



# Environmental Protection Act 1990

## 1990 CHAPTER 43

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

#### CONTAMINATED LAND

#### <sup>F2</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>F3</sup>(a) if it was served by a local authority in England [<sup>F4</sup>or by the Environment Agency] , to the Secretary of State;
  - (b) if it was served by a local authority in Wales [<sup>F5</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>F6</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>F7</sup>.....
  - (c) the procedure on an appeal under subsection (1) above <sup>F8</sup>...
- (5) Regulations under subsection (4) above may (among other things)—
  - (a) include provisions comparable to those in section 290 of the <sup>M1</sup>Public Health Act 1936 (appeals against notices requiring the execution of works);

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- (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>F9</sup> . . . , is subject to section 114 of the <sup>M2</sup>Environment Act 1995 (delegation or reference of appeals etc).]

#### 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

- 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** 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
- F4** 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)
- F5** 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)
- F6** 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
- F7** 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
- F8** 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
- F9** 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](#)

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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)

- 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.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.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))
- 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

- M1** 1936 c. 49.  
**M2** 1995 c. 25.

## <sup>F2</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—
- if it was served by a local authority, to a magistrates' court or, in Scotland, to the sheriff by way of summary application; or
  - 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—
- shall quash the notice, if it is satisfied that there is a material defect in the notice; but
  - 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—
- the grounds on which appeals under subsection (1) above may be made;
  - 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
  - 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)—
- include provisions comparable to those in section 290 of the <sup>M1</sup>Public Health Act 1936 (appeals against notices requiring the execution of works);
  - 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;

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- (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>M2</sup>Environment Act 1995 (delegation or reference of appeals etc).]

#### Textual Amendments

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#### 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
- C7** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

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