



Environmental Protection Act 1990

1990 CHAPTER 43

[^{F1}PART IIA

CONTAMINATED LAND

^{F2}[^{F1}78YB] **Interaction of this Part with other enactments.** E+W

[^{F3}(1) This Part shall not apply if and to the extent that—

- (a) any significant harm, or pollution of controlled waters, by reason of which land would otherwise fall to be regarded as contaminated, is attributable to the operation of a regulated facility; and
- (b) enforcement action may be taken in relation to that harm or [^{F4}significant] pollution.]

(3) If, in a case falling within subsection (1) or (7) of section 59 [^{F5}, section 59ZA(1), 59ZB(1) or (8) or 59ZC(1)] above, the land in question is contaminated land, or becomes such land by reason of the deposit [^{F6}, keeping or disposal] of the controlled waste in question, a remediation notice shall not be served in respect of that land by reason of that waste or any consequences of its deposit [^{F6}, keeping or disposal], if and to the extent that it appears to the enforcing authority that the powers of a waste regulation authority or waste collection authority under [^{F7}section 59, 59ZA, 59ZB or 59ZC (as the case may be)] may be exercised in relation to that waste or the consequences of its deposit [^{F6}, keeping or disposal].

(4) No remediation notice shall require a person to do anything the effect of which would be to impede or prevent the making of a discharge in pursuance of [^{F8}an environmental permit] or, in relation to Scotland, in pursuance of a consent given under Part II of the ^{M1}Control of Pollution Act 1974.

[In this section—
^{F9}(5)

“enforcement action” means action under regulation 36, 37 or 42 of [^{F10}the Environmental Permitting (England and Wales) Regulations 2016 ([S.I. 2016/1154](#))] ;

Status: There are multiple versions of this provision on screen. These apply to different geographical extents. This version of this provision has been superseded.

Changes to legislation: Environmental Protection Act 1990, Section 78YB is up to date with all changes known to be in force on or before 15 September 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

“regulated facility” has the meaning given in regulation 8 of those Regulations.]]

Extent Information

- E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

- F1** Pt. 2A (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57, (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2
- F2** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2
- F3** S. 78YB(1) substituted (E.W.) (6.4.2008) for s. 78YB(1)-(2C) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, Sch. 21 para. 18(a) (with reg. 72, Sch. 4)
- F4** Word in s. 78YB(1)(b) inserted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(7), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F5** Words in s. 78YB(3) inserted (E.W.) (9.5.2018) by The Waste Enforcement (England and Wales) Regulations 2018 (S.I. 2018/369), reg. 1(3), Sch. 1 para. 5(a) (with reg. 4(2))
- F6** Words in s. 78YB(3) inserted (E.W.) (9.5.2018) by The Waste Enforcement (England and Wales) Regulations 2018 (S.I. 2018/369), reg. 1(3), Sch. 1 para. 5(b) (with reg. 4(2))
- F7** Words in s. 78YB(3) substituted (E.W.) (9.5.2018) by The Waste Enforcement (England and Wales) Regulations 2018 (S.I. 2018/369), reg. 1(3), Sch. 1 para. 5(c) (with reg. 4(2))
- F8** Words in s. 78YB(4) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), 107, Sch. 26 para. 5(10)(a) (with Sch. 4)
- F9** S. 78YB(5) inserted (E.W.) (6.4. 2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, Sch. 21 para. 18(b) (with reg. 72, Sch. 4)
- F10** Words in s. 78YB(5) substituted (E.W.) (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 29 para. 6(5) (with regs. 1(3), 77-79, Sch. 4)

Marginal Citations

- M1** 1974 c. 40.

^{F2}78YB Interaction of this Part with other enactments. **S**

- (1) A remediation notice shall not be served if and to the extent that it appears to the enforcing authority that the powers of the appropriate Agency under section 27 above may be exercised in relation to—
- (a) the significant harm (if any), and
 - (b) the [^{F11}significant pollution of the water environment] (if any),
- by reason of which the contaminated land in question is such land.

- [^{F12}(1A) A remediation notice shall not be served if and to the extent that it appears to the enforcing authority that—

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- (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 (“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.]
- (2) Nothing in this Part shall apply in relation to any land in respect of which there is for the time being in force a site licence under Part II above, except to the extent that any significant harm, or [^{F13}significant pollution of the water environment], by reason of which that land would otherwise fall to be regarded as contaminated land is attributable to causes other than—
- (a) breach of the conditions of the licence; or
 - (b) the carrying on, in accordance with the conditions of the licence, of any activity authorised by the licence.
- [^{F14}(2A) This Part shall not apply if and to the extent that—
- (a) any significant harm, or pollution of [^{F15}the water environment], 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 activity.
- (2B) A remediation notice shall not be served in respect of contaminated land if and to the extent that—
- (a) the significant harm, or pollution of [^{F15}the water environment], 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 subsections (2A) and (2B) above—
- “controlled waste” has the meaning given in section 75(4) of this Act;
- [^{F16}“enforcement action” means action under regulation 55 (SEPA: enforcement notices) or regulation 57(2) (SEPA: power to prevent or remedy pollution) of the Pollution Prevention and Control (Scotland) Regulations 2012.]]
- (3) If, in a case falling within subsection (1) or (7) of section 59 above, the land in question is contaminated land, or becomes such land by reason of the deposit of the controlled waste in question, a remediation notice shall not be served in respect of that land by reason of that waste or any consequences of its deposit, if and to the extent that it

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appears to the enforcing authority that the powers of a waste regulation authority or waste collection authority under that section may be exercised in relation to that waste or the consequences of its deposit.

- (4) No remediation notice shall require a person to do anything the effect of which would be to impede or prevent the making of a discharge in pursuance of a consent given under Chapter II of Part III of the ^{M2}Water Resources Act 1991 (pollution offences) or, in relation to Scotland, in pursuance of a consent given under Part II of the ^{M1}Control of Pollution Act 1974.

Extent Information

- E2** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

- F2** Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, s. 57 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 2000/340, art. 2(a); S.S.I. 2000/180, art. 2(1)(a)(2); S.I. 2000/1986, art. 2
- F11** Words in s. 78YB(1)(b) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, 2(11)(a)
- F12** S. 78YB(1A) substituted (S.) (8.3.2016) by The Water Environment (Amendment of Part IIA of the Environmental Protection Act 1990: Contaminated Land) (Scotland) Regulations 2016 (S.S.I. 2016/99), regs. 1, 2
- F13** Words in s. 78YB(2) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, 2(11)(c)
- F14** S. 78YB(2A)-(2C) inserted (S.) (28.9.2000) by S.S.I. 2000/323, reg. 36, Sch. 10 Pt. 1 para. 3(5)
- F15** Words in s. 78YB(2A)(a)(2B)(a) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, 2(2)
- F16** Word in s. 78YB(2C) substituted (S.) (7.1.2013) by The Pollution Prevention and Control (Scotland) Regulations 2012 (S.S.I. 2012/360), reg. 1(2), sch. 11 para. 1(5) (with reg. 71)

Marginal Citations

- M1** 1974 c. 40.
- M2** 1991 c. 57.

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Changes to legislation:

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Changes and effects yet to be applied to :

- s. 78YB(2) words inserted by [2003 c. 37 s. 86\(7\)](#) (This amendment not applied to legislation.gov.uk. S. 78YB(2) fell when s. 78YB(1) was substituted for s. 78YB(1)-(2C) on 6.4.2012)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 30(4A) inserted by [2021 c. 30 s. 57\(2\)](#)
- s. 33ZB(10A) inserted by [2021 c. 30 s. 69\(3\)\(b\)](#)
- s. 34D and cross-heading inserted by [2016 anaw 3 s. 66\(1\)](#)
- s. 34ZB(8A) inserted by [2021 c. 30 s. 69\(5\)\(b\)](#)
- s. 45A-45AZG substituted for s. 45A by [2021 c. 30 s. 57\(4\)](#)
- s. 45AA45AB inserted by [2016 anaw 3 s. 65](#)
- s. 46(2)(a)(b) substituted for words by [2021 c. 30 s. 57\(5\)](#)
- s. 106A inserted by [2023 c. 6 s. 41\(2\)](#)
- s. 161(2AA)(2AB) inserted by [2016 anaw 3 s. 69\(4\)](#)