



Environmental Protection Act 1990

1990 CHAPTER 43

[^{F1}PART IIA

CONTAMINATED LAND

^{F2}[^{F1}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.

Status: There are multiple versions of this provision on screen. These apply to different geographical extents. Skip to: E+W - England and Wales extent S - Scotland extent

Changes to legislation: Environmental Protection Act 1990, Section 78J is up to date with all changes known to be in force on or before 01 July 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) View outstanding changes

- (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 ^{M1}Mines and Quarries Act 1954.]

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

- 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
- 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

Marginal Citations

- M1** 1954 c. 70.

^{F2}^{F1}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 [^{F3}the water environment], which he could not have been required to

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do by such a notice had paragraph (b) of section 78A(2) above (and all other references to pollution of ^{F4}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 ^{F5}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 ^{F6}the water environment],

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 ^{F7}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 ^{F4}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 ^{M1}Mines and Quarries Act 1954.]

Extent Information

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

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

F3 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)

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- F4** 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\(2\)](#)
- F5** 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\(7\)\(b\)](#)
- F6** 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\(7\)\(c\)](#)
- F7** 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

- M1** 1954 c. 70.

Status:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 33ZB(10A) inserted by [2021 c. 30 s. 69\(3\)\(b\)](#)
- s. 34ZB(8A) inserted by [2021 c. 30 s. 69\(5\)\(b\)](#)
- s. 106A inserted by [2023 c. 6 s. 41\(2\)](#)
- s. 161(2AA)(2AB) inserted by [2016 anaw 3 s. 69\(4\)](#)