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SCOTTISH STATUTORY INSTRUMENTS

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**2000 No. 178**

**ENVIRONMENTAL PROTECTION**

**The Contaminated Land (Scotland) Regulations 2000**

<i>Made</i>	- - - -	<i>12th June 2000</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>14th June 2000</i>
<i>Coming into force</i>	- -	<i>14th July 2000</i>

The Scottish Ministers, in exercise of the powers conferred upon them by sections 78C(8) to (10), 78E(6), 78G(5) and (6), 78L(4) and (5) and 78R(1), (2) and (8) of the Environmental Protection Act 1990<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement, extent and interpretation**

1.—(1) These Regulations may be cited as the Contaminated Land (Scotland) Regulations 2000 and shall come into force on 14th July 2000.

(2) These Regulations extend to Scotland only.

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

(4) In these Regulations “SEPA” means the Scottish Environment Protection Agency.

**Land required to be designated as a special site**

2.—(1) Land which has been identified as contaminated within the meaning of Part IIA of the Environmental Protection Act 1990 and which is 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;

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(1) 1990 c. 43. Sections 78A to 78YC were inserted by section 57 of the Environment Act 1995 (c. 25). See the definition of “prescribed” in section 78A(9). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

- (d) land on which a prescribed process designated for central control has been or is being carried on, other than land which is contaminated land solely as a result of 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 purposes;
  - (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<sup>(2)</sup>; or
    - (iii) any weapon, equipment or means of delivery which falls within section 1(1)(b) of that Act,
 has been carried on at any time; and
  - (h) land which—
    - (i) is adjoining or adjacent to land of a description specified in sub paragraphs (b) to (g) 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, “prescribed process” has the same meaning as in Part I of the Environmental Protection Act 1990 and the reference to designation for central control is a reference to designation under section 2(4) (which provides for the 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<sup>(3)</sup>.
- (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—

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(2) 1974 c. 6.

(3) 1965 c. 57. See section 26(1).

“international headquarters” and “defence organisation” mean any international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964(4);

“service authority” and “visiting force” have the same meaning as in Part I of the Visiting Forces Act 1952(5).

(7) In paragraph (1)(g) above, “chemical weapon” has the same meaning as in sub-section (1) of section 1 of the Chemical Weapons Act 1996(6) disregarding sub-section (2) of that section.

### **Pollution of controlled waters**

3. For the purposes of regulation 2(1)(a), this regulation applies to land where—
- (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(7) 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 VIA of the Water (Scotland) Act 1980(8);
  - (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 30B of the Control of Pollution Act 1974(9); 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 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 Devonian Sandstones or Permo-Triassic Sandstones.

### **Content of remediation notices**

4. A remediation notice(10) shall be in the form set out in Schedule 2 to these Regulations or as near as may be to that form and shall contain the information prescribed therein.

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

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(4) 1964 c. 5.

(5) 1952 c. 67.

(6) 1996 c. 6.

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

(8) 1980 c. 45.

(9) 1974 c. 40.

(10) See section 78E(1) for the meaning of “remediation notice”.

(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 3 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 provisions 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 Scottish Ministers 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 Scottish Ministers 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 wrongly 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 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 Scottish Ministers 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 Scottish Ministers 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 sub-section (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 anything 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 anything 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 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 Scottish Ministers 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 SEPA 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<sup>(11)</sup> to be personally liable to bear the whole or part of the cost of doing anything 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—
  - (i) in a case where sub-section (1) of that section is relied on, that it ought reasonably to have appeared to the enforcing authority that the powers of SEPA under section 27 might be exercised; or
  - (ii) in a case where sub-section (3) of section 78YB is relied on, that it ought reasonably to have appeared to the enforcing authority that the powers of SEPA or a local authority under section 59 might be exercised; or

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<sup>(11)</sup> See section 78X(4) for the definition of “person acting in a relevant capacity”.

- (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 that person is an appropriate person by virtue of section 78F(2) and that person claims to have found some other person who is an appropriate person by virtue of that subsection;
  - (b) the notice is served on that person as the owner or occupier for the time being of the contaminated land in question and that person claims to have found some other person who is an appropriate person by virtue of section 78F(2); or
  - (c) the notice is served on that person as the owner or occupier for the time being of the contaminated land in question, and that person 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 insofar 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 the Scottish Ministers**

- 8.—**(1) An appeal to the Scottish Ministers against a remediation notice shall be made to them 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 including particulars of the matters relied upon in support; 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 serving a notice of appeal on the Scottish Ministers—
- (a) serve a copy of it on—
    - (i) SEPA;
    - (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 Scottish Ministers 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 Scottish Ministers 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 (4) below, if the appellant wishes to abandon an appeal, the appellant shall do so by notifying the Scottish Ministers in writing (or in electronic form) and the appeal shall be treated as abandoned on the date the Scottish Ministers receive that notification.
- (4) The Scottish Ministers may refuse to permit an appellant to abandon the appeal against a remediation notice where the notification by the appellant in accordance with paragraph (3) above is received by them at any time after they have notified the appellant in accordance with regulation 12(1) below of the proposed modification of that notice.
- (5) Where an appeal is abandoned, the Scottish Ministers shall give notice of the abandonment to any person on whom the appellant was required to serve a copy of the notice of appeal.

### **Action by the Scottish Ministers upon receipt of notice of appeal**

9. The Scottish Ministers shall, within 14 days of receipt of a notice of appeal, give notice of the following matters to any person (other than to SEPA) on whom the appellant was required to serve a copy of the notice of appeal—

- (a) that representations with respect to the appeal may be made to the Scottish Ministers in writing (or in electronic form) by the recipient of the notice within the period of 21 days beginning with the date of receipt of the notice;
- (b) that copies of the representations will be sent to the appellant, SEPA and any other person on whom the appellant was required to serve a copy of the notice of appeal; and
- (c) that any person who makes any such representations will be informed about the hearing of the appeal if there is to be a hearing held wholly or partly in public.

### **Hearings and local inquiries**

10.—(1) Before determining an appeal, the Scottish Ministers may, if they think 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 Scottish Ministers shall act as mentioned in sub-paragraph (a) or (b) above if a request is made by either the appellant or SEPA to be heard with respect to the appeal.

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

- (a) the appellant;
- (b) SEPA; and
- (c) any person (other than SEPA) 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 that person has been appointed under section 114(1)(a) of the Environment Act 1995<sup>(12)</sup> to determine the appeal, make a report in writing (or in electronic form) to the Scottish Ministers which shall include the conclusions and the recommendations of that person or, as appropriate, the reasons for not making any recommendations.

### **Notification of the decision of the Scottish Ministers on an appeal**

11.—(1) The Scottish Ministers shall notify the appellant in writing (or in electronic form) of their decision on an appeal and shall provide the appellant with a copy of the report mentioned in regulation 10(4) above.

(2) The Scottish Ministers shall, at the same time as they notify the appellant, send a copy of the documents mentioned in paragraph (1) above to SEPA and to any other person on whom the appellant was required to serve a copy of the notice of appeal.

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(12) 1995 c. 25.

### **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 than the remediation notice against which the appellant is appealing, 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 to be heard, if the appellant so requests.

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

### **Interim suspension of a remediation notice**

**13.**—(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)(13) and—

- (a) in the case of an appeal to the Scottish Ministers, the requirements of regulation 8 have been fully complied with; or
- (b) in the case of an appeal to the sheriff, the summary application has been made.

### **Registers**

**14.**—(1) Schedule 4 to these Regulations shall have effect for prescribing—

- (a) for the purposes of sub-section (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 anything 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 section 78R(8) 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 sub-section—

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

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(13) The period specified in section 78L(1) is the period of twenty-one days beginning with the day on which the notice is served.

St Andrew's House, Edinburgh  
12th June 2000

*SARAH BOYACK*  
A member of the Scottish Executive

## SCHEDULE 1

Regulation 3(c)(i)

### SPECIAL SITES

The following families and groups of substances are listed for the purposes of regulation 3(c)(i):—

organohalogen compounds and substances which may form such compounds in the aquatic environment;

organophosphorus compounds;

organotin compounds;

substances which possess carcinogenic, mutagenic or teratogenic properties in or via the aquatic environment;

mercury and its compounds;

cadmium and its compounds;

mineral oil and other hydrocarbons; and

cyanides.

SCHEDULE 2

Regulation 4

REMEDIATION NOTICE

**[ENFORCING AUTHORITY]**

**ENVIRONMENTAL PROTECTION ACT 1990 (“The 1990 Act”)**

**THE CONTAMINATED LAND (SCOTLAND) REGULATIONS 2000 (“The 2000 Regulations”)**

**REMEDIATION NOTICE**

To: **[Name]**.....  
**[Address]**.....  
.....  
.....  
.....

[Enforcing Authority], being the enforcing authority for the purposes of Part IIA of the 1990 Act in relation to **[insert details of the location and extent of the contaminated land to which the notice relates sufficient to enable it to be identified whether by reference to a plan or otherwise]** (“the site”) which has been identified as contaminated land under Part IIA of the 1990 Act, considers that you are an appropriate person within the meaning of Part IIA of the 1990 Act by reason of the fact that you **[insert here either: “caused or knowingly permitted the substances, by reason of which the site is contaminated land within the meaning of Part IIA of the 1990 Act, to be in, on or under the site” or “are the owner of the contaminated land in question” or “are the occupier of the contaminated land in question”]**.

Pursuant to section 78E of the 1990 Act, [Enforcing Authority] does hereby require you to carry out, by way of remediation, the works listed in Schedule 2 annexed to this Notice within the corresponding periods listed in said Schedule.

**[Insert this para where more than one appropriate person]** [Enforcing Authority] has determined that there are **[insert number]** appropriate persons in relation to **[insert the particular thing which has to be done by way of remediation for which there are at least two appropriate persons]**. The details of the other appropriate persons are given in Schedule 1. [Enforcing Authority] has determined that the costs of doing the work stated above should be borne in the following proportion: **[Insert here the names of all appropriate persons (including the recipient of this notice) and the respective proportion of costs to be borne by each appropriate person]**. The reasons for the apportionment of costs are provided in Schedule 1.

Signed: .....  
Name: .....  
Position: .....  
Date: .....**[insert date of notice]**

[Enforcing Authority’s] address is:..... **[insert address of [Enforcing Authority] office dealing with notice]**....

Your contact within [Enforcing Authority] in connection with this notice is:.....**[insert name and telephone number of officer dealing with the notice]**....

## **REMEDIATION NOTICE SCHEDULE 1**

Your attention is drawn to the following information which [Enforcing Authority] is obliged to include in this notice:

### **The determination that the site is contaminated land**

[The date of any notice which was given under section 78B of the 1990 Act to the person on which the remediation notice is served identifying the contaminated land in question as contaminated land]

[Particulars of the significant harm or pollution of controlled waters by reason of which the contaminated land in question is contaminated land]

[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]

[The current use of the land]

### **The determination of remediation requirements**

[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 Scottish Ministers under section 78E(5) of the 1990 Act has been applied]

### **The determination of liability and the apportionment of remediation costs**

**[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]** particulars of 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 Scottish Ministers under Section 78F (6) has been applied.

**[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]** particulars of the [Enforcing Authority's] reasons for the proportion which it has determined, which shall show how any guidance issued by the Scottish Ministers under section 78F(7) has been applied.

**[Where two or more persons are appropriate persons in relation to the contaminated land in question]** a statement that this is the case, the name and address of each such person and the thing by way of remediation for which each such person bears responsibility.

**[Where known to the [Enforcing Authority]]** the name and address of the owner of the contaminated land in question and the name and address of any person who appears to the [Enforcing Authority] to be in occupation of the whole or any part of the contaminated land in question.

**[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.

**[Where the notice is to be served in reliance on section 78H(4),** a statement 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.

### **Offences and penalties**

- It is an offence to fail, without reasonable excuse, to comply with any of the requirements of this notice.
- A person who commits such an offence is liable to the following penalties:
  - where the contaminated land to which the notice relates is “industrial, trade or business premises” as defined in section 78M(6) of the 1990 Act, on summary conviction, to a fine not exceeding £20000 or such greater sum as the Scottish Ministers may from time to time by order substitute and to a further fine of an amount equal to one-tenth of that sum for each day on which the failure continues after conviction of the offence and before the [Enforcing Authority] has begun to exercise its powers by virtue of section 78N(3)(c) of the 1990 Act.
  - where the contaminated land to which the notice relates is not “industrial, trade or business premises”, on summary conviction, to a fine not exceeding level 5 on the standard scale and to a further fine of an amount equal to one-tenth of level 5 on the standard scale for each day on which the failure continues after conviction of the offence and before the [Enforcing Authority] has begun to exercise its powers by virtue of section 78N(3)(c).

### **Right of Appeal**

You do have a right of appeal against this notice under section 78L of the 1990 Act. If you wish to appeal you must do so within the period of twenty-one days beginning with the day on which the notice is served.

**[If this notice is served by a local authority]** appeals are to the sheriff by way of summary application. The standard rules governing the procedure for summary applications shall apply in such cases.

**[If this notice is served by the Scottish Environment Protection Agency (SEPA)]** appeals are made by submitting a “notice of appeal” to the Scottish Ministers at [insert address] which shall state: the name and address of the appellant; the grounds on which the appeal is made, including particulars of the matters relied upon in support; whether the appellant wishes to be heard or to have his appeal decided on the basis of written representations; and the names and addresses of all persons served with a copy of the notice of appeal. At the same time as a notice of appeal is served on the Scottish Ministers, the appellant shall also serve copies of it on: SEPA; any person named in the remediation notice as an appropriate person; any person named in the notice of appeal as an appropriate person; 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. A copy of the remediation notice to which the appeal relates shall be served on the Scottish Ministers and on any person named in the notice of appeal as an appropriate person who is not so named in the remediation notice.

Where an appeal is duly made, a notice is suspended until the final determination or abandonment of the appeal.

### **Grounds of Appeal**

- (1) The grounds of appeal against a remediation notice pursuant to section 78L of the 1990 Act 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 Scottish Ministers 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 Scottish Ministers 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 wrongly 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 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 Scottish Ministers 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 Scottish Ministers 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 anything 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 anything 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 Scottish Ministers 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 SEPA 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 (section 78X(4)) to be personally liable to bear the whole or part of the cost of doing anything 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 1990 Act with other enactments), and—
  - (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 SEPA 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 SEPA or a local 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 subparagraphs (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 that person is an appropriate person by virtue of section 78F(2) and that person claims to have found some other person who is an appropriate person by virtue of that subsection;
  - (b) the notice is served on that person as the owner or occupier for the time being of the contaminated land in question and that person claims to have found some other person who is an appropriate person by virtue of section 78F(2); or
  - (c) the notice is served on that person as the owner or occupier for the time being of the contaminated land in question, and that person 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 insofar 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.

## REMEDIATION NOTICE SCHEDULE 2

[Details of what is required to be done by way of remediation]

[Time period within which each of the things required by way of remediation shall be carried out]

**[Where the Enforcing Authority considers that there is some risk that the remediation might damage the environment that can be sufficiently reduced by including particular precautions in the notice]** particulars of the precautions required to prevent the occurrence of damage to the environment.

## SCHEDULE 3

Regulation 6

### COMPENSATION FOR RIGHTS OF ENTRY ETC.

#### Interpretation

1. In this Schedule—

“the Act” means the Land Compensation (Scotland) Act 1963(14);

“grantor” means a person who has granted, or joined in the granting of, any rights pursuant to section 78G(2);

“relevant interest” means an interest in land in respect of which rights have been granted pursuant to section 78G(2).

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(14) 1963 c. 51.

### **Period for making an application**

2. An application for compensation shall be made within the period beginning with the date of the grant of the rights in respect of which compensation is claimed and ending on whichever is the latest of the following dates:—

- (a) twelve months after the date of the grant of those rights;
- (b) where an appeal is made against a remediation notice in respect of which the rights in question have been granted, and the effect of the notice is suspended by virtue of regulation 13 of these Regulations, twelve months after the date of the final determination or abandonment of the appeal; or
- (c) six months after the date on which the rights were first exercised.

### **Manner of making an application**

3.—(1) An application shall be made in writing (or in electronic form) and shall be delivered at or sent by pre-paid post to the last known address for correspondence of the appropriate person to whom the rights were granted.

(2) The application shall contain, or be accompanied by—

- (a) a copy of the grant of rights in respect of which the grantor is applying for compensation, and of any plans attached to that grant;
- (b) a description of the exact nature of any interest in land in respect of which compensation is applied for; and
- (c) a statement of the amount of compensation applied for, distinguishing the amounts applied for under each of sub-paragraphs (a) to (e) of paragraph 4 below, and showing how the amount applied for under each sub-paragraph has been calculated.

### **Loss and damage for which compensation payable**

4. Subject to paragraph 5(3) and (5)(b) below, compensation is payable under section 78G for loss and damage of the following descriptions:—

- (a) depreciation in the value of any relevant interest to which the grantor is entitled which results from the grant of the rights;
- (b) depreciation in the value of any other interest in land to which the grantor is entitled which results from the exercise of the rights;
- (c) loss or damage, in relation to any relevant interest to which the grantor is entitled, which—
  - (i) is attributable to the grant of the rights or the exercise of them;
  - (ii) does not consist of depreciation in the value of that interest; and
  - (iii) is loss or damage for which the grantor would have been entitled to compensation by way of compensation for disturbance, if that interest had been acquired compulsorily under the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947<sup>(15)</sup> in pursuance of a notice to treat served on the date on which the rights were granted;
- (d) damage to, or injurious affection of, any interest in land to which the grantor is entitled which is not a relevant interest, and which results from the grant of the rights or the exercise of them; and
- (e) loss in respect of work carried out by or on behalf of the grantor which is rendered abortive by the grant of the rights or the exercise of them.

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(15) 1947 c. 42.

### **Basis on which compensation assessed**

5.—(1) The following provisions shall have effect for the purpose of assessing the amount to be paid by way of compensation under section 78G.

(2) The rules set out in section 12)(16) of the Act (rules for assessing compensation) shall, so far as applicable and subject to any necessary modifications, have effect for the purpose of assessing any such compensation as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(3) No account shall be taken of any enhancement of the value of any interest in land, by reason of any building erected, work done or improvement or alteration made on any land in which the grantor is, or was at the time of erection, doing or making, directly or indirectly concerned, if the Lands Tribunal for Scotland, is satisfied that the erection of the building, the doing of the work, the making of the improvement or the alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(4) In calculating the amount of any loss under paragraph 4(e) above, expenditure incurred in the preparation of plans or on other similar preparatory matters shall be taken into account.

(5) Where the interest in respect of which compensation is to be assessed is subject to a standard security within the meaning of section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970)(17)–

- (a) the compensation shall be assessed as if the interest were not subject to that security; and
- (b) no compensation shall be payable in respect of the interest of the creditor (as distinct from the interest which is subject to the security).

(6) Compensation under section 78G shall include an amount equal to the grantor's reasonable valuation and legal expenses.

### **Payment of compensation and determination of disputes**

6.—(1) Compensation payable under section 78G in respect of an interest which is subject to a standard security shall be paid (subject to the maximum sum due thereunder) to the creditor in that security or, if there is more than one such creditor, to the first ranking creditor and shall, in either case, be applied by him as if it were proceeds of sale.

(2) Amounts of compensation determined under this Schedule shall be payable–

- (a) where the appropriate person and the grantor or creditor in a standard security agree that a single payment is to be made on a specified date, on that date;
- (b) where the appropriate person and the grantor or such a creditor agree that payment is to be made in instalments at different dates, on the date agreed as regards each instalment; or
- (c) in any other case, subject to any direction of the Land Tribunal for Scotland as soon as reasonably practicable after the amount of the compensation has been finally determined.

(3) Any question of the application of paragraph 5(3) above or of disputed compensation shall be referred to and determined by the Lands Tribunal for Scotland.

(4) In relation to the determination of any such question, sections 9 and 11 of the Act (procedures on reference to the Lands Tribunal and expenses) )(17) shall apply as if–

- (a) the reference in section 9(1) of the Act to section 8 were a reference to sub-paragraph (3) of this paragraph; and

(16) Section 12 was repealed in part by the Planning and Compensation Act 1991 (c. 34), Schedules 17 and 19.

(17) 1970 c. 35.

(17) 1970 c. 35.

- (b) references in section 11 of the Act to the acquiring authority were references to the appropriate person.

### **Interest on compensation**

7.—(1) Compensation payable under section 78G shall carry interest at the rate for the time being prescribed under section 40 of the Act from the date of the grant of the rights in respect of which compensation is claimed until payment.

(2) If it appears to any person that such person may become liable to pay to another compensation under this Schedule or interest under this paragraph that person may, if the other person requests in writing for that person to do so, make one or more payments on account of such compensation or interest.

(3) If, after a payment has been made by any person under sub-paragraph (2)–

- (a) it is agreed or determined that compensation or interest is not liable to be paid; or
- (b) by reason of any agreement or determination, any payment under that sub-paragraph is shown to be excessive,

the payment or, as the case may be, excess shall be recoverable by that person.

## SCHEDULE 4

Regulation 14

### REGISTERS

A register maintained by an enforcing authority under section 78R shall contain full particulars of the following matters:–

#### **Identification notices**

1. Where the authority identifies any contaminated land in its area under section 78B(3), the notice given under that subsection.

#### **Remediation notices**

2. In relation to a remediation notice served by the authority–

- (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 paragraph 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 significant harm or pollution of controlled waters by reason of which the contaminated land in question is contaminated land;
- (d) 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;
- (e) the current use of the contaminated land in question;
- (f) what each appropriate person is to do by way of remediation and the periods within which they are required to do each of the things; and
- (g) the date of the notice.

### **Appeals against remediation notices**

3. Any appeal against a remediation notice served by the authority, including the name and address of the appellant, and the date of the appeal.
4. Any decision on such an appeal.

### **Remediation declarations**

5. Any remediation declaration prepared and published by the authority under section 78H(6).
6. In relation to any such remediation declaration—
  - (a) the location and extent of the contaminated land in question, sufficient to enable it to be identified whether by reference to a plan or otherwise; and
  - (b) the matters referred to in sub-paragraphs (c), (d) and (e) of paragraph 2 above.

### **Remediation statements**

7. Any remediation statement prepared and published by the responsible person under section 78H(7) or by the authority under section 78H(9).
8. In relation to any such remediation statement—
  - (a) the location and extent of the contaminated land in question, sufficient to enable it to be identified whether by reference to a plan or otherwise; and
  - (b) the matters referred to in sub-paragraphs (c), (d) and (e) of paragraph 2 above.

### **Designation of special sites**

9. In the case of SEPA, as respects any land in relation to which it is the enforcing authority, and in the case of a local authority, as respects any land in its area—
  - (a) any notice given by a local authority under sub-section (1)(b) or (5)(a) of section 78C, or by the Scottish Ministers under section 78D(4)(b), which, by virtue of section 78C(7) or section 78D(6) respectively, has effect as the designation of any land as a special site;
  - (b) the provisions of regulation 2 or 3 by virtue of which the land is required to be designated as a special site;
  - (c) any notice given by SEPA under section 78Q(1)(a) of its decision to adopt a remediation notice; and
  - (d) any notice given by or to the enforcing authority under section 78Q(4) terminating the designation of any land as a special site.

### **Notification of claimed remediation**

10. Any notification given to the authority for the purposes of section 78R(1)(h) or (j).

### **Convictions for offences under section 78M**

11. Any conviction of a person for any offence under section 78M in relation to a remediation notice served by the authority, including the name of the offender, the date of conviction, the penalty imposed and the name of the Court.

### **Guidance issued under section 78V(1)**

**12.** In the case of SEPA, the date of any guidance issued by it under section 78V(1) and, in the case of a local authority, the date of any guidance issued by SEPA to it under that sub-section.

### **Other environmental controls**

**13.** Where the authority is precluded by virtue of section 78YB(1) from serving a remediation notice–

- (a) the location and extent of the contaminated land in question, sufficient to enable it to be identified whether by reference to a plan or otherwise;
- (b) the matters referred to in sub-paragraphs (c), (d) and (e) of paragraph 2 above; and
- (c) any steps of which the authority has knowledge, carried out under section 27, towards remedying any significant harm or pollution of controlled waters by reason of which the land in question is contaminated land.

**14.** Where the authority is precluded by virtue of section 78YB(3) from serving a remediation notice in respect of land which is contaminated land by reason of the deposit of controlled waste or any consequences of its deposit–

- (a) the location and extent of the contaminated land in question, sufficient to enable it to be identified whether by reference to a plan or otherwise;
- (b) the matters referred to in sub-paragraphs (c), (d) and (e) of paragraph 2 above; and
- (c) any steps of which the authority has knowledge, carried out under section 59, in relation to that waste or the consequences of its deposit, including in a case where a waste collection authority (within the meaning of section 30(3)) took those steps or required the steps to be taken, the name of that authority.

**15.** Where, as a result of a consent given under Part II of the Control of Pollution Act 1974)**(18)**, the authority is precluded by virtue of section 78YB(4) from specifying in a remediation notice any particular thing by way of remediation which it would otherwise have specified in such a notice–

- (a) the consent;
- (b) the location and extent of the contaminated land in question, sufficient to enable it to be identified whether by reference to a plan or otherwise; and
- (c) the matters referred to in sub paragraphs (c), (d) and (e) of paragraph 2 above.

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### **EXPLANATORY NOTE**

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

These Regulations make provision in respect of Scotland for certain aspects of a new scheme under Part IIA of the Environmental Protection Act 1990 (“the 1990 Act”) for the remediation of contaminated land.

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**(18)** Section 9 was amended by the Local Government, Planning and Land Act 1980 (c. 65), Schedule 33, paragraph 7(2).

Regulations 2 and 3, and Schedule 1, identify those sites (known as “special sites”) for which the Scottish Environment Protection Agency (“SEPA”) is to be the authority responsible for enforcing the scheme. Local authorities are responsible for enforcing the scheme in the case of any other type of site.

Regulations 4 and 5, and Schedule 2, provide for the content and service of copies of “remediation notices”, that is, notices served by a local authority or SEPA specifying what is to be done by way of remediation and the time within which action must be taken.

Regulation 6, and Schedule 3, make provision for the compensation which is to be paid in accordance with section 78G(5) of the 1990 Act to a person who grants, or joins in granting, rights of entry etc. required to enable a person to comply with a remediation notice.

Regulations 7 to 13 make provision with respect to appeals against remediation notices, including the grounds of appeal and the procedure to be followed.

Regulation 14, and Schedule 4, prescribe the particulars of matters which are required under section 78R of the 1990 Act to be placed on a register maintained by local authorities or, in the case of special sites, by SEPA.

A regulatory impact assessment of the effect of these Regulations has been prepared and a copy may be obtained from the Environment Protection Unit, The Scottish Executive, 1 J, Victoria Quay, Edinburgh EH6 6QQ.