
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, amend Part IIA of the Environmental Protection Act 1990 (c. 43) (“the 1990 Act”) and the Contaminated Land (Scotland) Regulations 2000 (S.S.I. 2000/178) (“the 2000 Regulations”) in light of the [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#) (“the 2003 Act”).

Part IIA of the 1990 Act establishes a regime for contaminated land in Scotland, and requires local authorities to identify and secure the remediation of contaminated land in their area.

The 2000 Regulations provide for the circumstances in which contaminated land requires to be designated as a special site, and provides for a remediation regime in that regard.

The 2003 Act gave effect to Directive [2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy (O.J. No. L 327, 22.12.2000, p.1). Section 20 of the 2003 Act enables the Scottish Ministers to make regulations for or in connection with regulating any activity for the purposes of protection of “the water environment”.

Both Part IIA to the 1990 Act, and the 2000 Regulations, make provision in relation to the pollution of “controlled waters”. In so far as contaminated land is a source of pollution of controlled waters, it is necessary to amend the relevant provisions of Part IIA of the 1990 Act and the 2000 Regulations to align the contaminated land regime provided for thereunder with the requirements of the 2003 Act. The amendments accommodate a change in terminology from “controlled waters” to “the water environment” to ensure consistency of approach in the operation of the pollution control regime as provided for under the 2003 Act, with the provisions of Part IIA of the 1990 Act which concern contaminated land as a source of pollution of the water environment. Similar amendments are made to the 2000 Regulations to ensure consistency of approach in the designation of special sites under those Regulations with the pollution control regime provided for under the 2003 Act.

Regulation 1(2) makes provision to commence regulation 2(3)(d) and (e) to enable amended Guidance to be laid and considered by the Parliament, and subject to that consideration, the remaining amendments shall come into force on 1st April 2006.

Regulation 2(3)(a) amends the definition of contaminated land (section 78A(2) of the 1990 Act) by introducing a requirement that pollution be “significant” or likely to be “significant” in relation to the water environment. Consequential amendments are made to Part IIA of the 1990 Act, for example, to section 78A(5)(b) and (6) (regulation 2(3)(d)(ii) and 2(3)(e)(iii)).

Regulation 2(3)(c) inserts a definition of “harm” in relation to the water environment with reference to the definition in section 20(6) of the 2003 Act.

Regulation 2(11)(b) inserts a new subsection (1A) into section 78YB of the 1990 Act, such that a remediation notice shall not be served where land would otherwise be remediated by virtue of enforcement action under the [Water Environment \(Controlled Activities\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/348\)](#).

Part III of the 1990 Act makes provision in relation to statutory nuisances, and section 79(1) makes provision in relation to the matters that constitute “statutory nuisances”. Section 79(1A) provides that land in a contaminated state, and which therefore falls to be regulated under Part IIA of the 1990 Act, does not comprise a statutory nuisance for the purposes of section 79(1).

Regulation 2(12) makes equivalent amendment of the provisions of section 79(1B) of the 1990 Act on the definition of “contaminated state” to those in Part IIA of the 1990 Act.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

The Regulatory Impact Assessment in relation to these Regulations has been placed in the library of the Scottish Parliament and a copy can be obtained from the SEPA Sponsorship and Waste Division, Scottish Executive Environment and Rural Affairs Department (SEERAD), Victoria Quay, Leith, Edinburgh, EH6 6QQ.