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STATUTORY INSTRUMENTS

2006 No. 1380

ENVIRONMENTAL PROTECTION, ENGLAND

The Contaminated Land (England) Regulations 2006

Made - - - -	*17th May 2006*
Laid before Parliament	*23rd May 2006*
Coming into force - -	*4th August 2006*

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by sections 78A(9), 78C(8) to (10), 78E(1) and (6), 78G(5) and (6)(**a**), 78L(4)(**b**) and (5) and 78R(1), (2) and (8) of the Environmental Protection Act 1990(**c**), and those sections as applied in relation to harm, so far as attributable to any radioactivity possessed by any substance, by the Contaminated Land (Enabling Powers)(England) Regulations 2005(**d**):

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Contaminated Land (England) Regulations 2006 and come into force on 4th August 2006.

(2) These Regulations apply in relation to England only.

(3) In these Regulations, "the 1990 Act" means the Environmental Protection Act 1990.

(4) In these Regulations, unless otherwise indicated—

(a) any reference to a numbered section is to the section of the 1990 Act which bears that number or, in relation to harm so far as attributable to any radioactivity possessed by any substances, to that section as modified by the Radioactive Contaminated Land (Modification of Enactments)(England) Regulations 2006(**e**); and

(b) in relation to harm, so far as attributable to any radioactivity possessed by any substances, any term defined by the 1990 Act has the meaning given to it by that Act as modified by the Radioactive Contaminated Land (Modification of Enactments)(England) Regulations 2006.

(**a**) Section 78G(6) provides that regulations made under subsection 78G(5) may make such provision in relation to compensation as may be made by regulations by virtue of section 35A(4) of the 1990 Act (c. 43) in relation to compensation under that section.

(**b**) Subsection (4) of section 78L was amended by the Clean Neighbourhoods and Environment Act 2005 (c. 16), section 104 and 107, and Part 10 of Schedule 5.

(**c**) 1990 c. 43. Sections 78A to 78YC were inserted by section 57 of the Environment Act 1995 (c. 25). *See* the definition of "prescribed" and "regulations" in section 78A(9). The powers under these sections have been transferred in relation to Wales (*see* article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672)), and devolved to Scottish Ministers (*see* section 53 of the Scotland Act 1998 (c. 46)).

(**d**) S.I. 2005/3467. By virtue of S.I. 2006/1381, Part 2A applies to the Isles of Scilly in so far as, by virtue of S.I. 2006/1381, Part 2A applies (with certain modifications) in relation to and for the purposes of dealing with harm so far as attributable to any radioactivity possessed by any substance.

(**e**) S.I. 2006/1379.

Land required to be designated as a special site

2.—(1) Contaminated land 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 affecting controlled waters in the circumstances specified in regulation 3;

(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;

(d) land on which a prescribed process designated for central control has been or is being carried on under an authorisation, where the process does not solely consist of things being done which are required by way of remediation;

(e) land on which an activity has been or is being carried on in a Part A(1) installation or by means of Part A(1) mobile plant under a permit, where the activity does not solely consist of things being done which are required by way of remediation;

(f) land within a nuclear site;

(g) 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;

(h) 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(**a**) (restriction on development of biological agents and toxins), or

(iii) any weapon, equipment or means of delivery which falls within section 1(1)(b) of that Act (restriction on development of biological weapons),

has been carried on at any time;

(i) land comprising premises which are or were designated by the Secretary of State by an order made under section 1(1) of the Atomic Weapons Establishment Act 1991(**b**) (arrangements for development etc of nuclear devices);

(j) land to which section 30 of the Armed Forces Act 1996(**c**) (land held for the benefit of Greenwich Hospital) applies;

(k) land which is contaminated land wholly or partly by virtue of any radioactivity possessed by any substance in, on or under that land; and

(l) land which—

(i) is adjoining or adjacent to land of a description specified in any of sub–paragraphs (b) to (k); 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), "waste acid tars" are tars which—

(**a**) 1974 c. 6.
(**b**) 1991 c. 46.
(**c**) 1996 c. 46.

(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), "authorisation" and "prescribed process" have the same meanings as in Part 1 of the 1990 Act (integrated pollution control and air pollution control by local authorities) and the reference to designation for central control is a reference to designation under section 2(4) (which provides for processes to be designated for central or local control).

(4) In paragraph (1)(e), "Part A(1) installation", "Part A(1) mobile plant" and "permit" have the same meanings as in the Pollution Prevention and Control (England and Wales) Regulations 2000(**a**).

(5) In paragraph (1)(f), "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.

(6) In paragraph (5), "nuclear site licence", "licensee" and "period of responsibility" have the meanings given by the Nuclear Installations Act 1965(**b**).

(7) For the purposes of paragraph (1)(g), land used for residential purposes or by the Navy, Army and Air Force Institutes must 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.

(8) In paragraph (1)(g)—

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

"service authority" and "visiting force" have the same meanings as in Part 1 of the Visiting Forces Act 1952(**d**).

(9) In paragraph (1)(h), "chemical weapon" has the same meaning as in subsection (1) of section 1 of the Chemical Weapons Act 1996(**e**), disregarding subsection (2) of that section.

Pollution of controlled waters

3. The circumstances to which regulation 2(1)(a) refers are 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 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 3 of the Water Industry Act 1991(**f**) (water supply);

(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 82 of the Water Resources Act 1991(**g**) (classification of quality of waters); or

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

(**a**) S.I. 2000/1973.
(**b**) 1965 c. 57.
(**c**) 1964 c. 5.
(**d**) 1952 c. 67.
(**e**) 1996 c .6.
(**f**) 1991 c. 56.
(**g**) 1991 c. 57.

(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 paragraph 1 of 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 any of the formations of rocks listed in paragraph 2 of Schedule 1 to these Regulations.

Content of remediation notices

4.—(1) A remediation notice must state (in addition to the matters required by section 78E(1) and (3))—

(a) the name and address of the person on whom the notice is served;

(b) the location and extent of the contaminated land to which the notice relates (in this regulation referred to as the "contaminated land in question"), in sufficient detail to enable it to be identified whether by reference to a plan or otherwise;

(c) the date of any notice which was given under section 78B(3) to the person on whom the remediation notice is served identifying the contaminated land in question as contaminated land;

(d) whether the enforcing authority considers the person on whom the notice is served is an appropriate person by reason of—

(i) having caused or knowingly permitted the substances, or any of the substances, by reason of which the contaminated land in question is contaminated land, to be in, on or under that land; or

(ii) being the owner or occupier of the contaminated land in question;

(e) particulars of the significant harm, harm or pollution of controlled waters by reason of which the contaminated land in question is contaminated land;

(f) the substances by reason of which the contaminated land in question is contaminated land and, if any of the substances have escaped from other land, the location of that other land;

(g) the enforcing authority's reasons for its decisions as to the things by way of remediation that the appropriate person is required to do, showing how any guidance issued by the Secretary of State under section 78E(5) has been applied;

(h) where two or more persons are appropriate persons in relation to the contaminated land in question—

(i) that this is the case;

(ii) the name and address of each such person; and

(iii) the thing by way of remediation for which each such person bears responsibility;

(i) where two or more persons would, apart from section 78F(6), be appropriate persons in relation to any particular thing which is to be done by way of remediation, the enforcing authority's reasons for its determination as to whether any, and if so which, of them is to be treated as not being an appropriate person in relation to that thing, showing how any guidance issued by the Secretary of State under section 78F(6) has been applied;

(j) where the remediation notice is required by section 78E(3) to state the proportion of the cost of a thing to be done by way of remediation which each of the appropriate persons in relation to that thing is liable to bear, the enforcing authority's reasons for the proportion which it has determined, showing how any guidance issued by the Secretary of State under section 78F(7) has been applied;

(k) where known to the enforcing authority, the name and address of—

(i) the owner of the contaminated land in question; and

(ii) any person who appears to the enforcing authority to be in occupation of the whole or any part of the contaminated land in question;

(l) where known to the enforcing authority, the name and address of any person whose consent is required under section 78G(2) before any thing required by the remediation notice may be done;

(m) where the notice is to be served in reliance on section 78H(4), that 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 the land, that there is imminent danger of serious harm or serious pollution of controlled waters being caused;

(n) that a person on whom a remediation notice is served may be guilty of an offence for failure, without reasonable excuse, to comply with any of the requirements of the notice;

(o) the penalties which may be applied on conviction for such an offence;

(p) the name and address of the enforcing authority serving the notice; and

(q) the date of the notice.

(2) A remediation notice must explain—

(a) that a person on whom it is served has a right of appeal against the notice under section 78L;

(b) how, within what period and on what grounds an appeal may be made; and

(c) that a notice is suspended, where an appeal is duly made, until the final determination or abandonment of the appeal.

Service of copies of remediation notices

5.—(1) Subject to paragraph (2), the enforcing authority must, 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 required to be consulted under section 78H(1) before service of the notice;

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

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

(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 must send any copies of the notice pursuant to paragraph (1) as soon as practicable after service of the notice.

Compensation for rights of entry etc

6. Schedule 2 to these Regulations specifies—

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

(c) the manner in which the amount of such compensation is determined;

and makes further provision 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 Secretary of State 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 Secretary of State under section 78E(5); or

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

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

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

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

(f) that, where two or more persons are appropriate persons in relation to any thing 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 Secretary of State 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 subsection (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) in circumstances where section 78H(1) or (3) has not been complied with, 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 any thing 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 any thing 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 itself 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 Secretary of State 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 the Environment Agency 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 to be personally liable to bear the whole or part of the cost of doing any thing 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(**a**) (which makes provision regarding the interaction of Part 2A of the 1990 Act with other enactments), and—

(i) in a case where subsection (1) of that section is relied on, that it ought to have appeared to the enforcing authority that the powers of the Environment Agency under section 27(**b**) might be exercised;

(ii) in a case where subsection (3) of section 78YB is relied on, that it ought to have appeared to the enforcing authority that the powers of a waste regulation authority or waste collection authority under section 59(**c**) might be exercised; or

(s) that there has been some informality, defect or error in, or in connection with, the notice, in respect of which there is no right of appeal under the grounds set out in sub–paragraphs (a) to (r).

(2) A person may only appeal on the ground specified in paragraph (1)(d) in a case where—

(a) the enforcing authority has determined that he is an appropriate person by virtue of subsection (2) of section 78F and he claims to have found some other person who is an appropriate person by virtue of that subsection;

(b) the notice is served on him as the owner or occupier for the time being of the contaminated land in question and he claims to have found some other person who is an appropriate person by virtue of that subsection; or

(c) the notice is served on him as the owner or occupier for the time being of the contaminated land in question, and he claims that some other person is also an owner or occupier for the time being of the whole or part of that land.

(3) If and in so far as an appeal against a remediation notice is based on the ground of some informality, defect or error in, or in connection with, the notice, the Secretary of State must dismiss the appeal if he is satisfied that the informality, defect or error was not a material one.

Appeals to the Secretary of State

8.—(1) An appeal to the Secretary of State against a remediation notice must be made to him by a notice ("notice of appeal") which states—

(a) the name and address of the appellant;

(b) the grounds on which the appeal is made; and

(c) whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations.

(**a**) Section 78YB was amended, in relation to England and Wales, by S.I. 2000/1973, regulation 39 and Schedule 10, Part 1, paragraphs 2 and 6.

(**b**) Section 27 was amended by the Environment Act 1995 (c. 25), section 120 and Schedule 22, paragraph 60.

(**c**) Section 59 was amended, in relation to England and Wales, by the Clean Neighbourhoods and Environment Act 2005 (c. 16), section 43(2).

(2) The appellant must, at the same time as he serves a notice of appeal on the Secretary of State—

(a) serve a copy of it on—

(i) the enforcing authority;

(ii) any person named in the remediation notice as an appropriate person;

(iii) any person named in the notice of appeal as an appropriate person; and

(iv) any person named in the remediation notice as the owner or occupier of the whole or any part of the land to which the notice relates;

(b) serve on the Secretary of State a statement of the names and addresses of any persons falling within paragraph (ii), (iii) or (iv) of sub–paragraph (a); and

(c) serve a copy of the remediation notice to which the appeal relates on the Secretary of State and on any person named in the notice of appeal as an appropriate person who is not so named in the remediation notice.

(3) If the appellant wishes to abandon an appeal, he must do so by notifying the Secretary of State in writing and the appeal is then treated as abandoned as from the date on which the Secretary of State receives that notification.

(4) The Secretary of State may refuse to permit an appellant to abandon his appeal against a remediation notice where the notification by the appellant in accordance with paragraph (3) is received by the Secretary of State at any time after the Secretary of State has notified the appellant in accordance with regulation 11(1) of a proposed modification of that notice.

(5) Where an appeal is abandoned, the Secretary of State must give notice of the abandonment to any person on whom the appellant was required to serve a copy of the notice of appeal.

Hearings and local inquiries

9.—(1) Before determining an appeal, the Secretary of State may, if he thinks fit—

(a) cause the appeal to take or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held, or held to any extent, in private); or

(b) cause a local inquiry to be held.

(2) Before determining an appeal, the Secretary of State must act as mentioned in sub–paragraph (a) or (b) of paragraph (1) if a request is made by either the appellant or the enforcing authority to be heard with respect to the appeal.

(3) The persons entitled to be heard at a hearing are—

(a) the appellant;

(b) the enforcing authority; and

(c) any person (other than the enforcing authority) on whom the appellant was required to serve a copy of the notice of appeal.

(4) Nothing in paragraph (3) prevents the person appointed to conduct the hearing of the appeal from permitting any other person to be heard at the hearing and such permission must not be unreasonably withheld.

(5) After the conclusion of a hearing, the person appointed to conduct the hearing must, unless he has been appointed under subsection (1)(a) of section 114 of the Environment Act 1995(**a**) (power of Secretary of State to delegate his functions of determining, or to refer matters involved in, appeals) to determine the appeal, make a report in writing to the Secretary of State, which must include his conclusions and his recommendations or his reasons for not making any recommendations.

(**a**) 1995 c. 25.

Notification of Secretary of State's decision on an appeal

10.—(1) The Secretary of State must notify the appellant in writing of his decision on an appeal and must provide him with a copy of any report mentioned in regulation 9(5).

(2) The Secretary of State must, at the same time as he notifies the appellant, send a copy of the documents mentioned in paragraph (1) to the enforcing authority and to any other person on whom the appellant was required to serve a copy of the notice of appeal.

Modification of a remediation notice

11.—(1) Before modifying a remediation notice under subsection (2)(b) of section 78L (appeals against remediation notices) in any respect which would be less favourable to the appellant or any other person on whom the notice was served, the Secretary of State must—

(a) notify the appellant and any persons on whom the appellant was required to serve a copy of the notice of appeal of the proposed modification;

(b) permit any persons so notified to make representations in relation to the proposed modification; and

(c) permit the appellant or any other person on whom the remediation notice was served to be heard if any such person so requests.

(2) Where, in accordance with paragraph (1), the appellant or any other person is heard, the enforcing authority is also entitled to be heard.

Suspension of a remediation notice

12.—(1) Where an appeal is duly made against a remediation notice, the notice is of no effect pending the final determination or abandonment of the appeal.

(2) An appeal against a remediation notice is duly made for the purposes of this regulation if it is made within the period specified in section 78L(1) and the requirements of regulation 8(1) and (2) have been complied with.

Registers

13.—(1) For the purpose of subsection (1) of section 78R (registers) the particulars that must be contained in a register maintained under that subsection are specified in Schedule 3.

(2) The following descriptions of information are prescribed for the purposes of section 78R(2) as information to be contained in notifications for the purposes of section 78R(1)(h) and (j)—

(a) the location and extent of the land in sufficient detail to enable it to be identified;

(b) the name and address of the person who it is claimed has done each of the things by way of remediation;

(c) a description of any thing which it is claimed has been done by way of remediation; and

(d) the period within which it is claimed each such thing was done.

(3) The following places are prescribed for the purposes of subsection (8) of section 78R as places at which any registers or facilities for obtaining copies must be available or afforded to the public in pursuance of paragraph (a) or (b) of that subsection—

(a) where the enforcing authority is the local authority, its principal office; and

(b) where the enforcing authority is the Environment Agency, its office for the area in which the contaminated land in question is situated.

Revocations

14. The Contaminated Land (England) Regulations 2000(**a**) and the Contaminated Land (England) (Amendment) Regulations 2001(**b**) are revoked.

Ian Pearson
Minister of State,
17th May 2006 Department for Environment, Food and Rural Affairs

SCHEDULE 1

Regulation 3(c)

SPECIAL SITES

1. The families and groups of substances relevant for the purposes of regulation 3(c)(i) are—

organohalogen compounds and substances which may form such compounds in the aquatic environment;

organophosphorus compounds;

organotin compounds;

substances which possess carcinogenic, mutagenic or teratogenic properties in or via the aquatic environment;

mercury and its compounds;

cadmium and its compounds;

mineral oil and other hydrocarbons;

cyanides.

2. The formations of rocks relevant for the purposes of regulation 3(c)(ii) are—

Pleistocene Norwich Crag;

Upper Cretaceous Chalk;

Lower Cretaceous Sandstones;

Upper Jurassic Corallian;

Middle Jurassic Limestones;

Lower Jurassic Cotteswold Sands;

Permo–Triassic Sherwood Sandstone Group;

Upper Permian Magnesian Limestone;

Lower Permian Penrith Sandstone;

Lower Permian Collyhurst Sandstone;

Lower Permian Basal Breccias, Conglomerates and Sandstones;

Lower Carboniferous Limestones.

(**a**) S.I. 2000/227.
(**b**) S.I. 2001/663.

SCHEDULE 2

Regulation 6

COMPENSATION FOR RIGHTS OF ENTRY ETC

Interpretation

1. In this Schedule—

"the 1961 Act" means the Land Compensation Act 1961(**a**);

"grantor" means a person who has granted, or joined in the granting of, any rights pursuant to section 78G(2); and

"relevant interest" means an interest in land out of which rights have been granted pursuant to section 78G(2).

Period for making an application

2. An application for compensation must be made within the period beginning with the date of the grant of the rights in respect of which compensation is claimed and ending on the expiry of whichever is the latest of the following periods—

(a) twelve months after the date of the grant of those rights;

(b) where an appeal is made against a remediation notice in respect of which the rights in question have been granted, and the notice is of no effect by virtue of regulation 12, twelve months after the date of the final determination or abandonment of the appeal; or

(c) six months after the date on which the rights were first exercised.

Manner of making an application

3.—(1) An application must be made in writing and delivered at or sent by pre–paid post to the last known address for correspondence of the appropriate person to whom the rights were granted.

(2) The application must contain, or be accompanied by—

(a) a copy of the grant of rights in respect of which the grantor is applying for compensation, and of any plans attached to that grant;

(b) a description of the exact nature of any interest in land in respect of which compensation is applied for; and

(c) a statement of the amount of compensation applied for, distinguishing the amounts applied for under each of sub–paragraphs (a) to (e) of paragraph 4, and showing how the amount applied for under each sub–paragraph has been calculated.

Loss and damage for which compensation payable

4. Subject to paragraph 5(3) and (5)(b), compensation is payable under section 78G(5) for loss and damage of the following descriptions—

(a) depreciation in the value of any relevant interest to which the grantor is entitled which results from the grant of the rights;

(b) depreciation in the value of any other interest in land to which the grantor is entitled which results from the exercise of the rights;

(c) loss or damage, in relation to any relevant interest to which the grantor is entitled, which—

(i) is attributable to the grant of the rights or the exercise of them;

(**a**) 1961 c. 33.

(ii) does not consist of depreciation in the value of that interest; and

(iii) is loss or damage of a kind in respect of which compensation for disturbance, or any other matter not directly based on the value of that interest, is payable on a compulsory acquisition;

(d) damage to, or injurious affection of, any interest in land to which the grantor is entitled which is not a relevant interest, and which results from the grant of the rights or the exercise of them; and

(e) loss in respect of work carried out by or on behalf of the grantor which is rendered abortive by the grant of the rights or the exercise of them.

Basis on which compensation assessed

5.—(1) The following provisions have effect for the purpose of assessing the amount to be paid by way of compensation under section 78G(5).

(2) The rules set out in section 5(**a**) of the 1961 Act (rules for assessing compensation), so far as applicable and subject to any necessary modifications, have effect for the purpose of assessing any such compensation as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(3) No account must be taken of any enhancement of the value of any interest in land, by reason of any building erected, work done or improvement or alteration made on any land in which the grantor is, or was at the time of erection, doing or making, directly or indirectly concerned, if the Lands Tribunal is satisfied that the erection of the building, the doing of the work, the making of the improvement or the alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(4) In calculating the amount of any loss under paragraph 4(e), expenditure incurred in the preparation of plans or on other similar preparatory matters must be taken into account.

(5) Where the interest in respect of which compensation is to be assessed is subject to a mortgage—

(a) the compensation must be assessed as if the interest were not subject to the mortgage; and

(b) no compensation is payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage).

(6) Compensation under section 78G(5) must include an amount equal to the grantor's reasonable valuation and legal expenses.

Payment of compensation and determination of disputes

6.—(1) Compensation payable under section 78G(5) in respect of an interest which is subject to a mortgage must be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee and must, in either case, be applied by him as if it were proceeds of sale.

(2) Amounts of compensation determined under this Schedule are payable—

(a) where the appropriate person and the grantor or mortgagee agree that a single payment is to be made on a specified date, on that date;

(b) where the appropriate person and the grantor or mortgagee agree that payment is to be made in instalments on different dates, on the date agreed as regards each instalment; and

(c) in any other case, subject to any direction of the Lands Tribunal or the court, as soon as reasonably practicable after the amount of the compensation has been finally determined.

(3) Any question as to the application of paragraph 5(3) or of disputed compensation must be referred to and determined by the Lands Tribunal.

(**a**) Section 5 was amended by the Planning and Compensation Act 1991 (c. 43), sections 70 and 84, Schedule 15, paragraph 1, and Schedule 19, Part 3.

(4) In relation to the determination of any such question, sections 2(**a**) and 4 of the 1961 Act (which provide for the procedure on reference to the Lands Tribunal and costs) apply as if—

(a) the reference in section 2(1) of that Act to section 1 of that Act were a reference to sub–paragraph (3) of this paragraph; and

(b) references in section 4 of that Act to the acquiring authority were references to the appropriate person.

SCHEDULE 3

Regulation 13(1)

PARTICULARS PRESCRIBED FOR THE PURPOSE OF SECTION 78R(1)

Remediation notices

1. In relation to a remediation notice served by the enforcing authority—

(a) the name and address of the person on whom the notice is served;

(b) the location and extent of the contaminated land to which the notice relates, in sufficient detail to enable it to be identified whether by reference to a plan or otherwise;

(c) the significant harm, harm or pollution of controlled waters by reason of which the contaminated land in question is contaminated land;

(d) the substances by reason of which the contaminated land in question is contaminated land and, if any of the substances have escaped from other land, the location of that other land;

(e) the current use of the contaminated land in question;

(f) what each appropriate person is to do by way of remediation and the periods within which they are required to do each of the things; and

(g) the date of the notice.

Appeals against remediation notices

2. Any appeal against a remediation notice served by the enforcing authority.

3. Any decision on such an appeal.

Remediation declarations

4. Any remediation declaration prepared and published by the enforcing authority under section 78H(6).

5. In relation to any such remediation declaration—

(a) the location and extent of the contaminated land in question, in sufficient detail to enable it to be identified, whether by reference to a plan or otherwise; and

(b) the matters referred to in sub–paragraphs (c), (d) and (e) of paragraph 1.

Remediation statements

6. Any remediation statement prepared and published by the responsible person under section 78H(7) or by the enforcing authority under section 78H(9).

7. In relation to any such remediation statement—

(**a**) Section 2 was amended by the Local Government, Planning and Land Act 1980 (c. 65), section 193, and Schedule 33, paragraph 5.

(a) the location and extent of the contaminated land in question, in sufficient detail to enable it to be identified, whether by reference to a plan or otherwise; and

(b) the matters referred to in sub–paragraphs (c), (d) and (e) of paragraph 1.

Appeals against charging notices

8. Any appeal under section 78P(8) against a charging notice served by the enforcing authority.

9. Any decision on such an appeal.

Designation of special sites

10. In the case of the Environment Agency, as respects any land in relation to which it is the enforcing authority, and in the case of a local authority, as respects any land in its area—

(a) any notice given by a local authority under subsection (1)(b) or (5)(a) of section 78C, or by the Secretary of State under section 78D(4)(b), which, by virtue of section 78C(7) or section 78D(6) respectively, has effect as the designation of any land as a special site;

(b) the provisions of regulation 2 or 3 by virtue of which the land is required to be designated as a special site;

(c) any notice given by the Environment Agency under section 78Q(1)(a) of its decision to adopt a remediation notice; and

(d) any notice given by or to the enforcing authority under section 78Q(4) terminating the designation of any land as a special site.

Notification of claimed remediation

11. Any notification given to the enforcing authority for the purposes of section 78R(1)(h) or (j).

Convictions for offences under section 78M

12. Any conviction of a person for any offence under section 78M in relation to a remediation notice served by the enforcing authority, including the name of the offender, the date of conviction, the penalty imposed and the name of the Court.

Guidance issued under section 78V(1)

13. In the case of the Environment Agency, the date of any guidance issued by it under subsection (1) of section 78V and, in the case of a local authority, the date of any guidance issued by the Agency to it under that subsection.

Other environmental controls

14. Where the enforcing authority is precluded by virtue of section 78YB(1) or 78YB(2B)(**a**) from serving a remediation notice—

(a) the location and extent of the contaminated land in question, in sufficient detail to enable it to be identified, whether by reference to a plan or otherwise;

(b) the matters referred to in sub–paragraphs (c), (d) and (e) of paragraph 1; and

(c) any steps of which the authority has knowledge, carried out under section 27(**b**) or by means of enforcement action (within the meaning of section 78YB(2C)(**c**)), towards

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(**a**) Subsection (2B) of section 78YB was inserted, in relation to England and Wales, by S.I. 2000/1973, regulation 39 and Schedule 10, Part 1, paragraphs 2 and 6.
(**b**) Section 27 was amended by the Environment Act 1995 (c. 25), section 120 and Schedule 22, paragraph 60.
(**c**) Subsection (2C) of section 78YB was inserted, in relation to England and Wales, by S.I. 2000/1973, regulation 39 and Schedule 10, Part 1, paragraphs 2 and 6.

remedying any significant harm, harm or pollution of controlled waters by reason of which the land in question is contaminated land.

15. Where the enforcing authority is precluded by virtue of section 78YB(3) from serving a remediation notice in respect of land which is contaminated land by reason of the deposit of controlled waste or any consequences of its deposit—

(a) the location and extent of the contaminated land in question, in sufficient detail to enable it to be identified whether by reference to a plan or otherwise;

(b) the matters referred to in sub–paragraphs (c), (d) and (e) of paragraph 1; and

(c) any steps of which the enforcing authority has knowledge, carried out under section 59(**a**), in relation to that waste or the consequences of its deposit, and in a case where a waste collection authority (within the meaning of section 30(3)(**b**)) took those steps or required the steps to be taken, the name of that authority.

16. Where, as a result of a consent given under Chapter 2 of Part 3 of the Water Resources Act 1991 (pollution offences), the enforcing authority is precluded by virtue of section 78YB(4) from specifying in a remediation notice any particular thing by way of remediation which it would otherwise have specified in such a notice,—

(a) the consent;

(b) the location and extent of the contaminated land in question, in sufficient detail to enable it to be identified, whether by reference to a plan or otherwise; and

(c) the matters referred to in sub–paragraphs (c), (d) and (e) of paragraph 1.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate the provisions of the Contaminated Land (England) Regulations 2000 (S.I. 2000/227) and the Contaminated Land (England) (Amendment) Regulations 2001 (SI 2001/663) with amendments. These Regulations, which apply to England only, also set out provisions relating to the identification and remediation of contaminated land under Part 2A of the Environmental Protection Act 1990 ("the 1990 Act").

The Regulations make provision for an additional description of contaminated land that is required to be designated as a special site (see regulation 2): that is, land which is contaminated land as a result of radioactive substances in, on or under that land.

The Regulations also remove provisions relating to appeals against remediation notices to a magistrates' court, as a result of amendments to section 78L of the 1990 Act made by section 104 of the Clean Neighbourhoods and Environment Act 2005(**c**).

Regulations 2 and 3, and Schedule 1, identify those categories of site (known as "special sites") in relation to which the Environment Agency is to be the enforcing authority. Local authorities are the enforcing authority in relation to any other type of site.

Regulations 4 and 5 provide for the content and service of copies of "remediation notices", that is, notices served by a local authority or the Environment Agency specifying what is to be done by way of remediation and the time for taking any action.

Regulation 6 and Schedule 2 make provision in relation to the compensation which is to be paid in accordance with section 78G(5) of the 1990 Act to a person who grants, or joins in granting, rights of entry etc required to enable a person to comply with a remediation notice.

(**a**) Section 59 was amended, in relation to England and Wales, by the Clean Neighbourhoods and Environment Act 2005 (c. 16), section 43(2).

(**b**) Subsection (3) of section 30 was amended by the Local Government (Wales) Act 1994 (c. 19), sections 22(3) and 66(8) and Schedule 9, paragraph 17(3), and Schedule 18, and by the Local Government etc (Scotland) Act 1994 (c. 39), section 180(1) and Schedule 13, paragraph 167(3).

(**c**) 2005 c. 16.

Regulations 7 to 12 make provision with respect to appeals against remediation notices, including the grounds of appeal and the procedure to be followed.

Regulation 13 and Schedule 3 prescribe the particulars of matters which are required under section 78R of the 1990 Act to be placed on a register maintained by local authorities or, in the case of special sites, by the Environment Agency.

To the extent that provisions in these Regulations arise solely by virtue of the consolidation, no Regulatory Impact Assessment has been prepared in relation to these provisions, as there is no additional impact on the costs of business. In so far as the Regulations extend to land contaminated by radioactive substances, a Regulatory Impact Assessment has been prepared and placed in the library of each House of Parliament. Copies of this document can be obtained from the Radioactive Substances Division, Department for Environment, Food and Rural Affairs, Zone 3/G27, Ashdown House, 123 Victoria Street, London, SW1E 6DE.

£3.00

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Stationery Office and Queen's Printer of Acts of Parliament.

E0702 6/2006 160702T 19585