
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2005 No.

The Contaminated Land (Scotland) Regulations 2005

Amendment of the Environmental Protection Act 1990

2.—(1) The Environmental Protection Act 1990(1) is amended as follows.

(2) In each of the following provisions, for “controlled waters” wherever the expression occurs substitute “the water environment”–

section 78A(7)(b)(i),

section 78C(10)(b),

section 78E(4)(b),

section 78G(4),

section 78H(4),

section 78J(2),

section 78J(3) (where the expression appears for the second time),

section 78N(3)(a),

section 78YB(2A)(a),

section 78YB(2B)(a),

section 78YC.

(3) In section 78A (Preliminary)–

(a) in subsection (2), in the definition of “contaminated land”, for paragraph (b) substitute–

“(b) significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused.”.

(b) in subsection (4), for “Harm”, substitute–

“Subject to sub section (4A), “harm””;

(c) after subsection (4) insert–

“(4A) “Harm”, in relation to the water environment has the same meaning as in section 20(6) of the Water Environment and Water Services (Scotland) Act 2003.”.

(d) in sub section (5),

(i) in paragraph (a), after “harm” insert “or pollution of the water environment”;

(ii) in paragraph (b), after “harm” insert “or of significant pollution of the water environment”;

and

(iii) delete paragraph (c);

(e) in sub section (6),

(i) in paragraph (a), after “systems” insert “or substances which may give rise to pollution;”;

(1) 1990 c. 43. Part IIA was inserted by section 57 of the Environment Act 1995 (c. 25).

- (ii) in paragraph (b), after “places” insert “or of the water environment, or different degrees of pollution”; and
- (iii) after “significant harm” insert “or of significant pollution”;
- (f) in subsection (7)(a)(ii), for “any controlled waters”, substitute “the water environment”;
- (g) in subsection (7)(b), for “waters”, where it first appears, substitute “the water environment”;
- (h) in subsection (7)(b)(i), before “pollution” insert “significant”;
- (i) in subsection (7)(b)(ii), for “waters to their” substitute “water environment to its”;
- (j) in subsection (7)(c), for “waters” substitute “the water environment”;
- (k) in subsection (8)–
 - (i) for “Controlled waters are” substitute “The water environment is”; and
 - (ii) delete from “pollution” to the end, and substitute “significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused”.
- (l) in subsection (9)–
 - (i) delete the definitions of–
 - (aa) “controlled waters”; and
 - (bb) “pollution of controlled waters”; and
 - (ii) insert in the appropriate places–
 - ““pollution”, in relation to the water environment, means the direct or indirect introduction, as a result of human activity, of substances into the water environment, or any part of it, which may give rise to any harm”; and
 - ““the water environment” has the same meaning as in section 3 of the Water Environment and Water Services (Scotland) Act 2003”;
- (4) In section 78C (Identification and designation of special sites)–
 - (a) for subsection (10)(a)(ii) substitute–
 - “(ii) serious pollution of the water environment would or might be caused;”; and
 - (b) in subsection (10)(b), before “pollution” insert “significant”.
- (5) In section 78E (Duty of enforcing authority to require remediation of contaminated land etc.)–
 - (a) in subsection (2), for “waters” substitute “the water environment”;
 - (b) in subsection (4)(b), after “or” insert “of the”; and
 - (c) in subsection (5)(b), for “is, or waters are ” substitute “, or the water environment is”.
- (6) In section 78G (Grant of, and compensation for, rights of entry etc.)–
 - (a) in subsection (2), for “waters” substitute “water environment”;
 - (b) in subsection (3)(a), for “waters” substitute “water environment”; and
 - (c) for subsection (7), substitute–
 - “(7) 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 water environment.”.
- (7) In section 78J (Restrictions on liability relating to the pollution of the water environment)–

- (a) in subsection (2), for “any waters” substitute “the water environment”;
 - (b) in subsection (3)(a), for “any controlled waters” substitute “the water environment”;
 - (c) in subsection (3)(b), for “such waters” substitute “the water environment”; and
 - (d) in subsection (3), for “or waters” substitute “or the water environment”.
- (8) In section 78K (Liability in respect of contaminating substances which escape to other land)–
- (a) in subsection (3)–
 - (i) for “or waters” in both places it occurs, substitute “or the water environment”;
 - (ii) for “is being caused” to “likely to be caused” substitute “, or significant pollution of the water environment, is being caused, or there is a significant possibility of such harm or pollution being caused”; and
 - (b) in subsection (4), for “is being caused” to “likely to be caused” substitute “, or significant pollution of the water environment, is being caused, or there is a significant possibility of such harm or pollution being caused”.
- (9) In section 78N (Powers of the enforcing authority to carry out remediation)–
- (a) in subsection (1), for “waters” substitute “the water environment”; and
 - (b) for subsection (5) substitute–
 - “(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.”.
- (10) In section 78X (Supplementary provisions)–
- (a) in subsection (1)–
 - (i) for paragraph (b), substitute “(b) significant pollution of the water environment, is being caused, or there is a significant possibility of such pollution being caused,”; and
 - (ii) for “is being caused ” to “likely to be caused”, substitute “, or significant pollution of the water environment, is being caused, or there is a significant possibility of such harm or pollution being caused”; and
 - (b) in subsection (2), for “is being caused” to “likely to be, caused” substitute “, or significant pollution of the water environment, is being caused, or there is a significant possibility of such harm or pollution being caused”.
- (11) In section 78YB (Interaction of this Part with other enactments)–
- (a) in subsection (1)(b), for “pollution of controlled waters” substitute “significant pollution of the water environment”;
 - (b) after subsection (1), insert–
 - “(1A) A remediation notice shall not be served if and to the extent that it appears to the enforcing authority that–
 - (a) the significant harm (if any); and
 - (b) the significant pollution of the water environment (if any),by reason of which the contaminated land in question is such land, is as a result of an activity to which–
 - (a) the Water Environment (Controlled Activities) (Scotland) Regulations 2005 apply; and

- (b) enforcement action may be taken in relation to that activity.”; and
 - (c) in subsection (2), for “pollution of controlled waters” substitute “significant pollution of the water environment”.
- (12) For section 79(1B) (statutory nuisances)(2), substitute–
- “(1B) Land is in a “contaminated state” for the purposes of sub section (1A) above if, and only if, it is in such a condition, by reason of substances in, on or under the land, that–
 - (a) significant harm is being caused or there is a significant possibility of such harm being caused; or
 - (b) significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused;
- and in this subsection “harm”, “pollution” in relation to the water environment, “substance” and “the water environment” have the same meanings as in Part IIA of this Act.”.

(2) Section 79(1B) was inserted by the Environment Act 1995 (c. 25), Schedule 22, paragraph 89(3).