
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2016 No.

The Water Environment (Amendment of Part IIA of the Environmental Protection Act 1990: Contaminated Land) (Scotland) Regulations 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)(1) substitute—

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

- (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(2) (“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.”.

(1) 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.

(2) 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.