



Environmental Protection Act 1990

1990 CHAPTER 43

[^{F1}PART IIA

CONTAMINATED LAND

^{F2}[^{F1}78H Restrictions and prohibitions on serving remediation notices. **E+W**

- (1) Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult—
 - (a) the person on whom the notice is to be served,
 - (b) the owner of any land to which the notice relates,
 - (c) any person who appears to that authority to be in occupation of the whole or any part of the land, and
 - (d) any person of such other description as may be prescribed,concerning what is to be done by way of remediation.
- (2) Regulations may make provision for, or in connection with, steps to be taken for the purposes of subsection (1) above.
- (3) No remediation notice shall be served on any person by reference to any contaminated land during any of the following periods, that is to say—
 - (a) the period—
 - (i) beginning with the identification of the contaminated land in question pursuant to section 78B(1) above, and
 - (ii) ending with the expiration of the period of three months beginning with the day on which the notice required by subsection (3)(d) or, as the case may be, (4) of section 78B above is given to that person in respect of that land;
 - (b) if a decision falling within paragraph (b) of section 78C(1) above is made in relation to the contaminated land in question, the period beginning with the making of the decision and ending with the expiration of the period of three months beginning with—

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 78H is up to date with all changes known to be in force on or before 21 April 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

- (i) in a case where the decision is not referred to the Secretary of State under section 78D above, the day on which the notice required by section 78C(6) above is given, or
 - (ii) in a case where the decision is referred to the Secretary of State under section 78D above, the day on which he gives the notice required by subsection (4)(b) of that section;
- (c) if the appropriate Agency gives a notice under subsection (4) of section 78C above to a local authority in relation to the contaminated land in question, the period beginning with the day on which that notice is given and ending with the expiration of the period of three months beginning with—
- (i) in a case where notice is given under subsection (6) of that section, the day on which that notice is given;
 - (ii) in a case where the authority makes a decision falling within subsection (5)(b) of that section and the appropriate Agency fails to give notice under paragraph (b) of section 78D(1) above, the day following the expiration of the period of twenty-one days mentioned in that paragraph; or
 - (iii) in a case where the authority makes a decision falling within section 78C(5)(b) above which is referred to the Secretary of State under section 78D above, the day on which the Secretary of State gives the notice required by subsection (4)(b) of that section.
- (4) Neither subsection (1) nor subsection (3) above shall preclude the service of a remediation notice in any case where it appears to the enforcing authority that the 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.
- (5) The enforcing authority shall not serve a remediation notice on a person if and so long as any one or more of the following conditions is for the time being satisfied in the particular case, that is to say—
- (a) the authority is satisfied, in consequence of section 78E(4) and (5) above, that there is nothing by way of remediation which could be specified in a remediation notice served on that person;
 - (b) the authority is satisfied that appropriate things are being, or will be, done by way of remediation without the service of a remediation notice on that person;
 - (c) it appears to the authority that the person on whom the notice would be served is the authority itself; or
 - (d) the authority is satisfied that the powers conferred on it by section 78N below to do what is appropriate by way of remediation are exercisable.
- (6) Where the enforcing authority is precluded by virtue of section 78E(4) or (5) above from specifying in a remediation notice any particular thing by way of remediation which it would otherwise have specified in such a notice, the authority shall prepare and publish a document (in this Part referred to as a “remediation declaration”) which shall record—
- (a) the reasons why the authority would have specified that thing; and
 - (b) the grounds on which the authority is satisfied that it is precluded from specifying that thing in such a notice.
- (7) In any case where the enforcing authority is precluded, by virtue of paragraph (b), (c) or (d) of subsection (5) above, from serving a remediation notice, the responsible

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person shall prepare and publish a document (in this Part referred to as a “remediation statement”) which shall record—

- (a) the things which are being, have been, or are expected to be, done by way of remediation in the particular case;
 - (b) the name and address of the person who is doing, has done, or is expected to do, each of those things; and
 - (c) the periods within which each of those things is being, or is expected to be, done.
- (8) For the purposes of subsection (7) above, the “responsible person” is—
- (a) in a case where the condition in paragraph (b) of subsection (5) above is satisfied, the person who is doing or has done, or who the enforcing authority is satisfied will do, the things there mentioned; or
 - (b) in a case where the condition in paragraph (c) or (d) of that subsection is satisfied, the enforcing authority.
- (9) If a person who is required by virtue of subsection (8)(a) above to prepare and publish a remediation statement fails to do so within a reasonable time after the date on which a remediation notice specifying the things there mentioned could, apart from subsection (5) above, have been served, the enforcing authority may itself prepare and publish the statement and may recover its reasonable costs of doing so from that person.
- (10) Where the enforcing authority has been precluded by virtue only of subsection (5) above from serving a remediation notice on an appropriate person but—
- (a) none of the conditions in that subsection is for the time being satisfied in the particular case, and
 - (b) the authority is not precluded by any other provision of this Part from serving a remediation notice on that appropriate person,
- the authority shall serve a remediation notice on that person; and any such notice may be so served without any further endeavours by the authority to consult persons pursuant to subsection (1) above, if and to the extent that that person has been consulted pursuant to that subsection concerning the things which will be specified in the notice.]

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.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.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2

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^{F2}^{F1}78H Restrictions and prohibitions on serving remediation notices. **S**

- (1) Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult—
 - (a) the person on whom the notice is to be served,
 - (b) the owner of any land to which the notice relates,
 - (c) any person who appears to that authority to be in occupation of the whole or any part of the land, and
 - (d) any person of such other description as may be prescribed,
 concerning what is to be done by way of remediation.
- (2) Regulations may make provision for, or in connection with, steps to be taken for the purposes of subsection (1) above.
- (3) No remediation notice shall be served on any person by reference to any contaminated land during any of the following periods, that is to say—
 - (a) the period—
 - (i) beginning with the identification of the contaminated land in question pursuant to section 78B(1) above, and
 - (ii) ending with the expiration of the period of three months beginning with the day on which the notice required by subsection (3)(d) or, as the case may be, (4) of section 78B above is given to that person in respect of that land;
 - (b) if a decision falling within paragraph (b) of section 78C(1) above is made in relation to the contaminated land in question, the period beginning with the making of the decision and ending with the expiration of the period of three months beginning with—
 - (i) in a case where the decision is not referred to the Secretary of State under section 78D above, the day on which the notice required by section 78C(6) above is given, or
 - (ii) in a case where the decision is referred to the Secretary of State under section 78D above, the day on which he gives the notice required by subsection (4)(b) of that section;
 - (c) if the appropriate Agency gives a notice under subsection (4) of section 78C above to a local authority in relation to the contaminated land in question, the period beginning with the day on which that notice is given and ending with the expiration of the period of three months beginning with—
 - (i) in a case where notice is given under subsection (6) of that section, the day on which that notice is given;
 - (ii) in a case where the authority makes a decision falling within subsection (5)(b) of that section and the appropriate Agency fails to give notice under paragraph (b) of section 78D(1) above, the day following the expiration of the period of twenty-one days mentioned in that paragraph; or
 - (iii) in a case where the authority makes a decision falling within section 78C(5)(b) above which is referred to the Secretary of State under section 78D above, the day on which the Secretary of State gives the notice required by subsection (4)(b) of that section.
- (4) Neither subsection (1) nor subsection (3) above shall preclude the service of a remediation notice in any case where it appears to the enforcing authority that the land in question is in such a condition, by reason of substances in, on or under the

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land, that there is imminent danger of serious harm, or serious pollution of [^{F3}the water environment], being caused.

- (5) The enforcing authority shall not serve a remediation notice on a person if and so long as any one or more of the following conditions is for the time being satisfied in the particular case, that is to say—
- (a) the authority is satisfied, in consequence of section 78E(4) and (5) above, that there is nothing by way of remediation which could be specified in a remediation notice served on that person;
 - (b) the authority is satisfied that appropriate things are being, or will be, done by way of remediation without the service of a remediation notice on that person;
 - (c) it appears to the authority that the person on whom the notice would be served is the authority itself; or
 - (d) the authority is satisfied that the powers conferred on it by section 78N below to do what is appropriate by way of remediation are exercisable.
- (6) Where the enforcing authority is precluded by virtue of section 78E(4) or (5) above from specifying in a remediation notice any particular thing by way of remediation which it would otherwise have specified in such a notice, the authority shall prepare and publish a document (in this Part referred to as a “remediation declaration”) which shall record—
- (a) the reasons why the authority would have specified that thing; and
 - (b) the grounds on which the authority is satisfied that it is precluded from specifying that thing in such a notice.
- (7) In any case where the enforcing authority is precluded, by virtue of paragraph (b), (c) or (d) of subsection (5) above, from serving a remediation notice, the responsible person shall prepare and publish a document (in this Part referred to as a “remediation statement”) which shall record—
- (a) the things which are being, have been, or are expected to be, done by way of remediation in the particular case;
 - (b) the name and address of the person who is doing, has done, or is expected to do, each of those things; and
 - (c) the periods within which each of those things is being, or is expected to be, done.
- (8) For the purposes of subsection (7) above, the “responsible person” is—
- (a) in a case where the condition in paragraph (b) of subsection (5) above is satisfied, the person who is doing or has done, or who the enforcing authority is satisfied will do, the things there mentioned; or
 - (b) in a case where the condition in paragraph (c) or (d) of that subsection is satisfied, the enforcing authority.
- (9) If a person who is required by virtue of subsection (8)(a) above to prepare and publish a remediation statement fails to do so within a reasonable time after the date on which a remediation notice specifying the things there mentioned could, apart from subsection (5) above, have been served, the enforcing authority may itself prepare and publish the statement and may recover its reasonable costs of doing so from that person.
- (10) Where the enforcing authority has been precluded by virtue only of subsection (5) above from serving a remediation notice on an appropriate person but—

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- (a) none of the conditions in that subsection is for the time being satisfied in the particular case, and
- (b) the authority is not precluded by any other provision of this Part from serving a remediation notice on that appropriate person,

the authority shall serve a remediation notice on that person; and any such notice may be so served without any further endeavours by the authority to consult persons pursuant to subsection (1) above, if and to the extent that that person has been consulted pursuant to that subsection concerning the things which will be specified in the notice.]

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) 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. 78H(4) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005](#) (S.S.I. 2005/658), regs. 1, 2(2)

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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. 30(4A) inserted by [2021 c. 30 s. 57\(2\)](#)
- 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. 45A-45AZG substituted for s. 45A by [2021 c. 30 s. 57\(4\)](#)
- s. 46(2)(a)(b) substituted for words by [2021 c. 30 s. 57\(5\)](#)
- s. 106A inserted by [2023 c. 6 s. 41\(2\)](#)
- s. 161(2AA)(2AB) inserted by [2016 anaw 3 s. 69\(4\)](#)