

*Draft Regulations laid before the Scottish Parliament under section 36(6) of the Water Environment and Water Services (Scotland) Act 2003 for approval by resolution of the Scottish Parliament.*

---

DRAFT SCOTTISH STATUTORY INSTRUMENTS

---

**2016 No.**

**ENVIRONMENTAL PROTECTION**

**The Water Environment (Amendment of Part IIA of the Environmental Protection Act 1990: Contaminated Land) (Scotland) Regulations 2016**

*Made* - - - - *2016*  
*Coming into force* - - *8th March 2016*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 20 and 36(2) and (3) of the Water Environment and Water Services (Scotland) Act 2003<sup>(1)</sup> and all other powers enabling them to do so.

They have consulted in accordance with section 21(1) of that Act.

In accordance with section 36(6) of that Act<sup>(2)</sup>, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Water Environment (Amendment of Part IIA of the Environmental Protection Act 1990: Contaminated Land) (Scotland) Regulations 2016 and come into force on 8th March 2016.

**Amendment of section 78YB of the Environmental Protection Act 1990**

2. For subsection (1A) of section 78YB of the Environmental Protection Act 1990 (interaction of Part IIA with other enactments)<sup>(3)</sup> substitute—

“(1A) A remediation notice shall not be served if and to the extent that it appears to the enforcing authority that—

---

(1) 2003 asp 3; section 20 was amended by S.S.I. 2005/348.  
(2) Section 36(6) has been modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). There is an amendment to section 36(6) which is not relevant to these Regulations.  
(3) 1990 c.43; section 78YB was inserted by section 57 of the Environment Act 1995 (c.25) and subsection (1A) of section 78YB was inserted by S.S.I. 2005/658. There are other amendments which are not relevant to these Regulations.

- (a) the significant harm (if any) and 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 the Water Environment (Controlled Activities) (Scotland) Regulations 2011<sup>(4)</sup> (“the Regulations”) apply; and
- (b) one or more of the following sub-paragraphs apply—
  - (i) the activity is authorised under the Regulations;
  - (ii) the Scottish Environment Protection Agency has served, or has advised the enforcing authority that it intends to serve, a notice under regulation 32(2) (enforcement notices) of the Regulations requiring steps to be taken to prevent, mitigate or remedy the harm or pollution in question; or
  - (iii) the Scottish Environment Protection Agency has taken, is taking, or has advised the enforcing authority that it intends to take, steps to prevent, mitigate or remedy the harm or pollution in question (or has secured, is securing, or has advised the enforcing authority that it intends to secure, the taking of such steps) under regulation 33(1) (power of SEPA to carry out works) of the Regulations.”.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers

---

<sup>(4)</sup> S.S.I. 2011/209, as amended by S.S.I. 2012/360, S.S.I. 2013/176, S.S.I. 2013/323, S.S.I. 2013/325, S.S.I. 2014/373 and S.S.I. 2015/211.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend section 78YB of the Environmental Protection Act 1990 by substituting a new subsection (1A) into that provision. This new subsection sets out the circumstances in which a remediation notice under Part IIA of that Act (contaminated land) may not be served where the Water Environment (Controlled Activities) (Scotland) Regulations 2011 apply.

No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen.