



# Environmental Protection Act 1990

## 1990 CHAPTER 43

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

#### CONTAMINATED LAND

#### <sup>F2</sup>[<sup>F1</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>F3</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

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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>F4</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.

(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

**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

**F3** 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

**F4** 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>F2</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

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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 [<sup>F5</sup>or the water environment] (other than land [<sup>F5</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>F6</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—

- (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>F7</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.]

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### Extent Information

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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.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2
- F5** 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\(8\)\(a\)\(i\)](#)
- F6** 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\(8\)\(a\)\(ii\)](#)
- F7** 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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**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\(4\)](#)