



Environmental Protection Act 1990

1990 CHAPTER 43

[^{F1}PART IIA

CONTAMINATED LAND

^{F2}[^{F1}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;

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 78N is up to date with all changes known to be in force on or before 13 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

- (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.
- (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

- 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

^{F2}^{F1}78N Powers 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 [^{F3}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—

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- (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 [^{F4}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;
 - (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.

[^{F5}(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

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)

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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

F3 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)

F4 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)

F5 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)

Status:

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Changes to legislation:

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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\(4\)](#)