

Principal statutes and statutory instruments

<p>Environmental Protection Act 1990, s.78A</p>	<p>Defines statutory contaminated land as being land which appears to the local authority to be in such a condition, by reason of substances in, on or under the land that:</p> <ul style="list-style-type: none"> (a) significant harm is being caused or there is a significant possibility of such harm being caused; or (b) pollution of controlled waters is being, or is likely to be, caused. <p>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. Criteria for establishing what is <i>significant harm</i> are set out in DETR Circular 02/2000 – Environmental Protection Act 1990: Part IIA – Contaminated Land.</p>
<p>Environmental Protection Act 1990, s.78B and 78C</p>	<p>Imposes duty of local authorities to inspect their area in order to identify contaminated land and to determine whether any such land should be designated as a <i>special site</i>, in which case enforcement transfers to the Environment Agency</p>
<p>Environmental Protection Act 1990, s.78E, s.78F and s.78H</p>	<p>s.78E places duty on enforcing authority to serve a <i>remediation notice</i> upon each appropriate person as determined under s.78F. The remediation notice specifies what each person is to do by way of remediation and the periods within which they must be undertaken. The standards of remediation, form and content of the notice and procedural steps to be taken are established under Reg.4 and Reg.5 of the Contaminated Land Regulations 2000 and DETR Circular 02/2002. s.78H places restrictions on the enforcing authority in serving remediation notices, in particular, they may not serve a notice where the authority is satisfied that appropriate things are being, or will be, done by way of remediation without the service of a notice on the appropriate person. In such a case a <i>remediation statement</i> must be prepared setting out who is doing what and when.</p>
<p>Environmental Protection Act 1990, s.78J and s.78K</p>	<p>s.78J restricts the service of a notice in circumstances where pollution of controlled waters is caused by a mine abandoned before 31st December 1999 or where an owner or occupier of land which he himself did not cause or knowingly permit substances to be present in, on or under the land is causing pollution of a controlled water and nothing else. s.78K specifies the liability of various parties in situations where substances have escaped from one site to affect others. Neighbouring owners or occupiers of land which has become contaminated as a result of migration of substances from another site may have some liability for remediation of their own land.</p>
<p>Environmental Protection Act 1990, s.78L</p>	<p>Establishes rights of appeal within 21 days of service of a remediation notice.</p>
<p>Environmental Protection Act 1990, s.78R and 78S</p>	<p>Requires the enforcing authority to maintain a public register containing particulars relating to statutory contaminated land, in particular remediation notices or statements, other notices, convictions and such other matters. S.78S excludes information from the public register on the grounds of national security and s.78T excludes certain confidential information.</p>
<p>Environmental Protection Act 1990, s.78YB and s.78YC</p>	<p>s.78YB sets out the interactions with other statutory enactments as follows:</p> <ul style="list-style-type: none"> ➤ Preventing remediation notices being served where the contamination has arisen at a premises regulated under an IPC authorisation or IPPC permit and contamination arises as a result of breach of conditions and the Chief Inspector is empowered to effect remediation or to serve enforcement notices requiring remediation. ➤ Exclusion of activities subject to a waste management licence. ➤ Preventing remediation notices being served where contamination is due to the deposit of controlled waste which can be more properly dealt with by enforcement action under other enactments. ➤ Preventing remediation notices being served which would have the effect of impeding or preventing a discharge to controlled waters consented under the Water Resources Act 1991. <p>s.78YC excluded consideration of harm or pollution caused by radioactive substances, but these are now regulated under the Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005 (SI 2005/3467), Radioactive Contaminated Land (Modification of Enactments)(Wales) Regulations 2006 SI 2988 and Radioactive Contaminated Land (Modification of Enactments)(England) Regulations 2006 SI 1379.</p>
<p>Contaminated Land (England) Regulations 2006, SI 2006/1380 and Contaminated Land (Wales) Regulations 2006 (SI 2006/2989)</p>	<p>The Regulations provide rules for interpretation and operation of 78A to s.78YC of the Environmental Protection Act 1990 in respect of the contaminated land regime.</p>

Criminal penalties and remedies

<p>Environmental Protection Act 1991, s.78M</p>	<p>Failing without reasonable excuse to comply with the requirements of a remediation notice where the person is a trade, industrial or business premises is an offence punishable by a fine not exceeding £20,000 and a daily fine not exceeding £2,000 for each day the failure continues. Where the person is not in the above groups, the maximum fine is £5,000 with a daily fine of £500.</p> <p>The enforcing authority may carry out remediation under s. 78N and recover the costs from the appropriate person under s.78P.</p>
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Who are appropriate persons?

S.78F establishes that appropriate persons who may have liability for remediating contaminated land under the Act are as follows:

- Any person who caused or knowingly permitted the substances, or any of the substances, which have caused the land to be contaminated. Persons of this nature who cannot be excluded from liability following the application of exclusion tests is termed a 'Class A person'. The extent of liability is limited to that portion of remediation attributable to the extent of the substances which he caused or knowingly permitted to be present.
- If no person in the above group can be found, liability passes to the owner or occupier of the land in question. Persons of this nature who cannot be excluded from liability following the application of exclusion tests is termed a 'Class B person'.

DETR Circular 01/2006 sets out specific guidance on determining liability, exclusion from liability for both Class A and Class B persons and apportioning liability among members of a liability group for each and every *significant pollution linkage*.

What is a significant pollution linkage?

The contaminated land regime is based on establishing a pollutant linkage encompassing source → pathway → receptor. In determining whether land is contaminated, the enforcing authority first has to establish that such a linkage exists. Having established the linkage, a risk assessment is then performed to determine whether for each pollutant passing through each pathway, they are, or are capable of, causing significant harm to each class of receptor. Where such a relationship is established this is termed a significant pollution linkage.

What are the criteria for designating special sites?

Sites where the enforcement role transfers to the Environment Agency under the designation of a special site are established under Reg. 2 of the Contaminated Land (England) Regulations 2006 (and corresponding Regulations for Wales) as being either:

- land where groundwater or surface water is being, or is intended to be, used for the supply of drinking water for human consumption and is being affected by the land to the extent where treatment of the water is required to make it wholesome;
- controlled waters are being affected by the land to the extent that they do not meet the water quality standards and objectives established under the Water Resources Act 1991, s.82 (see E key facts No.6) ;
- the land is being, or is likely to be, affecting controlled waters by releasing any of the dangerous substances listed in column 1 below and the waters or any part of the waters are contained in any of the underground strata listed in column 2; or
- land where specified activities have been carried on as specified in column 3.

Column 1 ⁽¹⁾	Column 2 ⁽²⁾	Column 3
Substances which possess carcinogenic, mutagenic or teratogenic properties in or via the aquatic environment	Pleistocene Norwich Crag	Land which is contaminated by reason of waste acid tars in, on or under the land
	Upper Cretaceous Chalk	Land used for purification (incl. Refining) of crude petroleum, shale and any bituminous substance (excl. coal)
	Lower Cretaceous Sandstones	Land used for manufacture of explosives
Organophosphorus compounds	Upper Jurassic Corallion	Land on which a Part A process authorised under IPC or Part A(1) under IPPC has been carried on (except where the process was solely for remediation)
Organotin compounds	Middle Jurassic Limestones	
Cyanides	Lower Jurassic Cotteswold Sands	
Mineral oils and hydrocarbons	Permo-Triassic Sherwood Sandstones	Land within a nuclear site
Organohalogen compounds and substances which may form such compounds in the aquatic environment	Upper Permian Magnesian Limestone	Land owned or occupied by or on behalf of: SoS for Defence; Defence Council; international headquarters or defence organisations; the service authority of a visiting force; and which is being used for naval, air force or military purposes
	Lower Permian Penrith Sandstone	
	Lower Permian Collyhurst Sandstone	
	Power Permian Basal Breccias, Conglomerates and Sandstones	
Mercury and its compounds	Lower Carboniferous Limestones	Land used for the manufacture, production, disposal of chemical weapons, any biological agent, or any weapon, equipment or means of delivery of such substances.
Cadmium and its compounds		Land designated under the Atomic Weapons Establishment Act 1991
		Any land adjacent to any of the above which is contaminated as a result of substances which appear to have escaped from land of such a description

(1) List I substances under the Groundwater Regulations 1998

(2) Underground strata which are generally of importance as being major aquifers for drinking water supply and recharge into surface waters