

# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5053 GIBRALTAR Thursday 18th May 2023

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B. 12/23

## CONTAMINATED LAND BILL 2023

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Clause

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## BILL

FOR

**AN ACT** to establish a framework for the protection of soil to perform all environmental, economic, social and cultural functions, to set the polluter pays principle for remediation purposes, to establish a land use and existing contaminated land area register, to establish historical pollution sources and to track the progresses of remedying soil contamination and reserving natural soil capacities, to confer powers on the Minister to impose remediation of contaminated soil; and for connected purposes between all bodies.

**ENACTED** by the Legislature of Gibraltar.

### PART I INTERPRETATION

#### **Short title and commencement.**

1.(1) This Act may be cited as the Contaminated Land Act 2023.

(2) This Act shall come into force on a day to be appointed by the Minister by notice in the Gazette and different days may be so appointed for different provisions of this Act.

#### **Interpretation.**

2.(1) For the purposes of this Act, the following definitions shall apply, unless the context otherwise requires, -

“appropriate person” means any person, who is an appropriate person, determined in accordance with section 11, to bear responsibility for the thing which is to be done by way of remediation in any particular case, and which, for the avoidance of doubt shall include bodies corporate;

“charging notice” has the meaning given by section 14(3)(b);

“Competent Authority” has the meaning given by section 3;

“contaminated land” is any land which appears to the Competent Authority to be in such a condition, by reason of substances and/or conditions in, on or under the land, that-

- (a) significant harm is being caused or there is a significant possibility of such harm being caused; or
- (b) significant pollution of controlled waters is being caused or there is a significant possibility of such harm being caused and, in determining whether any land appears to be such land, the Competent Authority shall, subject to subsection (2) below, act in accordance with guidance issued by the Minister pursuant to section 21 with respect to the manner in which that determination is to be made;

“controlled waters” means waters which are affected by contaminated land if the contaminated land is in such a condition, by reason of substances and/or conditions in, on or under the land, that pollution of those waters is being, or is likely to be caused;

“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 a person, includes harm to their property;

“court” means a court established under section 3 of the Magistrates’ Court Act or the Supreme Court of Gibraltar;

“Minister” means the Minister with responsibility for the Environment;

“notice” means notice in writing;

“notification” means notification in writing;

“owner” means, in relation to any land in Gibraltar a person (other than a mortgagee not in possession) who, whether in their own right or as trustee for any other person, holds a legal interest over the land, and which for the avoidance of doubt shall include bodies corporate;

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

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Minister;

“remediation” means-

- (a) the doing of anything for the purpose of assessing the condition of-
  - (i) the contaminated land in question;

- (ii) any controlled waters affected by that land; or
  - (iii) any land adjoining or adjacent to that land;
- (b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose-
- (i) of preventing or minimizing, or remedying or mitigating the effects of, any significant harm, or any significant pollution of controlled waters, by reason of which the contaminated land is such land; or
  - (ii) of restoring of the soil, the environment or waters to a state where no significant harm is caused or apparent; or
  - (iii) of making subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters,

and similar expressions shall be construed accordingly.

“remediation declaration” has the meaning given by section 7(6);

“remediation notice” has the meaning given by section 5(1);

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

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

(2) The questions-

- (a) what harm or pollution of controlled waters is to be regarded as “significant”; and
- (b) whether the possibility of significant harm or of significant pollution of controlled waters being caused is “significant”,

shall be determined pursuant to guidance issued by the Minister in accordance with the provisions of this Act.

(3) Without prejudice to the guidance that may be issued by the Minister under subsection (2), guidance under subsection (2)(a) may make provision for different degrees of importance to be assigned to, or for the disregard of-

- (a) different descriptions of living organisms or ecological systems or of poisonous, noxious or polluting matter or solid waste matter;
- (b) different descriptions of places or controlled waters, or different degrees of pollution; or

(c) different descriptions of harm to health or property, or other interference, and any guidance issued under subsection (2)(b) may make provision for different degrees of possibility to be regarded as “significant” (or as not being “significant”) in relation to different descriptions of significant harm or of significant pollution.

**Competent Authority.**

3. The Department of the Environment is the designated Competent Authority for the purposes of this Act.

**PART II  
INSPECTION DUTIES**

**Identification Procedure.**

4.(1) The Competent Authority may arrange for areas to be inspected from time to time for the purpose of identifying contaminated land.

(2) In performing its functions under subsection (1), the Competent Authority shall act in accordance with any guidance issued by the Minister for this purpose pursuant to section 21.

(3) If contaminated land is identified, notice of that fact shall be given by the Competent Authority to—

- (a) the owner of the land;
- (b) the developer of the land (if applicable);
- (c) any person who is in occupation of the whole or any part of the land; and
- (d) each person who appears to the Competent Authority to be an appropriate person;

and any notice given shall state by virtue of which of subsections (3)(a) to (d) it is given.

(4) If, at any time after a notice has been given pursuant to subsection (3)(d) in respect of any land, it appears to the Competent Authority that another person is an appropriate person, notice shall be given to that other person-

- (a) of the fact that the land has been identified as contaminated land; and
- (b) that the person appears to be an appropriate person.

**PART III  
REMEDICATION**

**Duty of Competent Authority to Require Remediation of Contaminated Land.**

5.(1) In any case where the Competent Authority has identified any contaminated land it shall, in accordance with such procedure as may be prescribed and subject to the following provisions of this Part, serve on each person who is an appropriate person a notice (in this Part referred to as a “remediation notice”) specifying what that person is to do by way of remediation and the periods within which they are required to do each of the things so specified.

(2) Different remediation notices requiring the doing of different things by way of remediation may be served on different persons in consequence of the presence of different substances and/or conditions in, on or under any land or waters.

(3) Where two or more persons are appropriate persons in relation to any thing which is to be done by way of remediation, the remediation notice served on each of them may state the proportion, determined under section 11(6) of the cost of doing that thing which each of them respectively is liable to bear.

(4) The only things by way of remediation which the Competent Authority may do, or require to be done, under or by virtue of this Part are things which it considers reasonable, having regard to-

- (a) the cost which is likely to be involved; and
- (b) the seriousness of the harm, or pollution of controlled waters, in question.

(5) In determining for any purpose of this Part-

- (a) what is to be done (whether by an appropriate person, the Competent Authority or any other person) by way of remediation in any particular case;
- (b) the standard to which any land is, or waters are, to be remediated pursuant to the remediation notice; or
- (c) what is, or is not, to be regarded as reasonable for the purposes of subsection (4),

the Competent Authority shall have regard to guidance issued for the purpose by the Minister.

(6) The Minister may by regulations make provision for or in connection with-

- (a) the form or content of remediation notices; or

- (b) any steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of a remediation notice.

(7) The Competent Authority may adopt the remediation notice and, if it does so-

- (a) it shall give notice of its decision to adopt the remediation notice to the appropriate person;
- (b) the remediation notice shall have effect, as from the time at which the Competent Authority decides to adopt it, as a remediation notice given by the Competent Authority; and
- (c) the validity of the remediation notice shall not be affected by:
  - (i) the adoption of the remediation notice by the Competent Authority; or
  - (ii) anything in subsection (7)(b).

(8) Where the Competent Authority has begun, pursuant to section 10, to do any thing, or any series of things, by way of remediation-

- (a) it may continue doing that thing, or that series of things, by virtue of that section; and
- (b) section 14 shall apply in relation to the reasonable cost incurred by the Competent Authority in doing that thing or those things.

(9) The Competent Authority may from time to time inspect that land for the purpose of keeping its condition under review.

(10) If contaminated land is no longer land which is required to be designated as such, the Competent Authority shall give notice to the Minister, terminating the designation of the land in question as contaminated land as from such date as may be specified in the remediation notice.

(11) A notice under subsection (10) shall not prevent the land, or any of the land, to which the notice relates being designated as contaminated land on a subsequent occasion.

(12) In exercising its functions under subsection (9) or (10), the Competent Authority shall act in accordance with any guidance given for the purpose by the Minister.

### **Grant of, and Compensation for, Rights of Entry.**

6.(1) A remediation notice may require an appropriate person to do things by way of remediation, notwithstanding that the appropriate person is not entitled to do those things.



(2) Any person whose consent is required before any thing required by a remediation notice may be done shall grant, or join in granting, such rights in relation to any of the relevant land or waters as will enable the appropriate person to comply with any requirements imposed by the remediation notice.

(3) Before serving a remediation notice, the Competent Authority shall reasonably endeavour to consult every person who appears to the Competent Authority-

- (a) to be the owner, developer or occupier of any of the relevant land or waters; and
- (b) to be a person who might be required by subsection (2) to grant, or join in granting, any rights,

concerning the rights which that person may be so required to grant.

(4) Subsection (3) shall not preclude the service of a remediation notice in any case where it appears to the Competent Authority that the contaminated land in question is in such a condition, by reason of substances and/or conditions in, on or under the land, that there is imminent danger of serious harm, or serious pollution of controlled waters, being caused.

(5) A person who grants, or joins in granting, any rights pursuant to subsection (2) shall be entitled, on making an application within such period as may be prescribed and, in such manner, as may be prescribed to such person as may be prescribed, to be paid by the appropriate person compensation of such amount as may be determined in such manner as may be prescribed.

(6) In this section, “relevant land or waters” means:

- (a) the contaminated land in question;
- (b) any controlled waters affected by that land; or
- (c) any land adjoining or adjacent to that land or those waters.

### **Restrictions and Prohibitions on Serving Remediation Notices.**

7.(1) Before serving a remediation notice, the Competent Authority shall reasonably endeavour to consult-

- (a) the person on whom the remediation notice is to be served;
- (b) the owner, developer or occupier of any land to which the notice relates;
- (c) any person who appears to the Competent Authority to be in occupation of the whole or any part of the land; and
- (d) any person of such other description as may be prescribed,

concerning what is to be done by way of remediation.

(2) The Minister may make regulations for the provision of, or in connection with, steps to be taken for the purposes of subsection (1).

(3) No remediation notice shall be served on any person by reference to any contaminated land during the period-

- (a) beginning with the identification of the contaminated land in question pursuant to section 4(1); and
- (b) ending with the expiration of the period of three months beginning with the day on which the notice required by subsection (3)(d) or (4) of section 4 is given to that person in respect of that land;

(4) Neither subsection (1) nor subsection (3) shall preclude the service of a remediation notice in any case where it appears to the Competent Authority that the land in question is in such a condition, by reason of substances and/or conditions in, on or under the land, that there is imminent danger of serious harm, or serious pollution of controlled waters, being caused.

(5) The Competent Authority shall not serve a remediation notice on a person if and so long as any one or more of the following conditions is for the time being satisfied:

- (a) the Competent Authority is satisfied, in consequence of section 5(4) and (5), that there is nothing by way of remediation which could be specified in a remediation notice served on that person;
- (b) the Competent Authority is satisfied that appropriate things are being, or will be, done by way of remediation without the service of a remediation notice on that person; or
- (c) the Competent Authority is satisfied that the powers conferred on it by section 10 to do what is appropriate by way of remediation are exercisable.

(6) Where the Competent Authority is precluded by virtue of section 5(4) or (5) from specifying in a remediation notice any particular thing by way of remediation which it would otherwise have specified in such a notice, the Competent Authority shall prepare and publish a document (in this Part referred to as a “remediation declaration”) which shall record-

- (a) the reasons why the Competent Authority would have specified that thing; and
- (b) the grounds on which the Competent Authority is satisfied that it is precluded from specifying that thing in such a notice.

(7) In any case where the Competent Authority is precluded, by virtue of subsection (5)(b) or (c), from serving a remediation notice, the responsible person shall prepare and publish a document (in this Part referred to as a “remediation statement”) which shall record-

- (a) the things which are being, have been, or are expected to be, done by way of remediation in the particular case;
- (b) the name and address of the person who is doing, has done, or is expected to do, each of those things; and
- (c) the periods within which each of those things is being, or is expected to be, done.

(8) For the purposes of subsection (7), the “responsible person” is:

- (a) in a case where the condition in subsection (5)(b) is satisfied, the person who is doing or has done, or who the Competent Authority is satisfied will do, the things there mentioned; or
- (b) in a case where the condition subsection (5)(c) is satisfied, the Competent Authority.

(9) If a person who is required by virtue of subsection (8)(a) to prepare and publish a remediation statement fails to do so within a reasonable time after the date on which a remediation notice specifying the things there mentioned could, apart from subsection (5), have been served, the Competent Authority may itself prepare and publish the statement and may recover its reasonable costs of doing so from that person.

(10) Where the Competent Authority has been precluded by virtue only of subsection (5) from serving a remediation notice on an appropriate person but-

- (a) none of the conditions in that subsection is for the time being satisfied in the particular case; and
- (b) the Competent Authority is not precluded from serving a remediation notice on that appropriate person,

the Competent Authority shall serve a remediation notice on that person; and any such notice may be so served without any further endeavours by the Competent Authority to consult persons pursuant to subsection (1), if and to the extent that the person has been consulted pursuant to that subsection concerning the things which will be specified in the notice.

### **Appeals against Remediation Notices.**

8.(1) A person on whom a remediation notice is served may, within the period of twenty-one days beginning with the day on which the notice is served, appeal against the notice to the Minister; and in the following provisions of this section “the appellate authority” means the Minister.

(2) On any appeal under subsection (1) the appellate authority-

- (a) shall quash the notice, if it is satisfied that there is a material defect in the notice; but

(b) subject to that, may confirm the remediation notice, with or without modification, or quash it.

(3) Where the appellate authority confirms a remediation notice, with or without modification, it may extend the period specified in the notice for doing what the notice requires to be done.

(4) The Minister may by regulations make provision with respect to-

- (a) the grounds on which appeals under subsection (1) may be made; or
- (b) the procedure on an appeal under subsection (1).

(5) The Minister may make regulations under subsection (4) which may (among other things)-

- (a) include provisions comparable to those in section 330(3)(f) of the Public Health Act;
- (b) prescribe the cases in which a remediation notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;
- (c) prescribe the cases in which the decision on an appeal may in some respects be less favourable to the appellant than the remediation notice against which the appellant is appealing;
- (d) prescribe the cases in which the appellant may claim that a remediation notice should have been served on some other person and prescribe the procedure to be followed in those cases;
- (e) make provision as respects-
  - (i) the particulars to be included in the notice of appeal;
  - (ii) the persons on whom notice of appeal is to be served and the particulars, if any, which are to accompany the notice; and
  - (iii) the abandonment of an appeal;
- (f) make different provision for different cases or classes of case.

### **Offences of Not Complying with a Remediation Notice.**

9.(1) If a person on whom a remediation notice is served fails, without reasonable excuse, to comply with any of the requirements of the notice, that person shall be guilty of an offence.

(2) Where the remediation notice is one which was required by section 5(3) to state, in relation to the requirement which has not been complied with, the proportion of the cost involved which the person charged with the offence is liable to bear, it shall be a defence for that person to prove that the only reason why he or she has not complied with the requirement is that one or more of the other persons who are liable to bear a proportion of that cost refused, or was not able, to comply with the requirement.

(3) Except in a case falling within subsection (4), a person who commits an offence under subsection (1) shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale and to a further fine of an amount equal to one-tenth of level 5 on the standard scale for each day on which the failure continues after conviction of the offence and before the Competent Authority has begun to exercise its powers by virtue of section 10(3)(c).

(4) A person who commits an offence under subsection (1) in a case where the contaminated land to which the remediation notice relates is industrial, trade or business premises shall be liable on summary conviction to a fine not exceeding £20,000 or such greater sum as the Minister may from time to time by notice in the Gazette substitute and to a further fine of an amount equal to one-tenth of that sum for each day on which the failure continues after conviction of the offence and before the Competent Authority has begun to exercise its powers by virtue of section 10(3)(c).

(5) If proceedings for an offence under this section would afford an ineffectual remedy against a person who has failed to comply with any of the requirements of a remediation notice served on him or her, the Competent Authority may take proceedings in court, for the purpose of securing compliance with the remediation notice.

(6) In this section, “industrial, trade or business premises” means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purpose of manufacturing.

### **Powers of the Competent Authority to Carry out Remediation.**

10.(1) Where this section applies, the Competent Authority shall itself have power, in a case falling within section 5(1), to do what is appropriate by way of remediation to the relevant land or waters.

(2) Subsection (1) shall not confer power on the Competent Authority to do anything by way of remediation if the Competent Authority would, in the particular case, be precluded from serving a remediation notice requiring that thing to be done.

(3) This section applies in each of the following cases-

- (a) where the Competent Authority considers it necessary to do anything itself by way of remediation for the purpose of preventing the occurrence of any serious harm, or serious pollution of controlled waters, of which there is imminent danger;

- (b) where an appropriate person has entered into a written agreement with the Competent Authority for the Competent Authority to do, at the cost of that person, that which that person would otherwise be required to do by way of remediation;
- (c) where a person on whom the Competent Authority serves a remediation notice fails to comply with any of the requirements of the remediation notice;
- (d) where the Competent Authority is precluded by section 12 or 13 from including something by way of remediation in a remediation notice;
- (e) where the Competent Authority considers that, were it to do some particular thing by way of remediation, it would decide, by virtue of section 14(2) or any guidance issued under that section,
  - (i) not to seek to recover under section 14(1) any of the reasonable cost incurred by it in doing that thing; or
  - (ii) to seek so to recover only a portion of that cost;
- (f) where no person has, after reasonable inquiry, been found who is an appropriate person in relation to any particular thing.

(4) Subject to section 5(4) and (5), for the purposes of this section, the things which are appropriate for the Competent Authority to do by way of remediation are-

- (a) in a case falling within subsection (3)(a) above, anything by way of remediation which is considered necessary for the purpose mentioned in that subsection;
- (b) in a case falling within subsection (3)(b), anything specified in, or determined under, the agreement mentioned in that subsection;
- (c) in a case falling within subsection (3)(c), anything which the person mentioned in that subsection was required to do by virtue of the remediation notice;
- (d) in a case falling within subsection (3)(d), anything by way of remediation which the Competent Authority is precluded from including in a remediation notice;
- (e) in a case falling within subsection (3)(e) or (3)(f), the particular thing mentioned in the subsection in question.

(5) In this section “the relevant land or waters” means:

- (a) the contaminated land in question;
- (b) any controlled waters affected by that land; or
- (c) any land adjoining or adjacent to that land or those waters.

**PART IV  
LIABILITY**

**Determination of the appropriate person to bear responsibility for remediation.**

11.(1) Subject to the following provisions of this section, any person, or any of the persons, who caused or permitted the substances or conditions, or any of the substances or conditions, by reason of which the contaminated land in question is such land to be in, on or under that land is an appropriate person.

(2) A person shall only be an appropriate person by virtue of subsection (1) in relation to things which are to be done by way of remediation which are to any extent referable to substances or conditions which that person caused or permitted to be present in, on or under the contaminated land in question.

(3) If no person has, after reasonable inquiry, been found who is by virtue of subsection (1) an appropriate person to bear responsibility for the things which are to be done by way of remediation, the owner, developer or occupier for the time being of the contaminated land in question is an appropriate person.

(4) If, in consequence of subsection (2), there are things which are to be done by way of remediation in relation to which no person has, after reasonable inquiry, been found who is an appropriate person by virtue of subsection (1), the owner, developer or occupier for the time being of the contaminated land in question is an appropriate person in relation to those things.

(5) Where two or more persons would, apart from this subsection, be appropriate persons in relation to any particular thing which is to be done by way of remediation, the Competent Authority may determine in accordance with guidance issued for this purpose by the Minister whether any, and if so which, of them is to be treated as not being an appropriate person in relation to that thing.

(6) Where two or more persons are appropriate persons in relation to any particular thing which is to be done by way of remediation, they shall be liable to bear the cost of doing that thing in proportions which may be determined by the Competent Authority in accordance with guidance issued for the purpose by the Minister.

(7) Any guidance issued for the purposes of subsection (6) shall be issued in accordance with section 21.

(8) A person who has caused or permitted any substance and/or condition (“substance and/or condition A”) to be in, on or under any land shall also be taken for the purposes of this section to have caused or permitted there to be in, on or under that land any substance and/or condition which is there as a result of a chemical reaction or biological process affecting substance and/or condition A.

(9) A thing which is to be done by way of remediation may be regarded as referable to the presence of any substance and/or condition notwithstanding that the thing in question would not have to be done-

- (a) in consequence only of the presence of that substance in any quantity;
- (b) in consequence only of the quantity of that substance which any particular person caused or permitted to be present; or
- (c) in consequence only of any condition.

**Restrictions on liability relating to the pollution of controlled waters.**

12.(1) This section applies where any land is contaminated land by virtue of paragraph (b) in the definition of contaminated land in section 2(1) and whether or not the land is also contaminated land by virtue of paragraph (a) in the definition of contaminated land in section 2(1).

(2) Where this section applies, no remediation notice given in consequence of the land in question being contaminated land shall require a person who is an appropriate person by virtue of section 11 (3) or (4) to do anything by way of remediation to that or any other land, or any waters, which that person could not have been required to do by such a notice had paragraph (b) in the definition of contaminated land in section 2(1) and all other references to pollution of controlled waters been omitted.

**Liability in respect of contaminating substances and/or conditions which escape and/or are transferred to other land.**

13.(1) A person who has caused or permitted any substances and/or conditions to be in, on or under any land shall also be taken to have caused or, as the case may be, permitted those substances and/or conditions to be in, on or under any other land to which they appear to have escaped.

(2) Subsections (3) and (4) apply in any case where it appears that any substances and/or conditions are or have been in, on or under any land (in this section referred to as “Land A”) as a result of their escape, whether directly or indirectly, from other land in, on or under which a person caused or permitted them to be.

(3) Where this subsection applies, no remediation notice shall require a person-

- (a) who is the owner, developer or occupier of Land A; and
- (b) who has not caused or permitted the substances and/or conditions in question to be in, on or under that land,



to do anything by way of remediation to any land or waters (other than land or waters of which that person is the owner, developer or occupier) in consequence of Land A appearing to be in such a condition, by reason of the presence of those substances and/or conditions in, on or under it, that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of controlled waters is being, or is likely to be caused.

(4) Where this subsection applies, no remediation notice shall require a person-

- (a) who is the owner, developer or occupier of Land A; and
- (b) who has not caused or permitted the substances and/or conditions in question to be in, on or under that land,

to do anything by way of remediation in consequence of any further land in, on or under which those substances and/or conditions or any of them appear to be or to have been present as a result of their escape from Land A ("Land B") appearing to be in such a condition, by reason of the presence of those substances and/or conditions in, on or under it, that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of controlled waters is being, or is likely to be caused, unless that person is also the owner, developer or occupier of Land B.

(5) In any case where-

- (a) a person ("A") has caused or permitted any substances and/or conditions to be in, on, or under any land;
- (b) another person ("B") who has not caused or permitted those substances and/or conditions to be in, on or under that land becomes the owner, developer or occupier of that land; and
- (c) the substances and/or conditions, or any of the substances and/or conditions, mentioned in subsection (5)(a) appear to have escaped to other land,

no remediation notice shall require B to do anything by way of remediation to that other land in consequence of the apparent acts or omissions of A, except to the extent that B caused or permitted the escape.

(6) Nothing in subsection (3), (4) or (5) shall prevent the Competent Authority from doing anything by way of remediation under section 10 which it could have done apart from that subsection, but the Competent Authority shall not be entitled under section 14 to recover from any person any part of the cost incurred by the Competent Authority in doing by way of remediation anything which it is precluded by subsection (3), (4) or (5) from requiring that person to do.

**PART V**  
**RECOVERY OF THE COSTS OF REMEDIATION**

**Recovery of the Cost of Remediation by the Competent Authority.**

14.(1) Where, by virtue of section 10(3)(a), (c), (e) or (f), the Competent Authority does any particular thing by way of remediation, it shall be entitled, subject to section 12, to recover the reasonable cost incurred in doing it from the appropriate person or, if there are two or more appropriate persons in relation to the thing in question, from those persons in proportions which may be determined pursuant to section 11(7).

(2) In deciding whether to recover the cost, and, if so, how much of the cost, the Competent Authority is entitled to recover under subsection (1), the following shall apply-

- (a) any hardship which the recovery may cause to the person from whom the cost is recoverable; and
- (b) any guidance issued by the Minister for the purposes of this subsection.

(3) Subsection (4) shall apply in any case where-

- (a) any cost is recoverable under subsection (1) from a person:
  - (i) who is the owner, developer or occupier of any premises which consist of or include the contaminated land in question; and
  - (ii) who caused or permitted the substances and/or conditions, or any of the substances and/or conditions, by reason of which the land is contaminated land to be in, on or under the land; and
- (b) the Competent Authority serves a notice under this subsection (in this Part referred to as a “charging notice”) on that person.

(4) Where this section applies-

- (a) the cost shall carry interest, at such reasonable rate as the Competent Authority may determine, from the date of service of the charging notice until the whole amount is paid; and
- (b) subject to the following provisions of this section, the cost and accrued interest shall be a charge on the premises mentioned in subsection (3)(a)(i).

(5) A charging notice shall-

- (a) specify the amount of the cost which the Competent Authority claims is recoverable;

(b) state the effect of subsection (4) and the rate of interest determined by the Competent Authority under that subsection; and

(c) state the effect of subsections (7) and (8).

(6) On the date on which the Competent Authority serves a charging notice on a person, the Competent Authority shall also serve a copy of the charging notice on every other person who, to the knowledge of the Competent Authority, has an interest in the premises capable of being affected by the charging notice.

(7) Subject to any order under subsection (9)(b) or (c), the amount of any cost specified in a charging notice and the accrued interest shall be a charge on the premises-

(a) as from the end of the period of twenty-one days beginning with the service of the charging notice; or

(b) where an appeal is brought under subsection (8), as from the final determination or (as the case may be) the withdrawal, of the appeal,

until the cost and interest are recovered.

(8) A person served with a charging notice or a copy of a charging notice may appeal against the charging notice to the court within the period of twenty-one days beginning with the date of service.

(9) On an appeal under subsection (8), the court may-

(a) confirm the charging notice without modification;

(b) order that the charging notice is to have effect with the substitution of a different amount for the amount originally specified in it; or

(c) order that the charging notice is to be of no effect.

(10) Where any cost is a charge on premises under this section, the Competent Authority may declare the cost to be payable with interest by instalments within the specified period until the whole amount is paid.

(11) In subsection (10)-

(a) “interest” means interest at the rate determined by the Competent Authority under subsection (4); and

(b) “the specified period” means such period of ten years or less from the date of service of the charging notice as is specified in the order.

**PART VI**  
**REGISTERS, REPORTS & LAND NO LONGER CONSIDERED TO BE**  
**CONTAMINATED**

**Registers.**

15.(1) The Competent Authority shall maintain a register containing prescribed particulars of or relating to-

- (a) remediation notices served by the Competent Authority;
- (b) appeals against any such remediation notices;
- (c) remediation statements or remediation declarations prepared and published under section 7;
- (d) appeals against charging notices served by it;
- (e) notices given by or to it terminating the designation of any land as contaminated land;
- (f) notifications given to it by persons:
  - (i) on whom a remediation notice has been served; or
  - (ii) who are or were required to prepare and publish a remediation statement pursuant to section 7(8)(a),

of what they claim has been done by them by way of remediation;

- (g) notifications given to it by owners, developers or occupiers of land:
  - (i) in respect of which a remediation notice has been served; or
  - (ii) in respect of which a remediation statement has been prepared and published,

of what they claim has been done on the land in question by way of remediation;

- (a) convictions for such offences under section 9 as may be prescribed;
- (b) such other matters relating to contaminated land as may be prescribed.

(2) The form of, and the descriptions of information to be contained in, notifications for the purposes of subsection (1)(f) or (g) may be prescribed by the Minister in regulations.

(3) Where information of any description is excluded by virtue of sections 16 and 17 from any register maintained under this section, a statement shall be entered in the register indicating the existence of information of that description.

(4) It shall be the duty of the Competent Authority-

- (a) to ensure that the registers maintained by it under this section are available, at all reasonable times, for inspection by the public free of charge; and
- (b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges;

and, for the purposes of this subsection, places may be prescribed by the Minister at which any such registers or facilities are to be available or afforded to the public.

(5) Registers under this section may be kept in any form.

#### **Exclusion from Registers of Information Affecting National Security.**

16.(1) No information shall be included in a register maintained under section 15 if and so long as, in the opinion of the Minister, the inclusion in the register of that information, or information of that description, would be contrary to the interests of national security.

(2) The Minister may, for the purpose of securing the exclusion from registers of information to which subsection (1) above applies, give to the Competent Authority directions-

- (a) specifying information, or descriptions of information, to be excluded from its registers; or
- (b) specifying descriptions of information to be referred to the Minister for his or her determination,

and no information referred to the Minister in pursuance of subsection (2)(b) shall be included in any such register until the Minister determines that it should be so included.

(3) The Competent Authority shall notify the Minister of any information which it excludes from the register in pursuance of directions under subsection (2).

(4) A person may, as respects any information which appears to him or her to be information to which subsection (1) may apply, give a notice to the Minister specifying the information and indicating its apparent nature; and, if he or she does so:

- (a) he or she shall notify the Competent Authority that he or she has done so; and
- (b) no information so notified to the Minister shall be included in any such register until the Minister has determined that it should be so included.

**Exclusion from Registers of Certain Confidential Information.**

17.(1) No information relating to the affairs of any individual or business shall be included in a register maintained under section 15, without the consent of that individual or the person for the time being carrying on that business, if and so long as the information-

- (a) is, in relation to him or her, commercially confidential; and
- (b) is not required to be included in the register in pursuance of directions under subsection (7);

but information is not commercially confidential for the purposes of this section unless it is determined under this section to be so by the Competent Authority or, on appeal, by the Minister.

(2) Where it appears to the Competent Authority that any information which has been obtained by the Competent Authority under or by virtue of any provision of this section might be commercially confidential, it shall-

- (a) give to the person to whom or whose business it relates notice that the information is required to be included in the register unless excluded under this section; and
- (b) give the person a reasonable opportunity-
  - (i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and
  - (ii) of making representations to it for the purpose of justifying any such objection; and, if any representations are made, the Competent Authority shall, having taken the representations into account, determine whether the information is or is not commercially confidential.

(3) Where, under subsection (2), the Competent Authority determines that information is not commercially confidential-

- (a) the information shall not be entered in the register until the end of the period of twenty-one days beginning with the date on which the determination is notified to the person concerned;
- (b) that person may appeal to the Minister against the decision;

and, where an appeal is brought in respect of any information, the information shall not be entered in the register until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn.

(4) An appeal under subsection (3) shall, if either party to the appeal so requests or the Minister so decides, take or continue in the form of a hearing (which shall be held in private).

(5) The Minister may give the Competent Authority directions as to specified information, or descriptions of information, which the public interest requires to be included in registers maintained under section 15 notwithstanding that the information may be commercially confidential.

(6) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this section at the expiry of the period of four years beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the Competent Authority for the information to remain excluded from the register on the ground that it is still commercially confidential and the Competent Authority shall determine whether or not that is the case.

(7) Information is, for the purposes of any determination under this section, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that individual or person.

(8) For the purposes of subsection (7), there shall be disregarded any prejudice to the commercial interests of any individual or person so far as relating only to the value of the contaminated land in question or otherwise to the ownership or occupation of that land.

**Land no longer considered to be contaminated.**

18.(1) Subsection (2) applies where—

- (a) the Competent Authority has given notice under section 4 that land has been identified as contaminated land; and
- (b) the Competent Authority is satisfied that the land is no longer contaminated land.

(2) The Competent Authority shall give notice (a “non-contamination notice”) that the land is no longer contaminated land to—

- (a) the owner of the land;
- (b) any person in occupation of the land;
- (c) each person who is an appropriate person.

(3) Where a non-contamination notice is given in respect of land—

- (a) the notice mentioned in subsection (1) ceases to have effect and accordingly the land is no longer identified as contaminated land for the purposes of this Act;
- (b) no remediation notice may be served in respect of the land;
- (c) any remediation notice in force in respect of the land at the time the non-contamination notice is given ceases to have effect except to the extent that the non-contamination notice provides otherwise; and

(d) no proceedings may be begun against a person for an offence under section 9(1) in respect of such a remediation notice except in relation to a provision of the notice which continues to have effect by virtue of subsection (3)(c).

(4) A non-contamination notice shall not prevent the land, or any of the land, to which the notice relates being identified as contaminated land on a subsequent occasion.

(5) Where land, or any of the land, to which a non-contamination notice relates is subsequently identified as contaminated land, subsection (3)(b) above does not prevent a remediation notice being served in respect of the land.

(6) Where the Competent Authority gives a non-contamination notice, it shall keep in such form as it thinks fit a record of—

- (a) details of the land to which the notice relates;
- (b) its reasons for giving the notice; and
- (c) the date of—
  - (i) the notice mentioned in subsection (1);
  - (ii) service of the non-contamination notice.

(7) Subsection (4) of section 15 applies to records kept under subsection (6) above as it applies to registers maintained under that section; and for that purpose, the reference to entries is to be read as if it were a reference to information in such records.

(8) In this section, references to land in respect of which a non-contamination notice is given include references to part of that land.

### **Reports by the Competent Authority on the State of Contaminated Land.**

19. The Competent Authority may -

- (a) from time to time; or
- (b) if the Minister at any time so requests,

prepare and publish a report on the state of Contaminated Land in Gibraltar.



**PART VII  
MISCELLANEOUS**

**Supplementary Provisions.**

20.(1) Where it appears to the Competent Authority that two or more different sites, when considered together, are in such a condition, by reason of substances and/or conditions in, on or under the land, that-

- (a) significant harm is being caused or there is a significant possibility of such harm being caused; or
- (b) pollution of controlled waters is being, or is likely to be, caused,

this Act shall apply in relation to each of those sites, whether or not the condition of the land at any of them, when considered alone, appears to the Competent Authority to be such that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of controlled waters is being or is likely to be caused.

(2) A person acting in a relevant capacity:

- (a) shall not thereby be personally liable, to bear the whole or any part of the cost of doing any thing by way of remediation, unless that thing is to any extent referable to substances and/or conditions whose presence in, on or under the contaminated land in question is a result of any act done or omission made by that person which it was unreasonable for a person acting in that capacity to do or make; and
- (b) shall not thereby be guilty of an offence under or by virtue of section 9 unless the requirement which has not been complied with is a requirement to do some particular thing for which that person is personally liable to bear the whole or any part of the cost.

(3) In subsection (2) above, “person acting in a relevant capacity” means:

- (a) a person acting as an insolvency practitioner under the Insolvency Act 2011;
- (b) a person acting as the official receiver under the Insolvency Act 2011;
- (c) a person acting as a receiver or receiver and manager:
  - (i) under or by virtue of any enactment; or
  - (ii) by virtue of his appointment as such by an order of a court or by any other instrument.

(4) The Minister may by regulations make different provision for different cases or circumstances.

**Supplementary Provisions with Respect to Guidance by the Minister.**

21.(1) Any power of the Minister to issue guidance under this Act shall only be exercisable after consultation with the Competent Authority and such other bodies or persons as the Minister may consider it appropriate to consult in relation to the guidance in question.

(2) The Minister shall arrange for any guidance issued by him or her under this Act to be published in such manner as he considers appropriate.

(3) The Minister may issue guidance to the Competent Authority with respect to the exercise or performance of the Competent Authority's powers or duties under this Act; and in exercising or performing those powers or duties the Competent Authority shall have regard to any such guidance so issued.

(4) The duty imposed on the Competent Authority by subsection (1) above is without prejudice to any duty imposed by any other provision of this Act on the Competent Authority to act in accordance with guidance issued by the Minister.

**Radioactivity.**

22. Except as may be provided by regulations, nothing in this Act applies in relation to harm, or pollution of controlled waters, so far as attributable to any radioactivity possessed by any substance; but regulations may:

- (a) provide for prescribed provisions of this section to have effect with such modifications as the Minister considers appropriate for the purpose of dealing with harm, or pollution of controlled waters, so far as attributable to any radioactivity possessed by any substances; or
- (b) make such modifications of the Pollution Prevention and Control Regulations 2013 or any other Act or subsidiary legislation as the Minister considers appropriate.

**Regulations.**

23. The Minister may make regulations in respect of any matter and for any purpose relating to the application of this Act and for more effectually carrying into effect the objects of this Act.

## **EXPLANATORY MEMORANDUM**

This Act provides an improved system for the identification of land that is posing unacceptable risks to health or the environment and to secure remediation where such risks cannot be controlled by other means.

It introduces a regime for the regulation of contaminated land in Gibraltar and it aims to identify and remediate land affected by contamination that presents an unacceptable risk in its present state.

The Act aims to improve the transparency and focus of regulatory controls to ensure that a strategic approach is taken to land contamination problems, increase consistency in regulatory approaches, and to provide a more tailored regulatory mechanism, including liability rules, that is able to reflect the complexity and range of circumstances found on individual sites.

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