

2012 No. 263

ENVIRONMENTAL PROTECTION, ENGLAND

**The Contaminated Land (England) (Amendment) Regulations
2012**

<i>Made</i>	- - - -	<i>2nd February 2012</i>
<i>Laid before Parliament</i>		<i>7th February 2012</i>
<i>Coming into force</i>	- -	<i>6th April 2012</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 78C(8), (9) and (10), 78G(5) and (6) and 78L(4) and (5) of the Environmental Protection Act 1990(a).

Citation and commencement

1. These Regulations may be cited as the Contaminated Land (England) (Amendment) Regulations 2012 and come into force on 6th April 2012.

Amendments to the Contaminated Land (England) Regulations 2006

2.—(1) The Contaminated Land (England) Regulations 2006(b) are amended as follows.

(2) In regulation 3 (pollution of controlled waters)—

(a) for paragraph (b) substitute—

“(b) controlled waters are being affected by the land and, as a result—

- (i) 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(c) (classification of quality of waters); or
- (ii) for controlled waters that are designated as protected areas under Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(d), those waters do not meet the environmental objectives that apply to them under that Directive (excluding protected areas listed in paragraphs (i), (iv) and (v) of Annex IV to that Directive); or”; and

(a) 1990 c. 43. See the definition of “prescribed” and “regulations” in section 78A(9) of that Act. Sections 78C, 78G and 78L were inserted by section 57 of the Environment Act (c. 25). Section 78C(10) is prospectively amended by section 86 of the Water Act 2003 (c. 37). Section 78L(4) was amended by section 104 of, and Part 10 of Schedule 5 to, the Clean Neighbourhoods and Environment Act 2005 (c. 16).

(b) S.I. 2006/1380 as amended by S.I. 2009/1307; there are other amending instruments but none is relevant.

(c) 1991 c. 57.

(d) OJ No L 327, 22.12.00, p.1.

- (b) in paragraph (c)(ii), for “within underground strata” substitute “in underground strata within the saturation zone”.
- (3) In regulation 11 (modification of a remediation notice), after paragraph (2) insert—
 - “(3) this regulation applies only in relation to appeals made in accordance with regulation 8(1) prior to 6 April 2012.”
- (4) For paragraph 6(4) of Schedule 2 (compensation for rights of entry etc) substitute—
 - “(4) In relation to the determination of any such question, section 4 of the 1961 Act (costs)(a) applies as if—
 - (a) the reference to section 1 of that Act were a reference to sub-paragraph (3) of this paragraph;
 - (b) references to the acquiring authority were references to the appropriate person; and
 - (c) references to the claimant were references to the grantor.”.

2nd February 2012

Richard Benyon
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

(a) 1961 c. 33. Section 4 was amended by paragraphs 36 and 39 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Contaminated Land (England) Regulations 2006 (“the 2006 Regulations”) (S.I. 2006/1380).

Regulation 2(2) of these Regulations amends the circumstances set out in regulation 3 (pollution of controlled waters) of the 2006 Regulations in which contaminated land affecting controlled waters is required to be designated as a special site. The amendment takes account of protected areas under Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy (OJ No L 327, 22.12.00, p1).

Regulation 2(2) also amends regulation 3(c) (pollution of controlled waters) of the 2006 Regulations to take account of the updated definition of “controlled waters” in section 78A(9) of the Environmental Protection Act 1990 (c. 43).

These Regulations limit the application of regulation 11 (modification of a remediation notice) of the 2006 Regulations to appeals commenced prior to 6th April 2012. In relation to those appeals, regulation 11 provides that, prior to the Secretary of State modifying a remediation notice in a way which would be less favourable to the appellant or any other person on whom that notice was served, the Secretary of State is required to notify those persons, and to permit them to make representations and to be heard in relation to the proposed modification.

Regulation 2(4) amends paragraph 6(4) of Schedule 2 to the 2006 Regulations to remove an incorrect reference to the repealed section 2(1) of the Land Compensation Act 1961 (c. 33) and to provide for the appropriate application of particular references.

An impact assessment of the effect that changes to the contaminated land regime, making reference to the main impacts of these Regulations, will have on the costs of business and the voluntary sector has been produced, and a copy is available from the website of the Department for Environment, Food and Rural Affairs at www.defra.gov.uk. It is published alongside the Explanatory Memorandum and this instrument at www.legislation.gov.uk. No separate impact assessment was made for these Regulations.

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STATUTORY INSTRUMENTS

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