



2011 CHAPTER 5

*Contaminated land*

**Contaminated land: pollution of waterways and underground strata**

7.—(1) Part 3 of the 1997 Order is amended as follows.

(2) In Article 49 (interpretation of Part 3)—

(a) in paragraph (1), in the definition of “contaminated land”, for paragraph (b) substitute—

“(b) significant pollution of waterways or underground strata is being caused or there is a significant possibility of such pollution being caused;”;

(b) in paragraph (1), in the definition of “remediation”, in paragraph (b)(i) before “pollution” insert “significant”;

(c) in paragraph (1), in the definition of “underground strata”, at the end add “, except that it does not include strata which are above the saturation zone”;

(d) in paragraph (2)—

(i) in sub-paragraph (a) after “harm” insert “or pollution of waterways or underground strata”;

(ii) in sub-paragraph (b) after “harm” insert “or of significant pollution of waterways or underground strata”;

(iii) omit sub-paragraph (c);

(e) in paragraph (3)—

(i) in sub-paragraph (a) after “systems” insert “, or of poisonous, noxious or polluting matter or solid waste matter”;

- (ii) in sub-paragraph (b) after “places” insert “or waterways or underground strata, or different degrees of pollution”;
  - (iii) after “significant harm” insert “or of significant pollution”;
  - (f) in paragraph (4) for the words from “pollution” to the end substitute “significant pollution of, those waterways or those underground strata is being caused or there is a significant possibility of such pollution being caused.”.
- (3) In Article 51 (identification and designation of special sites), in paragraph (9)—
  - (a) in sub-paragraph (a)(ii) for “be, or would be likely to be, caused” substitute “or might be caused”;
  - (b) in sub-paragraph (b), before “pollution” insert “significant”.
- (4) In Article 53 (duty of enforcing authority to require remediation of contaminated land) in paragraph (4)(b) before “pollution” insert “of the”.
- (5) In Article 57 (liability in respect of contaminating substances which escape to other land) in each of paragraphs (3) and (4) for the words from “is being caused” to “likely to be caused” substitute “, or significant pollution of waterways or underground strata, is being caused, or there is a significant possibility of such harm or pollution being caused.”.
- (6) In Article 68 (supplementary provisions relating to contaminated land)—
  - (a) in paragraph (1)—
    - (i) for sub-paragraph (b) substitute—
      - “(b) significant pollution of waterways or underground strata is being caused or there is a significant possibility of such pollution being caused.”;
    - (ii) for the words from “is being caused, or” to the end substitute “, or significant pollution of waterways or underground strata, is being caused, or there is a significant possibility of such harm or pollution being caused.”;
  - (b) in paragraph (2) for the words from “is being caused” to “likely to be, caused” substitute “, or significant pollution of waterways or underground strata, is being caused, or there is a significant possibility of such harm or pollution being caused”.
- (7) In Article 70 (interaction of Part 3 with other statutory provisions), in each of paragraphs (1)(b) and (2), before “pollution” insert “significant”.

### **Appeals against remediation notices**

**8.—(1)** Article 58 of the 1997 Order (appeals against remediation notices) is amended as follows.

(2) In paragraph (1) for the words from “appeal against the notice” to the end substitute “appeal against the notice to the Planning Appeals Commission.”.

(3) After paragraph (1) insert—

“(1A) Article 127(2)(b) of the Planning (Northern Ireland) Order 1991 (power to prescribe fees for appeals to the Planning Appeals Commission under that Order) shall apply to appeals under this Article as it applies to appeals under that Order; and a notice of appeal to the Planning Appeals Commission under this Article shall be accompanied by such fee (if any) as may be prescribed under Article 127(2)(b) of that Order.”.

(4) In paragraph (3) for “Department” substitute “enforcing authority”.

(5) In paragraph (4) for “appellate authority” substitute “Planning Appeals Commission”.

(6) In paragraph (5) for “an appellate authority” substitute “the Planning Appeals Commission”.

#### **Interaction with other provisions**

9. In Article 70 of the 1997 Order (interaction of Part 3 with other statutory provisions) after paragraph (2) insert—

“(2A) This Part shall not apply if and to the extent that—

(a) any significant harm, or significant pollution of waterways or underground strata, by reason of which the land would otherwise fall to be regarded as contaminated, is attributable to the final disposal by deposit in or on land of controlled waste, and

(b) enforcement action may be taken in relation to that disposal.

(2B) A remediation notice shall not be served in respect of contaminated land if and to the extent that—

(a) the significant harm, or significant pollution of waterways or underground strata, by reason of which the contaminated land is such land is attributable to an activity other than the final disposal by deposit in or on land of controlled waste, and

(b) enforcement action may be taken in relation to that activity.

(2C) In paragraphs (2A) and (2B) “enforcement action” means action under regulation 24 (enforcement notices) or regulation 26(2) (power to remedy pollution) of the Pollution Prevention and Control Regulations (Northern Ireland) 2003.”.