
WELSH STATUTORY INSTRUMENTS

2001 No. 2197

The Contaminated Land (Wales) Regulations 2001

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Contaminated Land (Wales) Regulations 2001 and shall come into force on 1st July 2001.

(2) These Regulations apply to Wales only.

(3) In these Regulations, unless otherwise indicated, any reference to a numbered section is to the section of the Environmental Protection Act 1990 which bears that number.

Land required to be designated as a special site

2.—(1) Contaminated land of the following descriptions is prescribed for the purposes of section 78C(8) as land required to be designated as a special site—

- (a) land to which regulation 3 applies;
- (b) land which is contaminated land by reason of waste acid tars in, on or under the land;
- (c) land on which any of the following activities have been carried on at any time—
 - (i) the purification (including refining) of crude petroleum or of oil extracted from petroleum, shale or any other bituminous substance except coal; or
 - (ii) the manufacture or processing of explosives;
- (d) land on which a prescribed process designated for central control has been or is being carried on under an authorisation where the process does not comprise solely things being done which are required by way of remediation;
- (e) land within a nuclear site;
- (f) land owned or occupied by or on behalf of—
 - (i) the Secretary of State for Defence;
 - (ii) the Defence Council;
 - (iii) an international headquarters or defence organisation; or
 - (iv) the service authority of a visiting force,being land used for naval, military or air force;
- (g) land on which the manufacture, production or disposal of—
 - (i) chemical weapons;
 - (ii) any biological agent or toxin which falls within section 1(1)(a) of the Biological Weapons Act 1974 (restriction on development of biological agents and toxins)⁽¹⁾; or
 - (iii) any weapon, equipment or means of delivery which falls within section 1(1)(b) of that Act (restriction on development of biological weapons),

has been carried on at any time;

(h) land comprising premises which are or were designated by the Secretary of State by an order made under section 1(1) of the Atomic Weapons Establishment Act 1991 (arrangements for development etc of nuclear devices)(2); and

(i) land which—

(i) is adjoining or adjacent to land of a description specified in sub-paragraphs (b) to (h) above; and

(ii) is contaminated land by virtue of substances which appear to have escaped from land of such a description.

(2) For the purposes of paragraph (1)(b) above, “waste acid tars” are tars which—

(a) contain sulphuric acid;

(b) were produced as a result of the refining of benzole, used lubricants or petroleum; and

(c) are or were stored on land used as a retention basin for the disposal of such tars.

(3) In paragraph (1)(d) above, “authorisation” and “prescribed process” have the same meaning as in Part I of the Environmental Protection Act 1990 (integrated pollution control and air pollution control by local authorities)(3) and the reference to designation for central control is a reference to designation under section 2(4) (which provides for processes to be designated for central or local control).

(4) In paragraph (1)(e) above, “nuclear site” means—

(a) any site in respect of which, or part of which, a nuclear site licence is for the time being in force; or

(b) any site in respect of which, or part of which, after the revocation or surrender of a nuclear site licence, the period of responsibility of the licensee has not come to an end;

and “nuclear site licence”, “licensee” and “period of responsibility” have the meaning given by the Nuclear Installations Act 1965(4).

(5) For the purposes of paragraph (1)(f) above, land used for residential purposes or by the Navy, Army and Air Force Institutes shall be treated as land used for naval, military or air force purposes only if the land forms part of a base occupied for naval, military or air force purposes.

(6) In paragraph (1)(f) above—

“international headquarters” and “defence organisation” mean, respectively, any international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964(5);

“service authority” and “visiting force” have the same meaning as in Part I of the Visiting Forces Act 1952(6).

(7) In paragraph (1)(g) above, “chemical weapon” has the same meaning as in subsection (1) of section 1 of the Chemical Weapons Act 1996(7) disregarding subsection (2) of that section.

Pollution of controlled waters

3. For the purposes of regulation 2(1)(a), this regulation applies to land where—

(2) 1991 c. 46.
 (3) See section 1.
 (4) 1965 c. 57.
 (5) 1964 c. 5.
 (6) 1952 c. 67.
 (7) 1996 c. 6.

- (a) controlled waters which are, or are intended to be, used for the supply of drinking water for human consumption are being affected by the land⁽⁸⁾ and, as a result, require a treatment process or a change in such a process to be applied to those waters before use, so as to be regarded as wholesome within the meaning of Part III of the Water Industry Act 1991 (water supply)⁽⁹⁾;
- (b) controlled waters are being affected by the land and, as a result, those waters do not meet or are not likely to meet the criterion for classification applying to the relevant description of waters specified in regulations made under section 82 of the Water Resources Act 1991 (classification of quality of waters)⁽¹⁰⁾; or
- (c) controlled waters are being affected by the land and—
 - (i) any of the substances by reason of which the pollution of the waters is being or is likely to be caused falls within any of the families or groups of substances listed in paragraph 1 of Schedule 1 to these Regulations; and
 - (ii) the waters, or any part of the waters, are contained within underground strata which comprise wholly or partly any of the formations of rocks listed in paragraph 2 of Schedule 1 to these Regulations.

Content of remediation notices

4.—(1) A remediation notice shall state (in addition to the matters required by section 78E(1) and (3))—

- (a) the name and address of the person on whom the notice is served;
- (b) the location and extent of the contaminated land to which the notice relates (in this regulation referred to as the “contaminated land in question”), sufficient to enable it to be identified whether by reference to a plan or otherwise;
- (c) the date of any notice which was given under section 78B to the person on whom the remediation notice is served identifying the contaminated land in question as contaminated land;
- (d) whether the enforcing authority considers the person on whom the notice is served is an appropriate person by reason of—
 - (i) having caused or knowingly permitted the substances, or any of the substances, by reason of which the contaminated land in question is contaminated land, to be in, on or under that land;
 - (ii) being the owner of the contaminated land in question; or
 - (iii) being the occupier of the contaminated land in question;
- (e) particulars of the significant harm or pollution of controlled waters by reason of which the contaminated land in question is contaminated land;
- (f) the substances by reason of which the contaminated land in question is contaminated land and, if any of the substances have escaped from other land, the location of that other land;
- (g) the enforcing authority’s reasons for its decisions as to the things by way of remediation that the appropriate person is required to do, which shall show how any guidance issued by the National Assembly for Wales under section 78E(5) has been applied;
- (h) where two or more persons are appropriate persons in relation to the contaminated land in question—

⁽⁸⁾ See section 78A(8) for the meaning of “affected by”.

⁽⁹⁾ 1991 c. 56

⁽¹⁰⁾ 1991 c. 57.

- (i) that this is the case;
- (ii) the name and address of each such person; and
- (iii) the thing by way of remediation for which each such person bears responsibility;
- (i) where two or more persons would, apart from section 78F(6), be appropriate persons in relation to any particular thing which is to be done by way of remediation, the enforcing authority's reasons for its determination as to whether any, and if so which, of them is to be treated as not being an appropriate person in relation to that thing, which shall show how any guidance issued by the National Assembly for Wales under section 78F(6) has been applied;
- (j) where the remediation notice is required by section 78E(3) to state the proportion of the cost of a thing which is to be done by way of remediation which each of the appropriate persons in relation to that thing is liable to bear, the enforcing authority's reasons for the proportion which it has determined, which shall show how any guidance issued by the National Assembly for Wales under section 78F(7) has been applied;
- (k) where known to the enforcing authority, the name and address of—
 - (i) the owner of the contaminated land in question; and
 - (ii) any person who appears to the enforcing authority to be in occupation of the whole or any part of the contaminated land in question;
- (l) where known to the enforcing authority, the name and address of any person whose consent is required under section 78G(2) before anything required by the remediation notice may be done;
- (m) where the notice is to be served in reliance on section 78H(4), that it appears to the enforcing authority that the contaminated land in question is in such a condition, by reason of substances in, on or under the land, that there is imminent danger of serious harm, or serious pollution of controlled waters, being caused;
- (n) that a person on whom a remediation notice is served may be guilty of an offence⁽¹¹⁾ for failure, without reasonable excuse, to comply with any of the requirements of the notice;
- (o) the penalties which may be applied on conviction for such an offence⁽¹²⁾;
- (p) the name and address of the enforcing authority serving the notice; and
- (q) the date of the notice.
- (2) A remediation notice shall explain—
 - (a) that a person on whom it is served has a right of appeal against the notice under section 78L;
 - (b) how, within that period and on what grounds an appeal may be made; and
 - (c) that a notice is suspended, where an appeal is duly made, until the final determination or abandonment of the appeal.

Service of copies of remediation notices

5.—(1) Subject to paragraph (2) below, the enforcing authority shall, at the same time as it serves a remediation notice, send a copy of it to each of the following persons, not being a person on whom the notice is to be served—

- (a) any person who was required to be consulted under section 78G(3) before service of the notice;

⁽¹¹⁾ Section 78M(1).

⁽¹²⁾ Section 78M(1) and (3).

- (b) any person who was required to be consulted under section 78H(1) before service of the notice;
- (c) where the local authority is the enforcing authority, the Environment Agency; and
- (d) where the Environment Agency is the enforcing authority, the local authority in whose area the contaminated land in question is situated.

(2) Where it appears to the enforcing authority that the contaminated land in question is in such a condition by reason of substances in, on or under it that there is imminent danger of serious harm, or serious pollution of controlled waters, being caused, the enforcing authority shall send any copies of the notice pursuant to paragraph (1) above as soon as practicable after service of the notice.

Compensation for rights of entry etc.

6. Schedule 2 to these Regulations shall have effect—
- (a) for prescribing the period within which a person who grants, or joins in granting, any rights pursuant to section 78G(2) may apply for compensation for the grant of those rights;
 - (b) for prescribing the manner in which, and the person to whom, such an application may be made; and
 - (c) for prescribing the manner in which the amount of such compensation shall be determined and for making further provision relating to such compensation.

Grounds of appeal against a remediation notice

7.—(1) The grounds of appeal against a remediation notice under section 78L(1) are any of the following—

- (a) that, in determining whether any land to which the notice relates appears to be contaminated land, the local authority—
 - (i) failed to act in accordance with guidance issued by the National Assembly for Wales under section 78A(2), (5) or (6); or
 - (ii) whether by reason of such a failure or otherwise, unreasonably identified all or any of the land to which the notice relates as contaminated land;
- (b) that, in determining a requirement of the notice, the enforcing authority—
 - (i) failed to have regard to guidance issued by the National Assembly for Wales under section 78E(5); or
 - (ii) whether by reason of such a failure or otherwise, unreasonably required the appellant to do anything by way of remediation;
- (c) that the enforcing authority unreasonably determined the appellant to be the appropriate person who is to bear responsibility for anything required by the notice to be done by way of remediation;
- (d) subject to paragraph (2) below, that the enforcing authority unreasonably failed to determine that some person in addition to the appellant is an appropriate person in relation to anything required by the notice to be done by way of remediation;
- (e) that, in respect of anything required by the notice to be done by way of remediation, the enforcing authority failed to act in accordance with guidance issued by the National Assembly for Wales under section 78F(6);
- (f) that, where two or more persons are appropriate persons in relation to anything required by the notice to be done by way of remediation, the enforcing authority—

- (i) failed to determine the proportion of the cost stated in the notice to be the liability of the appellant in accordance with guidance issued by the National Assembly for Wales under section 78F(7); or
 - (ii) whether, by reason of such a failure or otherwise, unreasonably determined the proportion of the cost that the appellant is to bear;
- (g) that service of the notice contravened a provision of subsection (1) or (3) of section 78H (restrictions and prohibitions on serving remediation notices) other than in circumstances where section 78H(4) applies;
- (h) that, where the notice was served in reliance on section 78H(4) without compliance with section 78H(1) or (3), the enforcing authority could not reasonably have taken the view that the contaminated land in question was in such a condition by reason of substances in, on or under the land, that there was imminent danger of serious harm, or serious pollution of controlled waters, being caused;
- (i) that the enforcing authority has unreasonably failed to be satisfied, in accordance with section 78H(5)(b), that appropriate things are being, or will be, done by way of remediation without service of a notice;
- (j) that any thing required by the notice to be done by way of remediation was required in contravention of a provision of section 78J (restrictions on liability relating to the pollution of controlled waters);
- (k) that any thing required by the notice to be done by way of remediation was required in contravention of a provision of section 78K (liability in respect of contaminating substances which escape to other land);
- (l) that the enforcing authority itself has power, in a case falling within section 78N(3)(b), to do what is appropriate by way of remediation;
- (m) that the enforcing authority itself has power, in a case falling within section 78N(3)(e), to do what is appropriate by way of remediation;
- (n) that the enforcing authority, in considering for the purposes of section 78N(3)(e), whether it would seek to recover all or a portion of the cost incurred by it in doing some particular thing by way of remediation—
 - (i) failed to have regard to any hardship which the recovery may cause to the person from whom the cost is recoverable or to any guidance issued by the National Assembly for Wales for the purposes of section 78P(2); or
 - (ii) whether by reason of such a failure or otherwise, unreasonably determined that it would decide to seek to recover all of the cost;
- (o) that, in determining a requirement of the notice, the enforcing authority failed to have regard to guidance issued by the Environment Agency under section 78V(1);
- (p) that a period specified in the notice within which the appellant is required to do anything is not reasonably sufficient for the purpose;
- (q) that the notice provides for a person acting in a relevant capacity⁽¹³⁾ to be personally liable to bear the whole or part of the cost of doing any thing by way of remediation, contrary to the provisions of section 78X(3)(a);
- (r) that service of the notice contravened a provision of section 78YB (interaction of Part IIA of the Environmental Protection Act 1990 with other enactments), and—

⁽¹³⁾ For the definition of “person acting in a relevant capacity” see section 78X(4).

- (i) in a case where subsection (1) of that section is relied on, that it ought reasonably to have appeared to the enforcing authority that the powers of the Environment Agency under section 27 might be exercised;
 - (ii) in a case where subsection (3) of section 78YB is relied on, that it ought reasonably to have appeared to the enforcing authority that the powers of a waste regulation authority or waste collection authority under section 59 might be exercised; or
 - (s) that there has been some informality, defect or error in, or in connection with, the notice, in respect of which there is no right of appeal under the grounds set out in sub-paragraphs (a) to (r) above.
- (2) A person may only appeal on the ground specified in paragraph (1)(d) above in a case where—
- (a) the enforcing authority has determined that he is an appropriate person by virtue of subsection (2) of section 78F and he claims to have found some other person who is an appropriate person by virtue of that subsection;
 - (b) the notice is served on him as the owner or occupier for the time being of the contaminated land in question and he claims to have found some other person who is an appropriate person by virtue of that subsection; or
 - (c) the notice is served on him as the owner or occupier for the time being of the contaminated land in question, and he claims that some other person is also an owner or occupier for the time being of the whole or part of that land.
- (3) If and in so far as an appeal against a remediation notice is based on the ground of some informality, defect or error in, or in connection with, the notice, the appellate authority shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

Appeals to a magistrates' court

8.—(1) An appeal under section 78L(1) to a magistrates' court against a remediation notice shall be by way of complaint for an order and, subject to section 78L(2) and (3) and regulations 7(3), 12 and 13, the Magistrates' Courts Act 1980(14) shall apply to the proceedings.

- (2) An appellant shall, at the same time as he makes a complaint,—
- (a) file a notice (“notice of appeal”) and serve a copy of it on—
 - (i) the enforcing authority;
 - (ii) any person named in the remediation notice as an appropriate person;
 - (iii) any person named in the notice of appeal as an appropriate person;
 - (iv) any person named in the remediation notice as the owner or occupier of the whole or any part of the land to which the notice relates;
 - (b) file a copy of the remediation notice to which the appeal relates and serve a copy of it on any person named in the notice of appeal as an appropriate person who was not so named in the remediation notice; and
 - (c) file a statement of the names and addresses of any persons falling within paragraph (ii), (iii) or (iv) of sub-paragraph (a) above.
- (3) The notice of appeal shall state the appellant’s name and address and the grounds on which the appeal is made.
- (4) On an appeal under section 78L(1) to a magistrates' court—
- (a) the justices' clerk or the court may give, vary or revoke directions for the conduct of proceedings, including—

(14) 1980 c. 43.

- (i) the timetable for the proceedings;
 - (ii) the service of documents;
 - (iii) the submission of evidence; and
 - (iv) the order of speeches;
- (b) any person falling within paragraph (2)(a)(ii), (iii) or (iv) above shall be given notice of, and an opportunity to be heard at, the hearing of the complaint and any hearing for directions, in addition to the appellant and the enforcing authority; and
- (c) the court may refuse to grant a request by the appellant to abandon his appeal against a remediation notice, where the request is made after the court has notified the appellant in accordance with regulation 12(1) of a proposed modification of that notice.
- (5) Rule 15 of the Family Proceedings Courts (Matrimonial Proceedings etc.) Rules 1991⁽¹⁵⁾ (delegation by justices' clerk) shall apply for the purposes of an appeal under section 78L(1) to a magistrates' court as it applies for the purposes of Part II of those Rules.
- (6) In this regulation, "file" means deposit with the justices' clerk.

Appeals to the National Assembly for Wales

- 9.—(1) An appeal to the National Assembly for Wales against a remediation notice shall be made to it by a notice ("notice of appeal") which shall state—
- (a) the name and address of the appellant;
 - (b) the grounds on which the appeal is made; and
 - (c) whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations.
- (2) The appellant shall, at the same time as he serves a notice of appeal on the National Assembly for Wales,—
- (a) serve a copy of it on—
 - (i) the Environment Agency;
 - (ii) any person named in the remediation notice as an appropriate person;
 - (iii) any person named in the notice of appeal as an appropriate person; and
 - (iv) any person named in the remediation notice as the owner or occupier of the whole or any part of the land to which the notice relates;
 and serve on the National Assembly for Wales a statement of the names and addresses of any persons falling within paragraph (ii), (iii) or (iv) above; and
 - (b) serve a copy of the remediation notice to which the appeal relates on the National Assembly for Wales and on any person named in the notice of appeal as an appropriate person who is not so named in the remediation notice.
- (3) Subject to paragraph (5) below, if the appellant wishes to abandon an appeal, he shall do so by notifying the National Assembly for Wales in writing and the appeal shall be treated as abandoned on the date the National Assembly for Wales receives that notification.
- (4) The National Assembly for Wales may refuse to permit an appellant to abandon his appeal against a remediation notice where the notification by the appellant in accordance with paragraph (3) above is received by the National Assembly for Wales at any time after the National Assembly for Wales has notified the appellant in accordance with regulation 12(1) of a proposed modification of that notice.

⁽¹⁵⁾ S.I. 1991/1991 (L.32).

(5) Where an appeal is abandoned, the National Assembly for Wales shall give notice of the abandonment to any person on whom the appellant was required to serve a copy of the notice of appeal.

Hearings and local inquiries

10.—(1) Before determining an appeal, the National Assembly for Wales may, if it thinks fit—

- (a) cause the appeal to take or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held, or held to any extent, in private); or
- (b) cause a local inquiry to be held,

and the National Assembly for Wales shall act as mentioned in sub-paragraph (a) or (b) above if a request is made by either the appellant or the Environment Agency to be heard with respect to the appeal.

(2) The persons entitled to be heard at a hearing are—

- (a) the appellant;
- (b) the Environment Agency; and
- (c) any person (other than the Agency) on whom the appellant was required to serve a copy of the notice of appeal.

(3) Nothing in paragraph (2) above shall prevent the person appointed to conduct the hearing of the appeal from permitting any other person to be heard at the hearing and such permission shall not be unreasonably withheld.

(4) After the conclusion of a hearing, the person appointed to conduct the hearing shall, unless he has been appointed under section 114(1)(a) of the Environment Act 1995 (power of the National Assembly for Wales to delegate its functions of determining appeals) to determine the appeal, make a report in writing to the National Assembly for Wales which shall include his conclusions and his recommendations or his reasons for not making any recommendations.

Notification of National Assembly's decision on appeal

11.—(1) The National Assembly for Wales shall notify the appellant in writing of its decision on an appeal and shall provide him with a copy of any report mentioned in regulation 10(4).

(2) The National Assembly for Wales shall, at the same time as it notifies the appellant, send a copy of the documents mentioned in paragraph (1) above to the Environment Agency and to any other person on whom the appellant was required to serve a copy of the notice of appeal.

Modification of a remediation notice

12.—(1) Before modifying a remediation notice under section 78L(2)(b) in any respect which would be less favourable to the appellant or any other person on whom the notice was served, the appellate authority shall—

- (a) notify the appellant and any persons on whom the appellant was required to serve a copy of the notice of appeal of the proposed modification;
- (b) permit any persons so notified to make representations in relation to the proposed modification; and
- (c) permit the appellant or any other person on whom the remediation notice was served to be heard if any such person so requests.

(2) Where, in accordance with paragraph (1) above, the appellant or any other person is heard, the enforcing authority shall also be entitled to be heard.

Appeals to the High Court

13. An appeal against any decision of a magistrates' court in pursuance of an appeal under section 78L(1) shall lie to the High Court at the instance of any party to the proceedings in which the decision was given (including any person who exercised his entitlement under regulation 8(4)(b) to be heard at the hearing of the complaint).

Suspension of a remediation notice

14.—(1) Where an appeal is duly made against a remediation notice, the notice shall be of no effect pending the final determination or abandonment of the appeal.

(2) An appeal against a remediation notice is duly made for the purposes of this regulation if it is made within the period specified in section 78L(1)(16) and the requirements of regulation 8(2) and (3) (in the case of an appeal to a magistrates' court) or regulation 9(1) and (2) (in the case of an appeal to the National Assembly for Wales) have been complied with.

Registers

15.—(1) Schedule 3 to these Regulations shall have effect for prescribing—

- (a) for the purposes of subsection (1) of section 78R, the particulars of or relating to the matters to be contained in a register maintained under that section; and
- (b) other matters in respect of which such a register shall contain prescribed particulars pursuant to section 78R(1)(l).

(2) The following descriptions of information are prescribed for the purposes of section 78R(2) as information to be contained in notifications for the purposes of section 78R(1)(h) and (j)—

- (a) the location and extent of the land sufficient to enable it to be identified;
- (b) the name and address of the person who it is claimed has done each of the things by way of remediation;
- (c) a description of any thing which it is claimed has been done by way of remediation; and
- (d) the period within which it is claimed each such thing was done.

(3) The following places are prescribed for the purposes of subsection (8) of section 78R as places at which any registers or facilities for obtaining copies shall be available or afforded to the public in pursuance of paragraph (a) or (b) of that subsection—

- (a) where the enforcing authority is the local authority, its principal office; and
- (b) where the enforcing authority is the Environment Agency, its office for the area in which the contaminated land in question is situated.

(16) The period specified in section 78L(1) is the period of 21 days beginning with the day on which the notice is served.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(17).

12th June 2001

D. Elis-Thomas
The Presiding Officer of the National Assembly
for Wales