



Environmental Protection Act 1990

1990 CHAPTER 43

[^{F1}PART IIA

CONTAMINATED LAND

[^{F1}78T Exclusion from registers of certain confidential information.

- (1) No information relating to the affairs of any individual or business shall be included in a register maintained under section 78R above, without the consent of that individual or the person for the time being carrying on that business, if and so long as the information—
- (a) is, in relation to him, commercially confidential; and
 - (b) is not required to be included in the register in pursuance of directions under subsection (7) below;
- but information is not commercially confidential for the purposes of this section unless it is determined under this section to be so by the enforcing authority or, on appeal, by the Secretary of State.
- (2) Where it appears to an enforcing authority that any information which has been obtained by the authority under or by virtue of any provision of this Part might be commercially confidential, the authority shall—
- (a) give to the person to whom or whose business it relates notice that that information is required to be included in the register unless excluded under this section; and
 - (b) give him a reasonable opportunity—
 - (i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and
 - (ii) of making representations to the authority for the purpose of justifying any such objection;

and, if any representations are made, the enforcing authority shall, having taken the representations into account, determine whether the information is or is not commercially confidential.

Status: Point in time view as at 23/12/1997.

Changes to legislation: Environmental Protection Act 1990, Section 78T is up to date with all changes known to be in force on or before 23 August 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)

- (3) Where, under subsection (2) above, an authority determines that information is not commercially confidential—
- (a) the information shall not be entered in the register until the end of the period of twenty-one days beginning with the date on which the determination is notified to the person concerned;
 - (b) that person may appeal to the Secretary of State against the decision;
- and, where an appeal is brought in respect of any information, the information shall not be entered in the register until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn.
- (4) An appeal under subsection (3) above shall, if either party to the appeal so requests or the Secretary of State so decides, take or continue in the form of a hearing (which must be held in private).
- (5) Subsection (10) of section 15 above shall apply in relation to an appeal under subsection (3) above as it applies in relation to an appeal under that section.
- (6) Subsection (3) above is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).
- (7) The Secretary of State may give to the enforcing authorities directions as to specified information, or descriptions of information, which the public interest requires to be included in registers maintained under section 78R above notwithstanding that the information may be commercially confidential.
- (8) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this section at the expiry of the period of four years beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the authority for the information to remain excluded from the register on the ground that it is still commercially confidential and the authority shall determine whether or not that is the case.
- (9) Subsections (3) to (6) above shall apply in relation to a determination under subsection (8) above as they apply in relation to a determination under subsection (2) above.
- (10) Information is, for the purposes of any determination under this section, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that individual or person.
- (11) For the purposes of subsection (10) above, there shall be disregarded any prejudice to the commercial interests of any individual or person so far as relating only to the value of the contaminated land in question or otherwise to the ownership or occupation of that land.]

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

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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**))
- C2** S. 78T: 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**.

Status:

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