (13) In subsection (12) above—
- “interest” means interest at the rate determined by the enforcing authority under subsection (4) above; and
  - “the specified period” means such period of thirty years or less from the date of service of the charging notice as is specified in the order.
- (14) Subsections (3) to (13) above do not extend to Scotland.

#### Extent Information

**E8** S. 78P(3)-(13) do not extend to Scotland see s. 78P(14)

#### Textual Amendments

**F42** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

**F43** Words in s. 78P(8) substituted (22.4.2014) by *Crime and Courts Act 2013 (c. 22)*, s. 61(3), *Sch. 9 para. 52*; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

#### Marginal Citations

**M9** 1925 c. 20.

#### <sup>F44</sup>78Q Special sites.

- (1) If, in a case where a local authority has served a remediation notice, the contaminated land in question becomes a special site, the appropriate Agency may adopt the remediation notice and, if it does so,—
- (a) it shall give notice of its decision to adopt the remediation notice to the appropriate person and to the local authority;
  - (b) the remediation notice shall have effect, as from the time at which the appropriate Agency decides to adopt it, as a remediation notice given by that Agency; and
  - (c) the validity of the remediation notice shall not be affected by—



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- (i) the contaminated land having become a special site;
  - (ii) the adoption of the remediation notice by the appropriate Agency; or
  - (iii) anything in paragraph (b) above.
- (2) Where a local authority has, by virtue of section 78N above, begun to do any thing, or any series of things, by way of remediation—
- (a) the authority may continue doing that thing, or that series of things, by virtue of that section, notwithstanding that the contaminated land in question becomes a special site; and
  - (b) section 78P above shall apply in relation to the reasonable cost incurred by the authority in doing that thing or those things as if that authority were the enforcing authority.
- (3) If and so long as any land is a special site, the appropriate Agency may from time to time inspect that land for the purpose of keeping its condition under review.
- (4) If it appears to the appropriate Agency that a special site is no longer land which is required to be designated as such a site, the appropriate Agency may give notice—
- (a) to the Secretary of State, and
  - (b) to the local authority in whose area the site is situated,
- terminating the designation of the land in question as a special site as from such date as may be specified in the notice.
- (5) A notice under subsection (4) above shall not prevent the land, or any of the land, to which the notice relates being designated as a special site on a subsequent occasion.
- (6) In exercising its functions under subsection (3) or (4) above, the appropriate Agency shall act in accordance with any guidance given for the purpose by the Secretary of State.

#### Textual Amendments

**F44** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

#### **Land no longer considered to be contaminated**

**F45** 78QA

- (1) Subsection (2) applies where—
- (a) a local authority has given notice under section 78B above that land in its area has been identified as contaminated land;
  - (b) the land is not designated as a special site by virtue of section 78C(7) or 78D(6) above; and
  - (c) the local authority is satisfied that the land is no longer contaminated land.
- (2) The local authority may give notice (a “non-contamination notice”) that the land is no longer contaminated land to—
- (a) the appropriate Agency;
  - (b) the owner of the land;
  - (c) any person who appears to the local authority to be in occupation of the land;



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- (d) each person who appears to the authority to be an appropriate person.
- (3) Where a non-contamination notice is given in respect of land—
- (a) the notice mentioned in subsection (1) above ceases to have effect (and accordingly the land is no longer identified as contaminated land for the purposes of this Part);
  - (b) no remediation notice may be served in respect of the land;
  - (c) any remediation notice in force in respect of the land at the time the non-contamination notice is given ceases to have effect (except to the extent that the non-contamination notice provides otherwise); and
  - (d) no proceedings may be begun against a person for an offence under section 78M(1) above in respect of such a remediation notice except in relation to a provision of the notice which continues to have effect by virtue of paragraph (c) above.
- (4) A non-contamination notice shall not prevent the land, or any of the land, to which the notice relates being identified as contaminated land on a subsequent occasion.
- (5) Where land, or any of the land, to which a non-contamination notice relates is subsequently identified as contaminated land, or is subsequently designated as a special site by virtue of section 78C(7) or 78D(6), subsection (3)(b) above does not prevent a remediation notice being served in respect of the land.
- (6) Where a local authority gives a non-contamination notice, it must keep (in such form as it thinks fit) a record of—
- (a) details of the land to which the notice relates;
  - (b) its reasons for giving the notice; and
  - (c) the date of—
    - (i) the notice mentioned in subsection (1) above;
    - (ii) service of the non-contamination notice.
- (7) Subsection (8) of section 78R below applies to records kept under subsection (6) above as it applies to registers maintained by enforcing authorities under that section; and for that purpose, the reference to entries is to be read as if it were a reference to information in such records.
- (8) In performing its function under subsection (2) above, a local authority must have regard to any guidance issued by the Scottish Ministers in accordance with section 78YA below.
- (9) In this section, references to land in respect of which a non-contamination notice is given include references to part of that land.]

#### Textual Amendments

**F45** S. 78QA inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), ss. **45(3)**, 61(2); [S.S.I. 2014/160](#), art. 2(1)(2), sch.

#### Modifications etc. (not altering text)

**C7** Pt. IIA (ss. 78A-78YC) extended (with modifications) (S.) (1.4.2007 for certain purposes, otherwise 30.10.2007) by [The Radioactive Contaminated Land \(Scotland\) Regulations \(S.S.I. 2007/179\)](#), regs. 1(1)(2), {2-15} (as amended (10.12.2007) by [S.I. 2007/3240](#), reg. 3 (with reg. 2) which is itself amended (coming into force in accordance with art. 1(2)-(5) of the amending S.I.) by [The Nuclear](#)

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Installations (Liability for Damage) Order 2016 (S.I. 2016/562), art. 1(2), Sch. 2 para. 11 (with art. 40); (22.5.2019) by The Radiation (Emergency Preparedness and Public Information) Regulations 2019 (S.I. 2019/703), reg. 1(1), **Sch. 10 para. 8** (with reg. 3)

#### <sup>F46</sup>**78R Registers.**

- (1) Every enforcing authority shall maintain a register containing prescribed particulars of or relating to—
- (a) remediation notices served by that authority;
  - (b) appeals against any such remediation notices;
  - (c) remediation statements or remediation declarations prepared and published under section 78H above;
  - (d) in relation to an enforcing authority in England and Wales, appeals against charging notices served by that authority;
  - (e) notices under subsection (1)(b) or (5)(a) of section 78C above which have effect by virtue of subsection (7) of that section as the designation of any land as a special site;
  - (f) notices under subsection (4)(b) of section 78D above which have effect by virtue of subsection (6) of that section as the designation of any land as a special site;
  - (g) notices given by or to the enforcing authority under section 78Q(4) above terminating the designation of any land as a special site;
  - (h) notifications given to that authority by persons—
    - (i) on whom a remediation notice has been served, or
    - (ii) who are or were required by virtue of section 78H(8)(a) above to prepare and publish a remediation statement,
 of what they claim has been done by them by way of remediation;
  - (j) notifications given to that authority by owners or occupiers of land—
    - (i) in respect of which a remediation notice has been served, or
    - (ii) in respect of which a remediation statement has been prepared and published,
 of what they claim has been done on the land in question by way of remediation;
  - (k) convictions for such offences under section 78M above as may be prescribed;
  - (l) such other matters relating to contaminated land as may be prescribed;
- but that duty is subject to sections 78S and 78T below.
- (2) The form of, and the descriptions of information to be contained in, notifications for the purposes of subsection (1)(h) or (j) above may be prescribed by the Secretary of State.
- (3) No entry made in a register by virtue of subsection (1)(h) or (j) above constitutes a representation by the body maintaining the register or, in a case where the entry is made by virtue of subsection (6) below, the authority which sent the copy of the particulars in question pursuant to subsection (4) or (5) below—
- (a) that what is stated in the entry to have been done has in fact been done; or
  - (b) as to the manner in which it has been done.

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- (4) Where any particulars are entered on a register maintained under this section by the appropriate Agency, the appropriate Agency shall send a copy of those particulars to the local authority in whose area is situated the land to which the particulars relate.
- (5) In any case where—
  - (a) any land is treated by virtue of section 78X(2) below as situated in the area of a local authority other than the local authority in whose area it is in fact situated, and
  - (b) any particulars relating to that land are entered on the register maintained under this section by the local authority in whose area the land is so treated as situated,that authority shall send a copy of those particulars to the local authority in whose area the land is in fact situated.
- (6) Where a local authority receives a copy of any particulars sent to it pursuant to subsection (4) or (5) above, it shall enter those particulars on the register maintained by it under this section.
- (7) Where information of any description is excluded by virtue of section 78T below from any register maintained under this section, a statement shall be entered in the register indicating the existence of information of that description.
- (8) It shall be the duty of each enforcing authority—
  - (a) to secure that the registers maintained by it under this section are available, at all reasonable times, for inspection by the public free of charge; and
  - (b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges;and, for the purposes of this subsection, places may be prescribed by the Secretary of State at which any such registers or facilities as are mentioned in paragraph (a) or (b) above are to be available or afforded to the public in pursuance of the paragraph in question.
- (9) Registers under this section may be kept in any form.

#### Textual Amendments

**F46** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

#### <sup>F47</sup>78S Exclusion from registers of information affecting national security.

- (1) No information shall be included in a register maintained under section 78R above if and so long as, in the opinion of the Secretary of State, the inclusion in the register of that information, or information of that description, would be contrary to the interests of national security.
- (2) The Secretary of State may, for the purpose of securing the exclusion from registers of information to which subsection (1) above applies, give to enforcing authorities directions—

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- (a) specifying information, or descriptions of information, to be excluded from their registers; or
  - (b) specifying descriptions of information to be referred to the Secretary of State for his determination;
- and no information referred to the Secretary of State in pursuance of paragraph (b) above shall be included in any such register until the Secretary of State determines that it should be so included.
- (3) The enforcing authority shall notify the Secretary of State of any information which it excludes from the register in pursuance of directions under subsection (2) above.
- (4) A person may, as respects any information which appears to him to be information to which subsection (1) above may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and, if he does so—
- (a) he shall notify the enforcing authority that he has done so; and
  - (b) no information so notified to the Secretary of State shall be included in any such register until the Secretary of State has determined that it should be so included.

#### Textual Amendments

**F47** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

#### **<sup>F48</sup>78T Exclusion from registers of certain confidential information.**

- (1) No information relating to the affairs of any individual or business shall be included in a register maintained under section 78R above, without the consent of that individual or the person for the time being carrying on that business, if and so long as the information—
- (a) is, in relation to him, commercially confidential; and
  - (b) is not required to be included in the register in pursuance of directions under subsection (7) below;
- but information is not commercially confidential for the purposes of this section unless it is determined under this section to be so by the enforcing authority or, on appeal, by the Secretary of State.
- (2) Where it appears to an enforcing authority that any information which has been obtained by the authority under or by virtue of any provision of this Part might be commercially confidential, the authority shall—
- (a) give to the person to whom or whose business it relates notice that that information is required to be included in the register unless excluded under this section; and
  - (b) give him a reasonable opportunity—
    - (i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and
    - (ii) of making representations to the authority for the purpose of justifying any such objection;

*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- and, if any representations are made, the enforcing authority shall, having taken the representations into account, determine whether the information is or is not commercially confidential.
- (3) Where, under subsection (2) above, an authority determines that information is not commercially confidential—
- (a) the information shall not be entered in the register until the end of the period of twenty-one days beginning with the date on which the determination is notified to the person concerned;
- (b) that person may appeal to the Secretary of State against the decision;
- and, where an appeal is brought in respect of any information, the information shall not be entered in the register until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn.
- (4) An appeal under subsection (3) above shall, if either party to the appeal so requests or the Secretary of State so decides, take or continue in the form of a hearing (which must be held in private).
- (5) Subsection (10) of section 15 above shall apply in relation to an appeal under subsection (3) above as it applies in relation to an appeal under that section.
- (6) Subsection (3) above is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).
- (7) The Secretary of State may give to the enforcing authorities directions as to specified information, or descriptions of information, which the public interest requires to be included in registers maintained under section 78R above notwithstanding that the information may be commercially confidential.
- (8) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this section at the expiry of the period of four years beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the authority for the information to remain excluded from the register on the ground that it is still commercially confidential and the authority shall determine whether or not that is the case.
- (9) Subsections (3) to (6) above shall apply in relation to a determination under subsection (8) above as they apply in relation to a determination under subsection (2) above.
- (10) Information is, for the purposes of any determination under this section, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that individual or person.
- (11) For the purposes of subsection (10) above, there shall be disregarded any prejudice to the commercial interests of any individual or person so far as relating only to the value of the contaminated land in question or otherwise to the ownership or occupation of that land.

#### Textual Amendments

- F48** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000)

*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

**Modifications etc. (not altering text)**

**C8** S. 78T: power, to delegate certain functions, conferred (1.4.1996) by 1995 c. 25, s.114 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3.

**Registers: removal of information about land designated as special site**

<sup>F49</sup>78TA

- (1) Subsection (2) applies where a local authority has entered in a register maintained under section 78R above particulars of or relating to notices mentioned in paragraph (e) or (f) of subsection (1) of that section.
- (2) The local authority may remove the particulars from the register.
- (3) Particulars may be removed under subsection (2) above only if—
  - (a) the Scottish Environment Protection Agency has given the local authority a notice under section 78Q(4) above that the land to which the notices relate is no longer land which is required to be designated as a special site; and
  - (b) the date specified in the notice given under that section has passed.
- (4) Where a local authority removes particulars from a register under subsection (2) above, it must keep (in such form as it thinks fit) a record of—
  - (a) the particulars that have been removed;
  - (b) its reasons for removing them; and
  - (c) the date on which the particulars—
    - (i) were originally entered in the register; and
    - (ii) were removed.
- (5) Subsection (8) of section 78R above applies to records kept under subsection (4) above as it applies to registers maintained by enforcing authorities under that section; and for that purpose, the reference to entries is to be read as if it were a reference to information in such records.
- (6) In performing its functions under subsection (4) above, a local authority must have regard to any guidance issued by the Scottish Ministers in accordance with section 78YA below.
- (7) Where a local authority removes particulars from a register under subsection (2) above, it must give notice of such removal to—
  - (a) the Scottish Environment Protection Agency;
  - (b) any person who is the owner of land designated as a special site by a notice to which the particulars relate;
  - (c) any person who appears to the local authority to be in occupation of the whole or any part of that land;
  - (d) each person—
    - (i) who appears to the Scottish Environment Protection Agency to be an appropriate person in relation to that land; and
    - (ii) in respect of whom details have been given by the Scottish Environment Protection Agency to the local authority sufficient to enable notice of such removal to be given; and

*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (e) each person who appears to the local authority to be an appropriate person in relation to that land.]

#### Textual Amendments

**F49** Ss. 78TA, 78TB inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), ss. **45(4)**, 61(2); S.S.I. 2014/160, art. 2(1)(2), sch.

#### Modifications etc. (not altering text)

**C9** Pt. IIA (ss. 78A-78YC) extended (with modifications) (S.) (1.4.2007 for certain purposes, otherwise 30.10.2007) by The Radioactive Contaminated Land (Scotland) Regulations ([S.S.I. 2007/179](#)), regs. 1(1)(2), {2-15} (as amended (10.12.2007) by [S.I. 2007/3240](#), **reg. 3** (with **reg. 2**) which is itself amended (coming into force in accordance with art. 1(2)-(5) of the amending S.I.) by [The Nuclear Installations \(Liability for Damage\) Order 2016 \(S.I. 2016/562\)](#), art. 1(2), Sch. 2 para. 11 (with art. 40); (22.5.2019) by [The Radiation \(Emergency Preparedness and Public Information\) Regulations 2019 \(S.I. 2019/703\)](#), reg. 1(1), **Sch. 10 para. 8** (with **reg. 3**))

#### **F49** **78TB** **Effect of removal of information from register**

- (1) Where a local authority removes particulars from a register under section 78TA(2) above—
- (a) any remediation notice relating to the land ceases to have effect; and
  - (b) no proceedings may be begun against a person for an offence under section 78M(1) above in respect of any remediation notice relating to the land.
- (2) In subsection (1), “the land” means land designated as a special site by a notice to which the particulars mentioned in that subsection relate.]

#### Textual Amendments

**F49** Ss. 78TA, 78TB inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), ss. **45(4)**, 61(2); S.S.I. 2014/160, art. 2(1)(2), sch.

#### Modifications etc. (not altering text)

**C10** Pt. IIA (ss. 78A-78YC) extended (with modifications) (S.) (1.4.2007 for certain purposes, 30.10.2007 otherwise) by The Radioactive Contaminated Land (Scotland) Regulations ([S.S.I. 2007/179](#)), regs. 1(1)(2), 2-15 (as amended (10.12.2007) by [S.I. 2007/3240](#), **reg. 3** (with **reg. 2**) which is itself amended (coming into force in accordance with art. 1(2)-(5) of the amending S.I.) by [The Nuclear Installations \(Liability for Damage\) Order 2016 \(S.I. 2016/562\)](#), art. 1(2), Sch. 2 para. 11 (with art. 40); (22.5.2019) by [The Radiation \(Emergency Preparedness and Public Information\) Regulations 2019 \(S.I. 2019/703\)](#), reg. 1(1), **Sch. 10 para. 8** (with **reg. 3**))

#### **F50** **78U** **Reports by the appropriate Agency on the state of contaminated land.**

- (1) The appropriate Agency shall—
- (a) from time to time, or
  - (b) if the Secretary of State at any time so requests,
- prepare and publish a report on the state of contaminated land [<sup>F51</sup>in England, Wales or Scotland], as the case may be.



*Status: Point in time view as at 08/03/2016.*

*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) A local authority shall, at the written request of the appropriate Agency, furnish the appropriate Agency with such information to which this subsection applies as the appropriate Agency may require for the purpose of enabling it to perform its functions under subsection (1) above.
- (3) The information to which subsection (2) above applies is such information as the local authority may have, or may reasonably be expected to obtain, with respect to the condition of contaminated land in its area, being information which the authority has acquired or may acquire in the exercise of its functions under this Part.

#### Textual Amendments

- F50** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2
- F51** Words in s. 78U(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 218 (with Sch. 7)

#### <sup>F52</sup>78V Site-specific guidance by the appropriate Agency concerning contaminated land.

- (1) The appropriate Agency may issue guidance to any local authority with respect to the exercise or performance of the authority's powers or duties under this Part in relation to any particular contaminated land; and in exercising or performing those powers or duties in relation to that land the authority shall have regard to any such guidance so issued.
- (2) If and to the extent that any guidance issued under subsection (1) above to a local authority is inconsistent with any guidance issued under this Part by the Secretary of State, the local authority shall disregard the guidance under that subsection.
- (3) A local authority shall, at the written request of the appropriate Agency, furnish the appropriate Agency with such information to which this subsection applies as the appropriate Agency may require for the purpose of enabling it to issue guidance for the purposes of subsection (1) above.
- (4) The information to which subsection (3) above applies is such information as the local authority may have, or may reasonably be expected to obtain, with respect to any contaminated land in its area, being information which the authority has acquired, or may acquire, in the exercise of its functions under this Part.

#### Textual Amendments

- F52** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

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*Changes to legislation: Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

<sup>F53</sup>**78W The appropriate Agency to have regard to guidance given by the Secretary of State.**

- (1) The Secretary of State may issue guidance to the appropriate Agency with respect to the exercise or performance of that Agency's powers or duties under this Part; and in exercising or performing those powers or duties the appropriate Agency shall have regard to any such guidance so issued.
- (2) The duty imposed on the appropriate Agency by subsection (1) above is without prejudice to any duty imposed by any other provision of this Part on that Agency to act in accordance with guidance issued by the Secretary of State.

**Textual Amendments**

**F53** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

<sup>F54</sup>**78X Supplementary provisions.** **E+W**

- (1) Where it appears to a local authority that two or more different sites, when considered together, are in such a condition, by reason of substances in, on or under the land, that—
  - (a) significant harm is being caused or there is a significant possibility of such harm being caused, or
  - [<sup>F55</sup>(b) significant pollution of controlled waters is being caused or there is a significant possibility of such pollution being caused,]this Part shall apply in relation to each of those sites, whether or not the condition of the land at any of them, when considered alone, appears to the authority to be such that significant harm[<sup>F56</sup>, or significant pollution of controlled waters, is being caused, or there is a significant possibility of such harm or pollution being caused].
- (2) Where it appears to a local authority that any land outside, but adjoining or adjacent to, its area is in such a condition, by reason of substances in, on or under the land, that significant harm[<sup>F57</sup>, or significant pollution of controlled waters, is being caused, or there is a significant possibility of such harm or pollution being caused] within its area—
  - (a) the authority may, in exercising its functions under this Part, treat that land as if it were land situated within its area; and
  - (b) except in this subsection, any reference—
    - (i) to land within the area of a local authority, or
    - (ii) to the local authority in whose area any land is situated,shall be construed accordingly;but this subsection is without prejudice to the functions of the local authority in whose area the land is in fact situated.
- (3) A person acting in a relevant capacity—
  - (a) shall not thereby be personally liable, under this Part, to bear the whole or any part of the cost of doing any thing by way of remediation, unless that thing is to any extent referable to substances whose presence in, on or under the

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contaminated land in question is a result of any act done or omission made by him which it was unreasonable for a person acting in that capacity to do or make; and

- (b) shall not thereby be guilty of an offence under or by virtue of section 78M above unless the requirement which has not been complied with is a requirement to do some particular thing for which he is personally liable to bear the whole or any part of the cost.

(4) In subsection (3) above, “person acting in a relevant capacity” means—

- (a) a person acting as an insolvency practitioner, within the meaning of section 388 of the <sup>M10</sup>Insolvency Act 1986 (including that section as it applies in relation to an insolvent partnership by virtue of any order made under section 421 of that Act);
- (b) the official receiver acting in a capacity in which he would be regarded as acting as an insolvency practitioner within the meaning of section 388 of the <sup>M11</sup>Insolvency Act 1986 if subsection (5) of that section were disregarded;
- (c) the official receiver acting as receiver or manager;
- (d) a person acting as a special manager under section 177 or 370 of the <sup>M12</sup>Insolvency Act 1986;
- (e) the Accountant in Bankruptcy acting as permanent or interim trustee in a sequestration (within the meaning of the <sup>M13</sup>Bankruptcy (Scotland) Act 1985);
- (f) a person acting as a receiver or receiver and manager—
- (i) under or by virtue of any enactment; or
  - (ii) by virtue of his appointment as such by an order of a court or by any other instrument.

(5) Regulations may make different provision for different cases or circumstances.

#### Textual Amendments

- F54** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2
- F55** S. 78X(1)(b) substituted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(6)(a)(i), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F56** Words in s. 78X(1) substituted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(6)(a)(ii), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F57** Words in s. 78X(2) substituted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(6)(b), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2

#### Marginal Citations

- M10** 1986 c. 63.
- M11** 1986 c. 45.
- M12** 1986 c. 45.
- M13** 1985 c. 51.

*Status: Point in time view as at 08/03/2016.*

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<sup>F54</sup>**[78X Supplementary provisions. S**

(1) Where it appears to a local authority that two or more different sites, when considered together, are in such a condition, by reason of substances in, on or under the land, that—

(a) significant harm is being caused or there is a significant possibility of such harm being caused, or

[<sup>F114</sup>(b) significant pollution of the water environment, is being caused, or there is a significant possibility of such pollution being caused,]

this Part shall apply in relation to each of those sites, whether or not the condition of the land at any of them, when considered alone, appears to the authority to be such that significant harm [<sup>F115</sup>, or significant pollution of the water environment, is being caused, or there is a significant possibility of such harm or pollution being caused].

(2) Where it appears to a local authority that any land outside, but adjoining or adjacent to, its area is in such a condition, by reason of substances in, on or under the land, that significant harm [<sup>F116</sup>, or significant pollution of the water environment, is being caused, or there is a significant possibility of such harm or pollution being caused] within its area—

(a) the authority may, in exercising its functions under this Part, treat that land as if it were land situated within its area; and

(b) except in this subsection, any reference—

(i) to land within the area of a local authority, or

(ii) to the local authority in whose area any land is situated,

shall be construed accordingly;

but this subsection is without prejudice to the functions of the local authority in whose area the land is in fact situated.

(3) A person acting in a relevant capacity—

(a) shall not thereby be personally liable, under this Part, to bear the whole or any part of the cost of doing any thing by way of remediation, unless that thing is to any extent referable to substances whose presence in, on or under the contaminated land in question is a result of any act done or omission made by him which it was unreasonable for a person acting in that capacity to do or make; and

(b) shall not thereby be guilty of an offence under or by virtue of section 78M above unless the requirement which has not been complied with is a requirement to do some particular thing for which he is personally liable to bear the whole or any part of the cost.

(4) In subsection (3) above, “person acting in a relevant capacity” means—

(a) a person acting as an insolvency practitioner, within the meaning of section 388 of the <sup>M10</sup>Insolvency Act 1986 (including that section as it applies in relation to an insolvent partnership by virtue of any order made under section 421 of that Act);

(b) the official receiver acting in a capacity in which he would be regarded as acting as an insolvency practitioner within the meaning of section 388 of the <sup>M11</sup>Insolvency Act 1986 if subsection (5) of that section were disregarded;

(c) the official receiver acting as receiver or manager;

(d) a person acting as a special manager under section 177 or 370 of the <sup>M12</sup>Insolvency Act 1986;

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- (e) the Accountant in Bankruptcy acting as permanent or interim trustee in a sequestration (within the meaning of the <sup>M13</sup>Bankruptcy (Scotland) Act 1985);
- (f) a person acting as a receiver or receiver and manager—
  - (i) under or by virtue of any enactment; or
  - (ii) by virtue of his appointment as such by an order of a court or by any other instrument.
- <sup>F117</sup> [ in relation to property and rights that have vested as *bona vacantia* in the Crown, or that have fallen to the Crown as *ultimus haeres*, the Queen's and Lord Treasurer's Remembrancer.]

<sup>F118</sup> [ In subsection (4)(f)(i) above, “enactment” includes an enactment comprised in, or in (4A) an instrument made under, an Act of the Scottish Parliament.]

(5) Regulations may make different provision for different cases or circumstances.]

#### Textual Amendments

- F54** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2
- F114** S. 78X(1)(b) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005](#) (S.S.I. 2005/658), regs. 1, **2(10)(a)(i)**
- F115** Words in s. 78X(1) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005](#) (S.S.I. 2005/658), regs. 1, **2(10)(a)(ii)**
- F116** Words in s. 78X(2) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005](#) (S.S.I. 2005/658), regs. 1, **2(10)(b)**
- F117** S. 78X(4)(g) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014](#) (asp 3), ss. **45(5)**, 61(2); S.S.I. 2014/160, art. 2(1)(2), sch.
- F118** S. 78X(4A) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014](#) (asp 3), s. 61(2), sch. **3 para. 40(6)**; S.S.I. 2014/160, art. 2(1)(2), sch.

#### Marginal Citations

- M10** 1986 c. 63.  
**M11** 1986 c. 45.  
**M12** 1986 c. 45.  
**M13** 1985 c. 51.

#### <sup>F58</sup>78Y Application to the Isles of Scilly.

- (1) Subject to the provisions of any order under this section, this Part shall not apply in relation to the Isles of Scilly.
- (2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application of any provisions of this Part to the Isles of Scilly; and any such order may provide for the application of those provisions to those Isles with such modifications as may be specified in the order.
- (3) An order under this section may—
  - (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and

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- (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate, including provision saving provision repealed by or under any enactment.

#### Textual Amendments

**F58** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, ss. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

#### <sup>F59</sup>78YA Supplementary provisions with respect to guidance by the Secretary of State.

- (1) Any power of the Secretary of State to issue guidance under this Part shall only be exercisable after consultation with the appropriate Agency and such other bodies or persons as he may consider it appropriate to consult in relation to the guidance in question.
- (2) A draft of any guidance proposed to be issued under section 78A(2) or (5), 78B(2) or 78F(6) or (7) above shall be laid before each House of Parliament and the guidance shall not be issued until after the period of 40 days beginning with the day on which the draft was so laid or, if the draft is laid on different days, the later of the two days.
- (3) If, within the period mentioned in subsection (2) above, either House resolves that the guidance, the draft of which was laid before it, should not be issued, the Secretary of State shall not issue that guidance.
- (4) In reckoning any period of 40 days for the purposes of subsection (2) or (3) above, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

<sup>F60</sup> [ Subsections (2) to (4) shall not apply in respect of a draft of any guidance to be issued under section 78A(2) or (5), 78B(2) or 78F(6) or (7) above which relates only to Scotland and such a draft<sup>F61</sup>, and a draft of any guidance referred to in section 78QA(8) or section 78TA(6) above,] shall be laid before the Scottish Parliament and shall not be issued until after the end of the period of 40 days beginning with the day on which the draft was so laid.

- (4B) If within the period mentioned in subsection (4A) above the Scottish Parliament resolves that the guidance, the draft of which was laid before it, should not be issued, the Scottish Ministers shall not issue that guidance.
- (4C) In reckoning any period of 40 days for the purposes of subsection (4A) or (4B) above no account shall be taken of any time during which the Scottish Parliament is dissolved or is in recess for more than 4 days.]]
- (5) The Secretary of State shall arrange for any guidance issued by him under this Part to be published in such manner as he considers appropriate.

#### Textual Amendments

**F59** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000)



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by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

**F60** S. 78YA(4A)-(4C) inserted (1.7.1999) by S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 102(3)

**F61** Words in s. 78YA(4A) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), ss. 45(6), 61(2); S.S.I. 2014/160, art. 2(1)(2), sch.

## <sup>F62</sup>78YB Interaction of this Part with other enactments. **E+W**

<sup>F63</sup>(1) This Part shall not apply if and to the extent that—

- (a) any significant harm, or pollution of controlled waters, by reason of which land would otherwise fall to be regarded as contaminated, is attributable to the operation of a regulated facility; and
- (b) enforcement action may be taken in relation to that harm or [<sup>F64</sup>significant] pollution.]

(3) If, in a case falling within subsection (1) or (7) of section 59 above, the land in question is contaminated land, or becomes such land by reason of the deposit of the controlled waste in question, a remediation notice shall not be served in respect of that land by reason of that waste or any consequences of its deposit, if and to the extent that it appears to the enforcing authority that the powers of a waste regulation authority or waste collection authority under that section may be exercised in relation to that waste or the consequences of its deposit.

(4) No remediation notice shall require a person to do anything the effect of which would be to impede or prevent the making of a discharge in pursuance of [<sup>F65</sup>an environmental permit] or, in relation to Scotland, in pursuance of a consent given under Part II of the <sup>M14</sup>Control of Pollution Act 1974.

<sup>F66</sup>(5) In this section—

“enforcement action” means action under regulation 36, 37 or 42 of [<sup>F67</sup>the Environmental Permitting (England and Wales) Regulations 2010];

“regulated facility” has the meaning given in regulation 8 of those Regulations.]

### Extent Information

**E9** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

### Textual Amendments

**F62** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

**F63** S. 78YB(1) substituted (E.W.) (6.4.2008) for s. 78YB(1)-(2C) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, Sch. 21 para. 18(a) (with reg. 72, Sch. 4)

**F64** Word in s. 78YB(1)(b) inserted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(7), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2

**F65** Words in s. 78YB(4) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), 107, Sch. 26 para. 5(10)(a) (with Sch. 4)



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- F66** S. 78YB(5) inserted (E.W.) (6.4. 2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), reg. 73, **Sch. 21 para. 18(b)** (with reg. 72, Sch. 4)
- F67** S. 78YB(5): words in definition of "enforcement action" substituted (E.W.) (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), regs. 1(1)(b), 107, **Sch. 26 para. 5(10)(b)** (with Sch. 4)

#### Marginal Citations

**M14** 1974 c. 40.

#### <sup>F62</sup>78YB Interaction of this Part with other enactments. **S**

- (1) A remediation notice shall not be served if and to the extent that it appears to the enforcing authority that the powers of the appropriate Agency under section 27 above may be exercised in relation to—
- the significant harm (if any), and
  - the [<sup>F119</sup>significant pollution of the water environment] (if any),
- by reason of which the contaminated land in question is such land.
- [<sup>F120</sup>(1A) A remediation notice shall not be served if and to the extent that it appears to the enforcing authority that—
- the significant harm (if any) and the significant pollution of the water environment (if any), by reason of which the contaminated land in question is such land, is as a result of an activity to which the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (“the Regulations”) apply; and
  - one or more of the following sub-paragraphs apply—
    - the activity is authorised under the Regulations;
    - the Scottish Environment Protection Agency has served, or has advised the enforcing authority that it intends to serve, a notice under regulation 32(2) (enforcement notices) of the Regulations requiring steps to be taken to prevent, mitigate or remedy the harm or pollution in question; or
    - the Scottish Environment Protection Agency has taken, is taking, or has advised the enforcing authority that it intends to take, steps to prevent, mitigate or remedy the harm or pollution in question (or has secured, is securing, or has advised the enforcing authority that it intends to secure, the taking of such steps) under regulation 33(1) (power of SEPA to carry out works) of the Regulations.]
- (2) Nothing in this Part shall apply in relation to any land in respect of which there is for the time being in force a site licence under Part II above, except to the extent that any significant harm, or [<sup>F121</sup>significant pollution of the water environment], by reason of which that land would otherwise fall to be regarded as contaminated land is attributable to causes other than—
- breach of the conditions of the licence; or
  - the carrying on, in accordance with the conditions of the licence, of any activity authorised by the licence.
- [<sup>F122</sup>(2A) This Part shall not apply if and to the extent that—
- any significant harm, or pollution of [<sup>F123</sup>the water environment], by reason of which the land would otherwise fall to be regarded as contaminated, is

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- attributable to the final disposal by deposit in or on land of controlled waste);  
and
- (b) enforcement action may be taken in relation to that activity.
- (2B) A remediation notice shall not be served in respect of contaminated land if and to the extent that—
- (a) the significant harm, or pollution of [<sup>F123</sup>the water environment], by reason of which the contaminated land is such land is attributable to an activity (other than the final disposal by deposit in or on land of controlled waste); and
- (b) enforcement action may be taken in relation to that activity.
- (2C) In subsections (2A) and (2B) above—
- “controlled waste” has the meaning given in section 75(4) of this Act;  
[<sup>F124</sup>“enforcement action” means action under regulation 55 (SEPA: enforcement notices) or regulation 57(2) (SEPA: power to prevent or remedy pollution) of the Pollution Prevention and Control (Scotland) Regulations 2012.]]
- (3) If, in a case falling within subsection (1) or (7) of section 59 above, the land in question is contaminated land, or becomes such land by reason of the deposit of the controlled waste in question, a remediation notice shall not be served in respect of that land by reason of that waste or any consequences of its deposit, if and to the extent that it appears to the enforcing authority that the powers of a waste regulation authority or waste collection authority under that section may be exercised in relation to that waste or the consequences of its deposit.
- (4) No remediation notice shall require a person to do anything the effect of which would be to impede or prevent the making of a discharge in pursuance of a consent given under Chapter II of Part III of the <sup>M15</sup>Water Resources Act 1991 (pollution offences) or, in relation to Scotland, in pursuance of a consent given under Part II of the <sup>M14</sup>Control of Pollution Act 1974.

#### Extent Information

- E17** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

- F62** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2
- F119** Words in s. 78YB(1)(b) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, 2(11)(a)
- F120** S. 78YB(1A) substituted (S.) (8.3.2016) by [The Water Environment \(Amendment of Part IIA of the Environmental Protection Act 1990: Contaminated Land\) \(Scotland\) Regulations 2016 \(S.S.I. 2016/99\)](#), regs. 1, 2
- F121** Words in s. 78YB(2) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, 2(11)(c)
- F122** S. 78YB(2A)-(2C) inserted (S.) (28.9.2000) by S.S.I. 2000/323, reg. 36, **Sch. 10 Pt. 1 para. 3(5)**
- F123** Words in s. 78YB(2A)(a)(2B)(a) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, 2(2)
- F124** Word in s. 78YB(2C) substituted (S.) (7.1.2013) by [The Pollution Prevention and Control \(Scotland\) Regulations 2012 \(S.S.I. 2012/360\)](#), reg. 1(2), **sch. 11 para. 1(5)** (with reg. 71)

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#### Marginal Citations

**M14** 1974 c. 40.

**M15** 1991 c. 57.

#### [<sup>F68</sup>78YC] This Part and radioactivity. **E+W**

Except as provided by regulations, nothing in this Part applies in relation to harm, or pollution of controlled waters, so far as attributable to any radioactivity possessed by any substance; but regulations may—

- (a) provide for prescribed provisions of this Part to have effect with such modifications as the Secretary of State considers appropriate for the purpose of dealing with harm, or pollution of controlled waters, so far as attributable to any radioactivity possessed by any substances; or
- (b) make such modifications of [<sup>F69</sup>the Environmental Permitting (England and Wales) Regulations 2010 or any Act or other enactment] as the Secretary of State considers appropriate.]

#### Extent Information

**E10** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

**F68** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

**F69** Words in s. 78YC(b) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), 107, Sch. 26 para. 5(11) (with Sch. 4)

#### [<sup>F68</sup>78YC] This Part and radioactivity. **S**

Except as provided by regulations, nothing in this Part applies in relation to harm, or pollution of controlled waters, so far as attributable to any radioactivity possessed by any substance; but regulations may—

- (a) provide for prescribed provisions of this Part to have effect with such modifications as the Secretary of State considers appropriate for the purpose of dealing with harm, or pollution of [<sup>F125</sup>the water environment], so far as attributable to any radioactivity possessed by any substances; or
- (b) make such modifications of the <sup>M16</sup>Radioactive Substances Act 1993 or any other Act as the Secretary of State considers appropriate.]

#### Extent Information

**E18** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

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#### **Textual Amendments**

**F68** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

**F125** Words in s. 78YC substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005](#) (S.S.I. 2005/658), regs. 1, 2(2)

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#### **Marginal Citations**

**M16** 1993 c. 12.

**Status:**

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Environmental Protection Act 1990, Part IIA is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.