

2000 No. 227

ENVIRONMENTAL PROTECTION, ENGLAND

The Contaminated Land (England) Regulations 2000

<i>Made</i> - - - -	<i>2nd February 2000</i>
<i>Laid before Parliament</i>	<i>9th February 2000</i>
<i>Coming into force</i>	<i>1st April 2000</i>

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The Secretary of State for the Environment, Transport and the Regions in exercise of the powers conferred on him 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(a), and all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Contaminated Land (England) Regulations 2000 and shall come into force on 1st April 2000.

(2) These Regulations extend to England only.

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

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 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;
- (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 comprise solely 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 (restriction on development of biological agents and toxins)(b); 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;
- (h) 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 (arrangements for development etc of nuclear devices)(c);

(a) 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 Secretary of State can exercise the powers under these sections only in relation to England; see article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and section 53 of the Scotland Act 1998 (c. 46).

(b) 1974 c. 6.

(c) 1991 c. 46.

- (i) land to which section 30 of the Armed Forces Act 1996 (land held for the benefit of Greenwich Hospital)(a) applies; and
- (j) land which–
 - (i) is adjoining or adjacent to land of a description specified in sub-paragraphs (b) to (i) 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, “authorisation” and “prescribed process” have the same meaning as in Part I of the Environmental Protection Act 1990 (integrated pollution control and air pollution control by local authorities)(b) 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) 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(c).
- (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–
 - “international headquarters” and “defence organisation” mean, respectively, any international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964(d);
 - “service authority” and “visiting force” have the same meaning as in Part I of the Visiting Forces Act 1952(e).
- (7) In paragraph (1)(g) above, “chemical weapon” has the same meaning as in subsection (1) of section 1 of the Chemical Weapons Act 1996(f) disregarding subsection (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(g) 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 III of the Water Industry Act 1991 (water supply)(h);
 - (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 (classification of quality of waters)(i); or

(a) 1996 c. 46.
 (b) See section 1.
 (c) 1965 c. 57.
 (d) 1964 c. 5.
 (e) 1952 c. 67.
 (f) 1996 c. 6.
 (g) See section 78A(8) for the meaning of “affected by”.
 (h) 1991 c. 56.
 (i) 1991 c. 57.

- (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 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 shall 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”), sufficient 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 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;
 - (ii) being the owner of the contaminated land in question; or
 - (iii) being the occupier of the contaminated land in question;
- (e) particulars of the significant 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, which shall show 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, which shall show 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 which is 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, which shall show 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^(a) 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^(b);
 - (p) the name and address of the enforcing authority serving the notice; and
 - (q) the date of the notice.
- (2) A remediation notice shall 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) 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 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 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 2 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

(a) Section 78M(1).

(b) Section 78M(1) and (3).

- (c) for prescribing the manner in which the amount of such compensation shall be determined and for making 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) below, 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) 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 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^(a) 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 (interaction of Part IIA of the Environmental Protection Act 1990 with other enactments), and—
 - (i) in a case where subsection (1) of that section is relied on, that it ought reasonably to have appeared to the enforcing authority that the powers of the Environment Agency under section 27 might be exercised;
 - (ii) in a case where subsection (3) of section 78YB is relied on, that it ought reasonably to have appeared to the enforcing authority that the powers of a waste regulation authority or waste collection authority under section 59 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 subparagraphs (a) to (r) above.
- (2) A person may only appeal on the ground specified in paragraph (1)(d) above 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 appellate authority shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

Appeals to a magistrates' court

8.—(1) An appeal under section 78L(1) to a magistrates' court against a remediation notice shall be by way of complaint for an order and, subject to section 78L(2) and (3) and regulations 7(3), 12 and 13, the Magistrates' Courts Act 1980^(b) shall apply to the proceedings.

^(a) For the definition of "person acting in a relevant capacity" see section 78X(4).

^(b) 1980 c. 43.

- (2) An appellant shall, at the same time as he makes a complaint,—
- (a) file a notice (“notice of appeal”) and 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) file a copy of the remediation notice to which the appeal relates and serve a copy of it on any person named in the notice of appeal as an appropriate person who was not so named in the remediation notice; and
 - (c) file a statement of the names and addresses of any persons falling within paragraph (ii), (iii) or (iv) of sub-paragraph (a) above.
- (3) The notice of appeal shall state the appellant’s name and address and the grounds on which the appeal is made.
- (4) On an appeal under section 78L(1) to a magistrates’ court—
- (a) the justices’ clerk or the court may give, vary or revoke directions for the conduct of proceedings, including—
 - (i) the timetable for the proceedings;
 - (ii) the service of documents;
 - (iii) the submission of evidence; and
 - (iv) the order of speeches;
 - (b) any person falling within paragraph (2)(a)(ii), (iii) or (iv) above shall be given notice of, and an opportunity to be heard at, the hearing of the complaint and any hearing for directions, in addition to the appellant and the enforcing authority; and
 - (c) the court may refuse to grant a request by the appellant to abandon his appeal against a remediation notice, where the request is made after the court has notified the appellant in accordance with regulation 12(1) of a proposed modification of that notice.
- (5) Rule 15 of the Family Proceedings Courts (Matrimonial Proceedings etc.) Rules 1991(a) (delegation by justices’ clerk) shall apply for the purposes of an appeal under section 78L(1) to a magistrates’ court as it applies for the purposes of Part II of those Rules.
- (6) In this regulation, “file” means deposit with the justices’ clerk.

Appeals to the Secretary of State

- 9.—(1)** An appeal to the Secretary of State against a remediation notice shall be made to him by a notice (“notice of appeal”) which shall state—
- (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.
- (2) The appellant shall, 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 Environment Agency;
 - (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;
 and serve on the Secretary of State a statement of the names and addresses of any persons falling within paragraph (ii), (iii) or (iv) above; and

(a) S.I. 1991/1991 (L.32).

(b) 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) Subject to paragraph (5) below, if the appellant wishes to abandon an appeal, he shall do so by notifying the Secretary of State in writing and the appeal shall be treated as abandoned on the date 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) above is received by the Secretary of State at any time after the Secretary of State has notified the appellant in accordance with regulation 12(1) of a proposed modification of that notice.

(5) Where an appeal is abandoned, the Secretary of State shall 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

10.—(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,

and the Secretary of State shall act as mentioned in sub-paragraph (a) or (b) above if a request is made by either the appellant or the Environment Agency to be heard with respect to the appeal.

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

(a) the appellant;

(b) the Environment Agency; and

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

(3) Nothing in paragraph (2) above shall prevent the person appointed to conduct the hearing of the appeal from permitting any other person to be heard at the hearing and such permission shall not be unreasonably withheld.

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

Notification of Secretary of State's decision on an appeal

11.—(1) The Secretary of State shall notify the appellant in writing of his decision on an appeal and shall provide him with a copy of any report mentioned in regulation 10(4).

(2) The Secretary of State shall, at the same time as he notifies the appellant, send a copy of the documents mentioned in paragraph (1) above to the Environment Agency 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

12.—(1) Before modifying a remediation notice under section 78L(2)(b) in any respect which would be less favourable to the appellant or any other person on whom the notice was served, the appellate authority shall—

(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) above, the appellant or any other person is heard, the enforcing authority shall also be entitled to be heard.

Appeals to the High Court

13. An appeal against any decision of a magistrates' court in pursuance of an appeal under section 78L(1) shall lie to the High Court at the instance of any party to the proceedings in which the decision was given (including any person who exercised his entitlement under regulation 8(4)(b) to be heard at the hearing of the complaint).

Suspension of a remediation notice

14.—(1) Where an appeal is duly made against a remediation notice, the notice shall be 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)(a) and the requirements of regulation 8(2) and (3) (in the case of an appeal to a magistrates' court) or regulation 9(1) and (2) (in the case of an appeal to the Secretary of State) have been complied with.

Registers

15.—(1) Schedule 3 to these Regulations shall have effect for prescribing—

- (a) for the purposes of subsection (1) of section 78R, the particulars of or relating to the matters to be contained in a register maintained under that section; and
- (b) other matters in respect of which such a register shall contain prescribed particulars pursuant to section 78R(1)(l).

(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 sufficient 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 shall 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.

Signed by authority of the Secretary of State

Michael Meacher
Minister of State,
Department of the Environment,
Transport and the Regions

2nd February 2000

(a) The period specified in section 78L(1) is the period of twenty-one days beginning with the day on which the notice is served.

SCHEDULE 1

Regulation 3(c)

SPECIAL SITES

1. The following families and groups of substances are listed for the purposes of regulation 3(c)(i)–

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 following formations of rocks are listed for the purposes of regulation 3(c)(ii)–

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.

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);

“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 shall 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 whichever is the latest of the following dates—

- (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 14, 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 shall 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 shall 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 below, 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) below, compensation is payable under section 78G 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;
 - (ii) does not consist of depreciation in the value of that interest; and
 - (iii) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance, if that interest had been acquired compulsorily under the Acquisition of Land Act 1981(b) in pursuance of a notice to treat served on the date on which the rights were granted;

(a) 1961 c. 33 (9 & 10 Eliz. 2).

(b) 1981 c. 67.

- (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 shall have effect for the purpose of assessing the amount to be paid by way of compensation under section 78G.

(2) The rules set out in section 5 of the 1961 Act (rules for assessing compensation) shall, 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 shall 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) above, expenditure incurred in the preparation of plans or on other similar preparatory matters shall 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 shall be assessed as if the interest were not subject to the mortgage; and
- (b) no compensation shall be 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 shall 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 in respect of an interest which is subject to a mortgage shall be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee and shall, in either case, be applied by him as if it were proceeds of sale.

(2) Amounts of compensation determined under this Schedule shall be 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 at 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 of the application of paragraph 5(3) above or of disputed compensation shall be referred to and determined by the Lands Tribunal.

(4) In relation to the determination of any such question, sections 2 and 4 of the 1961 Act (procedure on reference to the Lands Tribunal and costs) shall 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.

REGISTERS

A register maintained by an enforcing authority under section 78R shall contain full particulars of the following matters—

Remediation notices

1. In relation to a remediation notice served by the 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 this paragraph referred to as the “contaminated land in question”), sufficient to enable it to be identified whether by reference to a plan or otherwise;
 - (c) the significant 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 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, sufficient 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 above.

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) the location and extent of the contaminated land in question, sufficient 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 above.

Appeals against charging notices

8. In the case of an enforcing authority, any appeal under section 78P(8) against a charging notice served by the 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 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 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 authority is precluded by virtue of section 78YB(1) from serving a remediation notice—

- (a) the location and extent of the contaminated land in question, sufficient 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 above; and
- (c) any steps of which the authority has knowledge, carried out under section 27, towards remedying any significant harm or pollution of controlled waters by reason of which the land in question is contaminated land.

15. Where the 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, sufficient 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 above; and
- (c) any steps of which the authority has knowledge, carried out under section 59, in relation to that waste or the consequences of its deposit, including in a case where a waste collection authority (within the meaning of section 30(3)) 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 II of Part III of the Water Resources Act 1991 (pollution offences)(a), the authority is precluded by virtue of section 78YB(4) from

(a) 1991 c. 57.

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, sufficient 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 above.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to England only, make provision for certain aspects of a new scheme under Part IIA of the Environmental Protection Act 1990 (“the 1990 Act”) for the remediation of contaminated land.

Regulations 2 and 3, and Schedule 1, identify those sites (known as “special sites”) for which the Environment Agency is to be the authority responsible for enforcing the scheme. Local authorities are responsible for enforcing the scheme in the case of 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 for 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.

Regulations 7 to 14 make provision with respect to appeals against remediation notices, including the grounds of appeal and the procedure to be followed.

Regulation 15, 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.

A regulatory impact assessment of the effect of these Regulations has been prepared and a copy may be obtained from the Land Quality Team, Marine, Land and Liability Division, Department of the Environment, Transport and the Regions, Zone 3/B4, Ashdown House, 123 Victoria Street, London SW1E 6DE.

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