



Environmental Protection Act 1990

1990 CHAPTER 43

[^{F1}PART IIA

CONTAMINATED LAND

^{F2}[^{F1}78A Preliminary. **E+W**

- (1) The following provisions have effect for the interpretation of this Part.
- (2) “Contaminated land” is any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that—
 - (a) significant harm is being caused or there is a significant possibility of such harm being caused; or
 - [^{F3}(b) significant pollution of controlled waters is being caused or there is a significant possibility of such pollution being caused;]and, in determining whether any land appears to be such land, a local authority shall, subject to subsection (5) below, act in accordance with guidance issued by the Secretary of State in accordance with section 78YA below with respect to the manner in which that determination is to be made.
- (3) A “special site” is any contaminated land—
 - (a) which has been designated as such a site by virtue of section 78C(7) or 78D(6) below; and
 - (b) whose designation as such has not been terminated by the appropriate Agency under section 78Q(4) below.
- (4) “Harm” means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property.
- (5) The questions—
 - (a) what harm [^{F4}or pollution of controlled waters] is to be regarded as “significant”,

Status: There are multiple versions of this provision on screen. These apply to different geographical extents. Skip to: E+W - England and Wales extent S - Scotland extent

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- (b) whether the possibility of significant harm [^{F5}or of significant pollution of controlled waters] being caused is “significant”,
- ^{F6}(c)
- shall be determined in accordance with guidance issued for the purpose by the Secretary of State in accordance with section 78YA below.
- (6) Without prejudice to the guidance that may be issued under subsection (5) above, guidance under paragraph (a) of that subsection may make provision for different degrees of importance to be assigned to, or for the disregard of,—
- (a) different descriptions of living organisms or ecological systems [^{F7}, or of poisonous, noxious or polluting matter or solid waste matter];
- (b) different descriptions of places [^{F8}or controlled waters, or different degrees of pollution]; or
- (c) different descriptions of harm to health or property, or other interference;
- and guidance under paragraph (b) of that subsection may make provision for different degrees of possibility to be regarded as “significant” (or as not being “significant”) in relation to different descriptions of significant harm [^{F9}or of significant pollution].
- (7) “Remediation” means—
- (a) the doing of anything for the purpose of assessing the condition of—
- (i) the contaminated land in question;
- (ii) any controlled waters affected by that land; or
- (iii) any land adjoining or adjacent to that land;
- (b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose—
- (i) of preventing or minimising, or remedying or mitigating the effects of, any significant harm, or any [^{F10}significant] pollution of controlled waters, by reason of which the contaminated land is such land; or
- (ii) of restoring the land or waters to their former state; or
- (c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters;
- and cognate expressions shall be construed accordingly.
- (8) Controlled waters are “affected by” contaminated land if (and only if) it appears to the enforcing authority that the contaminated land in question is, for the purposes of subsection (2) above, in such a condition, by reason of substances in, on or under the land, that [^{F11}significant pollution of those waters is being caused or there is a significant possibility of such pollution being caused].
- (9) The following expressions have the meaning respectively assigned to them—
- “the appropriate Agency” means—
- (a) in relation to England ^{F12}..., the Environment Agency;
- (b) in relation to Scotland, the Scottish Environment Protection Agency;
- (c) [^{F13}in relation to Wales, the Natural Resources Body for Wales;]
- “appropriate person” means any person who is an appropriate person, determined in accordance with section 78F below, to bear responsibility for any thing which is to be done by way of remediation in any particular case;
- “charging notice” has the meaning given by section 78P(3)(b) below;
- “controlled waters”—

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(a) in relation to England and Wales, has the same meaning as in Part III of the ^{M1}Water Resources Act 1991 [^{F14}except that “ground waters” does not include waters contained in underground strata but above the saturation zone]; and

(b) in relation to Scotland, has the same meaning as in section 30A of the ^{M2}Control of Pollution Act 1974;

“creditor” has the same meaning as in the ^{M3}Conveyancing and Feudal Reform (Scotland) Act 1970;

“enforcing authority” means—

(a) in relation to a special site, the appropriate Agency;

(b) in relation to contaminated land other than a special site, the local authority in whose area the land is situated;

“heritable security” has the same meaning as in the ^{M4}Conveyancing and Feudal Reform (Scotland) Act 1970;

“local authority” in relation to England and Wales means—

(a) any unitary authority;

(b) any district council, so far as it is not a unitary authority;

(c) the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;

and in relation to Scotland means a council for an area constituted under section 2 of the ^{M5}Local Government etc. (Scotland) Act 1994;

“notice” means notice in writing;

“notification” means notification in writing;

“owner”, in relation to any land in England and Wales, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or, where the land is not let at a rack rent, would be so entitled if it were so let;

“owner”, in relation to any land in Scotland, means a person (other than a creditor in a heritable security not in possession of the security subjects) for the time being entitled to receive or who would, if the land were let, be entitled to receive, the rents of the land in connection with which the word is used and includes a trustee, factor, guardian or curator and in the case of public or municipal land includes the persons to whom the management of the land is entrusted;

“pollution of controlled waters” means the entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Secretary of State;

“remediation declaration” has the meaning given by section 78H(6) below;

“remediation notice” has the meaning given by section 78E(1) below;

“remediation statement” has the meaning given by section 78H(7) below;

“required to be designated as a special site” shall be construed in accordance with section 78C(8) below;

“substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

“unitary authority” means—

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- (a) the council of a county, so far as it is the council of an area for which there are no district councils;
- (b) the council of any district comprised in an area for which there is no county council;
- (c) the council of a London borough;
- (d) the council of a county borough in Wales.]

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. 78A(2)(b) substituted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(2)(a), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F4** Words in s. 78A(5)(a) inserted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(2)(b)(i), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F5** Words in s. 78A(5)(b) inserted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(2)(b)(ii), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F6** S. 78A(5)(c) repealed (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(2)(b)(iii), 105(3), Sch. 9 Pt. 3; S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F7** Words in s. 78A(6)(a) inserted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(2)(c)(i), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F8** Words in s. 78A(6)(b) inserted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(2)(c)(ii), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F9** Words in s. 78A(6) inserted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(2)(c)(iii), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F10** Word in s. 78A(7)(b)(i) inserted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(2)(d), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F11** Words in s. 78A(8) substituted (E.W.) (6.4.2012) by Water Act 2003 (c. 37), ss. 86(2)(e), 105(3); S.I. 2012/264, art. 2; S.I. 2012/284, art. 2
- F12** Words in s. 78A(9) omitted (1.4.2013) by virtue of The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 216(a) (with Sch. 7)
- F13** Words in s. 78A(9) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 216(b) (with Sch. 7)
- F14** In s. 78A(9) in definition of "controlled waters" words inserted (1.10.2004 for E. and 11.11.2004 for W.) by Water Act 2003 (c. 37), ss. 86(2)(f), 105; S.I. 2004/2528, art. 2(q) (with art. 4, Sch.); S.I. 2004/2916, art. 2(e)

Commencement Information

- I1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland

Marginal Citations

- M1** 1991 c. 57.
- M2** 1974 c. 40.
- M3** 1970 c. 35.
- M4** 1970 c. 35.

Status: There are multiple versions of this provision on screen. These apply to different geographical extents. **Skip to:** E+W - England and Wales extent S - Scotland extent

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M5 1994 c. 39.

^{F2}^{F1}78A Preliminary. **S**

- (1) The following provisions have effect for the interpretation of this Part.
- (2) “Contaminated land” is any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that—
 - (a) significant harm is being caused or there is a significant possibility of such harm being caused; or
 - ^{F15}(b) significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused.]and, in determining whether any land appears to be such land, a local authority shall, subject to subsection (5) below, act in accordance with guidance issued by the Secretary of State in accordance with section 78YA below with respect to the manner in which that determination is to be made.
- (3) A “special site” is any contaminated land—
 - (a) which has been designated as such a site by virtue of section 78C(7) or 78D(6) below; and
 - (b) whose designation as such has not been terminated by the appropriate Agency under section 78Q(4) below.
- (4) ^{F16}Subject to sub section (4A), “harm”] means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property.
[“Harm”, in relation to the water environment has the same meaning as in section 20(6)^{F17}(4A) of the Water Environment and Water Services (Scotland) Act 2003.]
- (5) The questions—
 - (a) what harm ^{F18}or pollution of the water environment] is to be regarded as “significant”,
 - (b) whether the possibility of significant harm ^{F19}or of significant pollution of the water environment] being caused is “significant”,
 - (c) ^{F20}shall be determined in accordance with guidance issued for the purpose by the Secretary of State in accordance with section 78YA below.
- (6) Without prejudice to the guidance that may be issued under subsection (5) above, guidance under paragraph (a) of that subsection may make provision for different degrees of importance to be assigned to, or for the disregard of,—
 - (a) different descriptions of living organisms or ecological systems ^{F21}or substances which may give rise to pollution;]
 - (b) different descriptions of places ^{F22}or of the water environment, or different degrees of pollution]; or
 - (c) different descriptions of harm to health or property, or other interference; and guidance under paragraph (b) of that subsection may make provision for different degrees of possibility to be regarded as “significant” (or as not being “significant”) in relation to different descriptions of significant harm ^{F23}or of significant pollution].

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(7) “Remediation” means—

- (a) the doing of anything for the purpose of assessing the condition of—
 - (i) the contaminated land in question;
 - (ii) [^{F24}the water environment] affected by that land; or
 - (iii) any land adjoining or adjacent to that land;
- (b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or [^{F25}the water environment] for the purpose—
 - (i) of preventing or minimising, or remedying or mitigating the effects of, any significant harm, or any [^{F26}significant] pollution of [^{F27}the water environment], by reason of which the contaminated land is such land; or
 - (ii) of restoring the land or [^{F28}water environment to its] former state; or
- (c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or [^{F29}the water environment];

and cognate expressions shall be construed accordingly.

(8) [^{F30}The water environment is] “affected by” contaminated land if (and only if) it appears to the enforcing authority that the contaminated land in question is, for the purposes of subsection (2) above, in such a condition, by reason of substances in, on or under the land, that [^{F31}significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused].

(9) The following expressions have the meaning respectively assigned to them—

“the appropriate Agency” means—

- (a) in relation to England ^{F12}..., the Environment Agency;
- (b) in relation to Scotland, the Scottish Environment Protection Agency;
- (c) [^{F13}in relation to Wales, the Natural Resources Body for Wales;]

“appropriate person” means any person who is an appropriate person, determined in accordance with section 78F below, to bear responsibility for any thing which is to be done by way of remediation in any particular case;

“charging notice” has the meaning given by section 78P(3)(b) below;

^{F32}

“creditor” has the same meaning as in the ^{M3}Conveyancing and Feudal Reform (Scotland) Act 1970;

“enforcing authority” means—

- (a) in relation to a special site, the appropriate Agency;
- (b) in relation to contaminated land other than a special site, the local authority in whose area the land is situated;

“heritable security” has the same meaning as in the ^{M4}Conveyancing and Feudal Reform (Scotland) Act 1970;

“local authority” in relation to England and Wales means—

- (a) any unitary authority;
- (b) any district council, so far as it is not a unitary authority;
- (c) the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;

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and in relation to Scotland means a council for an area constituted under section 2 of the ^{M5}Local Government etc. (Scotland) Act 1994;

“notice” means notice in writing;

“notification” means notification in writing;

“owner”, in relation to any land in England and Wales, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or, where the land is not let at a rack rent, would be so entitled if it were so let;

“owner”, in relation to any land in Scotland, means a person (other than a creditor in a heritable security not in possession of the security subjects) for the time being entitled to receive or who would, if the land were let, be entitled to receive, the rents of the land in connection with which the word is used and includes a trustee, factor, guardian or curator and in the case of public or municipal land includes the persons to whom the management of the land is entrusted;

[^{F33}“pollution”, in relation to the water environment, means the direct or indirect introduction, as a result of human activity, of substances into the water environment, or any part of it, which may give rise to any harm]

^{F34}

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Secretary of State;

“remediation declaration” has the meaning given by section 78H(6) below;

“remediation notice” has the meaning given by section 78E(1) below;

“remediation statement” has the meaning given by section 78H(7) below;

“required to be designated as a special site” shall be construed in accordance with section 78C(8) below;

“substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

“unitary authority” means—

- (a) the council of a county, so far as it is the council of an area for which there are no district councils;
- (b) the council of any district comprised in an area for which there is no county council;
- (c) the council of a London borough;
- (d) the council of a county borough in Wales.

[^{F35}“the water environment” has the same meaning as in section 3 of the Water Environment and Water Services (Scotland) Act 2003]]

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
- F12** Words in s. 78A(9) omitted (1.4.2013) by virtue of The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 216(a) (with Sch. 7)
- F13** Words in s. 78A(9) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 216(b) (with Sch. 7)

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- F15** S. 78A(2)(b) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(a\)](#)
- F16** Words in s. 78A(4) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(b\)](#)
- F17** S. 78A(4A) inserted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(c\)](#)
- F18** Words in s. 78A(5)(a) inserted (S.) (21.12.2005) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(d\)\(i\)](#)
- F19** Words in s. 78A(5)(b) inserted (S.) (21.12.2005) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(d\)\(ii\)](#)
- F20** S. 78A(5)(c) deleted (S.) (21.12.2005) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(d\)\(iii\)](#)
- F21** Words in s. 78A(6)(a) inserted (S.) (21.12.2005) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(e\)\(i\)](#)
- F22** Words in s. 78A(6)(b) inserted (S.) (21.12.2005) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(e\)\(ii\)](#)
- F23** Words in s. 78A(6) inserted (S.) (21.12.2005) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(e\)\(iii\)](#)
- F24** Words in s. 78A(7)(a)(ii) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(f\)](#)
- F25** Words in s. 78A(7)(b) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(g\)](#)
- F26** Word in s. 78A(7)(b)(i) inserted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(h\)](#)
- F27** Words in s. 78A(7)(b)(i) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(2\)](#)
- F28** Words in s. 78A(7)(b)(ii) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(i\)](#)
- F29** Words in s. 78A(7)(c) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(j\)](#)
- F30** Words in s. 78A(8) substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(k\)\(i\)](#)
- F31** Words in s. 78A(8) from "pollution" to the end deleted and substituted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(k\)\(ii\)](#)
- F32** In s. 78A(9) definition of "controlled waters" deleted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(l\)\(i\)\(aa\)](#)
- F33** In s. 78A(9) definition of "pollution" inserted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(l\)\(i\)\(ii\)](#)
- F34** In s. 78A(9) definition of "pollution of controlled waters" deleted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(l\)\(i\)\(bb\)](#)
- F35** In s. 78A(9) definition of "the water environment" inserted (S.) (1.4.2006) by [The Contaminated Land \(Scotland\) Regulations 2005 \(S.S.I. 2005/658\)](#), regs. 1, [2\(3\)\(l\)\(ii\)](#)

Commencement Information

- I2** This version of this provision extends to Scotland only; a separate version has been created for England and Wales

Marginal Citations

- M3** 1970 c. 35.
M4 1970 c. 35.
M5 1994 c. 39.

Status:

There are multiple versions of this provision on screen. These apply to different geographical extents.

Skip to:

- E+W - England and Wales extent
- S - Scotland extent

Changes to legislation:

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[View outstanding changes](#)

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. 33ZB(10A) inserted by [2021 c. 30 s. 69\(3\)\(b\)](#)
- s. 34ZB(8A) inserted by [2021 c. 30 s. 69\(5\)\(b\)](#)
- s. 106A inserted by [2023 c. 6 s. 41\(2\)](#)
- s. 161(2AA)(2AB) inserted by [2016 anaw 3 s. 69\(4\)](#)