



# Environmental Protection Act 1990

## 1990 CHAPTER 43

### PART II

#### WASTE ON LAND

##### *Preliminary*

#### **29 Preliminary**

- (1) The following provisions have effect for the interpretation of this Part.
- (2) The “environment” consists of all, or any, of the following media, namely land, water and the air.
- (3) “Pollution of the environment” means pollution of the environment due to the release or escape (into any environmental medium) from—
  - (a) the land on which controlled waste is treated,
  - (b) the land on which controlled waste is kept,
  - (c) the land in or on which controlled waste is deposited,
  - (d) fixed plant by means of which controlled waste is treated, kept or disposed of, of substances or articles constituting or resulting from the waste and capable (by reason of the quantity or concentrations involved) of causing harm to man or any other living organisms supported by the environment.
- (4) Subsection (3) above applies in relation to mobile plant by means of which controlled waste is treated or disposed of as it applies to plant on land by means of which controlled waste is treated or disposed of.
- (5) For the purposes of subsections (3) and (4) above “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 offence to any of his senses or harm to his property; and “harmless” has a corresponding meaning.

- (6) The “disposal” of waste includes its disposal by way of deposit in or on land and, subject to subsection (7) below, waste is “treated” when it is subjected to any process, including making it re-usable or reclaiming substances from it and “recycle” (and cognate expressions) shall be construed accordingly.
- (7) Regulations made by the Secretary of State may prescribe activities as activities which constitute the treatment of waste for the purposes of this Part or any provision of this Part prescribed in the regulations.
- (8) “Land” includes land covered by waters where the land is above the low water mark of ordinary spring tides and references to land on which controlled waste is treated, kept or deposited are references to the surface of the land (including any structure set into the surface).
- (9) “Mobile plant” means, subject to subsection (10) below, plant which is designed to move or be moved whether on roads or other land.
- (10) Regulations made by the Secretary of State may prescribe descriptions of plant which are to be treated as being, or as not being, mobile plant for the purposes of this Part.
- (11) “Substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.

### **30 Authorities for purposes of this Part**

- (1) For the purposes of this Part the following authorities are, subject to section 31 below, waste regulation authorities, namely—
  - (a) for any non-metropolitan county in England, the county council;
  - (b) for Greater London, the authority constituted as the London Waste Regulation Authority;
  - (c) for the metropolitan county of Greater Manchester, the authority constituted as the Greater Manchester Waste Disposal Authority;
  - (d) for the metropolitan county of Merseyside, the authority constituted as the Merseyside Waste Disposal Authority;
  - (e) for any district in any other metropolitan county in England, the council of the district;
  - (f) for any district in Wales, the council of the district;
  - (g) in Scotland, an islands or district council;
 and the authorities mentioned in paragraph (c) and (d) above shall for the purposes of their functions as waste regulation authorities be known as the Greater Manchester Waste Regulation Authority and the Merseyside Waste Regulation Authority respectively.
- (2) For the purposes of this Part the following authorities are waste disposal authorities, namely—
  - (a) for any non-metropolitan county in England, the county council;
  - (b) in Greater London, the following—
    - (i) for the area of a London waste disposal authority, the authority constituted as the waste disposal authority for that area;
    - (ii) for the City of London, the Common Council;
    - (iii) for any other London borough, the council of the borough;
  - (c) in the metropolitan county of Greater Manchester, the following—

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- (i) for the metropolitan district of Wigan, the district council;
    - (ii) for all other areas in the county, the authority constituted as the Greater Manchester Waste Disposal Authority;
  - (d) for the metropolitan county of Merseyside, the authority constituted as the Merseyside Waste Disposal Authority;
  - (e) for any district in any other metropolitan county in England, the council of the district;
  - (f) for any district in Wales, the council of the district;
  - (g) in Scotland, an islands or district council.
- (3) For the purposes of this Part the following authorities are waste collection authorities—
- (a) for any district in England and Wales not within Greater London, the council of the district;
  - (b) in Greater London, the following—
    - (i) for any London borough, the council of the borough;
    - (ii) for the City of London, the Common Council;
    - (iii) for the Temples, the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple respectively;
  - (c) in Scotland, an islands or district council.
- (4) In this section references to particular authorities having been constituted as waste disposal or regulation authorities are references to their having been so constituted by the Waste Regulation and Disposal (Authorities) Order 1985 made by the Secretary of State under section 10 of the Local Government Act 1985 and the reference to London waste disposal authorities is a reference to the authorities named in Parts I, II, III, IV and V of Schedule 1 to that Order and this section has effect subject to any order made under the said section 10 establishing authorities to discharge any functions to which that section applies.
- (5) In this Part “waste disposal contractor” means a person who in the course of a business collects, keeps, treats or disposes of waste, being either—
- (a) a company formed for all or any of those purposes by a waste disposal authority whether in pursuance of section 32 below or otherwise; or
  - (b) either a company formed for all or any of those purposes by other persons or a partnership or an individual;
- and “company” has the same meaning as in the Companies Act 1985 and “formed”, in relation to a company formed by other persons, includes the alteration of the objects of the company.
- (6) In this Part, in its application to Scotland, “river purification authority” means a river purification authority within the meaning of the Rivers (Prevention of Pollution) (Scotland) Act 1951.
- (7) It shall be the duty of each authority which is both a waste regulation authority and a waste disposal authority—
- (a) to make administrative arrangements for keeping its functions as a waste regulation authority separate from its functions as a waste disposal authority; and
  - (b) to submit details of the arrangements which it has made to the Secretary of State.

- (8) The Secretary of State may give to an authority to which subsection (7) above applies directions as to the arrangements which it is to make for the purpose of keeping its functions as a waste regulation authority separate from its functions as a waste disposal authority; and it shall be the duty of the authority to give effect to the directions.

### **31 Power to create regional authorities for purposes of waste regulation**

- (1) If it appears to the Secretary of State in the case of any two or more of the authorities mentioned in section 30(1) above that those authorities (in this section referred to as “relevant authorities”) could with advantage make joint arrangements for the discharge of all or any of their functions as waste regulation authorities, he may by order establish a single authority (a “regional authority”) to discharge such of those functions as may be specified in the order for the area comprising the areas of those authorities.
- (2) A regional authority shall exercise the functions specified in the order establishing it on and after a day specified in the order and, so far as the exercise of those functions (if not withdrawn) and any subsequently-conferred functions is concerned, shall (in place of the relevant authorities) be the waste regulation authority for the purposes of this Part.
- (3) The members of a regional authority shall be appointed by the relevant authorities in accordance with the order establishing it and no person shall be such a member unless he is a member of one of the relevant authorities.
- (4) The Secretary of State may by order made with respect to any regional authority—
- (a) confer or impose on it further functions;
  - (b) withdraw from it any functions previously conferred or imposed; or
  - (c) dissolve it;
- and functions may be so conferred or imposed or withdrawn as respects the whole or any part of the authority’s area.
- (5) An order under this section may contain such supplementary and transitional provisions as the Secretary of State thinks necessary or expedient, including provision for the transfer of property, staff, rights and liabilities.

### **32 Transition to waste disposal companies etc**

- (1) In this section “existing disposal authority” means any authority (including any joint authority) constituted as a waste disposal authority for any area before the day appointed for this section to come into force.
- (2) The Secretary of State shall, subject to subsection (3) below, give directions to existing disposal authorities or, in the case of joint authorities, to the constituent authorities requiring them, before specified dates, to—
- (a) form or participate in forming waste disposal companies; and
  - (b) transfer to the companies so formed, by and in accordance with a scheme made in accordance with Schedule 2 to this Act, the relevant part of their undertakings;

and a waste disposal authority shall accordingly have power to form, and hold securities in, any company so established.

- (3) Subject to subsection (4) below, the Secretary of State shall not give any direction under subsection (2) above to an existing disposal authority, or to the constituent authorities of an existing disposal authority, as respects which or each of which he is satisfied that the authority—
- (a) has formed or participated in forming a waste disposal company and transferred to it the relevant part of its undertaking;
  - (b) has, in pursuance of arrangements made with other persons, ceased to carry on itself the relevant part of its undertaking;
  - (c) has made arrangements with other persons to cease to carry on itself the relevant part of its undertaking; or
  - (d) has, in pursuance of arrangements made with other persons, ceased to provide places at which and plant and equipment by means of which controlled waste can be disposed of or deposited for the purposes of disposal.
- (4) Subsection (3) above does not apply in a case falling within paragraph (a) unless it appears to the Secretary of State that—
- (a) the form of the company and the undertaking transferred are satisfactory; and
  - (b) the requirements of subsections (8) and (9) below are fulfilled;
- and “satisfactory” means satisfactory by reference to the corresponding arrangements to which he would give his approval for the purposes of a transfer scheme under Schedule 2 to this Act.
- (5) Where the Secretary of State is precluded from giving a direction under subsection (2) above to any authority by reason of his being satisfied as to the arrangements mentioned in subsection (3)(c) above, then, if those arrangements are not implemented within what appears to him to be a reasonable time, he may exercise his power to give directions under subsection (2) above as respects that authority.
- (6) Part I of Schedule 2 to this Act has effect for the purposes of this section and Part II for regulating the functions of waste disposal authorities and the activities of waste disposal contractors.
- (7) Subject to subsection (8) below, the activities of a company which a waste disposal authority has formed or participated in forming (whether in pursuance of subsection (2)(a) above or otherwise) may include activities which are beyond the powers of the authority to carry on itself, but, in the case of a company formed otherwise than in pursuance of subsection (2)(a) above, only if the Secretary of State has determined under subsection (4)(a) above that the form of the company and the undertaking transferred to it are satisfactory.
- (8) A waste disposal authority shall, for so long as it controls a company which it has formed or participated in forming (whether in pursuance of subsection (2)(a) above or otherwise), so exercise its control as to secure that the company does not engage in activities other than the following activities or any activities incidental or conducive to, or calculated to facilitate, them, that is to say, the disposal, keeping or treatment of waste and the collection of waste.
- (9) Subject to subsection (10) below, a waste disposal authority shall, for so long as it controls a company which it has formed or participated in forming (whether in pursuance of subsection (2)(a) above or otherwise), so exercise its control as to secure that, for the purposes of Part V of the Local Government and Housing Act 1989, the company is an arm’s length company.

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- (10) Subsection (9) above shall not apply in the case of a company which a waste disposal authority has formed or participated in forming in pursuance of subsection (2)(a) above until after the vesting date for that company.
- (11) In this section and Schedule 2 to this Act—  
“control” (and cognate expressions) is to be construed in accordance with section 68 or, as the case requires, section 73 of the Local Government and Housing Act 1989;  
“the relevant part” of the undertaking of an existing disposal authority is that part which relates to the disposal, keeping or treatment or the collection of waste;  
and in this section “securities” and “vesting date” have the same meaning as in Schedule 2.
- (12) This section shall not apply to Scotland.

*Prohibition on unauthorised or harmful depositing, treatment or disposal of waste*

### **33 Prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste**

- (1) Subject to subsection (2) and (3) below and, in relation to Scotland, to section 54 below, a person shall not—
- (a) deposit controlled waste, or knowingly cause or knowingly permit controlled waste to be deposited in or on any land unless a waste management licence authorising the deposit is in force and the deposit is in accordance with the licence;
  - (b) treat, keep or dispose of controlled waste, or knowingly cause or knowingly permit controlled waste to be treated, kept or disposed of—
    - (i) in or on any land, or
    - (ii) by means of any mobile plant,
except under and in accordance with a waste management licence;
  - (c) treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.
- (2) Subsection (1) above does not apply in relation to household waste from a domestic property which is treated, kept or disposed of within the curtilage of the dwelling by or with the permission of the occupier of the dwelling.
- (3) Subsection (1)(a), (b) or (c) above do not apply in cases prescribed in regulations made by the Secretary of State and the regulations may make different exceptions for different areas.
- (4) The Secretary of State, in exercising his power under subsection (3) above, shall have regard in particular to the expediency of excluding from the controls imposed by waste management licences—
- (a) any deposits which are small enough or of such a temporary nature that they may be so excluded;
  - (b) any means of treatment or disposal which are innocuous enough to be so excluded;

- (c) cases for which adequate controls are provided by another enactment than this section.
- (5) Where controlled waste is carried in and deposited from a motor vehicle, the person who controls or is in a position to control the use of the vehicle shall, for the purposes of subsection (1)(a) above, be treated as knowingly causing the waste to be deposited whether or not he gave any instructions for this to be done.
- (6) A person who contravenes subsection (1) above or any condition of a waste management licence commits an offence.
- (7) It shall be a defence for a person charged with an offence under this section to prove—
  - (a) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence; or
  - (b) that he acted under instructions from his employer and neither knew nor had reason to suppose that the acts done by him constituted a contravention of subsection (1) above; or
  - (c) that the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to the public and that, as soon as reasonably practicable after they were done, particulars of them were furnished to the waste regulation authority in whose area the treatment or disposal of the waste took place.
- (8) Except in a case falling within subsection (9) below, a person who commits an offence under this section shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding £20,000 or both; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (9) A person who commits an offence under this section in relation to special waste shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding £20,000 or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both.

*Duty of care etc. as respects waste*

**34 Duty of care etc. as respects waste**

- (1) Subject to subsection (2) below, it shall be the duty of any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste, to take all such measures applicable to him in that capacity as are reasonable in the circumstances—
  - (a) to prevent any contravention by any other person of section 33 above;
  - (b) to prevent the escape of the waste from his control or that of any other person; and
  - (c) on the transfer of the waste, to secure—
    - (i) that the transfer is only to an authorised person or to a person for authorised transport purposes; and

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- (ii) that there is transferred such a written description of the waste as will enable other persons to avoid a contravention of that section and to comply with the duty under this subsection as respects the escape of waste.
- (2) The duty imposed by subsection (1) above does not apply to an occupier of domestic property as respects the household waste produced on the property.
- (3) The following are authorised persons for the purpose of subsection (1)(c) above—
- (a) any authority which is a waste collection authority for the purposes of this Part;
  - (b) any person who is the holder of a waste management licence under section 35 below or of a disposal licence under section 5 of the Control of Pollution Act 1974;
  - (c) any person to whom section 33(1) above does not apply by virtue of regulations under subsection (3) of that section;
  - (d) any person registered as a carrier of controlled waste under section 2 of the Control of Pollution (Amendment) Act 1989;
  - (e) any person who is not required to be so registered by virtue of regulations under section 1(3) of that Act; and
  - (f) a waste disposal authority in Scotland.
- (4) The following are authorised transport purposes for the purposes of subsection (1)(c) above—
- (a) the transport of controlled waste within the same premises between different places in those premises;
  - (b) the transport to a place in Great Britain of controlled waste which has been brought from a country or territory outside Great Britain not having been landed in Great Britain until it arrives at that place; and
  - (c) the transport by air or sea of controlled waste from a place in Great Britain to a place outside Great Britain;
- and “transport” has the same meaning in this subsection as in the Control of Pollution (Amendment) Act 1989.
- (5) The Secretary of State may, by regulations, make provision imposing requirements on any person who is subject to the duty imposed by subsection (1) above as respects the making and retention of documents and the furnishing of documents or copies of documents.
- (6) Any person who fails to comply with the duty imposed by subsection (1) above or with any requirement imposed under subsection (5) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to a fine.
- (7) The Secretary of State shall, after consultation with such persons or bodies as appear to him representative of the interests concerned, prepare and issue a code of practice for the purpose of providing to persons practical guidance on how to discharge the duty imposed on them by subsection (1) above.
- (8) The Secretary of State may from time to time revise a code of practice issued under subsection (7) above by revoking, amending or adding to the provisions of the code.



- (9) The code of practice prepared in pursuance of subsection (7) above shall be laid before both Houses of Parliament.
- (10) A code of practice issued under subsection (7) above shall be admissible in evidence and if any provision of such a code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.
- (11) Different codes of practice may be prepared and issued under subsection (7) above for different areas.

### *Waste Management Licences*

#### **35 Waste management licences: general**

- (1) A waste management licence is a licence granted by a waste regulation authority authorising the treatment, keeping or disposal of any specified description of controlled waste in or on specified land or the treatment or disposal of any specified description of controlled waste by means of specified mobile plant.
- (2) A licence shall be granted to the following person, that is to say—
  - (a) in the case of a licence relating to the treatment, keeping or disposal of waste in or on land, to the person who is in occupation of the land; and
  - (b) in the case of a licence relating to the treatment or disposal of waste by means of mobile plant, to the person who operates the plant.
- (3) A licence shall be granted on such terms and subject to such conditions as appear to the waste regulation authority to be appropriate and the conditions may relate—
  - (a) to the activities which the licence authorises, and
  - (b) to the precautions to be taken and works to be carried out in connection with or in consequence of those activities;and accordingly requirements may be imposed in the licence which are to be complied with before the activities which the licence authorises have begun or after the activities which the licence authorises have ceased.
- (4) Conditions may require the holder of a licence to carry out works or do other things notwithstanding that he is not entitled to carry out the works or do the thing and any person whose consent would be required shall grant, or join in granting, the holder of the licence such rights in relation to the land as will enable the holder of the licence to comply with any requirements imposed on him by the licence.
- (5) Conditions may relate, where waste other than controlled waste is to be treated, kept or disposed of, to the treatment, keeping or disposal of that other waste.
- (6) The Secretary of State may, by regulations, make provision as to the conditions which are, or are not, to be included in a licence; and regulations under this subsection may make different provision for different circumstances.
- (7) The Secretary of State may, as respects any licence for which an application is made to a waste regulation authority, give to the authority directions as to the terms and conditions which are, or are not, to be included in the licence; and it shall be the duty of the authority to give effect to the directions.

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- (8) It shall be the duty of waste regulation authorities to have regard to any guidance issued to them by the Secretary of State with respect to the discharge of their functions in relation to licences.
- (9) A licence may not be surrendered by the holder except in accordance with section 39 below.
- (10) A licence is not transferable by the holder but the waste regulation authority may transfer it to another person under section 40 below.
- (11) A licence shall continue in force until it is revoked entirely by the waste regulation authority under section 38 below or it is surrendered or its surrender is accepted under section 39 below.
- (12) In this Part “licence” means a waste management licence and “site licence” and “mobile plant licence” mean, respectively, a licence authorising the treatment, keeping or disposal of waste in or on land and a licence authorising the treatment or disposal of waste by means of mobile plant.

### **36 Grant of licences**

- (1) An application for a licence shall be made—
  - (a) in the case of an application for a site licence, to the waste regulation authority in whose area the land is situated; and
  - (b) in the case of an application for a mobile plant licence, to the waste regulation authority in whose area the operator of the plant has his principal place of business;and shall be made in the form prescribed by the Secretary of State in regulations and accompanied by the prescribed fee payable under section 41 below.
- (2) A licence shall not be issued for a use of land for which planning permission is required in pursuance of the Town and Country Planning Act 1990 or the Town and Country Planning (Scotland) Act 1972 unless—
  - (a) such planning permission is in force in relation to that use of the land, or
  - (b) an established use certificate is in force under section 192 of the said Act of 1990 or section 90 of the said Act of 1972 in relation to that use of the land.
- (3) Subject to subsection (2) above and subsection (4) below, a waste regulation authority to which an application for a licence has been duly made shall not reject the application if it is satisfied that the applicant is a fit and proper person unless it is satisfied that its rejection is necessary for the purpose of preventing—
  - (a) pollution of the environment;
  - (b) harm to human health; or
  - (c) serious detriment to the amenities of the locality;but paragraph (c) above is inapplicable where planning permission is in force in relation to the use to which the land will be put under the licence.
- (4) Where the waste regulation authority proposes to issue a licence, the authority must, before it does so,—
  - (a) refer the proposal to the National Rivers Authority and the Health and Safety Executive; and

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- (b) consider any representations about the proposal which the Authority or the Executive makes to it during the allowed period.
- (5) If, following the referral of a proposal to the National Rivers Authority under subsection (4)(a) above, the Authority requests that the licence be not issued or disagrees about the conditions of the proposed licence either of them may refer the matter to the Secretary of State and the licence shall not be issued except in accordance with his decision.
- (6) Subsection (4) above shall not apply to Scotland, but in Scotland where a waste regulation authority (other than an islands council) proposes to issue a licence, the authority must, before it does so,—
- (a) refer the proposal to—
- (i) the river purification authority whose area includes any of the relevant land;
  - (ii) the Health and Safety Executive;
  - (iii) where the waste regulation authority is not also a district planning authority within the meaning of section 172 of the Local Government (Scotland) Act 1973, the general planning authority within the meaning of that section whose area includes any of the relevant land; and
- (b) consider any representations about the proposal which the river purification authority, the Executive or the general planning authority makes to it during the allowed period,
- and if the river purification authority requests that the licence be not issued or disagrees with the waste regulation authority about the conditions of the proposed licence either of them may refer the matter to the Secretary of State and the licence shall not be issued except in accordance with his decision.
- (7) Where any part of the land to be used is land which has been notified under section 28(1) of the Wildlife and Countryside Act 1981 (protection for certain areas) and the waste regulation authority proposes to issue a licence, the authority must, before it does so—
- (a) refer the proposal to the appropriate nature conservation body; and
- (b) consider any representations about the proposal which the body makes to it during the allowed period;
- and in this section any reference to the appropriate nature conservation body is a reference to the Nature Conservancy Council for England, the Nature Conservancy Council for Scotland or the Countryside Council for Wales, according as the land is situated in England, Scotland or Wales.
- (8) Until the date appointed under section 131(3) below any reference in subsection (7) above to the appropriate nature conservation body is a reference to the Nature Conservancy Council.
- (9) If within the period of four months beginning with the date on which a waste regulation authority received an application for the grant of a licence, or within such longer period as the authority and the applicant may at any time agree in writing, the authority has neither granted the licence in consequence of the application nor given notice to the applicant that the authority has rejected the application, the authority shall be deemed to have rejected the application.

- (10) The period allowed to the National Rivers Authority, the Health and Safety Executive, the appropriate nature conservancy body, a river purification authority or general planning authority for the making of representations under subsection (4), (6) or (7) above about a proposal is the period of twenty-one days beginning with that on which the proposal is received by the authority or such longer period as the waste regulation authority and the Authority, the Executive, the body, the river purification authority or the general planning authority, as the case may be, agree in writing.

### **37 Variation of licences**

- (1) While a licence issued by a waste regulation authority is in force, the authority may, subject to regulations under section 35(6) above and to subsection (3) below,—
- (a) on its own initiative, modify the conditions of the licence to any extent which, in the opinion of the authority, is desirable and is unlikely to require unreasonable expense on the part of the holder; and
  - (b) on the application of the licence holder accompanied by the prescribed fee payable under section 41 below, modify the conditions of his licence to the extent requested in the application.
- (2) While a licence issued by a waste regulation authority is in force, the authority shall, except where it revokes the licence entirely under section 38 below, modify the conditions of the licence—
- (a) to the extent which in the opinion of the authority is required for the purpose of ensuring that the activities authorised by the licence do not cause pollution of the environment or harm to human health or become seriously detrimental to the amenities of the locality affected by the activities; and
  - (b) to the extent required by any regulations in force under section 35(6) above.
- (3) The Secretary of State may, as respects any licence issued by a waste regulation authority, give to the authority directions as to the modifications which are to be made in the conditions of the licence under subsection (1)(a) or (2)(a) above; and it shall be the duty of the authority to give effect to the directions.
- (4) Any modification of a licence under this section shall be effected by notice served on the holder of the licence and the notice shall state the time at which the modification is to take effect.
- (5) Section 36(4), (5), (6), (7), (8) and (10) above shall with the necessary modifications apply to a proposal by a waste regulation authority to modify a licence under subsection (1) or (2)(a) above as they apply to a proposal to issue a licence, except that—
- (a) the authority may postpone the reference so far as the authority considers that by reason of an emergency it is appropriate to do so; and
  - (b) the authority need not consider any representations as respects a modification which, in the opinion of the waste regulation authority, will not affect any authority mentioned in the subsections so applied.
- (6) If within the period of two months beginning with the date on which a waste regulation authority received an application by the holder of a licence for a modification of it, or within such longer period as the authority and the applicant may at any time agree in writing, the authority has neither granted a modification of the licence in consequence of the application nor given notice to the applicant that the authority has rejected the application, the authority shall be deemed to have rejected the application.

### **38 Revocation and suspension of licences**

(1) Where a licence granted by a waste regulation authority is in force and it appears to the authority—

- (a) that the holder of the licence has ceased to be a fit and proper person by reason of his having been convicted of a relevant offence; or
- (b) that the continuation of the activities authorised by the licence would cause pollution of the environment or harm to human health or would be seriously detrimental to the amenities of the locality affected; and
- (c) that the pollution, harm or detriment cannot be avoided by modifying the conditions of the licence;

the authority may exercise, as it thinks fit, either of the powers conferred by subsections (3) and (4) below.

(2) Where a licence granted by a waste regulation authority is in force and it appears to the authority that the holder of the licence has ceased to be a fit and proper person by reason of the management of the activities authorised by the licence having ceased to be in the hands of a technically competent person, the authority may exercise the power conferred by subsection (3) below.

(3) The authority may, under this subsection, revoke the licence so far as it authorises the carrying on of the activities specified in the licence or such of them as the authority specifies in revoking the licence.

(4) The authority may, under this subsection, revoke the licence entirely.

(5) A licence revoked under subsection (3) above shall cease to have effect to authorise the carrying on of the activities specified in the licence or, as the case may be, the activities specified by the authority in revoking the licence but shall not affect the requirements imposed by the licence which the authority, in revoking the licence, specifies as requirements which are to continue to bind the licence holder.

(6) Where a licence granted by a waste regulation authority is in force and it appears to the authority—

- (a) that the holder of the licence has ceased to be a fit and proper person by reason of the management of the activities authorised by the licence having ceased to be in the hands of a technically competent person; or
- (b) that serious pollution of the environment or serious harm to human health has resulted from, or is about to be caused by, the activities to which the licence relates or the happening or threatened happening of an event affecting those activities; and
- (c) that the continuing to carry on those activities, or any of those activities, in the circumstances will continue or, as the case may be, cause serious pollution of the environment or serious harm to human health;

the authority may suspend the licence so far as it authorises the carrying on of the activities specified in the licence or such of them as the authority specifies in suspending the licence.

(7) The Secretary of State may, if he thinks fit in relation to a licence granted by a waste regulation authority, give to the authority directions as to whether and in what manner the authority should exercise its powers under this section; and it shall be the duty of the authority to give effect to the directions.

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- (8) A licence suspended under subsection (6) above shall, while the suspension has effect, be of no effect to authorise the carrying on of the activities specified in the licence or, as the case may be, the activities specified by the authority in suspending the licence.
- (9) Where a licence is suspended under subsection (6) above, the authority, in suspending it or at any time while it is suspended, may require the holder of the licence to take such measures to deal with or avert the pollution or harm as the authority considers necessary.
- (10) A person who, without reasonable excuse, fails to comply with any requirement imposed under subsection (9) above otherwise than in relation to special waste shall be liable—
- (a) on summary conviction, to a fine of an amount not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (11) A person who, without reasonable excuse, fails to comply with any requirement imposed under subsection (9) above in relation to special waste shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both.
- (12) Any revocation or suspension of a licence or requirement imposed during the suspension of a licence under this section shall be effected by notice served on the holder of the licence and the notice shall state the time at which the revocation or suspension or the requirement is to take effect and, in the case of suspension, the period at the end of which, or the event on the occurrence of which, the suspension is to cease.

### **39 Surrender of licences**

- (1) A licence may be surrendered by its holder to the authority which granted it but, in the case of a site licence, only if the authority accepts the surrender.
- (2) The following provisions apply to the surrender and acceptance of the surrender of a site licence.
- (3) The holder of a site licence who desires to surrender it shall make an application for that purpose to the authority in such form, giving such information and accompanied by such evidence as the Secretary of State prescribes by regulations and accompanied by the prescribed fee payable under section 41 below.
- (4) An authority which receives an application for the surrender of a site licence—
- (a) shall inspect the land to which the licence relates, and
  - (b) may require the holder of the licence to furnish to it further information or further evidence.
- (5) The authority shall determine whether it is likely or unlikely that the condition of the land, so far as that condition is the result of the use of the land for the treatment, keeping or disposal of waste (whether or not in pursuance of the licence), will cause pollution of the environment or harm to human health.

- (6) If the authority is satisfied that the condition of the land is unlikely to cause the pollution or harm mentioned in subsection (5) above, the authority shall, subject to subsection (7) below, accept the surrender of the licence; but otherwise the authority shall refuse to accept it.
- (7) Where the authority proposes to accept the surrender of a site licence, the authority must, before it does so,—
- (a) refer the proposal to the National Rivers Authority; and
  - (b) consider any representations about the proposal which the Authority makes to it during the allowed period;
- and if the Authority requests that the surrender of the licence be not accepted either of them may refer the matter to the Secretary of State and the surrender shall not be accepted except in accordance with his decision.
- (8) Subsection (7) above shall not apply to Scotland, but in Scotland where the authority (not being an islands council) proposes to accept the surrender of a licence, the authority must, before it does so,—
- (a) refer the proposal to—
    - (i) the river purification authority whose area includes any of the relevant land;
    - (ii) where the waste regulation authority is not also a district planning authority within the meaning of section 172 of the Local Government (Scotland) Act 1973, the general planning authority within the meaning of that section whose area includes any of the relevant land; and
  - (b) consider any representations about the proposal which the river purification authority or the general planning authority makes to it during the allowed period,
- and if the river purification authority requests that the surrender of the licence be not accepted by the waste regulation authority either of them may refer the matter to the Secretary of State and the surrender shall not be accepted except in accordance with his decision.
- (9) Where the surrender of a licence is accepted under this section the authority shall issue to the applicant, with the notice of its determination, a certificate (a “certificate of completion”) stating that it is satisfied as mentioned in subsection (6) above and, on the issue of that certificate, the licence shall cease to have effect.
- (10) If within the period of three months beginning with the date on which an authority receives an application to surrender a licence, or within such longer period as the authority and the applicant may at any time agree in writing, the authority has neither issued a certificate of completion nor given notice to the applicant that the authority has rejected the application, the authority shall be deemed to have rejected the application.
- (11) Section 36(10) above applies for the interpretation of the “allowed period” in subsections (7) and (8) above.

#### **40 Transfer of licences**

- (1) A licence may be transferred to another person in accordance with subsections (2) to (6) below and may be so transferred whether or not the licence is partly revoked or suspended under any provision of this Part.

- (2) Where the holder of a licence desires that the licence be transferred to another person (“the proposed transferee”) the licence holder and the proposed transferee shall jointly make an application to the waste regulation authority which granted the licence for a transfer of it.
- (3) An application under subsection (2) above for the transfer of a licence shall be made in such form and shall include such information as the Secretary of State prescribes by regulations and shall be accompanied by the prescribed fee payable under section 41 below and the licence.
- (4) If, on such an application, the authority is satisfied that the proposed transferee is a fit and proper person the authority shall effect a transfer of the licence to the proposed transferee.
- (5) The authority shall effect a transfer of a licence under the foregoing provisions of this section by causing the licence to be endorsed with the name and other particulars of the proposed transferee as the holder of the licence from such date specified in the endorsement as may be agreed with the applicants.
- (6) If within the period of two months beginning with the date on which the authority receives an application for the transfer of a licence, or within such longer period as the authority and the applicants may at any time agree in writing, the authority has neither effected a transfer of the licence nor given notice to the applicants that the authority has rejected the application, the authority shall be deemed to have rejected the application.

#### **41 Fees and charges for licences**

- (1) There shall be charged by and paid to waste regulation authorities, in respect of applications for licences or relevant applications in respect of licences, and in respect of the holding of licences, such fees and charges as may be provided for from time to time by a scheme under subsection (2) below.
- (2) The Secretary of State may, with the approval of the Treasury, make, and from time to time revise, a scheme prescribing—
  - (a) fees payable in respect of applications for licences or relevant applications in respect of licences, and
  - (b) charges payable in respect of the subsistence of licences,to waste regulation authorities by persons making applications for or in respect of licences, or holding licences, as the case may be.
- (3) The applications in respect of licences which are relevant for the purposes of this section are—
  - (a) applications for a modification of the conditions of a licence;
  - (b) applications to surrender a licence; and
  - (c) applications for the transfer of a licence.
- (4) The Secretary of State shall, on making or revising a scheme under subsection (2) above, lay a copy of the scheme or of the modifications made in the scheme before each House of Parliament.
- (5) A waste regulation authority in England and Wales shall pay to the National Rivers Authority, and a waste regulation authority in Scotland shall pay to any river purification authority which it consults in relation to a licence, out of any fee or charge which—



- (a) is payable to the authority under a scheme under subsection (2) above; and
  - (b) is of a description prescribed in such a scheme for the purposes of this subsection,
- such amount as may be prescribed in the scheme in relation to fees or charges of that description.
- (6) A scheme under subsection (2) above may in particular—
- (a) provide for different fees or charges to be payable according to the description of activities authorised by licences and the descriptions and amounts of controlled waste to which those activities relate;
  - (b) provide for the times at which and manner in which payments of fees or charges are to be made; and
  - (c) make such incidental, supplementary and transitional provision as appears to the Secretary of State to be appropriate;
- and different schemes may be made and revised for different areas.
- (7) If it appears to the waste regulation authority that the holder of a licence has failed to pay a charge due in consideration of the subsistence of the licence, the authority may, by notice in writing served on the holder, revoke the licence so far as it authorises the carrying on of the activities specified in the licence.
- (8) Section 38(5) above applies for the purposes of subsection (7) above as it applies for the purposes of subsection (3) of that section.

## **42 Supervision of licensed activities**

- (1) While a licence is in force it shall be the duty of the waste regulation authority which granted the licence to take the steps needed—
- (a) for the purpose of ensuring that the activities authorised by the licence do not cause pollution of the environment or harm to human health or become seriously detrimental to the amenities of the locality affected by the activities; and
  - (b) for the purpose of ensuring that the conditions of the licence are complied with.
- (2) Where, at any time during the subsistence of a licence, it appears to the waste regulation authority that pollution of water is likely to be caused by the activities to which the licence relates, it shall be the duty of the authority to consult the National Rivers Authority or, in Scotland, the river purification authority whose area includes any of the relevant land as to the discharge by the authority of the duty imposed on it by subsection (1) above.
- (3) For the purpose of performing the duty imposed on it by subsection (1) above, any officer of the authority authorised in writing for the purpose by the authority may, if it appears to him that by reason of an emergency it is necessary to do so, carry out work on the land or in relation to plant or equipment on the land to which the licence relates or, as the case may be, in relation to the mobile plant to which the licence relates.
- (4) Where a waste regulation authority incurs any expenditure by virtue of subsection (3) above, the authority may recover the amount of the expenditure from the holder of the licence or, if the licence has been surrendered, from the former holder of it, except where the holder or former holder of the licence shows that there was no emergency requiring any work or except such of the expenditure as he shows was unnecessary.

- (5) Where it appears to a waste regulation authority that a condition of a licence granted by it is not being complied with, then, without prejudice to any proceedings under section 33(6) above, the authority may—
- (a) require the licence holder to comply with the condition within a specified time; and
  - (b) if in the opinion of the authority the licence holder has not complied with the condition within that time, exercise any of the powers specified in subsection (6) below.
- (6) The powers which become exercisable in the event mentioned in subsection (5)(b) above are the following—
- (a) to revoke the licence so far as it authorises the carrying on of the activities specified in the licence or such of them as the authority specifies in revoking the licence;
  - (b) to revoke the licence entirely; and
  - (c) to suspend the licence so far as it authorises the carrying on of the activities specified in the licence or, as the case may be, the activities specified by the authority in suspending the licence.
- (7) Where a licence is revoked or suspended under subsection (6) above, subsections (5) or (8) and (9), (10) and (12) of section 38 above shall apply with the necessary modifications as they respectively apply to revocations or suspensions of licences under that section; and the power to make a requirement under subsection (5)(a) above shall be exercisable by notice served on the holder of the licence (and “specified” shall be construed accordingly).
- (8) The Secretary of State may, if he thinks fit in relation to a licence granted by a waste regulation authority, give to the authority directions as to whether and in what manner the authority should exercise its powers under this section; and it shall be the duty of the authority to give effect to the directions.

#### **43 Appeals to Secretary of State from decisions with respect to licences**

- (1) Where, except in pursuance of a direction given by the Secretary of State,—
- (a) an application for a licence or a modification of the conditions of a licence is rejected;
  - (b) a licence is granted subject to conditions;
  - (c) the conditions of a licence are modified;
  - (d) a licence is suspended;
  - (e) a licence is revoked under section 38 or 42 above;
  - (f) an application to surrender a licence is rejected; or
  - (g) an application for the transfer of a licence is rejected;
- then, except in the case of an application for a transfer, the applicant for the licence or, as the case may be, the holder or former holder of it may appeal from the decision to the Secretary of State and, in the case of an application for a transfer, the proposed transferee may do so.
- (2) Where an appeal is made to the Secretary of State—
- (a) the Secretary of State may refer any matter involved in the appeal to a person appointed by him for the purpose;

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- (b) the Secretary of State may, instead of determining the appeal himself, direct that the appeal or any matter involved in it shall be determined by a person appointed by him for the purpose (who shall have the same powers as the Secretary of State);
  - (c) if a party to the appeal so requests, or the Secretary of State so decides, the appeal shall be 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).
- (3) Where, on such an appeal, the Secretary of State or other person determining the appeal determines that the decision of the authority shall be altered it shall be the duty of the authority to give effect to the determination.
- (4) While an appeal is pending in a case falling within subsection (1)(c) or (e) above, the decision in question shall, subject to subsection (6) below, be ineffective; and if the appeal is dismissed or withdrawn the decision shall become effective from the end of the day on which the appeal is dismissed or withdrawn.
- (5) Where an appeal is made in a case falling within subsection (1)(d) above, the bringing of the appeal shall have no effect on the decision in question.
- (6) Subsection (4) above shall not apply to a decision modifying the conditions of a licence under section 37 above or revoking a licence under section 38 or 42 above in the case of which the notice effecting the modification or revocation includes a statement that in the opinion of the authority it is necessary for the purpose of preventing or, where that is not practicable, minimising pollution of the environment or harm to human health that that subsection should not apply.
- (7) Where the decision under appeal is one falling within subsection (6) above or is a decision to suspend a licence, if, on the application of the holder or former holder of the licence, the Secretary of State or other person determining the appeal determines that the authority acted unreasonably in excluding the application of subsection (4) above or, as the case may be, in suspending the licence, then—
  - (a) if the appeal is still pending at the end of the day on which the determination is made, subsection (4) above shall apply to the decision from the end of that day; and
  - (b) the holder or former holder of the licence shall be entitled to recover compensation from the authority in respect of any loss suffered by him in consequence of the exclusion of the application of that subsection or the suspension of the licence;and any dispute as to a person's entitlement to such compensation or as to the amount of it shall be determined by arbitration or in Scotland by a single arbiter appointed, in default of agreement between the parties concerned, by the Secretary of State on the application of any of the parties.
- (8) Provision may be made by the Secretary of State by regulations with respect to appeals under this section and in particular—
  - (a) as to the period within which and the manner in which appeals are to be brought; and
  - (b) as to the manner in which appeals are to be considered.

#### 44 Offences of making false statements

A person who, in an application for a licence, for a modification of the conditions of a licence or for the surrender or transfer of a licence, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both.

#### *Collection, disposal or treatment of controlled waste*

#### 45 Collection of controlled waste

- (1) It shall be the duty of each waste collection authority—
  - (a) to arrange for the collection of household waste in its area except waste—
    - (i) which is situated at a place which in the opinion of the authority is so isolated or inaccessible that the cost of collecting it would be unreasonably high, and
    - (ii) as to which the authority is satisfied that adequate arrangements for its disposal have been or can reasonably be expected to be made by a person who controls the waste; and
  - (b) if requested by the occupier of premises in its area to collect any commercial waste from the premises, to arrange for the collection of the waste.
- (2) Each waste collection authority may, if requested by the occupier of premises in its area to collect any industrial waste from the premises, arrange for the collection of the waste; but a collection authority in England and Wales shall not exercise the power except with the consent of the waste disposal authority whose area includes the area of the waste collection authority.
- (3) No charge shall be made for the collection of household waste except in cases prescribed in regulations made by the Secretary of State; and in any of those cases—
  - (a) the duty to arrange for the collection of the waste shall not arise until a person who controls the waste requests the authority to collect it; and
  - (b) the authority may recover a reasonable charge for the collection of the waste from the person who made the request.
- (4) A person at whose request waste other than household waste is collected under this section shall be liable to pay a reasonable charge for the collection and disposal of the waste to the authority which arranged for its collection; and it shall be the duty of that authority to recover the charge unless in the case of a charge in respect of commercial waste the authority considers it inappropriate to do so.
- (5) It shall be the duty of each waste collection authority—
  - (a) to make such arrangements for the emptying, without charge, of privies serving one or more private dwellings in its area as the authority considers appropriate;
  - (b) if requested by the person who controls a cesspool serving only one or more private dwellings in its area to empty the cesspool, to remove such of the contents of the cesspool as the authority considers appropriate on payment, if the authority so requires, of a reasonable charge.

- (6) A waste collection authority may, if requested by the person who controls any other privy or cesspool in its area to empty the privy or cesspool, empty the privy or, as the case may be, remove from the cesspool such of its contents as the authority consider appropriate on payment, if the authority so requires, of a reasonable charge.
- (7) A waste collection authority may—
- (a) construct, lay and maintain, within or outside its area, pipes and associated works for the purpose of collecting waste;
  - (b) contribute towards the cost incurred by another person in providing or maintaining pipes or associated works connecting with pipes provided by the authority under paragraph (a) above.
- (8) A waste collection authority may contribute towards the cost incurred by another person in providing or maintaining plant or equipment intended to deal with commercial or industrial waste before it is collected under arrangements made by the authority under subsection (1)(b) or (2) above.
- (9) Subject to section 48(1) below, anything collected under arrangements made by a waste collection authority under this section shall belong to the authority and may be dealt with accordingly.
- (10) In relation to Scotland, sections 2, 3, 4 and 41 of the Sewerage (Scotland) Act 1968 (maintenance of public sewers etc.) shall apply in relation to pipes and associated works provided or to be provided under subsection (7)(a) above as those sections apply in relation to public sewers but as if—
- (a) the said section 2 conferred a power and did not impose a duty on a local authority to do the things mentioned in that section;
  - (b) in the said section 4, the words from “but before any person” to the end were omitted,
- and the Pipe-lines Act 1962 shall not apply to pipes and associated works provided or to be provided under the said subsection (7)(a).
- (11) In the application of this section to Scotland, subsection (5)(b) and the references to a cesspool occurring in subsection (6) shall be omitted.
- (12) In this section “privy” means a latrine which has a moveable receptacle and “cesspool” includes a settlement tank or other tank for the reception or disposal of foul matter from buildings.

#### **46 Receptacles for household waste**

- (1) Where a waste collection authority has a duty by virtue of section 45(1)(a) above to arrange for the collection of household waste from any premises, the authority may, by notice served on him, require the occupier to place the waste for collection in receptacles of a kind and number specified.
- (2) The kind and number of the receptacles required under subsection (1) above to be used shall be such only as are reasonable but, subject to that, separate receptacles or compartments of receptacles may be required to be used for waste which is to be recycled and waste which is not.
- (3) In making requirements under subsection (1) above the authority may, as respects the provision of the receptacles—
- (a) determine that they be provided by the authority free of charge;

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- (b) propose that they be provided, if the occupier agrees, by the authority on payment by him of such a single payment or such periodical payments as he agrees with the authority;
  - (c) require the occupier to provide them if he does not enter into an agreement under paragraph (b) above within a specified period; or
  - (d) require the occupier to provide them.
- (4) In making requirements as respects receptacles under subsection (1) above, the authority may, by the notice under that subsection, make provision with respect to—
  - (a) the size, construction and maintenance of the receptacles;
  - (b) the placing of the receptacles for the purpose of facilitating the emptying of them, and access to the receptacles for that purpose;
  - (c) the placing of the receptacles for that purpose on highways or, in Scotland, roads;
  - (d) the substances or articles which may or may not be put into the receptacles or compartments of receptacles of any description and the precautions to be taken where particular substances or articles are put into them; and
  - (e) the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptacles.
- (5) No requirement shall be made under subsection (1) above for receptacles to be placed on a highway or, as the case may be, road, unless—
  - (a) the relevant highway authority or roads authority have given their consent to their being so placed; and
  - (b) arrangements have been made as to the liability for any damage arising out of their being so placed.
- (6) A person who fails, without reasonable excuse, to comply with any requirements imposed under subsection (1), (3)(c) or (d) or (4) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) Where an occupier is required under subsection (1) above to provide any receptacles he may, within the period allowed by subsection (8) below, appeal to a magistrates' court or, in Scotland, to the sheriff by way of summary application against any requirement imposed under subsection (1), subsection (3)(c) or (d) or (4) above on the ground that—
  - (a) the requirement is unreasonable; or
  - (b) the receptacles in which household waste is placed for collection from the premises are adequate.
- (8) The period allowed to the occupier of premises for appealing against such a requirement is the period of twenty-one days beginning—
  - (a) in a case where a period was specified under subsection (3)(c) above, with the end of that period; and
  - (b) where no period was specified, with the day on which the notice making the requirement was served on him.
- (9) Where an appeal against a requirement is brought under subsection (7) above—
  - (a) the requirement shall be of no effect pending the determination of the appeal;
  - (b) the court shall either quash or modify the requirement or dismiss the appeal; and

- (c) no question as to whether the requirement is, in any respect, unreasonable shall be entertained in any proceedings for an offence under subsection (6) above.
- (10) In this section—  
“receptacle” includes a holder for receptacles; and  
“specified” means specified in a notice under subsection (1) above.

#### **47 Receptacles for commercial or industrial waste**

- (1) A waste collection authority may, at the request of any person, supply him with receptacles for commercial or industrial waste which he has requested the authority to arrange to collect and shall make a reasonable charge for any receptacle supplied unless in the case of a receptacle for commercial waste the authority considers it appropriate not to make a charge.
- (2) If it appears to a waste collection authority that there is likely to be situated, on any premises in its area, commercial waste or industrial waste of a kind which, if the waste is not stored in receptacles of a particular kind, is likely to cause a nuisance or to be detrimental to the amenities of the locality, the authority may, by notice served on him, require the occupier of the premises to provide at the premises receptacles for the storage of such waste of a kind and number specified.
- (3) The kind and number of the receptacles required under subsection (2) above to be used shall be such only as are reasonable.
- (4) In making requirements as respects receptacles under subsection (2) above, the authority may, by the notice under that subsection, make provision with respect to—  
(a) the size, construction and maintenance of the receptacles;  
(b) the placing of the receptacles for the purpose of facilitating the emptying of them, and access to the receptacles for that purpose;  
(c) the placing of the receptacles for that purpose on highways or, in Scotland, roads;  
(d) the substances or articles which may or may not be put into the receptacles and the precautions to be taken where particular substances or articles are put into them; and  
(e) the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptacles.
- (5) No requirement shall be made under subsection (2) above for receptacles to be placed on a highway or, as the case may be, road unless—  
(a) the relevant highway authority or roads authority have given their consent to their being so placed; and  
(b) arrangements have been made as to the liability for any damage arising out of their being so placed.
- (6) A person who fails, without reasonable excuse, to comply with any requirements imposed under subsection (2) or (4) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) Where an occupier is required under subsection (2) above to provide any receptacles he may, within the period allowed by subsection (8) below, appeal to a magistrates' court or, in Scotland, to the sheriff by way of summary application against any requirement imposed under subsection (2) or (4) above on the ground that—

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- (a) the requirement is unreasonable; or
  - (b) the waste is not likely to cause a nuisance or be detrimental to the amenities of the locality.
- (8) The period allowed to the occupier of premises for appealing against such a requirement is the period of twenty-one days beginning with the day on which the notice making the requirement was served on him.
- (9) Where an appeal against a requirement is brought under subsection (7) above—
- (a) the requirement shall be of no effect pending the determination of the appeal;
  - (b) the court shall either quash or modify the requirement or dismiss the appeal; and
  - (c) no question as to whether the requirement is, in any respect, unreasonable shall be entertained in any proceedings for an offence under subsection (6) above.
- (10) In this section—
- “receptacle” includes a holder for receptacles; and
  - “specified” means specified in a notice under subsection (2) above.

#### **48 Duties of waste collection authorities as respects disposal of waste collected**

- (1) Subject to subsections (2) and (6) below, it shall be the duty of each waste collection authority to deliver for disposal all waste which is collected by the authority under section 45 above to such places as the waste disposal authority for its area directs.
- (2) The duty imposed on a waste collection authority by subsection (1) above does not, except in cases falling within subsection (4) below, apply as respects household waste or commercial waste for which the authority decides to make arrangements for recycling the waste; and the authority shall have regard, in deciding what recycling arrangements to make, to its waste recycling plan under section 49 below.
- (3) A waste collection authority which decides to make arrangements under subsection (2) above for recycling waste collected by it shall, as soon as reasonably practicable, by notice in writing, inform the waste disposal authority for the area which includes its area of the arrangements which it proposes to make.
- (4) Where a waste disposal authority has made with a waste disposal contractor arrangements, as respects household waste or commercial waste in its area or any part of its area, for the contractor to recycle the waste, or any of it, the waste disposal authority may, by notice served on the waste collection authority, object to the waste collection authority having the waste recycled; and the objection may be made as respects all the waste, part only of the waste or specified descriptions of the waste.
- (5) Where an objection is made under subsection (4) above, subsection (2) above shall not be available to the waste collection authority to the extent objected to.
- (6) A waste collection authority may, subject to subsection (7) below, provide plant and equipment for the sorting and baling of waste retained by the authority under subsection (2) above.
- (7) Subsection (6) above does not apply to an authority which is also a waste disposal authority; but, in such a case, the authority may make arrangements with a waste disposal contractor for the contractor to deal with the waste as mentioned in that subsection.



- (8) A waste collection authority may permit another person to use facilities provided by the authority under subsection (6) above and may provide for the use of another person any such facilities as the authority has power to provide under that subsection; and—
- (a) subject to paragraph (b) below, it shall be the duty of the authority to make a reasonable charge in respect of the use by another person of the facilities, unless the authority considers it appropriate not to make a charge;
  - (b) no charge shall be made under this subsection in respect of household waste; and
  - (c) anything delivered to the authority by another person in the course of using the facilities shall belong to the authority and may be dealt with accordingly.
- (9) This section shall not apply to Scotland.

#### **49 Waste recycling plans by collection authorities**

- (1) It shall be the duty of each waste collection authority, as respects household and commercial waste arising in its area—
- (a) to carry out an investigation with a view to deciding what arrangements are appropriate for dealing with the waste by separating, baling or otherwise packaging it for the purpose of recycling it;
  - (b) to decide what arrangements are in the opinion of the authority needed for that purpose;
  - (c) to prepare a statement (“the plan”) of the arrangements made and proposed to be made by the authority and other persons for dealing with waste in those ways;
  - (d) to carry out from time to time further investigations with a view to deciding what changes in the plan are needed; and
  - (e) to make any modification of the plan which the authority thinks appropriate in consequence of any such further investigation.
- (2) In considering any arrangements or modification for the purposes of subsection (1) (c) or (e) above it shall be the duty of the authority to have regard to the effect which the arrangements or modification would be likely to have on the amenities of any locality and the likely cost or saving to the authority attributable to the arrangements or modification.
- (3) It shall be the duty of a waste collection authority to include in the plan information as to—
- (a) the kinds and quantities of controlled waste which the authority expects to collect during the period specified in the plan;
  - (b) the kinds and quantities of controlled waste which the authority expects to purchase during that period;
  - (c) the kinds and quantities of controlled waste which the authority expects to deal with in the ways specified in subsection (1)(a) above during that period;
  - (d) the arrangements which the authority expects to make during that period with waste disposal contractors or, in Scotland, waste disposal authorities and waste disposal contractors for them to deal with waste in those ways;
  - (e) the plant and equipment which the authority expects to provide under section 48(6) above or 53 below; and
  - (f) the estimated costs or savings attributable to the methods of dealing with the waste in the ways provided for in the plan.

- (4) It shall be the duty of a waste collection authority, before finally determining the content of the plan or a modification, to send a copy of it in draft to the Secretary of State for the purpose of enabling him to determine whether subsection (3) above has been complied with; and, if the Secretary of State gives any directions to the authority for securing compliance with that subsection, it shall be the duty of the authority to comply with the direction.
- (5) When a waste collection authority has determined the content of the plan or a modification it shall be the duty of the authority—
  - (a) to take such steps as in the opinion of the authority will give adequate publicity in its area to the plan or modification; and
  - (b) to send to the waste disposal authority and waste regulation authority for the area which includes its area a copy of the plan or, as the case may be, particulars of the modification.
- (6) It shall be the duty of each waste collection authority to keep a copy of the plan and particulars of any modifications to it available at all reasonable times at its principal offices for inspection by members of the public free of charge and to supply a copy of the plan and of the particulars of any modifications to it to any person who requests one, on payment by that person of such reasonable charge as the authority requires.
- (7) The Secretary of State may give to any waste collection authority directions as to the time by which the authority is to perform any duty imposed by this section specified in the direction; and it shall be the duty of the authority to comply with the direction.

## **50 Waste disposal plans of waste regulation authorities**

- (1) It shall be the duty of each waste regulation authority—
  - (a) to carry out an investigation with a view to deciding what arrangements are needed for the purpose of treating or disposing of controlled waste which is situated in its area and controlled waste which is likely to be so situated so as to prevent or minimise pollution of the environment or harm to human health;
  - (b) to decide what arrangements are in the opinion of the authority needed for that purpose and how it should discharge its functions in relation to licences;
  - (c) to prepare a statement (“the plan”) of the arrangements made and proposed to be made by waste disposal contractors, or, in Scotland, waste disposal authorities and waste disposal contractors, for the treatment or disposal of such waste;
  - (d) to carry out from time to time further investigations with a view to deciding what changes in the plan are needed; and
  - (e) to make any modification of the plan which the authority thinks appropriate in consequence of any such further investigation.
- (2) In considering any arrangements or modification for the purposes of subsection (1) (c) or (e) above it shall be the duty of the authority to have regard both to the likely cost of the arrangements or modification and to their likely beneficial effects on the environment.
- (3) It shall be the duty of the authority to include in the plan information as to—
  - (a) the kinds and quantities of controlled waste which the authority expects to be situated in its area during the period specified in the plan;

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- (b) the kinds and quantities of controlled waste which the authority expects to be brought into or taken for disposal out of its area during that period;
- (c) the kinds and quantities of controlled waste which the authority expects to be disposed of within its area during that period;
- (d) the methods and the respective priorities for the methods by which in the opinion of the authority controlled waste in its area should be disposed of or treated during that period;
- (e) the policy of the authority as respects the discharge of its functions in relation to licences and any relevant guidance issued by the Secretary of State;
- (f) the sites and equipment which persons are providing and which during that period are expected to provide for disposing of controlled waste; and
- (g) the estimated costs of the methods of disposal or treatment provided for in the plan;

but provision may be made by the Secretary of State by regulations for modifying the foregoing paragraphs and for requiring waste regulation authorities to take into account in preparing plans and any modifications of plans under this section such factors as may be prescribed in the regulations.

- (4) In considering what information to include in the plan under subsection (3)(d) above, it shall be the duty of the authority to have regard to the desirability, where reasonably practicable, of giving priority to recycling waste.
- (5) It shall be the duty of the authority—
  - (a) in preparing the plan and any modification of it, to consult—
    - (i) the National Rivers Authority or, in Scotland, any river purification authority any part of whose area is included in the area of the waste regulation authority;
    - (ii) the waste collection authorities whose areas are included in the area of the authority;
    - (iii) in a case where the plan or modification is prepared by a waste regulation authority in Wales, the county council whose area includes that of the authority;
    - (iv) in a case where the plan or modification is prepared by a Scottish waste regulation authority other than an islands council, the council of the region in which the area of the authority is included;
    - (v) in a case where provisions of the plan or modification relate to the taking of waste for disposal or treatment into the area of another waste regulation authority, that other authority; and
    - (vi) in any case, such persons as the authority considers it appropriate to consult from among persons who in the opinion of the authority are or are likely to be, or are representative of persons who are or are likely to be, engaged by way of trade or business in the disposal or treatment of controlled waste situated in the area of the authority; and
  - (b) before finally determining the content of the plan or modification, to take, subject to subsection (6) below, such steps as in the opinion of the authority will—
    - (i) give adequate publicity in its area to the plan or modification; and
    - (ii) provide members of the public with opportunities of making representations to the authority about it;

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and to consider any representations made by the public and make any change in the plan or modification which the authority considers appropriate.

- (6) No steps need be taken under subsection (5)(b) above in respect of a modification which in the opinion of the waste regulation authority is such that no person will be prejudiced if those steps are not taken.
- (7) Without prejudice to the duty of authorities under subsection (5) above, it shall be the duty of the authority, in preparing the plan and any modification of it, to consider, in consultation with the waste collection authorities in its area and any other persons,—
  - (a) what arrangements can reasonably be expected to be made for recycling waste; and
  - (b) what provisions should be included in the plan for that purpose.
- (8) An authority shall not finally determine the content of the plan or modification in a case falling within subsection (5)(a)(v) above except with the consent of the other waste regulation authority or, if the other authority withholds its consent, with the consent of the Secretary of State.
- (9) It shall be the duty of the authority, before finally determining the content of the plan or modification, to send a copy of it in draft to the Secretary of State for the purpose of enabling him to determine whether subsection (3) above has been complied with; and, if the Secretary of State gives any directions to the authority for securing compliance with that subsection, it shall be the duty of the authority to comply with the direction.
- (10) When an authority has finally determined the content of the plan or a modification it shall be the duty of the authority—
  - (a) to take such steps as in the opinion of the authority will give adequate publicity in its area to the plan or modification; and
  - (b) to send to the Secretary of State a copy of the plan or, as the case may be, particulars of the modification.
- (11) The Secretary of State may give to any waste regulation authority directions as to the time by which the authority is to perform any duty imposed by this section specified in the direction; and it shall be the duty of the authority to comply with the direction.

## **51 Functions of waste disposal authorities**

- (1) It shall be the duty of each waste disposal authority to arrange—
  - (a) for the disposal of the controlled waste collected in its area by the waste collection authorities; and
  - (b) for places to be provided at which persons resident in its area may deposit their household waste and for the disposal of waste so deposited;in either case by means of arrangements made (in accordance with Part II of Schedule 2 to this Act) with waste disposal contractors, but by no other means.
- (2) The arrangements made by a waste disposal authority under subsection (1)(b) above shall be such as to secure that—
  - (a) each place is situated either within the area of the authority or so as to be reasonably accessible to persons resident in its area;
  - (b) each place is available for the deposit of waste at all reasonable times (including at least one period on the Saturday or following day of each week except a week in which the Saturday is 25th December or 1st January);

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- (c) each place is available for the deposit of waste free of charge by persons resident in the area;
- but the arrangements may restrict the availability of specified places to specified descriptions of waste.
- (3) A waste disposal authority may include in arrangements made under subsection (1)(b) above arrangements for the places provided for its area for the deposit of household waste free of charge by residents in its area to be available for the deposit of household or other controlled waste by other persons on such terms as to payment (if any) as the authority determines.
- (4) For the purpose of discharging its duty under subsection (1)(a) above as respects controlled waste collected as mentioned in that paragraph a waste disposal authority—
- (a) shall give directions to the waste collection authorities within its area as to the persons to whom and places at which such waste is to be delivered;
  - (b) may arrange for the provision, within or outside its area, by waste disposal contractors of places at which such waste may be treated or kept prior to its removal for treatment or disposal;
  - (c) may make available to waste disposal contractors (and accordingly own) plant and equipment for the purpose of enabling them to keep such waste prior to its removal for disposal or to treat such waste in connection with so keeping it or for the purpose of facilitating its transportation;
  - (d) may make available to waste disposal contractors (and accordingly hold) land for the purpose of enabling them to treat, keep or dispose of such waste in or on the land;
  - (e) may contribute towards the cost incurred by persons who produce commercial or industrial waste in providing and maintaining plant or equipment intended to deal with such waste before it is collected; and
  - (f) may contribute towards the cost incurred by persons who produce commercial or industrial waste in providing or maintaining pipes or associated works connecting with pipes provided by a waste collection authority within the area of the waste disposal authority.
- (5) For the purpose of discharging its duties under subsection (1)(b) above as respects household waste deposited as mentioned in that paragraph a waste disposal authority—
- (a) may arrange for the provision, within or outside its area, by waste disposal contractors of places at which such waste may be treated or kept prior to its removal for treatment or disposal;
  - (b) may make available to waste disposal contractors (and accordingly own) plant and equipment for the purpose of enabling them to keep such waste prior to its removal for disposal or to treat such waste in connection with so keeping it or for the purpose of facilitating its transportation; and
  - (c) may make available to waste disposal contractors (and accordingly hold) land for the purpose of enabling them to treat, keep or dispose of such waste in or on the land.
- (6) Where the arrangements made under subsection (1)(b) include such arrangements as are authorised by subsection (3) above, subsection (5) above applies as respects household or other controlled waste as it applies as respects household waste.
- (7) Subsection (1) above is subject to section 77.

- (8) This section shall not apply to Scotland.

## **52 Payments for recycling and disposal etc. of waste**

- (1) Where, under section 48(2) above, a waste collection authority retains for recycling waste collected by it under section 45 above, the waste disposal authority for the area which includes the area of the waste collection authority shall make to that authority payments, in respect of the waste so retained, of such amounts representing its net saving of expenditure on the disposal of the waste as the authority determines.
- (2) Where, by reason of the discharge by a waste disposal authority of its functions, waste arising in its area does not fall to be collected by a waste collection authority under section 45 above, the waste collection authority shall make to the waste disposal authority payments, in respect of the waste not falling to be so collected, of such amounts representing its net saving of expenditure on the collection of the waste as the authority determines.
- (3) Where a person other than a waste collection authority, for the purpose of recycling it, collects waste arising in the area of a waste disposal authority which would fall to be collected under section 45 above, the waste disposal authority may make to that person payments, in respect of the waste so collected, of such amounts representing its net saving of expenditure on the disposal of the waste as the authority determines.
- (4) Where a person other than a waste collection authority, for the purpose of recycling it, collects waste which would fall to be collected under section 45 above, the waste collection authority may make to that person payments, in respect of the waste so collected, of such amounts representing its net saving of expenditure on the collection of the waste as the authority determines.
- (5) The Secretary of State may, by regulations, impose on waste disposal authorities a duty to make payments corresponding to the payments which are authorised by subsection (3) above to such persons in such circumstances and in respect of such descriptions or quantities of waste as are specified in the regulations.
- (6) For the purposes of subsections (1), (3) and (5) above the net saving of expenditure of a waste disposal authority on the disposal of any waste retained or collected for recycling is the amount of the expenditure which the authority would, but for the retention or collection, have incurred in having it disposed of less any amount payable by the authority to any person in consequence of the retention or collection for recycling (instead of the disposal) of the waste.
- (7) For the purposes of subsections (2) and (4) above the net saving of expenditure of a waste collection authority on the collection of any waste not falling to be collected by it is the amount of the expenditure which the authority would, if it had had to collect the waste, have incurred in collecting it .
- (8) The Secretary of State shall, by regulations, make provision for the determination of the net saving of expenditure for the purposes of subsections (1), (2), (3), (4) and (5) above.
- (9) A waste disposal authority shall be entitled to receive from a waste collection authority such sums as are needed to reimburse the waste disposal authority the reasonable cost of making arrangements under section 51(1) above for the disposal of commercial and industrial waste collected in the area of the waste disposal authority.

- (10) A waste disposal authority shall pay to a waste collection authority a reasonable contribution towards expenditure reasonably incurred by the waste collection authority in delivering waste, in pursuance of a direction under section 51(4)(a) above, to a place which is unreasonably far from the waste collection authority's area.
- (11) Any question arising under subsection (9) or (10) above shall, in default of agreement between the two authorities in question, be determined by arbitration.

### **53 Duties of authorities as respects disposal of waste collected: Scotland**

- (1) It shall be the duty of each waste disposal authority to arrange for the disposal of any waste collected by it, in its capacity as a waste collection authority, under section 45 above; and without prejudice to the authority's powers apart from the following provisions of this subsection, the powers exercisable by the authority for the purpose of performing that duty shall include power—
  - (a) to provide, within or outside its area, places at which to deposit waste before the authority transfers it to a place or plant or equipment provided under the following paragraph; and
  - (b) to provide, within or outside its area, places at which to dispose of or recycle the waste and plant or equipment for processing, recycling or otherwise disposing of it.
- (2) Subsections (7) and (10) of section 45 above shall have effect in relation to a waste disposal authority as if the reference in paragraph (a) of the said subsection (7) to the collection of waste included the disposal of waste under this section and the disposal of anything produced from waste belonging to the authority.
- (3) A waste disposal authority may permit another person to use facilities provided by the authority under the preceding provisions of this section and may provide for the use of another person any such facilities as the authority has power to provide under those provisions, and—
  - (a) subject to the following paragraph, it shall be the duty of the authority to make a reasonable charge in respect of the use by another person of the facilities unless the authority considers it appropriate not to make a charge;
  - (b) no charge shall be made under this section in respect of household waste; and
  - (c) anything delivered to the authority by another person in the course of using the facilities shall belong to the authority and may be dealt with accordingly.
- (4) References to waste in subsection (1) above do not include matter removed from privies under section 45(5)(a) or (6) above, and it shall be the duty of a waste collection authority (other than an islands council) by which matter is so removed—
  - (a) to deliver the matter, in accordance with any directions of the regional council, at a place specified in the directions (which must be in or within a reasonable distance from the waste collection authority's area), to the regional council or another person so specified;
  - (b) to give to the regional council from time to time a notice stating the quantity of the matter which the waste collection authority expects to deliver to or as directed by the regional council under the preceding paragraph during a period specified in the notice.
- (5) Any question arising under paragraph (a) of the preceding subsection as to whether a place is within a reasonable distance from a waste collection authority's area shall, in

default of agreement between the waste collection authority and the regional council in question, be determined by a single arbiter appointed, in default of agreement between the parties concerned, by the Secretary of State on the application of any of the parties; and anything delivered to a regional council under that subsection shall belong to the council and may be dealt with accordingly.

- (6) This section applies to Scotland only.

#### **54 Special provisions for land occupied by disposal authorities: Scotland**

- (1) Nothing in subsection (1)(a) and (b) of section 33 above shall apply to—
- (a) the deposit of controlled waste in or on land in the area of a waste disposal authority which is occupied by the authority; or
  - (b) the treating, keeping or disposing of controlled waste—
    - (i) in or on land so occupied;
    - (ii) by means of any mobile plant operated by the waste disposal authority,
 if the requirements of subsection (3) below are satisfied.
- (2) If any land occupied by a waste disposal authority is used by the authority as a site in or on which to deposit, treat, keep or dispose of or permit other persons to deposit, treat, keep or dispose of controlled waste or if the authority operates their mobile plant for the purpose aforesaid, it shall be the duty of the waste regulation authority to ensure that the land is used and the mobile plant operated in accordance with conditions which are—
- (a) calculated to prevent the use from causing pollution of the environment or harm to human health or serious detriment to the amenities of the locality in which the land is situated or the mobile plant may be operated; and
  - (b) specified in a resolution passed by the waste regulation authority in accordance with the following provisions of this section.
- (3) The requirements mentioned in subsection (1) above are, where the deposit is made, or the treating, keeping or disposing is carried out—
- (a) by the waste disposal authority that, as respects the land or as the case may be the mobile plant, conditions have been specified by the waste regulation authority by virtue of subsection (2)(b) above and (in so far as current) are complied with;
  - (b) by another person, that it is with the consent of the waste disposal authority and in accordance with any conditions to which the consent is subject.
- (4) Where a waste disposal authority proposes that any land which the waste disposal authority occupies or intends to occupy should be used by that authority or that any mobile plant should be operated by the authority as mentioned in the preceding subsection, it shall be the duty of the waste regulation authority before it gives effect to the proposal—
- (a) to prepare a statement of the conditions which the waste regulation authority intends to specify in a resolution to be passed by that authority under paragraph (d) below;
  - (b) to refer the proposal and the statement—
    - (i) to the river purification authority whose area includes any of the land in question;
    - (ii) to the Health and Safety Executive;



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- (iii) where the waste regulation authority is not also a district planning authority (within the meaning of section 172 of the Local Government (Scotland) Act 1973), to the general planning authority (within the meaning of that section) whose area includes any of the land; and
    - (iv) in the case of a proposal to operate mobile plant, to the river purification authority whose area includes the area of the waste disposal authority;
  - (c) to consider any representations about the proposal and statement which the river purification authority, the Health and Safety Executive or the general planning authority makes to it during the allowed period;
  - (d) subject to subsection (7) of this section, to pass a resolution—
    - (i) authorising the deposit, keeping, treatment or disposal of any specified description of controlled waste in or on specified land occupied or to be occupied by the waste disposal authority or the treatment or disposal of any specified description of controlled waste by means of specified mobile plant;
    - (ii) specifying the conditions in accordance with which the land in question or the mobile plant is to be used by the waste disposal authority as mentioned in the preceding subsection;
  - (e) where any part of the land to be used is land which has been notified under section 28(1) of the Wildlife and Countryside Act 1981, to—
    - (i) refer the proposal and the statement to the appropriate nature conservation body, and
    - (ii) consider any representations about the proposal and the statement which that body makes to it during the allowed period,and in this subsection and subsection (13) of this section any reference to the appropriate nature conservation body is a reference, until the date appointed under section 131(3) below, to the Nature Conservancy Council or, after that date, to the Nature Conservancy Council for Scotland.
- (5) In subsection (4) above, paragraphs (a) to (c), and in paragraph (d) the words “subject to subsection (7) of this section”, shall have effect only in a case where the proposal is made by a waste disposal authority other than an islands council.
- (6) A separate resolution under subsection (4)(d) above shall be passed by the authority—
  - (a) in respect of each item of mobile plant; and
  - (b) in relation to each site.
- (7) If a river purification authority to which a proposal is referred by a waste regulation authority under paragraph (b) of subsection (4) of this section requests the authority not to proceed with the resolution or disagrees with the authority as to the conditions to be specified in the resolution under paragraph (d) of that subsection, either of them may refer the matter to the Secretary of State and it shall be the duty of the authority not to pass a resolution under that paragraph except in accordance with his decision.
- (8) A waste regulation authority by which a resolution has been passed under paragraph (d) of subsection (4) of this section or this subsection may vary or rescind the resolution by a subsequent resolution of the authority.
- (9) Paragraphs (a) to (c) of subsection (4) and subsection (7) of this section shall with the necessary modifications apply to a proposal to pass a resolution under subsection (8)

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above and to such a resolution as they apply to such a proposal as is mentioned in those provisions and to a resolution under the said paragraph (d), except that—

- (a) those provisions shall not apply to a resolution, or to a proposal to pass a resolution, which only rescinds a previous resolution; and
- (b) the waste regulation authority may postpone the reference under the said subsection (4) so far as the authority considers that by reason of an emergency it is appropriate to do so; and
- (c) the waste regulation authority may disregard any other authority or the Health and Safety Executive for the purposes of the preceding provisions of this subsection in relation to a resolution which, in the opinion of the waste regulation authority, will not affect the other authority.

(10) If while a resolution is in force under the preceding provisions of this section it appears to the authority which passed the resolution—

- (a) that the continuation of activities to which the resolution relates would cause pollution of the environment or harm to human health or would be seriously detrimental to the amenities of the locality affected; and
- (b) that the pollution, harm or detriment cannot be avoided by modifying the conditions relating to the carrying on of the activities,

it shall be the duty of the waste disposal authority to discontinue the activities and of the waste regulation authority to rescind the resolution.

(11) If it appears to a river purification authority that activities to which a resolution under this section relates are causing or likely to cause pollution to controlled waters (within the meaning of Part II of the Control of Pollution Act 1974) in the area of the authority, the authority may, without prejudice to the provisions of the preceding subsection or the said Part II, request the Secretary of State to direct the waste regulation authority which passed the resolution to rescind it and the waste disposal authority to discontinue the activities; and it shall be the duty of a waste disposal authority and a waste regulation authority to comply with a direction given to it under this subsection.

(12) It shall be the duty of waste regulation authorities to have regard to any guidance issued to them by the Secretary of State with regard to the discharge of their functions under this section.

(13) The period allowed to the river purification authority, the Health and Safety Executive and the general planning authority for the making of representations under subsection (4)(c) above or to the appropriate nature conservation body for the making of representations under subsection (4)(e) above about a proposal is the period of twenty-one days beginning with that on which the proposal is received by that body or such longer period as the waste regulation authority and that body agree in writing.

(14) The Secretary of State may, by regulations, make provision as to conditions which are, or are not, to be included in a resolution; and regulations under this subsection may make different provision for different circumstances.

(15) The Secretary of State may as respects any resolution made or to be made by the authority give to the authority directions—

- (a) as to the conditions which are or are not to be included in the resolution;
- (b) as to the modifications which it would be appropriate to make in the conditions included in a resolution by virtue of subsection (7) above;
- (c) as to the rescinding of the resolution;

and it shall be the duty of the authority to give effect to the directions.

(16) Any resolution of a waste disposal authority under Part I of the Control of Pollution Act 1974 effective immediately before the commencement of this section shall have effect as if it were a resolution of a waste regulation authority under this section.

(17) This section applies to Scotland only.

## **55 Powers for recycling waste**

(1) This section has effect for conferring on waste disposal authorities and waste collection authorities powers for the purposes of recycling waste.

(2) A waste disposal authority may—

- (a) make arrangements with waste disposal contractors for them to recycle waste as respects which the authority has duties under section 51(1) above or agrees with another person for its disposal or treatment;
- (b) make arrangements with waste disposal contractors for them to use waste for the purpose of producing from it heat or electricity or both;
- (c) buy or otherwise acquire waste with a view to its being recycled;
- (d) use, sell or otherwise dispose of waste as respects which the authority has duties under section 51(1) above or anything produced from such waste.

(3) A waste collection authority may—

- (a) buy or otherwise acquire waste with a view to recycling it;
- (b) use, or dispose of by way of sale or otherwise to another person, waste belonging to the authority or anything produced from such waste.

(4) This section shall not apply to Scotland.

## **56 Powers for recycling waste: Scotland**

(1) Without prejudice to the powers of waste disposal authorities apart from this section, a waste disposal authority may—

- (a) do such things as the authority considers appropriate for the purpose of—
  - (i) enabling waste belonging to the authority, or belonging to another person who requests the authority to deal with it under this section, to be recycled; or
  - (ii) enabling waste to be used for the purpose of producing from it heat or electricity or both;
- (b) buy or otherwise acquire waste with a view to its being recycled;
- (c) use, sell or otherwise dispose of waste belonging to the authority or anything produced from such waste.

(2) This section applies to Scotland only.

## **57 Power of Secretary of State to require waste to be accepted, treated, disposed of or delivered**

(1) The Secretary of State may, by notice in writing, direct the holder of any waste management licence to accept and keep, or accept and treat or dispose of, controlled waste at specified places on specified terms.

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- (2) The Secretary of State may, by notice in writing, direct any person who is keeping controlled waste on any land to deliver the waste to a specified person on specified terms with a view to its being treated or disposed of by that other person.
- (3) A direction under this section may impose a requirement as respects waste of any specified kind or as respects any specified consignment of waste.
- (4) A direction under subsection (2) above may require the person who is directed to deliver the waste to pay to the specified person his reasonable costs of treating or disposing of the waste.
- (5) A person who fails, without reasonable excuse, to comply with a direction under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) A person shall not be guilty of an offence under any other enactment prescribed by the Secretary of State by regulations made for the purposes of this subsection by reason only of anything necessarily done or omitted in order to comply with a direction under this section.
- (7) The Secretary of State may, where the costs of the treatment or disposal of waste are not paid or not fully paid in pursuance of subsection (4) above to the person treating or disposing of the waste, pay the costs or the unpaid costs, as the case may be, to that person.
- (8) In this section “specified” means specified in a direction under this section.

**58 Power of Secretary of State to require waste to be accepted, treated, disposed of or delivered: Scotland**

In relation to Scotland, the Secretary of State may give directions to a waste disposal authority to accept and keep, or accept and treat or dispose of, controlled waste at specified places on specified terms; and it shall be the duty of the authority to give effect to the directions.

**59 Powers to require removal of waste unlawfully deposited**

- (1) If any controlled waste is deposited in or on any land in the area of a waste regulation authority or waste collection authority in contravention of section 33(1) above, the authority may, by notice served on him, require the occupier to do either or both of the following, that is—
  - (a) to remove the waste from the land within a specified period not less than a period of twenty-one days beginning with the service of the notice;
  - (b) to take within such a period specified steps with a view to eliminating or reducing the consequences of the deposit of the waste.
- (2) A person on whom any requirements are imposed under subsection (1) above may, within the period of twenty-one days mentioned in that subsection, appeal against the requirement to a magistrates' court or, in Scotland, to the sheriff by way of summary application.
- (3) On any appeal under subsection (2) above the court shall quash the requirement if it is satisfied that—

- (a) the appellant neither deposited nor knowingly caused nor knowingly permitted the deposit of the waste; or
  - (b) there is a material defect in the notice;and in any other case shall either modify the requirement or dismiss the appeal.
- (4) Where a person appeals against any requirement imposed under subsection (1) above, the requirement shall be of no effect pending the determination of the appeal; and where the court modifies the requirement or dismisses the appeal it may extend the period specified in the notice.
- (5) If a person on whom a requirement imposed under subsection (1) above fails, without reasonable excuse, to comply with the requirement he 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 authority has begun to exercise its powers under subsection (6) below.
- (6) Where a person on whom a requirement has been imposed under subsection (1) above by an authority fails to comply with the requirement the authority may do what that person was required to do and may recover from him any expenses reasonably incurred by the authority in doing it.
- (7) If it appears to a waste regulation authority or waste collection authority that waste has been deposited in or on any land in contravention of section 33(1) above and that—
  - (a) in order to remove or prevent pollution of land, water or air or harm to human health it is necessary that the waste be forthwith removed or other steps taken to eliminate or reduce the consequences of the deposit or both; or
  - (b) there is no occupier of the land; or
  - (c) the occupier neither made nor knowingly permitted the deposit of the waste;the authority may remove the waste from the land or take other steps to eliminate or reduce the consequences of the deposit or, as the case may require, to remove the waste and take those steps.
- (8) Where an authority exercises any of the powers conferred on it by subsection (7) above it shall be entitled to recover the cost incurred by it in removing the waste or taking the steps or both and in disposing of the waste—
  - (a) in a case falling within subsection (7)(a) above, from the occupier of the land unless he proves that he neither made nor knowingly caused nor knowingly permitted the deposit of the waste;
  - (b) in any case, from any person who deposited or knowingly caused or knowingly permitted the deposit of any of the waste;except such of the cost as the occupier or that person shows was incurred unnecessarily.
- (9) Any waste removed by an authority under subsection (7) above shall belong to that authority and may be dealt with accordingly.

## **60 Interference with waste sites and receptacles for waste**

- (1) No person shall sort over or disturb—
  - (a) anything deposited at a place for the deposit of waste provided by a waste collection authority, by a waste disposal contractor under arrangements made with a waste disposal authority or by any other local authority or person or, in Scotland, by a waste disposal authority;

- (b) anything deposited in a receptacle for waste, whether for public or private use, provided by a waste collection authority, by a waste disposal contractor under arrangements made with a waste disposal authority, by a parish or community council or by a holder of a waste management licence or, in Scotland, by a waste disposal authority or a roads authority; or
- (c) the contents of any receptacle for waste which, in accordance with a requirement under section 46 or 47 above, is placed on any highway or, in Scotland, road or in any other place with a view to its being emptied;

unless he has the relevant consent or right to do so specified in subsection (2) below.

- (2) The consent or right that is relevant for the purposes of subsection (1)(a), (b) or (c) above is—
  - (a) in the case of paragraph (a), the consent of the authority, contractor or other person who provides the place for the deposit of the waste;
  - (b) in the case of paragraph (b), the consent of the authority, contractor or other person who provides the receptacle for the deposit of the waste;
  - (c) in the case of paragraph (c), the right to the custody of the receptacle, the consent of the person having the right to the custody of the receptacle or the right conferred by the function by or under this Part of emptying such receptacles.
- (3) A person who contravenes subsection (1) above shall be liable on summary conviction to a fine of an amount not exceeding level 3 on the standard scale.

## **61 Duty of waste regulation authorities as respects closed landfills**

- (1) Except as respects land in relation to which a site licence is in force, it shall be the duty of every waste regulation authority to cause its area to be inspected from time to time to detect whether any land is in such a condition, by reason of the relevant matters affecting the land, that it may cause pollution of the environment or harm to human health.
- (2) The matters affecting land relevant for the purposes of this section are the concentration or accumulation in, and emission or discharge from, the land of noxious gases or noxious liquids caused by deposits of controlled waste in the land.
- (3) For the purpose of discharging the duty imposed by subsection (1) above on a waste regulation authority, the authority may enter and inspect any land—
  - (a) in or on which controlled waste has been deposited at any time under the authority of a waste management licence or a disposal licence under section 5 of the Control of Pollution Act 1974; or
  - (b) as respects which the authority has reason to believe that controlled waste has been deposited in the land at any time (whether before or after 1st January 1976); or
  - (c) in which there are, or the authority has reason to believe there may be, concentrations or accumulations of noxious gases or noxious liquids.

In this subsection “controlled waste” means household, industrial or commercial waste as defined in section 75(5), (6) and (7) below (subject, if the regulations so provide, to regulations under section 63(1) or 75(8) below).

- (4) Where it appears to a waste regulation authority that the condition of any land in its area is such as is specified in subsection (1) above it shall be the duty of the authority,

from time to time during the period of its responsibility for the land, to enter and inspect the land for the purpose of keeping its condition under review.

- (5) Where, at any time during the period of its responsibility for any land, it appears to a waste regulation authority that the condition of the land is, by reason of the relevant matters affecting the land, such that pollution of water is likely to be caused, it shall be the duty of the authority to consult the National Rivers Authority or, in Scotland, the river purification authority whose area includes the land in question as to the discharge by the authority of the duty imposed on it in relation to the land by subsection (7) below.
- (6) The “period of responsibility” for any land for the purposes of subsections (4) and (5) above extends from the time at which the condition of the land first appears to the authority to be such as is referred to in that subsection until the authority is satisfied that no pollution of the environment or harm to human health will be caused by reason of the relevant matters affecting the land.
- (7) Where, on an inspection by a waste regulation authority of any land under this section, it appears to the authority that the condition of the land is, by reason of the relevant matters affecting the land, such that pollution of the environment or harm to human health is likely to be caused it shall be the duty of the authority to do such works and take such other steps (whether on the land affected or on adjacent land) as appear to the authority to be reasonable to avoid such pollution or harm.
- (8) Where an authority exercises in relation to waste on any land the duty imposed by subsection (7) above, the authority shall, except in a case falling within subsection (9) below, be entitled to recover the cost or part of the cost incurred in doing so from the person who is for the time being the owner of the land, except such of the cost as that person shows was incurred unreasonably.
- (9) Subsection (8) above does not apply in a case where the authority accepted the surrender under section 39 above of the waste management licence which authorised the activities in the course of which the waste was deposited.
- (10) In deciding whether to recover the cost and, if so, how much to recover of the cost which it is entitled to recover under subsection (8) above, the authority shall have regard to any hardship which the recovery may cause to the owner of the land.
- (11) It shall be the duty of waste regulation authorities to have regard to any guidance issued to them by the Secretary of State as respects the discharge of their functions under this section.

### *Special waste and non-controlled waste*

## **62 Special provision with respect to certain dangerous or intractable waste**

- (1) If the Secretary of State considers that controlled waste of any kind is or may be so dangerous or difficult to treat, keep or dispose of that special provision is required for dealing with it he shall make provision by regulations for the treatment, keeping or disposal of waste of that kind (“special waste”).
- (2) Without prejudice to the generality of subsection (1) above, the regulations may include provision—
  - (a) for the giving of directions by waste regulation authorities with respect to matters connected with the treatment, keeping or disposal of special waste;

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- (b) for securing that special waste is not, while awaiting treatment or disposal in pursuance of the regulations, kept at any one place in quantities greater than those which are prescribed and in circumstances which differ from those which are prescribed;
  - (c) in connection with requirements imposed on consignors or consignees of special waste, imposing, in the event of non-compliance, requirements on any person carrying the consignment to re-deliver it as directed;
  - (d) for requiring the occupier of premises on which special waste is situated to give notice of that fact and other prescribed information to a prescribed authority;
  - (e) for the keeping of records by waste regulation authorities and by persons who import, export, produce, keep, treat or dispose of special waste or deliver it to another person for treatment or disposal, for the inspection of the records and for the furnishing by such persons to waste regulation authorities of copies of or information derived from the records;
  - (f) for the keeping in the register under section 64(1) below of copies of such of those records, or such information derived from those records, as may be prescribed;
  - (g) providing that a contravention of the regulations shall be an offence and prescribing the maximum penalty for the offence, which shall not exceed, on summary conviction, a fine at level 5 on the standard scale and, on conviction on indictment, imprisonment for a term of two years or a fine or both.
- (3) Without prejudice to the generality of subsection (1) above, the regulations may include provision—
- (a) for the supervision by waste regulation authorities of activities authorised by virtue of the regulations and for the recovery of the costs incurred by them from the persons carrying on the activities;
  - (b) as to the recovery of expenses or other charges for the treatment, keeping or disposal or the re-delivery of special waste in pursuance of the regulations;
  - (c) as to appeals to the Secretary of State from decisions of waste regulation authorities under the regulations.
- (4) In the application of this section to Northern Ireland “waste regulation authority” means a district council established under the Local Government Act (Northern Ireland) 1972.

### **63 Waste other than controlled waste**

- (1) The Secretary of State may, after consultation with such bodies as he considers appropriate, make regulations providing that prescribed provisions of this Part shall have effect in a prescribed area—
- (a) as if references in those provisions to controlled waste or controlled waste of a kind specified in the regulations included references to such waste as is mentioned in section 75(7)(c) below which is of a kind so specified; and
  - (b) with such modifications as may be prescribed;
- and the regulations may make such modifications of other enactments as the Secretary of State considers appropriate.
- (2) A person who—
- (a) deposits any waste other than controlled waste, or



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- (b) knowingly causes or knowingly permits the deposit of any waste other than controlled waste,  
in a case where, if the waste were special waste and any waste management licence were not in force, he would be guilty of an offence under section 33 above shall, subject to subsection (3) below, be guilty of that offence and punishable accordingly.
- (3) No offence is committed by virtue of subsection (2) above if the act charged was done under and in accordance with any consent, licence, approval or authority granted under any enactment (excluding any planning permission under the enactments relating to town and country planning).
- (4) Section 45(2) and section 47(1) above shall apply to waste other than controlled waste as they apply to controlled waste.

### *Publicity*

## **64 Public registers**

- (1) Subject to sections 65 and 66 below, it shall be the duty of each waste regulation authority to maintain a register containing prescribed particulars of or relating to—
- (a) current or recently current licences (“licences”) granted by the authority;
  - (b) current or recently current applications to the authority for licences;
  - (c) applications made to the authority under section 37 above for the modification of licences;
  - (d) notices issued by the authority under section 37 above effecting the modification of licences;
  - (e) notices issued by the authority under section 38 above effecting the revocation or suspension of licences or imposing requirements on the holders of licences;
  - (f) appeals under section 43 above relating to decisions of the authority;
  - (g) certificates of completion issued by the authority under section 39(9) above;
  - (h) notices issued by the authority imposing requirements on the holders of licences under section 42(5) above;
  - (i) convictions of the holders of licences granted by the authority for any offence under this Part (whether in relation to a licence so granted or not);
  - (j) the occasions on which the authority has discharged any function under section 42 or 61 above;
  - (k) directions given to the authority under any provision of this Part by the Secretary of State;
  - (l) in Scotland, resolutions made by the authority under section 54 above;
  - (m) such matters relating to the treatment, keeping or disposal of waste in the area of the authority or any pollution of the environment caused thereby as may be prescribed;
- and any other document or information required to be kept in the register under any provision of this Act.
- (2) Where information of any description is excluded from any register by virtue of section 66 below, a statement shall be entered in the register indicating the existence of information of that description.
- (3) For the purposes of subsection (1) above licences are “recently” current for the period of twelve months after they cease to be in force and applications for licences are

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“recently” current if they relate to a licence which is current or recently current or, in the case of an application which is rejected, for the period of twelve months beginning with the date on which the waste regulation authority gives notice of rejection or, as the case may be, on which the application is deemed by section 36(9) above to have been rejected.

- (4) It shall be the duty of each waste collection authority in England which is not a waste regulation authority to maintain a register containing prescribed particulars of such information contained in any register maintained under subsection (1) above as relates to the treatment, keeping or disposal of controlled waste in the area of the authority.
- (5) Waste regulation authorities in England which are not waste collection authorities shall furnish any waste collection authorities in their areas with the particulars necessary to enable them to discharge their duty under subsection (4) above.
- (6) Each waste regulation authority and waste collection authority shall secure that any register maintained under this section is open to inspection at its principal office by members of the public free of charge at all reasonable hours and shall afford to members of the public reasonable facilities for obtaining, on payment of reasonable charges, copies of entries in the register.
- (7) Registers under this section may be kept in any form.
- (8) In this section “prescribed” means prescribed in regulations by the Secretary of State.

## **65 Exclusion from registers of information affecting national security**

- (1) No information shall be included in a register maintained under section 64 above (a “register”) if and so long as, in the opinion of the Secretary of State, the inclusion in the register of that information, or information of that description, would be contrary to the interests of national security.
- (2) The Secretary of State may, for the purpose of securing the exclusion from registers of information to which subsection (1) above applies, give to the authorities maintaining registers directions—
  - (a) specifying information, or descriptions of information, to be excluded from their registers; or
  - (b) specifying descriptions of information to be referred to the Secretary of State for his determination;and no information referred to the Secretary of State in pursuance of paragraph (b) above shall be included in any such register until the Secretary of State determines that it should be so included.
- (3) An authority maintaining a register shall notify the Secretary of State of any information it excludes from the register in pursuance of directions under subsection (2) above.
- (4) A person may, as respects any information which appears to him to be information to which subsection (1) above may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and, if he does so—
  - (a) he shall notify the authority concerned that he has done so; and
  - (b) no information so notified to the Secretary of State shall be included in the register kept by that authority until the Secretary of State has determined that it should be so included.

## **66 Exclusion from registers of certain confidential information**

- (1) No information relating to the affairs of any individual or business shall be included in a register maintained under section 64 above (a “register”), 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, commercially confidential; and
  - (b) is not required to be included in the register in pursuance of directions under subsection (7) below;but information is not commercially confidential for the purposes of this section unless it is determined under this section to be so by the authority maintaining the register or, on appeal, by the Secretary of State.
- (2) Where information is furnished to an authority maintaining a register for the purpose of—
  - (a) an application for, or for the modification of, a licence;
  - (b) complying with any condition of a licence; or
  - (c) complying with a notice under section 71(2) below;then, if the person furnishing it applies to the authority to have the information excluded from the register on the ground that it is commercially confidential (as regards himself or another person), the authority shall determine whether the information is or is not commercially confidential.
- (3) A determination under subsection (2) above must be made within the period of fourteen days beginning with the date of the application and if the authority fails to make a determination within that period it shall be treated as having determined that the information is commercially confidential.
- (4) Where it appears to an authority maintaining a register that any information (other than information furnished in circumstances within subsection (2) above) which has been obtained by the authority under or by virtue of any provision of this Part might be commercially confidential, the authority shall—
  - (a) give to the person to whom or whose business it relates notice that that information is required to be included in the register unless excluded under this section; and
  - (b) give him a reasonable opportunity—
    - (i) of objecting to the inclusion of the information on the grounds that it is commercially confidential; and
    - (ii) of making representations to the authority for the purpose of justifying any such objection;and, if any representations are made, the authority shall, having taken the representations into account, determine whether the information is or is not commercially confidential.
- (5) Where, under subsection (2) or (4) above, an 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 Secretary of State against the decision;and, where an appeal is brought in respect of any information, the information shall not be entered in the register pending the final determination or withdrawal of the appeal.

- (6) Subsections (2) and (8) of section 43 above shall apply in relation to appeals under subsection (5) above.
- (7) The Secretary of State may give to the authorities maintaining registers directions as to specified information, or descriptions of information, which the public interest requires to be included in the registers notwithstanding that the information may be commercially confidential.
- (8) 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 authority for the information to remain excluded from the register on the ground that it is still commercially confidential and the authority shall determine whether or not that is the case.
- (9) Subsections (5) and (6) above shall apply in relation to a determination under subsection (8) above as they apply in relation to a determination under subsection (2) or (4) above.
- (10) The Secretary of State may, by order, substitute for the period for the time being specified in subsection (3) above such other period as he considers appropriate.
- (11) 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.

## **67 Annual reports**

- (1) Each waste regulation authority shall, for each financial year of the authority, prepare and publish a report on the discharge by the authority of its functions under this Part or under any relevant instrument.
- (2) A report under subsection (1) above shall include information as respects—
  - (a) the licences respectively applied for, granted, in force, modified, revoked, suspended, surrendered or transferred during the year and the appeals made against decisions taken in respect of them;
  - (b) the exercise by the authority of its powers under sections 42, 54, 61 or 62 of this Act or any relevant instrument;
  - (c) the implementation of the authority's plan under section 50 above, with particular reference to recycling waste;
  - (d) the number and description of prosecutions brought under this Part; and
  - (e) the cost incurred, and the sums received, by the authority in discharging its functions under this Part.
- (3) Each waste regulation authority shall—
  - (a) arrange for the report for any year under subsection (1) above to be published not later than the end of the period of six months following the end of the year to which the report relates; and
  - (b) when it publishes it, send a copy of the report to the Secretary of State.

- (4) In subsections (1) and (2) above “relevant instrument” means any instrument under section 2(2) of the European Communities Act 1972 under which waste regulation authorities have functions.

### *Supervision and enforcement*

## **68 Functions of Secretary of State and appointment etc. of inspectors**

- (1) The Secretary of State shall have the function of keeping under review the discharge by waste regulation authorities of their functions under this Part.
- (2) The Secretary of State may appoint as inspectors (under whatever title he may determine) such persons having suitable qualifications as he thinks necessary for assisting him in discharging his functions under this Part, and may terminate any appointment made under this subsection.
- (3) Any waste regulation authority having functions under this Part may appoint as inspectors (under whatever title the authority may determine) such persons having suitable qualifications as the authority thinks necessary for carrying this Part into effect in the authority’s area, and may terminate any appointment made under this subsection.
- (4) An inspector shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under section 69 or 70 below if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.
- (5) In the following provisions of this Part “inspector” means a person appointed as an inspector under subsection (2) or (3) above.

## **69 Powers of entry etc. of inspectors**

- (1) An inspector may, on production (if so required) of his authority, exercise any of the powers specified in subsection (3) below for the purpose of—
- (a) discharging any functions conferred or imposed by or under this Part on the Secretary of State or, as the case may be, a waste regulation authority or on the inspector;
  - (b) determining whether, and if so in what manner, such a function should be discharged; or
  - (c) determining whether any provision of this Part or of an instrument under it is being complied with.
- (2) Those powers are exercisable in relation to—
- (a) land in or on which, or vessels in or by means of which, controlled waste is being or has been deposited, treated, kept or disposed of;
  - (b) land in or on which, or vessels in or by means of which, controlled waste is (on reasonable grounds) believed to be being, or to have been, deposited, treated, kept or disposed of;
  - (c) land which is or is (on reasonable grounds) believed to be affected by the deposit, treatment, keeping or disposal of controlled waste on other land;
- and in this section “premises” means any such land or any such vessel.
- (3) The powers of an inspector referred to above are—

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- (a) at any reasonable time (or, in a situation in which in his opinion there is an immediate risk of serious pollution of the environment or serious harm to human health, at any time) to enter premises which he has reason to believe it is necessary for him to enter;
- (b) on entering any premises by virtue of paragraph (a) above to take with him—
  - (i) any person duly authorised by the Secretary of State or, as the case may be, the waste regulation authority and, if the inspector has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and
  - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
- (c) to make such examination and investigation as may in any circumstances be necessary;
- (d) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (c) above;
- (e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c) above;
- (f) to take samples of any articles or substances found on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;
- (g) in the case of any article or substance found in any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause pollution of the environment or harm to human health, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is necessary);
- (h) in the case of any such article or substance as is mentioned in paragraph (g) above, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
  - (i) to examine it and do to it anything which he has power to do under that paragraph;
  - (ii) to ensure that it is not tampered with before his examination of it is completed;
  - (iii) to ensure that it is available for use as evidence in any proceedings under this Part;
- (i) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (c) above to answer (in the absence of persons other than a person nominated to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers;
- (j) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which are required to be kept under this Part or it is necessary for him to see for the purposes of an examination or investigation under paragraph (c) above and to inspect, and takes copies of, or of any entry in, the records;

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- (k) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by this section.
- (4) The Secretary of State may by regulations make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under subsection (3)(f) above.
- (5) Where an inspector proposes to exercise the power conferred by subsection (3)(g) above in the case of an article or substance found on any premises, he shall, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.
- (6) Before exercising the power conferred by subsection (3)(g) above in the case of any article or substance, an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under the power.
- (7) Where under the power conferred by subsection (3)(h) above an inspector takes possession of any article or substance found on any premises, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such substance under that power an inspector shall, if it is practical for him to do so, take a sample of it and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.
- (8) No answer given by a person in pursuance of a requirement imposed under subsection (3)(i) above shall be admissible in evidence in England and Wales against that person in any proceedings or in Scotland against that person in any criminal proceedings.
- (9) Any person who—
  - (a) fails, without reasonable excuse, to comply with any requirement imposed under this section;
  - (b) prevents any other person from appearing before or from answering any question to which an inspector may by virtue of subsection (3) above require an answer; or
  - (c) intentionally obstructs an inspector in the exercise or performance of his powers or duties;shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (10) The powers conferred by subsection (3)(a), (c), (e) and (f) above shall also be exercisable by any person authorised for the purpose in writing by the Secretary of State.
- (11) Nothing in this section shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court or, in relation to Scotland, on an order for the production of documents in an action in the Court of Session.

**70 Power to deal with cause of imminent danger of serious pollution etc**

- (1) Where, in the case of any article or substance found by him on any premises which he has power to enter, an inspector has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious pollution of the environment or serious harm to human health, he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).
- (2) Before there is rendered harmless under this section—
  - (a) any article that forms part of a batch of similar articles; or
  - (b) any substance,the inspector shall, if it is practicable for him to do so, take a sample of it and give to a responsible person at the premises where the article or substance was found by him a portion of the sample marked in a manner sufficient to identify it.
- (3) As soon as may be after any article or substance has been seized and rendered harmless under this section, the inspector shall prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and so dealt with by him, and shall—
  - (a) give a signed copy of the report to a responsible person at the premises where the article or substance was found by him; and
  - (b) unless that person is the owner of the article or substance, also serve a signed copy of the report on the owner;and if, where paragraph (b) above applies, the inspector cannot after reasonable inquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under paragraph (a) above.
- (4) Any person who intentionally obstructs an inspector in the exercise of his powers under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

**71 Obtaining of information from persons and authorities**

- (1) For the purpose of the discharge of his functions under this Part, the Secretary of State may, by notice in writing served on a waste regulation authority, require the authority to furnish such information about the discharge of its functions under this Part as he may require.
- (2) For the purpose of the discharge of their respective functions under this Part—
  - (a) the Secretary of State, and
  - (b) a waste regulation authority,may, by notice in writing served on him, require any person to furnish such information specified in the notice as the Secretary of State or the authority, as the case may be, reasonably considers he or it needs, in such form and within such period following service of the notice as is so specified.
- (3) A person who—
  - (a) fails, without reasonable excuse, to comply with a requirement imposed under subsection (2) above; or



- (b) in furnishing any information in compliance with such a requirement, makes any statement which he knows to be false or misleading in a material particular, or recklessly makes a statement which is false or misleading in a material particular;

shall be liable—

- (i) on summary conviction, to a fine not exceeding the statutory maximum;
- (ii) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

## **72 Default powers of Secretary of State**

- (1) If the Secretary of State is satisfied that a waste regulation authority has failed, in any respect, to discharge any function under this Part which it ought to have discharged, he may make an order declaring the authority to be in default.
- (2) The failure to discharge any such function may be a failure in a class of case to which the function relates or a failure in a particular case.
- (3) An order made under subsection (1) above which declares an authority to be in default may, for the purpose of remedying the default, direct the authority (“the defaulting authority”) to perform any function specified in the order (whether in relation to a class of case or a particular case) and may specify the manner in which and the time or times within which the function is to be performed by the authority.
- (4) If the defaulting authority fails to comply with any direction contained in such an order the Secretary of State may, instead of enforcing the order by mandamus, make an order transferring to himself any function of the authority specified in the order, whether in relation to all the classes of case to which the function relates or to such of those classes or, as the case may be, such particular case as is specified in the order.
- (5) Where any function of a defaulting authority is transferred under subsection (4) above, the amount of any expenses which the Secretary of State certifies were incurred by him in performing the function shall on demand be paid to him by the defaulting authority.
- (6) Any expenses required to be paid by a defaulting authority under subsection (5) above shall be defrayed by the authority in like manner, and shall be debited to the like account, as if the functions had not been transferred and the expenses had been incurred by the authority in performing them.
- (7) The Secretary of State may by order vary or revoke any order previously made by him under this section.
- (8) An order transferring any functions of a defaulting authority may provide for the transfer to the Secretary of State of such of the property, rights, liabilities and obligations of the authority as he considers appropriate; and where such an order is revoked the Secretary of State may, by the revoking order or a subsequent order, make such provision as he considers appropriate with respect to the property, rights, liabilities and obligations held by him for the purposes of the transferred function.
- (9) Any order under this section may include such incidental, supplemental and transitional provisions as the Secretary of State considers appropriate.
- (10) This section shall not apply to Scotland.

*Supplemental***73 Appeals and other provisions relating to legal proceedings and civil liability**

- (1) An appeal against any decision of a magistrates' court under this Part (other than a decision made in criminal proceedings) shall lie to the Crown Court at the instance of any party to the proceedings in which the decision was given if such an appeal does not lie to the Crown Court by virtue of any other enactment.
- (2) In Scotland an appeal against any decision of the sheriff under this Part (other than a decision made in criminal proceedings) shall lie to the Court of Session at the instance of any party to the proceedings in which the decision was given if such an appeal does not lie to the Court of Session by virtue of any other enactment.
- (3) Where a person appeals to the Crown Court or the Court of Session against a decision of a magistrates' court or the sheriff dismissing an appeal against any requirement imposed under this Part which was suspended pending determination of that appeal, the requirement shall again be suspended pending the determination of the appeal to the Crown Court or Court of Session.
- (4) Where an appeal against a decision of any authority lies to a magistrates' court or to the sheriff by virtue of any provision of this Part, it shall be the duty of the authority to include in any document by which it notifies the decision to the person concerned a statement indicating that such an appeal lies and specifying the time within which it must be brought.
- (5) Where on an appeal to any court against or arising out of a decision of any authority under this Part the court varies or reverses the decision it shall be the duty of the authority to act in accordance with the court's decision.
- (6) Where any damage is caused by waste which has been deposited in or on land, any person who deposited it, or knowingly caused or knowingly permitted it to be deposited, in either case so as to commit an offence under section 33(1) or 63(2) above, is liable for the damage except where the damage—
  - (a) was due wholly to the fault of the person who suffered it; or
  - (b) was suffered by a person who voluntarily accepted the risk of the damage being caused;but without prejudice to any liability arising otherwise than under this subsection.
- (7) The matters which may be proved by way of defence under section 33(7) above may be proved also by way of defence to an action brought under subsection (6) above.
- (8) In subsection (6) above—

“damage” includes the death of, or injury to, any person (including any disease and any impairment of physical or mental condition); and

“fault” has the same meaning as in the Law Reform (Contributory Negligence) Act 1945.
- (9) For the purposes of the following enactments—
  - (a) the Fatal Accidents Act 1976;
  - (b) the Law Reform (Contributory Negligence) Act 1945; and
  - (c) the Limitation Act 1980;

and for the purposes of any action of damages in Scotland arising out of the death of, or personal injury to, any person, any damage for which a person is liable under subsection (6) above shall be treated as due to his fault.

#### **74 Meaning of “fit and proper person”**

- (1) The following provisions apply for the purposes of the discharge by a waste regulation authority of any function under this Part which requires the authority to determine whether a person is or is not a fit and proper person to hold a waste management licence.
- (2) Whether a person is or is not a fit and proper person to hold a licence is to be determined by reference to the carrying on by him of the activities which are or are to be authorised by the licence and the fulfilment of the requirements of the licence.
- (3) Subject to subsection (4) below, a person shall be treated as not being a fit and proper person if it appears to the authority—
  - (a) that he or another relevant person has been convicted of a relevant offence;
  - (b) that the management of the activities which are or are to be authorised by the licence are not or will not be in the hands of a technically competent person; or
  - (c) that the person who holds or is to hold the licence has not made and either has no intention of making or is in no position to make financial provision adequate to discharge the obligations arising from the licence.
- (4) The authority may, if it considers it proper to do so in any particular case, treat a person as a fit and proper person notwithstanding that subsection (3)(a) above applies in his case.
- (5) It shall be the duty of waste regulation authorities to have regard to any guidance issued to them by the Secretary of State with respect to the discharge of their functions of making the determinations to which this section applies.
- (6) The Secretary of State may, by regulations, prescribe the offences that are relevant for the purposes of subsection (3)(a) above and the qualifications and experience required of a person for the purposes of subsection (3)(b) above.
- (7) For the purposes of subsection (3)(a) above, another relevant person shall be treated, in relation to the licence holder or proposed licence holder, as the case may be, as having been convicted of a relevant offence if—
  - (a) any person has been convicted of a relevant offence committed by him in the course of his employment by the holder or, as the case may be, the proposed holder of the licence or in the course of the carrying on of any business by a partnership one of the members of which was the holder or, as the case may be, the proposed holder of the licence;
  - (b) a body corporate has been convicted of a relevant offence committed when the holder or, as the case may be, the proposed holder of the licence was a director, manager, secretary or other similar officer of that body corporate; or
  - (c) where the holder or, as the case may be, the proposed holder of the licence is a body corporate, a person who is a director, manager, secretary or other similar officer of that body corporate—
    - (i) has been convicted of a relevant offence; or

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- (ii) was a director, manager, secretary or other similar officer of another body corporate at a time when a relevant offence for which that other body corporate has been convicted was committed.

**75 Meaning of “waste” and household, commercial and industrial waste and special waste**

- (1) The following provisions apply for the interpretation of this Part.
- (2) “Waste” includes—
  - (a) any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process; and
  - (b) any substance or article which requires to be disposed of as being broken, worn out, contaminated or otherwise spoiled;
 but does not include a substance which is an explosive within the meaning of the Explosives Act 1875.
- (3) Any thing which is discarded or otherwise dealt with as if it were waste shall be presumed to be waste unless the contrary is proved.
- (4) “Controlled waste” means household, industrial and commercial waste or any such waste.
- (5) Subject to subsection (8) below, “household waste” means waste from—
  - (a) domestic property, that is to say, a building or self-contained part of a building which is used wholly for the purposes of living accommodation;
  - (b) a caravan (as defined in section 29(1) of the Caravan Sites and Control of Development Act 1960) which usually and for the time being is situated on a caravan site (within the meaning of that Act);
  - (c) a residential home;
  - (d) premises forming part of a university or school or other educational establishment;
  - (e) premises forming part of a hospital or nursing home.
- (6) Subject to subsection (8) below, “industrial waste” means waste from any of the following premises—
  - (a) any factory (within the meaning of the Factories Act 1961);
  - (b) any premises used for the purposes of, or in connection with, the provision to the public of transport services by land, water or air;
  - (c) any premises used for the purposes of, or in connection with, the supply to the public of gas, water or electricity or the provision of sewerage services; or
  - (d) any premises used for the purposes of, or in connection with, the provision to the public of postal or telecommunications services.
- (7) Subject to subsection (8) below, “commercial waste” means waste from premises used wholly or mainly for the purposes of a trade or business or the purposes of sport, recreation or entertainment excluding—
  - (a) household waste;
  - (b) industrial waste;
  - (c) waste from any mine or quarry and waste from premises used for agriculture within the meaning of the Agriculture Act 1947 or, in Scotland, the Agriculture (Scotland) Act 1948; and

- (d) waste of any other description prescribed by regulations made by the Secretary of State for the purposes of this paragraph.
- (8) Regulations made by the Secretary of State may provide that waste of a description prescribed in the regulations shall be treated for the purposes of provisions of this Part prescribed in the regulations as being or not being household waste or industrial waste or commercial waste; but no regulations shall be made in respect of such waste as is mentioned in subsection (7)(c) above and references to waste in subsection (7) above and this subsection do not include sewage (including matter in or from a privy) except so far as the regulations provide otherwise.
- (9) “Special waste” means controlled waste as respects which regulations are in force under section 62 above.

## **76 Application of this Part to Isles of Scilly**

This Part shall have effect in its application to the Isles of Scilly with such modifications as the Secretary of State may by order specify.

## **77 Transition from Control of Pollution Act 1974 to this Part**

- (1) This section has effect for the purposes of the transition from the provisions of Part I of the Control of Pollution Act 1974 (“the 1974 Act”) to the corresponding provisions of this Part of this Act and in this section—
  - “existing disposal authority” has the same meaning as in section 32 above;
  - “existing disposal licence” means a disposal licence under section 5 of the 1974 Act subsisting on the day appointed under section 164(3) below for the repeal of sections 3 to 10 of the 1974 Act and “relevant appointed day for licences” shall be construed accordingly;
  - “existing disposal plan” means a plan under section 2 of the 1974 Act subsisting on the day appointed under section 164(3) below for the repeal of that section and “relevant appointed day for plans” shall be construed accordingly;
  - “relevant part of its undertaking”, in relation to an existing disposal authority, has the same meaning as in section 32 above; and
  - “the vesting date”, in relation to an existing disposal authority and its waste disposal contractors, means the vesting date under Schedule 2 to this Act.
- (2) An existing disposal licence shall, on and after the relevant appointed day for licences, be treated as a site licence until it expires or otherwise ceases to have effect; and accordingly it shall be variable and subject to revocation or suspension under this Part of this Act and may not be surrendered or transferred except under this Part of this Act.
- (3) The restriction imposed by section 33(1) above shall not apply in relation to land occupied by an existing disposal authority for which a resolution of the authority subsists under section 11 of the 1974 Act on the relevant appointed day for licences until the following date, that is to say—
  - (a) in the case of an authority which transfers the relevant part of its undertaking in accordance with a scheme under Schedule 2 to this Act, the date which is the vesting date for that authority; and
  - (b) in any other case, the date on which the authority transfers, or ceases itself to carry on, the relevant part of its undertaking or ceases to provide places at

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which and plant and equipment by means of which controlled waste can be disposed of or deposited for the purposes of disposal.

- (4) Any existing disposal plan of an existing disposal authority shall, on and after the relevant appointed day for plans, be treated as the plan of that authority under section 50 above and that section shall accordingly have effect as if references in it to “the plan” included the existing disposal plan of that authority.
- (5) Subsection (4) above applies to Scotland and, for the purposes of that application, “existing disposal authority” means any authority constituted as a disposal authority for any area before the day appointed for this section to come into force and “that authority” means the waste disposal authority for that area under section 30(2) above.
- (6) Subject to subsection (7) below, as respects any existing disposal authority—
  - (a) the restriction imposed by section 51(1) of this Act on the means whereby the authority arranges for the disposal of controlled waste shall not apply to the authority—
    - (i) in the case of an authority which transfers the relevant part of its undertaking in accordance with a scheme under Schedule 2 to this Act, until the date which is the vesting date for that authority; and
    - (ii) in any other case, until the date on which the authority transfers, or ceases itself to carry on, the relevant part of its undertaking or ceases to provide places at which and plant and equipment by means of which controlled waste can be disposed of or deposited for the purposes of disposal; and
  - (b) on and after that date, section 14(4) of the 1974 Act shall not authorise the authority to arrange for the disposal of controlled waste except by means of arrangements made (in accordance with Part II of Schedule 2 to this Act) with waste disposal contractors.
- (7) The Secretary of State may, as respects any existing disposal authority, direct that the restriction imposed by section 51(1) above shall not apply in the case of that authority until such date as he specifies in the direction and where he does so paragraph (a) of subsection (6) above shall not apply and paragraph (b) shall be read as referring to the date so specified.
- (8) In section 14(4) of the 1974 Act, after the words “this subsection”, there shall be inserted the words “but subject to subsection (6) of section 77 of the Environmental Protection Act 1990 as respects any time after the date applicable to the authority under paragraph (a) or (b) of that subsection”.
- (9) As respects any existing disposal authority, until the date which is, under subsection (6) (a) above, the date until which the restriction imposed by section 51(1) of this Act is disapplied,—
  - (a) the powers conferred on a waste disposal authority by section 55(2)(a) and (b) of this Act as respects the recycling of waste and the use of waste to produce heat or electricity shall be treated as powers which the authority may exercise itself; and
  - (b) the power conferred on a waste disposal authority by section 48(4) of this Act to object to a waste collection authority having waste recycled where the disposal authority has made arrangements with a waste disposal contractor for the contractor to recycle the waste shall be available to the waste disposal authority where it itself has the waste recycled.

## **78 This Part and radioactive substances**

Except as provided by regulations made by the Secretary of State under this section, nothing in this Part applies to radioactive waste within the meaning of the Radioactive Substances Act 1960; but regulations may—

- (a) provide for prescribed provisions of this Part to have effect with such modifications as the Secretary of State considers appropriate for the purposes of dealing with such radioactive waste;
- (b) make such modifications of the Radioactive Substances Act 1960 and any other Act as the Secretary of State considers appropriate.