

POLICY NOTE

THE WATER ENVIRONMENT (AMENDMENT OF PART IIA OF THE ENVIRONMENTAL PROTECTION ACT 1990: CONTAMINATED LAND) (SCOTLAND) REGULATIONS 2016

SSI 2016/99

The above instrument is made in exercise of the powers conferred by sections 20 and 36(2) and (3) of the Water Environment and Water Services (Scotland) Act 2003 (“the 2003 Act”). The instrument is subject to the affirmative procedure.

Policy Objectives

1. These Regulations clarify the circumstances in which a remediation notice under Part IIA (contaminated land) of the Environmental Protection Act 1990 may not be served, where it is more appropriate to take enforcement action under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (“the CAR Regulations”).

Background

2. The purpose of Part IIA is to address the legacy of historic contamination - there are other legislative regimes in place to deal with pollution or contamination that is current or recent. Where it is not appropriate to take action under those other regimes, Part IIA comes into play and the current wording of the 1990 Act is intended to convey that hierarchy. Section 78YB of the 1990 Act sets out the interactions between Part IIA and other pollution control regimes by describing the circumstances under which Part IIA cannot be used.

3. However in describing these interactions between Part IIA and the CAR Regulations, the wording of section 78YB of the 1990 Act is open to such broad interpretation that it could be construed that the CAR Regulations should be used in circumstances where the policy intent is that Part IIA is the appropriate regime. This lack of clarity is unhelpful and may be hindering action to address historic contamination; so these amendments provide the necessary clarity.

Consultation and financial implications

4. This technical amendment is of relevance only to our regulatory bodies with responsibilities for contaminated land remediation – namely, our local authorities and the Scottish Environment Protection Agency (“SEPA”). We have therefore consulted local authorities, SEPA and, as required by section 21(1)(b) of the 2003 Act, other responsible authorities designated under section 2 of the 2003 Act. The amendment will not affect any other persons and so no consultation was carried out under section 21(1)(c) or (d) of the Act. All persons consulted are content with this proposal. No business and regulatory impact assessment has been prepared for these Regulations because no additional impacts on business, charities or voluntary bodies is foreseen.