



# Environmental Protection Act 1990

## 1990 CHAPTER 43

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

#### CONTAMINATED LAND

#### [<sup>F1</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.
- (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—

---

*Status: Point in time view as at 28/09/2000. This version of this provision has been superseded.*

**Changes to legislation:** Environmental Protection Act 1990, Section 78P is up to date with all changes known to be in force on or before 10 September 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 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 a 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;
  - (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>M1</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

*Status: Point in time view as at 28/09/2000. This version of this provision has been superseded.*

**Changes to legislation:** Environmental Protection Act 1990, Section 78P is up to date with all changes known to be in force on or before 10 September 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 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

**E1** S. 78P(3)-(13) do not extend to Scotland see s. 78P(14)

#### Textual Amendments

**F1** 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)

**C1** 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))

#### Marginal Citations

**M1** 1925 c. 20.

**Status:**

Point in time view as at 28/09/2000. This version of this provision has been superseded.

**Changes to legislation:**

Environmental Protection Act 1990, Section 78P is up to date with all changes known to be in force on or before 10 September 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.