SCOTTISH STATUTORY INSTRUMENTS

2000 No. 178

ENVIRONMENTAL PROTECTION

The Contaminated Land (Scotland) Regulations 2000

Made - - - -	*12th June 2000*
Laid before the Scottish Parliament - - - -	*14th June 2000*
Coming into force - -	*14th July 2000*

The Scottish Ministers, in exercise of the powers conferred upon them by sections 78C(8) to (10), 78E(6), 78G(5) and (6), 78L(4) and (5) and 78R(1), (2) and (8) of the Environmental Protection Act 1990(**1**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Contaminated Land (Scotland) Regulations 2000 and shall come into force on 14th July 2000.

(2) These Regulations extend to Scotland only.

(3) In these Regulations, unless otherwise indicated, any reference to a numbered section is a reference to the section of the Environmental Protection Act 1990, which bears that number.

(4) In these Regulations "SEPA" means the Scottish Environment Protection Agency.

Land required to be designated as a special site

2.—(1) Land which has been identified as contaminated within the meaning of Part IIA of the Environmental Protection Act 1990 and which is of the following descriptions is prescribed for the purposes of section 78C(8) as land required to be designated as a special site:–

(a) land to which regulation 3 applies;

(b) land which is contaminated land by reason of waste acid tars in, on or under the land;

(c) land on which any of the following activities have been carried on at any time:–

(i) the purification (including refining) of crude petroleum or of oil extracted from petroleum, shale or any other bituminous substance except coal; or

(ii) the manufacture or processing of explosives;

(**1**) 1990 c. 43. Sections 78A to 78YC were inserted by section 57 of the Environment Act 1995 (c. 25). See the definition of "prescribed" in section 78A(9). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(d) land on which a prescribed process designated for central control has been or is being carried on, other than land which is contaminated land solely as a result of things being done which are required by way of remediation;

(e) land within a nuclear site;

(f) land owned or occupied by or on behalf of–

(i) the Secretary of State for Defence;

(ii) the Defence Council;

(iii) an international headquarters or defence organisation; or

(iv) the service authority of a visiting force,

being land used for naval, military or air force purposes;

(g) land on which the manufacture, production or disposal of–

(i) chemical weapons;

(ii) any biological agent or toxin which falls within section 1(1)(a) of the Biological Weapons Act 1974(**2**); or

(iii) any weapon, equipment or means of delivery which falls within section 1(1)(b) of that Act,

has been carried on at any time; and

(h) land which–

(i) is adjoining or adjacent to land of a description specified in sub paragraphs (b) to (g) above; and

(ii) is contaminated land by virtue of substances which appear to have escaped from land of such a description.

(2) For the purposes of paragraph (1)(b) above, "waste acid tars" are tars which–

(a) contain sulphuric acid;

(b) were produced as a result of the refining of benzole, used lubricants or petroleum; and

(c) are or were stored on land used as a retention basin for the disposal of such tars.

(3) In paragraph (1)(d) above, "prescribed process" has the same meaning as in Part I of the Environmental Protection Act 1990 and the reference to designation for central control is a reference to designation under section 2(4) (which provides for the processes to be designated for central or local control).

(4) In paragraph (1)(e) above, "nuclear site" means–

(a) any site in respect of which or part of which a nuclear site licence is for the time being in force; or

(b) any site in respect of which, or part of which, after the revocation or surrender of a nuclear site licence, the period of responsibility of the licensee has not come to an end,

and "nuclear site licence", "licensee" and "period of responsibility" have the meaning given by the Nuclear Installations Act 1965(**3**).

(5) For the purposes of paragraph (1)(f) above, land used for residential purposes or by the Navy, Army and Air Force Institutes shall be treated as land used for naval, military or air force purposes only if the land forms part of a base occupied for naval, military or air force purposes.

(6) In paragraph (1)(f) above–

(**2**) 1974 c. 6.
(**3**) 1965 c. 57. See section 26(1).

"international headquarters" and "defence organisation" mean any international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964(**4**);

"service authority" and "visiting force" have the same meaning as in Part I of the Visiting Forces Act 1952(**5**).

(7) In paragraph (1)(g) above, "chemical weapon" has the same meaning as in sub-section (1) of section 1 of the Chemical Weapons Act 1996(**6**) disregarding sub-section (2) of that section.

Pollution of controlled waters

3. For the purposes of regulation 2(1)(a), this regulation applies to land where–

(a) controlled waters which are, or are intended to be, used for the supply of drinking water for human consumption are being affected by the land(**7**) and, as a result, require a treatment process or a change in such a process to be applied to those waters before use, so as to be regarded as wholesome within the meaning of Part VIA of the Water (Scotland) Act 1980(**8**);

(b) controlled waters are being affected by the land and, as a result, those waters do not meet or are not likely to meet the criterion for classification applying to the relevant description of waters specified in regulations made under section 30B of the Control of Pollution Act 1974(**9**); or

(c) controlled waters are being affected by the land and–

(i) any of the substances by reason of which the pollution of the waters is being or is likely to be caused falls within any of the families or groups of substances listed in Schedule 1 to these Regulations; and

(ii) the waters, or any part of the waters, are contained within underground strata which comprise wholly or partly Devonian Sandstones or Permo-Triassic Sandstones.

Content of remediation notices

4. A remediation notice(**10**) shall be in the form set out in Schedule 2 to these Regulations or as near as may be to that form and shall contain the information prescribed therein.

Service of copies of remediation notices

5.—(1) Subject to paragraph (2) below, the enforcing authority shall, at the same time as it serves a remediation notice, send a copy of it to each of the following persons, not being a person on whom the notice is to be served:–

(a) any person who was required to be consulted under section 78G(3) before service of the notice;

(b) any person who was consulted under section 78H(1) before service of the notice;

(c) where the local authority is the enforcing authority, SEPA; and

(d) where SEPA is the enforcing authority, the local authority in whose area the contaminated land in question is situated.

(**4**) 1964 c. 5.
(**5**) 1952 c. 67.
(**6**) 1996 c. 6.
(**7**) See section 78A(8) for the meaning of "affected by".
(**8**) 1980 c. 45.
(**9**) 1974 c. 40.
(**10**) See section 78E(1) for the meaning of "remediation notice".

(2) Where it appears to the enforcing authority that the contaminated land in question is in such a condition by reason of substances in, on or under it, that there is imminent danger of serious harm, or serious pollution of controlled waters, being caused, the enforcing authority shall send any copies of the notice pursuant to paragraph (1) above as soon as practicable after service of the notice.

Compensation for rights of entry etc.

6. Schedule 3 to these Regulations shall have effect–

(a) for prescribing the period within which a person who grants, or joins in granting, any rights pursuant to section 78G(2) may apply for compensation for the grant of those rights;

(b) for prescribing the manner in which, and the person to whom, such an application may be made; and

(c) for prescribing the manner in which the amount of such compensation shall be determined and for making further provisions relating to such compensation.

Grounds of appeal against a remediation notice

7.—(1) The grounds of appeal against a remediation notice under section 78L(1) are any of the following:–

(a) that, in determining whether any land to which the notice relates appears to be contaminated land, the local authority–

(i) failed to act in accordance with guidance issued by the Scottish Ministers under section 78A(2), (5) or (6); or

(ii) whether, by reason of such a failure or otherwise, unreasonably identified all or any of the land to which the notice relates as contaminated land;

(b) that, in determining a requirement of the notice, the enforcing authority–

(i) failed to have regard to guidance issued by the Scottish Ministers under section 78E(5); or

(ii) whether by reason of such a failure or otherwise, unreasonably required the appellant to do anything by way of remediation;

(c) that the enforcing authority wrongly determined the appellant to be the appropriate person who is to bear responsibility for anything required by the notice to be done by way of remediation;

(d) subject to paragraph (2) below, that the enforcing authority failed to determine that some person in addition to the appellant is an appropriate person in relation to anything required by the notice to be done by way of remediation;

(e) that, in respect of anything required by the notice to be done by way of remediation, the enforcing authority failed to act in accordance with guidance issued by the Scottish Ministers under section 78F(6);

(f) that, where two or more persons are appropriate persons in relation to anything required by the notice to be done by way of remediation, the enforcing authority–

(i) failed to determine the proportion of the cost stated in the notice to be the liability of the appellant in accordance with guidance issued by the Scottish Ministers under section 78F(7); or

(ii) whether, by reason of such a failure or otherwise, unreasonably determined the proportion of the cost that the appellant is to bear;

(g) that service of the notice contravened a provision of sub-section (1) or (3) of section 78H (restrictions and prohibitions on serving remediation notices), other than in circumstances where section 78H(4) applies;

(h) that, where the notice was served in reliance on section 78H(4) without compliance with section 78H(1) or (3), the enforcing authority could not reasonably have taken the view that the contaminated land in question was in such a condition by reason of substances in, on or under the land, that there was imminent danger of serious harm or serious pollution of controlled waters being caused;

(i) that the enforcing authority has unreasonably failed to be satisfied, in accordance with section 78H(5)(b), that appropriate things are being, or will be, done by way of remediation without service of a notice;

(j) that anything required by the notice to be done by way of remediation was required in contravention of a provision of section 78J (restrictions on liability relating to the pollution of controlled waters);

(k) that anything required by the notice to be done by way of remediation was required in contravention of a provision of section 78K (liability in respect of contaminating substances which escape to other land);

(l) that the enforcing authority itself has power, in a case falling within section 78N(3)(b), to do what is appropriate by way of remediation;

(m) that the enforcing authority has power, in a case falling within section 78N(3)(e), to do what is appropriate by way of remediation;

(n) that the enforcing authority, in considering for the purposes of section 78N(3)(e), whether it would seek to recover all or a portion of the cost incurred by it in doing some particular thing by way of remediation–

(i) failed to have regard to any hardship which the recovery may cause to the person from whom the cost is recoverable or to any guidance issued by the Scottish Ministers for the purposes of section 78P(2); or

(ii) whether by reason of such a failure or otherwise, unreasonably determined that it would decide to seek to recover all of the cost;

(o) that in determining a requirement of the notice the enforcing authority failed to have regard to guidance issued by SEPA under section 78V(1);

(p) that a period specified in the notice within which the appellant is required to do anything is not reasonably sufficient for the purpose;

(q) that the notice provides for a person acting in a relevant capacity(**11**) to be personally liable to bear the whole or part of the cost of doing anything by way of remediation, contrary to the provisions of section 78X(3)(a);

(r) that service of the notice contravened a provision of section 78YB (interaction of Part IIA of the Environmental Protection Act 1990 with other enactments), and–

(i) in a case where sub-section (1) of that section is relied on, that it ought reasonably to have appeared to the enforcing authority that the powers of SEPA under section 27 might be exercised; or

(ii) in a case where sub-section (3) of section 78YB is relied on, that it ought reasonably to have appeared to the enforcing authority that the powers of SEPA or a local authority under section 59 might be exercised; or

(**11**) See section 78X(4) for the definition of "person acting in a relevant capacity".