



# Environment Act 1995

## 1995 CHAPTER 25

### PART I

#### THE ENVIRONMENT AGENCY AND THE SCOTTISH ENVIRONMENT PROTECTION AGENCY

#### CHAPTER I

##### THE ENVIRONMENT AGENCY

##### *Establishment of the Agency*

#### **1 The Environment Agency.**

- (1) There shall be a body corporate to be known as the Environment Agency or, in Welsh, Asiantaeth yr Amgylchedd (in this Act referred to as “the Agency”), for the purpose of carrying out the functions transferred or assigned to it by or under this Act.
- (2) The Agency shall consist of not less than eight nor more than fifteen members of whom—
  - (a) three shall be appointed by the Minister; and
  - (b) the others shall be appointed by the Secretary of State.
- (3) The Secretary of State shall designate—
  - (a) one of the members as the chairman of the Agency, and
  - (b) another of them as the deputy chairman of the Agency.
- (4) In appointing a person to be a member of the Agency, the Secretary of State or, as the case may be, the Minister shall have regard to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to the functions of the Agency.
- (5) Subject to the provisions of section 38 below, the Agency shall not be regarded—

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*Status: Point in time view as at 01/04/2003. This version of this part contains provisions that are prospective.*

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- (a) as the servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown; or
  - (b) by virtue of any connection with the Crown, as exempt from any tax, duty, rate, levy or other charge whatsoever, whether general or local;
- and the Agency's property shall not be regarded as property of, or property held on behalf of, the Crown.
- (6) The provisions of Schedule 1 to this Act shall have effect with respect to the Agency.

*Transfer of functions, property etc. to the Agency*

## 2 Transfer of functions to the Agency.

- (1) On the transfer date there shall by virtue of this section be transferred to the Agency—
- (a) the functions of the National Rivers Authority, that is to say—
    - (i) its functions under or by virtue of Part II (water resources management) of the <sup>M1</sup>Water Resources Act 1991 (in this Part referred to as “the 1991 Act”);
    - (ii) its functions under or by virtue of Part III of that Act (control of pollution of water resources);
    - (iii) its functions under or by virtue of Part IV of that Act (flood defence) and the <sup>M2</sup>Land Drainage Act 1991 and the functions transferred to the Authority by virtue of section 136(8) of the <sup>M3</sup>Water Act 1989 and paragraph 1(3) of Schedule 15 to that Act (transfer of land drainage functions under local statutory provisions and subordinate legislation);
    - (iv) its functions under or by virtue of Part VII of the 1991 Act (land and works powers);
    - (v) its functions under or by virtue of the <sup>M4</sup>Diseases of Fish Act 1937, the <sup>M5</sup>Sea Fisheries Regulation Act 1966, the <sup>M6</sup>Salmon and Freshwater Fisheries Act 1975, Part V of the 1991 Act or any other enactment relating to fisheries;
    - (vi) the functions as a navigation authority, harbour authority or conservancy authority which were transferred to the Authority by virtue of Chapter V of Part III of the <sup>M7</sup>Water Act 1989 or paragraph 23(3) of Schedule 13 to that Act or which have been transferred to the Authority by any order or agreement under Schedule 2 to the 1991 Act;
    - (vii) its functions under Schedule 2 to the 1991 Act;
    - (viii) the functions assigned to the Authority by or under any other enactment, apart from this Act;
  - (b) the functions of waste regulation authorities, that is to say, the functions conferred or imposed on them by or under—
    - (i) the <sup>M8</sup>Control of Pollution (Amendment) Act 1989, or
    - (ii) Part II of the <sup>M9</sup>Environmental Protection Act 1990 (in this Part referred to as “the 1990 Act”),
 or assigned to them by or under any other enactment, apart from this Act;
  - (c) the functions of disposal authorities under or by virtue of the waste regulation provisions of the <sup>M10</sup>Control of Pollution Act 1974;

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- (d) the functions of the chief inspector for England and Wales constituted under section 16(3) of the 1990 Act, that is to say, the functions conferred or imposed on him by or under Part I of that Act or assigned to him by or under any other enactment, apart from this Act;
  - (e) the functions of the chief inspector for England and Wales appointed under section 4(2)(a) of the <sup>M11</sup>Radioactive Substances Act 1993, that is to say, the functions conferred or imposed on him by or under that Act or assigned to him by or under any other enactment, apart from this Act;
  - (f) the functions conferred or imposed by or under the <sup>M12</sup>Alkali, &c, Works Regulation Act 1906 (in this section referred to as “the 1906 Act”) on the chief, or any other, inspector (within the meaning of that Act), so far as exercisable in relation to England and Wales;
  - (g) so far as exercisable in relation to England and Wales, the functions in relation to improvement notices and prohibition notices under Part I of the <sup>M13</sup>Health and Safety at Work etc. Act 1974 (in this section referred to as “the 1974 Act”) of inspectors appointed under section 19 of that Act by the Secretary of State in his capacity as the enforcing authority responsible in relation to England and Wales for the enforcement of the 1906 Act and section 5 of the 1974 Act; and
  - (h) the functions of the Secretary of State specified in subsection (2) below.
- (2) The functions of the Secretary of State mentioned in subsection (1)(h) above are the following, that is to say—
- (a) so far as exercisable in relation to England and Wales, his functions under section 30(1) of the <sup>M14</sup>Radioactive Substances Act 1993 (power to dispose of radioactive waste);
  - (b) his functions under Chapter III of Part IV of the <sup>M15</sup>Water Industry Act 1991 in relation to special category effluent, within the meaning of that Chapter, other than any function of making regulations or of making orders under section 139 of that Act;
  - (c) so far as exercisable in relation to England and Wales, the functions conferred or imposed on him by virtue of his being, for the purposes of Part I of the 1974 Act, the authority which is by any of the relevant statutory provisions made responsible for the enforcement of the 1906 Act and section 5 of the 1974 Act;
  - (d) so far as exercisable in relation to England and Wales, his functions under, or under regulations made by virtue of, section 9 of the 1906 Act (registration of works), other than any functions of his as an appellate authority or any function of making regulations;
  - (e) so far as exercisable in relation to England and Wales, his functions under regulations 7(1) and 8(2) of, and paragraph 2(2)(c) of Schedule 2 to, the <sup>M16</sup>Sludge (Use in Agriculture) Regulations 1989 (which relate to the provision of information and the testing of soil).
- (3) The National Rivers Authority and the London Waste Regulation Authority are hereby abolished.

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#### Marginal Citations

- M1** 1991 c. 57.
- M2** 1991 c. 59.
- M3** 1989 c. 15.
- M4** 1937 c. 33.

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<b>M5</b>	1966 c. 38.
<b>M6</b>	1975 c. 51.
<b>M7</b>	1989 c. 15.
<b>M8</b>	1989 c. 14.
<b>M9</b>	1990 c. 43.
<b>M10</b>	1974 c. 40.
<b>M11</b>	1993 c. 12.
<b>M12</b>	1906 c. 14.
<b>M13</b>	1974 c. 37.
<b>M14</b>	1993 c. 12.
<b>M15</b>	1991 c. 56.
<b>M16</b>	S.I. 1989/1263.

### **3 Transfer of property, rights and liabilities to the Agency.**

- (1) On the transfer date—
- (a) the property, rights and liabilities—
    - (i) of the National Rivers Authority, and
    - (ii) of the London Waste Regulation Authority,
 shall, by virtue of this paragraph, be transferred to and vested in the Agency;
  - (b) any property, rights or liabilities which are the subject of—
    - (i) a scheme made under the following provisions of this section by the Secretary of State, or
    - (ii) a scheme made under those provisions by a body which is a waste regulation authority and approved (with or without modifications) under those provisions by the Secretary of State,
 shall be transferred to and vested in the Agency by and in accordance with the scheme.
- (2) The Secretary of State may, before the transfer date, make a scheme for the transfer to the Agency of such of—
- (a) his property, rights and liabilities, or
  - (b) the property, rights and liabilities of any of the inspectors or chief inspectors mentioned in subsection (1) of section 2 above,
- as appear to the Secretary of State appropriate to be so transferred in consequence of the transfer of any functions to the Agency by virtue of any of paragraphs (d) to (h) of that subsection.
- (3) It shall be the duty of every body which is a waste regulation authority, other than the London Waste Regulation Authority—
- (a) to make a scheme, after consultation with the Agency, for the transfer to the Agency of such of the body's property, rights and liabilities as appear to the body appropriate to be so transferred in consequence of the transfer of any functions to the Agency by virtue of section 2(1)(b) or (c) above; and
  - (b) to submit that scheme to the Secretary of State for his approval before such date as he may direct.
- (4) Any body preparing a scheme in pursuance of subsection (3) above shall take into account any guidance given by the Secretary of State as to the provisions which he regards as appropriate for inclusion in the scheme.

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- (5) Where a scheme under subsection (3) above is submitted to the Secretary of State, he may—
- (a) approve the scheme;
  - (b) approve the scheme subject to such modifications as he considers appropriate;
- or
- (c) reject the scheme;
- but the power conferred on the Secretary of State by paragraph (b) above shall only be exercisable after consultation with the body which submitted the scheme to him and with the Agency.
- (6) The Secretary of State may, in the case of any body which is required to make a scheme under subsection (3) above, himself make a scheme for the transfer to the Agency of such of the body's property, rights or liabilities as appear to him appropriate to be so transferred in consequence of the transfer of any functions to the Agency by virtue of section 2(1)(b) or (c) above, if—
- (a) the body fails to submit a scheme under subsection (3) above to him for approval before the due date; or
  - (b) the Secretary of State rejects a scheme under that subsection submitted to him by that body;
- but nothing in this subsection shall prevent the Secretary of State from approving any scheme which may be submitted to him after the due date.
- (7) The Secretary of State may, at any time before the transfer date, modify any scheme made or approved by him under this section but only after consultation with the Agency and, in the case of a scheme which was approved by him (with or without modifications), after consultation with the body which submitted the scheme to him for approval.
- (8) Schedule 2 to this Act shall have effect in relation to transfers by or under this section.

#### **Commencement Information**

- II** S. 3 not in force at Royal Assent see s. 125(3); s. 3(2)-(8) in force at 28.7.1995 by [S.I. 1995/1983](#), [art. 2](#); s. 3(1) in force at 1.4.1996 by [S.I. 1996/186](#), [art 3](#)

## **4 Principal aim and objectives of the Agency.**

- (1) It shall be the principal aim of the Agency (subject to and in accordance with the provisions of this Act or any other enactment and taking into account any likely costs) in discharging its functions so to protect or enhance the environment, taken as a whole, as to make the contribution towards attaining the objective of achieving sustainable development mentioned in subsection (3) below.
- (2) The Ministers shall from time to time give guidance to the Agency with respect to objectives which they consider it appropriate for the Agency to pursue in the discharge of its functions.
- (3) The guidance given under subsection (2) above must include guidance with respect to the contribution which, having regard to the Agency's responsibilities and resources, the Ministers consider it appropriate for the Agency to make, by the discharge of its functions, towards attaining the objective of achieving sustainable development.

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- (4) In discharging its functions, the Agency shall have regard to guidance given under this section.
- (5) The power to give guidance to the Agency under this section shall only be exercisable after consultation with the Agency and such other bodies or persons as the Ministers consider it appropriate to consult in relation to the guidance in question.
- (6) A draft of any guidance proposed to be given under this section shall be laid before each House of Parliament and the guidance shall not be given until after the period of 40 days beginning with the day on which the draft was so laid or, if the draft is laid on different days, the later of the two days.
- (7) If, within the period mentioned in subsection (6) above, either House resolves that the guidance, the draft of which was laid before it, should not be given, the Ministers shall not give that guidance.
- (8) In reckoning any period of 40 days for the purposes of subsection (6) or (7) above, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (9) The Ministers shall arrange for any guidance given under this section to be published in such manner as they consider appropriate.

## **5 General functions with respect to pollution control.**

- (1) The Agency's pollution control powers shall be exercisable for the purpose of preventing or minimising, or remedying or mitigating the effects of, pollution of the environment.
- (2) The Agency shall, for the purpose—
  - (a) of facilitating the carrying out of its pollution control functions, or
  - (b) of enabling it to form an opinion of the general state of pollution of the environment,
 compile information relating to such pollution (whether the information is acquired by the Agency carrying out observations or is obtained in any other way).
- (3) If required by either of the Ministers to do so, the Agency shall—
  - (a) carry out assessments (whether generally or for such particular purpose as may be specified in the requirement) of the effect, or likely effect, on the environment of existing or potential levels of pollution of the environment and report its findings to that Minister; or
  - (b) prepare and send to that Minister a report identifying—
    - (i) the options which the Agency considers to be available for preventing or minimising, or remedying or mitigating the effects of, pollution of the environment, whether generally or in cases or circumstances specified in the requirement; and
    - (ii) the costs and benefits of such options as are identified by the Agency pursuant to sub-paragraph (i) above.
- (4) The Agency shall follow developments in technology and techniques for preventing or minimising, or remedying or mitigating the effects of, pollution of the environment.

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- (5) In this section, “pollution control powers” and “pollution control functions”, in relation to the Agency, mean respectively its powers or its functions under or by virtue of the following enactments, that is to say—
- (a) the <sup>M17</sup>Alkali, &c, Works Regulation Act 1906;
  - (b) Part I of the <sup>M18</sup>Health and Safety at Work etc. Act 1974;
  - (c) Part I of the <sup>M19</sup>Control of Pollution Act 1974;
  - (d) the <sup>M20</sup>Control of Pollution (Amendment) Act 1989;
  - (e) Parts I, II and IIA of the 1990 Act (integrated pollution control etc, waste on land and contaminated land);
  - (f) Chapter III of Part IV of the <sup>M21</sup>Water Industry Act 1991 (special category effluent);
  - (g) Part III and sections 161 to 161D of the 1991 Act (control of pollution of water resources);
  - (h) the <sup>M22</sup>Radioactive Substances Act 1993;
  - [<sup>F1</sup>(i) regulations under section 2 of the Pollution Prevention and Control Act 1999;]
  - (j) regulations made by virtue of section 2(2) of the <sup>M23</sup>European Communities Act 1972, to the extent that the regulations relate to pollution.

#### Textual Amendments

- F1** S. 5(5)(i) inserted (21.3.2000 for E.W and otherwise *prosp.*) by 1999 c. 24, ss. 6(1), 7(3), **Sch. 2 para. 15**; S.I. 2000/800, **art. 2**

#### Commencement Information

- I2** S. 5 wholly in force at 1.4.1996; s. 5 not in force at Royal Assent see s. 125(3); s. 5(2)(5) in force at 1.2.1996 by S.I. 1996/186, **art 2**; s. 5(1)(3)(4) in force at 1.4.1996 by S.I. 1996/186, **art 3**

#### Marginal Citations

- M17** 1906 c. 14.  
**M18** 1974 c. 37.  
**M19** 1974 c. 40.  
**M20** 1989 c. 14.  
**M21** 1991 c. 56.  
**M22** 1993 c. 12.  
**M23** 1972 c. 68.

## 6 General provisions with respect to water.

- (1) It shall be the duty of the Agency, to such extent as it considers desirable, generally to promote—
- (a) the conservation and enhancement of the natural beauty and amenity of inland and coastal waters and of land associated with such waters;
  - (b) the conservation of flora and fauna which are dependent on an aquatic environment; and
  - (c) the use of such waters and land for recreational purposes;

and it shall be the duty of the Agency, in determining what steps to take in performance of the duty imposed by virtue of paragraph (c) above, to take into account the needs of persons who are chronically sick or disabled. This subsection is without prejudice to the duties of the Agency under section 7 below.

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- (2) It shall be the duty of the Agency to take all such action as it may from time to time consider, in accordance with any directions given under section 40 below, to be necessary or expedient for the purpose—
- (a) of conserving, redistributing or otherwise augmenting water resources in England and Wales; and
  - (b) of securing the proper use of water resources in England and Wales;
- but nothing in this subsection shall be construed as relieving any water undertaker of the obligation to develop water resources for the purpose of performing any duty imposed on it by virtue of section 37 of the <sup>M24</sup>Water Industry Act 1991 (general duty to maintain water supply system).
- (3) The provisions of the 1991 Act relating to the functions of the Agency under Chapter II of Part II of that Act and the related water resources provisions so far as they relate to other functions of the Agency shall not apply to so much of any inland waters as—
- (a) are part of the River Tweed;
  - (b) are part of the River Esk or River Sark at a point where either of the banks of the river is in Scotland; or
  - (c) are part of any tributary stream of the River Esk or the River Sark at a point where either of the banks of the tributary stream is in Scotland.
- (4) Subject to section 106 of the 1991 Act (obligation to carry out flood defence functions through committees), the Agency shall in relation to England and Wales exercise a general supervision over all matters relating to flood defence.
- (5) The Agency's flood defence functions shall extend to the territorial sea adjacent to England and Wales in so far as—
- (a) the area of any regional flood defence committee includes any area of that territorial sea; or
  - (b) section 165(2) or (3) of the 1991 Act (drainage works for the purpose of defence against sea water or tidal water, and works etc to secure an adequate outfall for a main river) provides for the exercise of any power in the territorial sea.
- (6) It shall be the duty of the Agency to maintain, improve and develop salmon fisheries, trout fisheries, freshwater fisheries and eel fisheries.
- (7) The area in respect of which the Agency shall carry out its functions relating to fisheries shall be the whole of England and Wales, together with—
- (a) such part of the territorial sea adjacent to England and Wales as extends for six miles from the baselines from which the breadth of that sea is measured,
  - (b) in the Ecase of—
    - (i) the <sup>M25</sup>Diseases of Fish Act 1937,
    - (ii) the <sup>M26</sup>Salmon and Freshwater Fisheries Act 1975,
    - (iii) Part V of the 1991 Act (general control of fisheries), and
    - (iv) subsection (6) above,
 so much of the River Esk, with its banks and tributary streams up to their source, as is situated in Scotland, and
  - (c) in the case of sections 31 to 34 and 36(2) of the <sup>M27</sup>Salmon and Freshwater Fisheries Act 1975 as applied by section 39(1B) of that Act, so much of the catchment area of the River Esk as is situated in Scotland,



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but, in the case of the enactments specified in paragraph (b) above, excluding the River Tweed.

(8) In this section—

“miles” means international nautical miles of 1,852 metres;

“the related water resources provisions” has the same meaning as it has in the 1991 Act;

[<sup>F2</sup>“the River Esk” means that River as defined by section 111(4) of the Scotland Act 1998 or as such definition as may be modified by an order under section 111(1) of that Act;]

“the River Tweed” means “the river” within the meaning of the <sup>M28</sup>Tweed Fisheries Amendment Act 1859 as amended by byelaws.

#### Textual Amendments

**F2** S. 6: definition of “the River Esk” inserted (30.6.1999) by S.I. 1999/1746, arts. 1(1), 5(3); S.I. 1998/3178, art. 3

#### Marginal Citations

**M24** 1991 c. 56.  
**M25** 1937 c. 33.  
**M26** 1975 c. 51.  
**M27** 1975 c. 51.  
**M28** 1859 c. lxx.

## 7 General environmental and recreational duties.

(1) It shall be the duty of each of the Ministers and of the Agency, in formulating or considering—

- (a) any proposals relating to any functions of the Agency other than its pollution control functions, so far as may be consistent—
  - (i) with the purposes of any enactment relating to the functions of the Agency,
  - (ii) in the case of each of the Ministers, with the objective of achieving sustainable development,
  - (iii) in the case of the Agency, with any guidance under section 4 above,
  - (iv) in the case of the Secretary of State, with his duties under section 2 of the <sup>M29</sup>Water Industry Act 1991,

so to exercise any power conferred on him or it with respect to the proposals as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest;

- (b) any proposals relating to pollution control functions of the Agency, to have regard to the desirability of conserving and enhancing natural beauty and of conserving flora, fauna and geological or physiographical features of special interest;
- (c) any proposal relating to any functions of the Agency—
  - (i) to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural, engineering or historic interest;

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- (ii) to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects; and
  - (iii) to have regard to any effect which the proposals would have on the economic and social well-being of local communities in rural areas.
- (2) Subject to subsection (1) above, it shall be the duty of each of the Ministers and of the Agency, in formulating or considering any proposals relating to any functions of the Agency—
- (a) to have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountains, moor, heath, down, cliff or foreshore and other places of natural beauty;
  - (b) to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural, engineering or historic interest; and
  - (c) to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility.
- (3) Subsections (1) and (2) above shall apply so as to impose duties on the Agency in relation to—
- (a) any proposals relating to the functions of a water undertaker or sewerage undertaker,
  - (b) any proposals relating to the management, by the company holding an appointment as such an undertaker, of any land for the time being held by that company for any purpose whatever (whether or not connected with the carrying out of the functions of a water undertaker or sewerage undertaker), and
  - (c) any proposal which by virtue of section 156(7) of the <sup>M30</sup>Water Industry Act 1991 (disposals of protected land) falls to be treated for the purposes of section 3 of that Act as a proposal relating to the functions of a water undertaker or sewerage undertaker,
- as they apply in relation to proposals relating to the Agency's own functions, other than its pollution control functions.
- (4) Subject to obtaining the consent of any navigation authority, harbour authority or conservancy authority before doing anything which causes obstruction of, or other interference with, navigation which is subject to the control of that authority, it shall be the duty of the Agency to take such steps as are—
- (a) reasonably practicable, and
  - (b) consistent with the purposes of the enactments relating to the functions of the Agency,
- for securing, so long as the Agency has rights to the use of water or land associated with water, that those rights are exercised so as to ensure that the water or land is made available for recreational purposes and is so made available in the best manner.
- (5) It shall be the duty of the Agency, in determining what steps to take in performance of any duty imposed by virtue of subsection (4) above, to take into account the needs of persons who are chronically sick or disabled.
- (6) Nothing in this section, the following provisions of this Act or the 1991 Act shall require recreational facilities made available by the Agency to be made available free of charge.

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(7) In this section—

“building” includes structure;

“pollution control functions”, in relation to the Agency, has the same meaning as in section 5 above.

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#### Marginal Citations

**M29** 1991 c. 56.

**M30** 1991 c. 56.

## 8 Environmental duties with respect to sites of special interest.

(1) Where [<sup>F3</sup>English Nature] or the Countryside Council for Wales is of the opinion that any area of land in England or, as the case may be, in Wales—

- (a) is of special interest by reason of its flora, fauna or geological or physiographical features, and
- (b) may at any time be affected by schemes, works, operations or activities of the Agency or by an authorisation given by the Agency,

that Council shall notify the fact that the land is of special interest for that reason to the Agency.

(2) Where a National Park authority or the Broads Authority is of the opinion that any area of land in a National Park or in the Broads—

- (a) is land in relation to which the matters for the purposes of which sections 6(1) and 7 above (other than section 7(1)(c)(iii) above) have effect are of particular importance, and
- (b) may at any time be affected by schemes, works, operations or activities of the Agency or by an authorisation given by the Agency,

the National Park authority or Broads Authority shall notify the Agency of the fact that the land is such land, and of the reasons why those matters are of particular importance in relation to the land.

(3) Where the Agency has received a notification under subsection (1) or (2) above with respect to any land, it shall consult the notifying body before carrying out or authorising any works, operations or activities which appear to the Agency to be likely—

- (a) to destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; or
- (b) significantly to prejudice anything the importance of which is one of the reasons why the matters mentioned in subsection (2) above are of particular importance in relation to that land.

(4) Subsection (3) above shall not apply in relation to anything done in an emergency where particulars of what is done and of the emergency are notified to [<sup>F3</sup>English Nature], the Countryside Council for Wales, the National Park authority in question or, as the case may be, the Broads Authority as soon as practicable after that thing is done.

(5) In this section—

“authorisation” includes any consent or licence;

*Status: Point in time view as at 01/04/2003. This version of this part contains provisions that are prospective.*

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“the Broads” has the same meaning as in the <sup>M31</sup>Norfolk and Suffolk Broads Act 1988; and

“National Park authority”, <sup>F4</sup> . . . , means a National Park authority established under section 63 below which has become the local planning authority for the National Park in question.

<sup>F5</sup>(6) . . . . .

#### Textual Amendments

- F3** Words in s. 8(1)(4) substituted (30.1.2001) by 2000 c. 37, ss. 73(4), 103(2), **Sch. 8 para. 1(t)(i)**
- F4** Words in definition of  
 “National Park authority”  
 in s. 8(6) repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**
- F5** S. 8(6) repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**

#### Marginal Citations

**M31** 1988 c. 4.

## 9 Codes of practice with respect to environmental and recreational duties.

- (1) Each of the Ministers shall have power by order to approve any code of practice issued (whether by him or by another person) for the purpose of—
- (a) giving practical guidance to the Agency with respect to any of the matters for the purposes of which sections 6(1), 7 and 8 above have effect, and
  - (b) promoting what appear to him to be desirable practices by the Agency with respect to those matters,
- and may at any time by such an order approve a modification of such a code or withdraw his approval of such a code or modification.
- (2) In discharging its duties under section 6(1), 7 or 8 above, the Agency shall have regard to any code of practice, and any modifications of a code of practice, for the time being approved under this section.
- (3) Neither of the Ministers shall make an order under this section unless he has first consulted—
- (a) the Agency;
  - (b) the [<sup>F6</sup>Countryside Agency], [<sup>F7</sup>English Nature] and the Countryside Council for Wales;
  - (c) the Historic Buildings and Monuments Commission for England;
  - (d) the Sports Council and the Sports Council for Wales; and
  - (e) such other persons as he considers it appropriate to consult.
- (4) The power of each of the Ministers to make an order under this section shall be exercisable by statutory instrument; and any statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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#### Textual Amendments

- F6** Words in s. 9(3)(b) substituted (20.2.1999) by S.I. 1999/416, art. 3, Sch. 1 para. 17(2)  
**F7** Words in s. 9(3)(b) substituted (30.1.2001) by 2000 c. 37, ss. 73(4), 103(2), Sch. 8 para. 1(t)(ii)

#### Modifications etc. (not altering text)

- C1** S. 9(3) excluded (1.7.1999) by S.I. 1999/672, art. 2, Sch. 1

## 10 Incidental functions of the Agency.

- (1) This section has effect—
- (a) for the purposes of section 37(1) below, as it applies in relation to the Agency; and
  - (b) for the construction of any other enactment which, by reference to the functions of the Agency, confers any power on or in relation to the Agency; and any reference in this section to “the relevant purposes” is a reference to the purposes described in paragraphs (a) and (b) above.
- (2) For the relevant purposes, the functions of the Agency shall be taken to include the protection against pollution of—
- (a) any waters, whether on the surface or underground, which belong to the Agency or any water undertaker or from which the Agency or any water undertaker is authorised to take water;
  - (b) without prejudice to paragraph (a) above, any reservoir which belongs to or is operated by the Agency or any water undertaker or which the Agency or any water undertaker is proposing to acquire or construct for the purpose of being so operated; and
  - (c) any underground strata from which the Agency or any water undertaker is for the time being authorised to abstract water in pursuance of a licence under Chapter II of Part II of the 1991 Act (abstraction and impounding).
- (3) For the relevant purposes, the functions of the Agency shall be taken to include joining with or acting on behalf of one or more relevant undertakers for the purpose of carrying out any works or acquiring any land which at least one of the undertakers with which it joins, or on whose behalf it acts, is authorised to carry out or acquire for the purposes of—
- (a) any function of that undertaker under any enactment; or
  - (b) any function which is taken to be a function of that undertaker for the purposes to which section 217 of the <sup>M32</sup>Water Industry Act 1991 applies.
- (4) For the relevant purposes, the functions of the Agency shall be taken to include the provision of supplies of water in bulk, whether or not such supplies are provided for the purposes of, or in connection with, the carrying out of any other function of the Agency.
- (5) For the relevant purposes, the functions of the Agency shall be taken to include the provision of houses and other buildings for the use of persons employed by the Agency and the provision of recreation grounds for persons so employed.
- (6) In this section—
- “relevant undertaker” means a water undertaker or sewerage undertaker; and

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“supply of water in bulk” means a supply of water for distribution by a water undertaker taking the supply.

#### Marginal Citations

M32 1991 c. 56.

### *Advisory committees*

#### [<sup>F8</sup>11 **Advisory committee for Wales.**

- (1) The Secretary of State shall establish and maintain a committee for advising him with respect to matters affecting, or otherwise connected with, the carrying out in Wales of the Agency’s functions.
- (2) The committee shall consist of such persons as may from time to time be appointed by the Secretary of State.
- (3) The committee shall meet at least once a year.
- (4) The Secretary of State may pay to the members of the committee such sums by way of reimbursement (whether in whole or in part) for loss of remuneration, for travelling expenses and for other out-of-pocket expenses as he may determine.]

#### Textual Amendments

F8 S. 11 repealed (W.) (1.4.2002) by S.I. 2002/784, art. 2(2)

#### 12 **Environment protection advisory committees.**

- (1) It shall be the duty of the Agency—
  - (a) to establish and maintain advisory committees, to be known as Environment Protection Advisory Committees, for the different regions of England and Wales;
  - (b) to consult the advisory committee for any region as to any proposals of the Agency relating generally to the manner in which the Agency carries out its functions in that region; and
  - (c) to consider any representations made to it by the advisory committee for any region (whether in response to consultation under paragraph (b) above or otherwise) as to the manner in which the Agency carries out its functions in that region.
- (2) The advisory committee for any region shall consist of—
  - (a) a chairman appointed by the Secretary of State; and
  - (b) such other members as the Agency may appoint in accordance with the provisions of the approved membership scheme for that region.
- (3) In appointing the chairman of any advisory committee, the Secretary of State shall have regard to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to the functions of the committee.

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- (4) The members of advisory committees appointed by virtue of subsection (2)(b) above—
  - (a) must not be members of the Agency; but
  - (b) must be persons who appear to the Agency to have a significant interest in matters likely to be affected by the manner in which the Agency carries out any of its functions in the region of the advisory committee in question.
- (5) The duty imposed by subsection (1)(a) above to establish and maintain advisory committees is a duty to establish and maintain an advisory committee for each area which the Agency considers it appropriate for the time being to regard as a region of England and Wales for the purposes of this section.
- (6) It shall be the duty of the Agency, in determining the regions for which advisory committees are established and maintained under this section, to ensure that one of those regions consists wholly or mainly of, or of most of, Wales.
- (7) For the purposes of this section, functions of the Agency which are carried out in any area of Scotland, or of the territorial sea, which is adjacent to any region for which an advisory committee is maintained, shall be regarded as carried out in that region.
- (8) Schedule 3 to this Act shall have effect with respect to advisory committees.
- (9) In this section—
  - “advisory committee” means an advisory committee under this section;
  - “approved membership scheme” means a scheme, as in force for the time being, prepared by the Agency and approved (with or without modification) by the Secretary of State under Schedule 3 to this Act which makes provision with respect to the membership of the advisory committee for a region.

### **13 Regional and local fisheries advisory committees.**

- (1) It shall be the duty of the Agency—
  - (a) to establish and maintain advisory committees of persons who are not members of the Agency but appear to it to be interested in salmon fisheries, trout fisheries, freshwater fisheries or eel fisheries in the different parts of the controlled area; and
  - (b) to consult those committees as to the manner in which the Agency is to perform its duty under section 6(6) above.
- (2) If the Agency, with the consent of the Ministers, so determines, it shall also be under a duty to consult those committees, or such of them as may be specified or described in the determination, as to—
  - (a) the manner in which it is to perform its duties under or by virtue of such of the enactments relating to recreation, conservation or navigation as may be the subject of the determination, or
  - (b) such matters relating to recreation, conservation or navigation as may be the subject of the determination.
- (3) Where, by virtue of subsection (2) above, the Agency is under a duty to consult those committees or any of them, there may be included among the members of the committees in question persons who are not members of the Agency but who appear to it to be interested in matters—

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- (a) likely to be affected by the manner in which it performs the duties to which the determination in question relates, or
  - (b) which are the subject of the determination,
- if the Ministers consent to the inclusion of persons of that description.
- (4) The duty to establish and maintain advisory committees imposed by subsection (1) above is a duty to establish and maintain—
- (a) a regional advisory committee for each such region of the controlled area as the Agency considers it appropriate for the time being to regard as a region of that area for the purposes of this section; and
  - (b) such local advisory committees as the Agency considers necessary to represent—
    - (i) the interests referred to in subsection (1)(a) above, and
    - (ii) where persons may be appointed members of those committees by virtue of subsection (3) above by reference to any such interests as are mentioned in that subsection, the interests in question,
 in the different parts of each such region.
- (5) It shall be the duty of the Agency in determining the regions for which regional advisory committees are established and maintained under this section to ensure that one of those regions consists (apart from territorial waters) wholly or mainly of, or of most of, Wales.
- (6) In addition to any members appointed under the foregoing provisions of this section, there shall, in the case of each regional advisory committee established and maintained under this section, also be a chairman appointed—
- (a) by the Secretary of State, in the case of the committee established and maintained for the region described in subsection (5) above; or
  - (b) by the Minister, in any other case.
- (7) There shall be paid by the Agency—
- (a) to the chairman of any regional or local advisory committee established and maintained under this section such remuneration and such travelling and other allowances; and
  - (b) to any other members of that committee such sums by way of reimbursement (whether in whole or in part) for loss of remuneration, for travelling expenses or for any other out-of-pocket expenses,
- as may be determined by one of the Ministers.
- (8) In this section “the controlled area” means the area specified in section 6(7) above in respect of which the Agency carries out functions under section 6(6) above and Part V of the 1991 Act.

#### *Flood defence committees*

### **14 Regional flood defence committees.**

- (1) There shall be committees, known as regional flood defence committees, for the purpose of carrying out the functions which fall to be carried out by such committees by virtue of this Act and the 1991 Act.



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- (2) Subject to Schedule 4 to this Act (which makes provision for the alteration of the boundaries of and the amalgamation of the areas of regional flood defence committees)
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- (a) there shall be a regional flood defence committee for each of the areas for which there was an old committee immediately before the transfer date; but
  - (b) where under section 165(2) or (3) of the 1991 Act any function of the Agency falls to be carried out at a place beyond the seaward boundaries of the area of any regional flood defence committee, that place shall be assumed for the purposes of this Act and the 1991 Act to be within the area of the regional flood defence committee to whose area the area of sea where that place is situated is adjacent.
- (3) The Agency shall maintain a principal office for the area of each regional flood defence committee.
- (4) In this section “old committee” means a regional flood defence committee for the purposes of section 9 of the 1991 Act.

## **15 Composition of regional flood defence committees.**

- (1) Subject to subsection (2) below, a regional flood defence committee shall consist of the following, none of whom shall be a member of the Agency, that is to say—
- (a) a chairman and a number of other members appointed by the relevant Minister;
  - (b) two members appointed by the Agency;
  - (c) a number of members appointed by or on behalf of the constituent councils.
- (2) Any person who immediately before the transfer date is, by virtue of his appointment—
- (a) by a Minister of the Crown,
  - (b) by or on behalf of any council, or
  - (c) by the National Rivers Authority,
- the chairman or a member of an old committee which, by virtue of section 14 above, is replaced by a new committee shall be treated, on and after that date, for the remainder of the period for which he would, under the terms of his appointment, have held office in relation to the old committee, as if he had been appointed as the chairman or, as the case may be, a member of the new committee, and on the same terms, by that Minister or, as the case may be, by or on behalf of that council or, in the case of a person appointed by the National Rivers Authority, by the Agency.
- (3) Subject to section 16 below and to any order under Schedule 4 to this Act amalgamating the areas of any two or more regional flood defence committees—
- (a) the total number of members of a new committee for any area shall be the same as the total number of members of the old committee for that area immediately before the transfer date;
  - (b) the number of members to be appointed to a new committee for any area by or on behalf of each of the constituent councils or, as the case may be, jointly by or on behalf of more than one of them shall be the same as the number of members of the old committee for that area which fell to be so appointed immediately before the transfer date.
- (4) In any case where—

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- (a) the appointment of one or more members of a regional flood defence committee is (by virtue of subsection (3) above or an order under section 16(5) below), to be made jointly by more than one constituent council, and
- (b) the councils by whom that appointment is to be made are unable to agree on an appointment,

the member or members in question shall be appointed by the relevant Minister on behalf of those councils.

- (5) In appointing a person to be the chairman or a member of a regional flood defence committee under subsection (1)(a) or (c) or (4) above the relevant Minister or, as the case may be, a constituent council shall have regard to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to the functions of the committee.
- (6) The councils of every county, county borough, metropolitan district or London borough any part of which is in the area of a regional flood defence committee shall be the constituent councils for the regional flood defence committee for that area, and the Common Council of the City of London shall be a constituent council for the regional flood defence committee for any area which comprises any part of the City.
- (7) In this section—
  - “old committee” has the same meaning as in section 14 above;
  - “new committee” means a regional flood defence committee established under section 14 above;
  - “the relevant Minister”—
    - (a) in relation to the regional flood defence committee for an area the whole or the greater part of which is in Wales, means the Secretary of State; and
    - (b) in relation to any other regional flood defence committee, means the Minister.

## **16 Change of composition of regional flood defence committee.**

- (1) The Agency may, in accordance with the following provisions of this section, from time to time make a determination varying the total number of members of a regional flood defence committee.
- (2) The Agency shall submit any determination under subsection (1) above to the relevant Minister.
- (3) For the purposes of this section—
  - (a) the total number of members of a regional flood defence committee shall not be less than eleven; and
  - (b) any determination by the Agency under subsection (1) above that a regional flood defence committee should consist of more than seventeen members shall be provisional and shall take effect only if the relevant Minister makes an order under subsection (4) below.
- (4) If the Agency submits a provisional determination to the relevant Minister with respect to any regional flood defence committee and he considers that the committee should consist of more than seventeen members, he may by order made by statutory instrument—
  - (a) confirm it; or

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- (b) substitute for the number of members determined by the Agency some other number not less than seventeen.
- (5) Subject to the following provisions of this section, whenever—
- (a) the total number of members of a regional flood defence committee is varied under this section, or
  - (b) the relevant Minister considers it necessary or expedient to make an order under this subsection,
- the relevant Minister shall by order made by statutory instrument specify the number of members to be appointed to the committee by each of the constituent councils.
- (6) An order under subsection (5) above shall relate—
- (a) where paragraph (a) of that subsection applies, to times after the coming into force of the variation; and
  - (b) where paragraph (b) of that subsection applies, to such times as are specified in the order.
- (7) An order under subsection (5) above shall be so framed that the total number of members appointed under section 15(1)(a) and (b) above is one less than the number of those appointed by or on behalf of constituent councils.
- (8) For the purpose of determining for the purposes of subsection (5) above the number of persons to be appointed to a regional flood defence committee by or on behalf of each constituent council, the relevant Minister—
- (a) if he considers it to be inappropriate that that council should appoint a member of the committee, or
  - (b) if he considers that one or more members should be appointed jointly by that council and one or more other constituent councils,
- may include provision to that effect in the order.
- (9) In this section—
- “member”, in relation to a regional flood defence committee, includes the chairman of the committee;
  - “the relevant Minister” has the same meaning as in section 15 above.

## **17 Local flood defence schemes and local flood defence committees.**

- (1) A scheme, known as a local flood defence scheme, may be made by the Agency, in accordance with the following provisions of this section—
- (a) for the creation in the area of a regional flood defence committee of one or more districts, to be known as local flood defence districts; and
  - (b) for the constitution, membership, functions and procedure of a committee for each such district, to be known as the local flood defence committee for that district.
- (2) Any local flood defence scheme which was made under the 1991 Act or continued in force by virtue of paragraph 14(1) of Schedule 2 to the <sup>M33</sup>Water Consolidation (Consequential Provisions) Act 1991 and which, immediately before the transfer date, is in force in relation to the area of a regional flood defence committee, shall on and after that date have effect, and may be amended or revoked, as if it were a local flood defence scheme made under this section in relation to that area; and, accordingly, subject to any such amendment or revocation—

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- (a) any local flood defence district created by that scheme and in being immediately before that date shall be treated, on and after that date, as a local flood defence district created by a scheme under this section in relation to the area of that regional flood defence committee; and
  - (b) any local flood defence committee created by that scheme for any such district and in being immediately before that date shall be treated, on and after that date, as the local flood defence committee for that district.
- (3) A regional flood defence committee may at any time submit to the Agency—
- (a) a local flood defence scheme for any part of their area for which there is then no such scheme in force; or
  - (b) a scheme varying a local flood defence scheme or revoking such a scheme and, if the committee think fit, replacing it with another such scheme;
- and references in the following provisions of this section and in section 18 below to local flood defence schemes are references to schemes under either of paragraphs (a) and (b) above.
- (4) Before submitting a scheme to the Agency under subsection (3) above, a regional flood defence committee shall consult—
- (a) every local authority any part of whose area will fall within the area to which the scheme is proposed to relate; and
  - (b) such organisations representative of persons interested in flood defence (within the meaning of Part IV of the 1991 Act) or agriculture as the regional flood defence committee consider to be appropriate.
- (5) It shall be the duty of the Agency to send any scheme submitted to it under subsection (3) above to one of the Ministers.
- (6) A local flood defence scheme may define a local flood defence district—
- (a) by reference to the districts which were local land drainage districts immediately before 1st September 1989;
  - (b) by reference to the area of the regional flood defence committee in which that district is situated;
  - (c) by reference to a map;
- or partly by one of those means and partly by another or others.
- (7) A local flood defence scheme may contain incidental, consequential and supplementary provisions.
- (8) Either of the Ministers may approve a local flood defence scheme with or without modifications; and any scheme approved under this subsection shall come into force on a date fixed by the Minister approving it.

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**Marginal Citations**

**M33** 1991 c. 60.

## **18 Composition of local flood defence committees.**

- (1) Subject to subsections (2) and (3) below, a local flood defence scheme shall provide that any local flood defence committee to which it relates shall consist of not less than eleven and not more than fifteen members.

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*Status: Point in time view as at 01/04/2003. This version of this part contains provisions that are prospective.*

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- (2) A regional flood defence committee may include in a local flood defence scheme which they submit to the Agency a recommendation that a committee to which the scheme relates should consist of a number of members greater than fifteen; and a scheme so submitted shall be taken to provide for the number of members of a committee if it contains a recommendation under this subsection relating to that committee.
- (3) The power conferred on each of the Ministers by section 17(8) above shall include power to direct that a committee to which a recommendation under subsection (2) above relates shall consist either of the recommended number of members or of some other number of members greater than fifteen.
- (4) A local flood defence committee shall consist of—
  - (a) a chairman appointed from among their own members by the regional flood defence committee;
  - (b) other members appointed by that committee; and
  - (c) members appointed, in accordance with and subject to the terms of the local flood defence scheme, by or on behalf of constituent councils.
- (5) The number of members appointed to a local flood defence committee by or on behalf of constituent councils shall be one more than the total number of members appointed by the regional flood defence committee.
- (6) In appointing a person to be a member of a local flood defence committee, the regional flood defence committee shall have regard to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to the functions of the committee to which he is appointed.
- (7) Any person who, immediately before the transfer date is, by virtue of an appointment by an old regional committee or by or on behalf of any council, the chairman or a member of a local flood defence committee which is continued in force by virtue of section 17(2) above shall be treated, on and after that date, for the remainder of the period for which he would, under the terms of his appointment, have held office in relation to the local flood defence committee—
  - (a) as if he had been appointed as such under this section by the regional flood defence committee or, as the case may be, by or on behalf of that council; and
  - (b) in the case of the chairman, as if he were a member of the regional flood defence committee.
- (8) The councils of every county, county borough, metropolitan district or London borough any part of which is in a local flood defence district shall be the constituent councils for the local flood defence committee for that district, and the Common Council of the City of London shall be a constituent council for the local flood defence committee of any local flood defence district which comprises any part of the City.
- (9) In this section “old regional committee” means a regional flood defence committee for the purposes of section 9 of the 1991 Act.

## **19 Membership and proceedings of flood defence committees.**

Schedule 5 to this Act shall have effect in relation to regional flood defence committees and local flood defence committees.

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## CHAPTER II

### THE SCOTTISH ENVIRONMENT PROTECTION AGENCY

#### *Establishment of SEPA*

#### **20 The Scottish Environment Protection Agency.**

- (1) There shall be a body to be known as the Scottish Environment Protection Agency (in this Act referred to as “SEPA”), for the purpose of carrying out the functions transferred or assigned to it by or under this Act.
- (2) Schedule 6 to this Act shall have effect with respect to SEPA.

#### *Transfer of functions, property etc. to SEPA*

#### **21 Transfer of functions to SEPA.**

- (1) On the transfer date there shall by virtue of this section be transferred to SEPA—
  - (a) the functions of river purification authorities, that is to say—
    - (i) their functions with respect to water resources under or by virtue of Part III of the <sup>M34</sup>Rivers (Prevention of Pollution) (Scotland) Act 1951 (in this Part referred to as “the 1951 Act”) and Part II of the <sup>M35</sup>Natural Heritage (Scotland) Act 1991;
    - (ii) their functions with respect to water pollution under or by virtue of Part III of the 1951 Act, the <sup>M36</sup>Rivers (Prevention of Pollution) (Scotland) Act 1965 and Part II of the <sup>M37</sup>Control of Pollution Act 1974;
    - (iii) their functions as enforcing authority, in relation to releases of substances into the environment, under or by virtue of Part I of the 1990 Act;
    - (iv) their functions with respect to flood warning systems under or by virtue of Part VI of the <sup>M38</sup>Agriculture Act 1970; and
    - (v) the functions assigned to them by or under any other enactment apart from this Act;
  - (b) the functions of waste regulation authorities, that is to say, the functions conferred or imposed on them by or under—
    - (i) the <sup>M39</sup>Control of Pollution (Amendment) Act 1989; or
    - (ii) Part II of the 1990 Act,
 or assigned to them by or under any other enactment apart from this Act;
  - (c) the functions of disposal authorities under or by virtue of sections 3 to 10, 16, 17(1)(a) and 17(2)(b) to (d) of the <sup>M40</sup>Control of Pollution Act 1974;
  - (d) the functions of the chief inspector for Scotland constituted under section 16(3) of the 1990 Act, that is to say, the functions conferred or imposed on him by or under Part I of that Act or assigned to him by or under any other enactment apart from this Act;
  - (e) the functions of the chief inspector for Scotland appointed under section 4(2)(b) of the <sup>M41</sup>Radioactive Substances Act 1993, that is to say, the functions conferred or imposed on him by or under that Act or assigned to him by or under any other enactment apart from this Act;

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- (f) the functions conferred or imposed by or under the <sup>M42</sup>Alkali, &c, Works Regulation Act 1906 (in this section referred to as “the 1906 Act”) on the chief, or any other, inspector (within the meaning of that Act), so far as exercisable in relation to Scotland;
  - (g) so far as exercisable in relation to Scotland, the functions in relation to improvement notices and prohibition notices under Part I of the <sup>M43</sup>Health and Safety at Work etc. Act 1974 (in this section referred to as “the 1974 Act”) of inspectors appointed under section 19 of that Act by the Secretary of State in his capacity as enforcing authority responsible in relation to Scotland for the enforcement of the 1906 Act and section 5 of the 1974 Act;
  - (h) the functions of local authorities as enforcing authority, in relation to releases of substances into the air, under or by virtue of Part I of the 1990 Act; and
  - (i) the functions of the Secretary of State specified in subsection (2) below.
- (2) The functions of the Secretary of State mentioned in subsection (1)(i) above are, so far as exercisable in relation to Scotland—
- (a) the functions conferred or imposed on him by virtue of his being, for the purposes of Part I of the 1974 Act, the authority which is by any of the relevant statutory provisions made responsible for the enforcement of the 1906 Act and section 5 of the 1974 Act;
  - (b) his functions under, or under regulations made by virtue of, section 9 of the 1906 Act (registration of works), other than any functions of his as an appellate authority or any function of making regulations;
  - (c) his functions under section 19 of the <sup>M44</sup>Clean Air Act 1993 with respect to the creation of smoke control areas by local authorities; and
  - (d) his functions under section 30(1) of the <sup>M45</sup>Radioactive Substances Act 1993 (power to dispose of radioactive waste).
- (3) River purification boards shall be dissolved on the transfer date.

#### Marginal Citations

**M34** 1951 c. 66.

**M35** 1991 c. 28.

**M36** 1965 c. 13.

**M37** 1974 c. 40.

**M38** 1970 c. 40.

**M39** 1989 c. 14.

**M40** 1974 c. 40.

**M41** 1993 c. 12.

**M42** 1906 c. 14.

**M43** 1974 c. 37.

**M44** 1993 c. 11.

**M45** 1993 c. 12.

## 22 Transfer of property, rights and liabilities to SEPA.

- (1) On the transfer date—
- (a) the property, rights and liabilities of every river purification board shall, by virtue of this paragraph, be transferred to and vested in SEPA;

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- (b) any property, rights and liabilities which are the subject of a scheme under this section—
- (i) made by the Secretary of State; or
  - (ii) made by a local authority and approved by the Secretary of State,
- shall be transferred to and vested in SEPA by and in accordance with the scheme.
- (2) The Secretary of State may, before the transfer date, make a scheme for the transfer to SEPA of such of—
- (a) his property, rights and liabilities; or
  - (b) the property, rights and liabilities of any of the inspectors or chief inspectors mentioned in subsection (1) of section 21 above,
- as appear to the Secretary of State appropriate to be so transferred in consequence of the transfer of any functions to SEPA by virtue of that subsection.
- (3) It shall be the duty of every local authority to make a scheme, after consultation with SEPA, for the transfer to SEPA of—
- (a) such of the authority's property and rights as are held by it for the purposes of its functions as—
    - (i) a waste regulation authority;
    - (ii) a disposal authority under or by virtue of the provisions mentioned in section 21(1)(c) above;
    - (iii) enforcing authority, in relation to releases of substances into the air, by virtue of Part I of the 1990 Act; and
    - (iv) in the case of an islands council, a river purification authority; and
  - (b) such of its liabilities as are liabilities to which it is subject by virtue of its being an authority mentioned in paragraph (a)(i) to (iv) above,
- and to submit that scheme to the Secretary of State for his approval before such date as he may direct.
- (4) Any local authority preparing a scheme in pursuance of subsection (3) above shall take into account any guidance given by the Secretary of State as to the provisions which he regards as appropriate for inclusion in the scheme.
- (5) Where a scheme under subsection (3) above is submitted to the Secretary of State, he may—
- (a) approve the scheme;
  - (b) approve the scheme subject to such modifications as he considers appropriate;
  - or
  - (c) reject the scheme;
- but the power conferred on the Secretary of State by paragraph (b) above shall be exercisable only after consultation with the local authority which submitted the scheme to him and with SEPA.
- (6) The Secretary of State may, in the case of any local authority which is required to make a scheme under subsection (3) above, himself make a scheme for the transfer to SEPA of such of the body's property, rights or liabilities as are mentioned in paragraph (a) or (b) of that subsection, if—
- (a) the authority fails to submit a scheme under that subsection to him for his approval before the due date; or



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- (b) the Secretary of State rejects a scheme under that subsection submitted to him by the authority;
- but nothing in this subsection shall prevent the Secretary of State from approving any scheme which may be submitted to him after the due date.
- (7) Where the Secretary of State makes a transfer scheme under subsection (6) above, he may recover his reasonable expenses in doing so, or such proportion of those expenses as he thinks fit, from the local authority in question by such means as appear to him to be appropriate including, without prejudice to that generality, setting off the expenses payable by the local authority against revenue support grant or non-domestic rate income payable by the Secretary of State to the local authority under paragraph 3 of Schedule 12 to the <sup>M46</sup>Local Government Finance Act 1992.
- (8) The Secretary of State may, at any time before the transfer date, modify any scheme made or approved by him under this section but only after consultation with SEPA and, in the case of a scheme which was approved by him (with or without modifications), after consultation with the local authority which submitted the scheme to him for approval.
- (9) Schedule 2 to this Act shall have effect in relation to transfers by or under this section.

**Marginal Citations**

**M46** 1992 c. 14.

**23 Functions of staff commission.**

The functions of the staff commission established under section 12 of the <sup>M47</sup>Local Government etc. (Scotland) Act 1994 shall include—

- (a) considering and keeping under review the arrangements for the transfer to SEPA, in consequence of this Act or of any scheme made under it, of staff employed by local authorities;
- (b) considering such staffing problems arising out of, consequential on or connected with any provision of, or scheme made under, this Act as may be referred to them by the Secretary of State or by any local authority;
- (c) advising the Secretary of State as to the steps necessary to safeguard the interests of the staff referred to in paragraph (a) above.

**Marginal Citations**

**M47** 1994 c. 39.

*Other functions etc. of SEPA*

PROSPECTIVE

**F<sup>9</sup>24 Consultation with respect to drainage works.**

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#### Textual Amendments

- F9** S. 24 repealed (S.) (1.4.2006) by [The Water Environment \(Consequential and Savings Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/181\)](#), art. 1, **sch. Pt. 1** (with sch. Pt. 3)

### 25 Assessing flood risk.

- (1) Without prejudice to section 92 of the <sup>M48</sup>Agriculture Act 1970 (provision of flood warning systems), SEPA shall have the function of assessing, as far as it considers it appropriate, the risk of flooding in any area of Scotland.
- (2) If requested by a planning authority to do so, SEPA shall, on the basis of such information as it holds with respect to the risk of flooding in any part of the authority's area, provide the authority with advice as to such risk.

#### Marginal Citations

- M48** 1970 c. 40.

### 26 Power of SEPA to purchase land compulsorily.

- (1) The Secretary of State may authorise SEPA, for the purpose of any of its functions, to purchase land compulsorily.
- (2) The <sup>M49</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply in relation to the compulsory purchase of land under this section as if this section had been in force immediately before the commencement of that Act and, in relation to such purchase of land, SEPA shall be treated as if it were a local authority within the meaning of that Act.

#### Marginal Citations

- M49** 1947 c. 42.

### 27 Power of SEPA to obtain information about land.

- (1) Where, with a view to performing a function conferred on it by any enactment, SEPA considers that it ought to have information connected with any land, it may serve on one or more of the persons mentioned in subsection (2) below a notice—
  - (a) specifying the land, the function and the enactment; and
  - (b) requiring the recipient of the notice to furnish to SEPA, within such period of not less than 14 days from the date of service of the notice as is specified in the notice—
    - (i) the nature of his interest in the land; and
    - (ii) the name and address of each person whom he believes is, as respects the land, a person mentioned in subsection (2) below.
- (2) The persons referred to in subsection (1) above are—
  - (a) the occupier of the land;

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- (b) any person—
    - (i) who has an interest in the land as owner, creditor in a heritable security or lessee; or
    - (ii) who directly or indirectly receives rent for the land; and
  - (c) any person who, in pursuance of an agreement between himself and a person interested in the land, is authorised to manage the land or to arrange for the letting of it.
- (3) A person who—
- (a) fails to comply with the requirements of a notice served on him in pursuance of subsection (1) above; or
  - (b) in furnishing any information in compliance with such a notice makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## 28 Power of SEPA to promote or oppose private legislation.

- (1) SEPA may, where it is satisfied that it is expedient to do so—
  - (a) with the consent of the Secretary of State, petition for the issue of a provisional order under the <sup>M50</sup>Private Legislation Procedure (Scotland) Act 1936; or
  - (b) oppose any private legislation in Parliament.
- (2) An application for the consent mentioned in paragraph (a) of subsection (1) above shall be accompanied by a concise summary of the purposes of the order petitioned for.
- (3) In paragraph (b) of subsection (1) above, “private legislation in Parliament” includes—
  - (a) a provisional order and a Confirmation Bill relating to such an order; and
  - (b) any local or personal Bill.

### Marginal Citations

M50 1936 c. 52.

## 29 Procedure relating to making of byelaws.

The following provisions of the <sup>M51</sup>Local Government (Scotland) Act 1973—

- (a) section 202 (procedure etc. for byelaws);
- (b) section 202C (revocation of byelaws);
- (c) section 204 (evidence of byelaws),

shall apply in relation to SEPA as they apply in relation to a local authority, provided that in the application of the said section 202 to SEPA for subsection (13) there shall be substituted—

“(13) The Scottish Environment Protection Agency shall send a copy of any byelaws made by it to the proper officer of the local authority for any area to the whole or any part of which the byelaws will apply.”

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### **Marginal Citations**

**M51** 1973 c. 65.

## **30 Records held by SEPA.**

- (1) Subject to subsection (3) below—
  - (a) this section applies to all records (in whatever form or medium)—
    - (i) transferred to and vested in SEPA by or under section 22 above;
    - (ii) created or acquired by it in the exercise of any of its functions; or
    - (iii) otherwise in its keeping;
  - (b) SEPA shall ensure that the records, other than such as are mentioned in paragraph (c) below, are preserved and managed in accordance with such arrangements as it, after consulting the Keeper of the Records of Scotland, shall put into effect;
  - (c) records which in SEPA’s opinion are not worthy of preservation may be disposed of by it;
  - (d) SEPA may from time to time revise the arrangements mentioned in paragraph (b) above but before making any material change to those arrangements shall consult the Keeper; and
  - (e) SEPA—
    - (i) shall secure that the Keeper has, at all reasonable hours, unrestricted access to the records preserved by it;
    - (ii) may afford members of the public, free of charge or on payment of reasonable charges, facilities for inspecting and for obtaining copies or extracts from those records.
- (2) Nothing in subsection (1)(e)(ii) above permits infringement of copyright or contravention of conditions subject to which records are in SEPA’s keeping.
- (3) Insofar as any provision of any enactment, being a provision which relates to records of a specific kind, is (but for this subsection) inconsistent with subsection (1) above, that subsection is subject to the provision in question.

### *General powers and duties*

## **31 Guidance on sustainable development and other aims and objectives.**

- (1) The Secretary of State shall from time to time give guidance to SEPA with respect to aims and objectives which he considers it appropriate for SEPA to pursue in the performance of its functions.
- (2) The guidance given under subsection (1) above must include guidance with respect to the contribution which, having regard to SEPA’s responsibilities and resources, the Secretary of State considers it appropriate for SEPA to make, by the performance of its functions, towards attaining the objective of achieving sustainable development.
- (3) In performing its functions, SEPA shall have regard to guidance given under this section.

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- (4) The power to give guidance to SEPA under this section shall be exercisable only after consultation with SEPA and such other bodies or persons as the Secretary of State considers it appropriate to consult in relation to the guidance in question.
- (5) A draft of any guidance proposed to be given under this section shall be laid before [<sup>F10</sup>the Scottish Parliament] and the guidance shall not be given until after the period of 40 days beginning with the day on which the draft was so laid <sup>F11</sup> . . .
- (6) If, within the period mentioned in subsection (5) above, [<sup>F10</sup>the Scottish Parliament] resolves that the guidance, the draft of which was laid before it, should not be given, the Secretary of State shall not give that guidance.
- (7) In reckoning any period of 40 days for the purposes of subsection (5) or (6) above, no account shall be taken of any time during which [<sup>F10</sup>the Scottish Parliament] is dissolved or prorogued or <sup>F12</sup> . . . adjourned for more than four days.
- (8) The Secretary of State shall arrange for any guidance given under this section to be published in such manner as he considers appropriate.

#### Textual Amendments

**F10** Words in s. 31(5)(6)(7) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(2)(a)**; S.I. 1998/3178, **art. 3**

**F11** Words in s. 31(5) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(2)(b)**, Pt. IV; S.I. 1998/3178, **art. 3**

**F12** Words in s. 31(7) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(2)(c)**, Pt. IV; S.I. 1998/3178, **art. 3**

## 32 General environmental and recreational duties.

- (1) It shall be the duty of the Secretary of State and of SEPA, in formulating or considering any proposals relating to any functions of SEPA—
  - (a) to have regard to the desirability of conserving and enhancing the natural heritage of Scotland;
  - (b) to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural, engineering or historic interest;
  - (c) to take into account any effect which the proposals would have on the natural heritage of Scotland or on any such buildings, sites or objects; and
  - (d) to have regard to the social and economic needs of any area or description of area of Scotland and, in particular, to such needs of rural areas.
- (2) Subject to subsection (1) above, it shall be the duty of the Secretary of State and of SEPA, in formulating or considering any proposals relating to any functions of SEPA—
  - (a) to have regard to the desirability of preserving for the public any freedom of access (including access for recreational purposes) to areas of forest, woodland, mountains, moor, bog, cliff, foreshore, loch or reservoir and other places of natural beauty;
  - (b) to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural, engineering or historic interest; and

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- (c) to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility.

(3) In this section—

“building” includes structure; and

“the natural heritage of Scotland” has the same meaning as in section 1(3) of the <sup>M52</sup>Natural Heritage (Scotland) Act 1991.

#### Marginal Citations

M52 1991 c. 28.

### 33 General duties with respect to pollution control.

- (1) SEPA’s pollution control powers shall be exercisable for the purpose of preventing or minimising, or remedying or mitigating the effects of, pollution of the environment.
- (2) SEPA shall, for the purpose—
- (a) of facilitating the carrying out of its pollution control functions; or
  - (b) of enabling it to form an opinion of the general state of pollution of the environment,
- compile information relating to such pollution (whether the information is acquired by SEPA carrying out observations or is obtained in any other way).
- (3) If required by the Secretary of State to do so, SEPA shall—
- (a) carry out assessments (whether generally or for such particular purpose as may be specified in the requirement) of the effect, or likely effect, on the environment of existing or potential levels of pollution of the environment and report its findings to the Secretary of State; or
  - (b) prepare and send to the Secretary of State a report identifying—
    - (i) the options which SEPA considers to be available for preventing or minimising, or remedying or mitigating the effects of, pollution of the environment, whether generally or in cases or circumstances specified in the requirement; and
    - (ii) the costs and benefits of such options as are identified by SEPA pursuant to sub-paragraph (i) above.
- (4) SEPA shall follow developments in technology and techniques for preventing or minimising, or remedying or mitigating the effects of, pollution of the environment.
- (5) In this section, “pollution control powers” and “pollution control functions” in relation to SEPA, mean respectively its powers or its functions under or by virtue of—
- (a) the <sup>M53</sup>Alkali, &c. Works Regulation Act 1906;
  - (b) Part III of the 1951 Act, the <sup>M54</sup>Rivers (Prevention of Pollution) (Scotland) Act 1965 and Parts I, IA and II of the <sup>M55</sup>Control of Pollution Act 1974;
  - (c) Part I of the <sup>M56</sup>Health and Safety at Work etc. Act 1974;
  - (d) the <sup>M57</sup>Control of Pollution (Amendment) Act 1989;
  - (e) Parts I, II and IIA of the 1990 Act;
  - (f) section 19 of the <sup>M58</sup>Clean Air Act 1993;
  - (g) the <sup>M59</sup>Radioactive Substances Act 1993;

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- [<sup>F13</sup>(ga) regulations under section 2 of the Pollution Prevention and Control Act 1999;]  
and
- (h) regulations made by virtue of section 2(2) of the <sup>M60</sup>European Communities Act 1972, to the extent that the regulations relate to pollution.

#### Textual Amendments

**F13** S. 33(5)(ga) inserted (21.3.2000 (E.W.) and 29.9.2000 (S.)) by 1999 c. 24, s. 6(1), **Sch. 2 para. 16**; S.I. 2000/800, **art. 2**; S.S.I. 2000/322, **art. 2**

#### Marginal Citations

**M53** 1906 c. 14.  
**M54** 1965 c. 13.  
**M55** 1974 c. 40.  
**M56** 1974 c. 37.  
**M57** 1989 c. 14.  
**M58** 1993 c. 11.  
**M59** 1993 c. 12.  
**M60** 1972 c. 68.

### 34 General duties with respect to water.

- (1) It shall be the duty of SEPA—
- (a) to promote the cleanliness of—
    - (i) rivers, other inland waters and ground waters in Scotland; and
    - (ii) the tidal waters of Scotland; and
  - (b) to conserve so far as practicable the water resources of Scotland.
- (2) Without prejudice to section 32 above, it shall be the duty of SEPA, to such extent as it considers desirable, generally to promote—
- (a) the conservation and enhancement of the natural beauty and amenity of inland and coastal waters and of land associated with such waters; and
  - (b) the conservation of flora and fauna which are dependent on an aquatic environment.
- (3) Subsection (1) above is without prejudice to section 1 of the <sup>M61</sup>Water (Scotland) Act 1980 (general duties of Secretary of State and water authorities as respects water resources and supplies).
- (4) In subsection (1) above, “tidal waters” means any part of the sea or the tidal part of any river, watercourse or inland water (whether natural or artificial) and includes the waters of any enclosed dock which adjoins tidal waters.

#### Marginal Citations

**M61** 1980 c. 45.



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### 35 Environmental duties as respects Natural Heritage Areas and sites of special interest.

- (1) Where an area of land—
- (a) has been designated, under section 6(2) of the <sup>M62</sup>Natural Heritage (Scotland) Act 1991 (in this section referred to as “the 1991 Act”) as a Natural Heritage Area; or
  - (b) is, in the opinion of Scottish Natural Heritage (in this section referred to as “SNH”), of special interest by reason of its flora, fauna or geological or physiographical features,
- and SNH consider that it may at any time be affected by schemes, works, operations or activities of SEPA or by an authorisation given by SEPA, SNH shall give notice to SEPA in accordance with subsection (2) below.
- (2) A notice under subsection (1) above shall specify—
- (a) in the case of an area of land mentioned in paragraph (a) of that subsection, SNH’s reasons for considering that the area is of outstanding value to the natural heritage of Scotland; and
  - (b) in the case of an area of land mentioned in paragraph (b) of that subsection, SNH’s reasons for holding the opinion there mentioned.
- (3) Where SNH has given notice under subsection (1) above in respect of an area of land and—
- (a) in the case of an area of land mentioned in paragraph (a) of that subsection, the designation is cancelled or varied under section 6(7) of the 1991 Act; or
  - (b) in the case of an area of land mentioned in paragraph (b) of that subsection, SNH ceases to be of the opinion there mentioned,
- SNH shall forthwith notify SEPA of that fact.
- (4) Where SEPA has received notice under subsection (1) above with respect to any area of land, it shall (unless SNH has given notice under subsection (3) above with respect to the land) consult SNH before carrying out or authorising any schemes, works, operations or activities which appear to SEPA to be likely—
- (a) in the case of an area of land mentioned in subsection (1)(a), significantly to prejudice the value of the land, or any part of it, as a Natural Heritage Area; and
  - (b) in the case of an area of land mentioned in subsection (1)(b), to destroy or damage any of the flora or fauna or features by reason of which SNH formed the opinion there mentioned.
- (5) Subsection (4) above shall not apply in relation to anything done in an emergency if particulars of what is done and of the emergency are notified by SEPA to SNH as soon as practicable after the thing is done.
- (6) In this section, “authorisation” includes any consent, licence or permission.
- (7) Any expression used in this section and in Part I of the 1991 Act and not defined in this Act shall be construed in accordance with that Part.

#### Marginal Citations

M62 1991 c. 28.



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### 36 Codes of practice with respect to environmental and recreational duties.

- (1) The Secretary of State shall have power by order to approve any code of practice issued (whether by him or by another person) for the purpose of—
- (a) giving practical guidance to SEPA with respect to any of the matters for the purposes of which sections 32, 34(2) and 35 above have effect; and
  - (b) promoting what appear to him to be desirable practices by SEPA with respect to those matters,
- and may at any time by such an order approve a modification of such a code or withdraw his approval of such a code or modification.
- (2) In discharging its duties under section 32, 34(2) or 35 above, SEPA shall have regard to any code of practice, and any modifications of a code of practice, for the time being approved under this section.
- (3) The Secretary of State shall not make an order under this section unless he has first consulted—
- (a) SEPA;
  - (b) Scottish Natural Heritage;
  - (c) Scottish Enterprise;
  - (d) Highlands and Islands Enterprise;
  - [<sup>F14</sup>(da) Scottish Water;]
  - (g) the North of Scotland Water Authority; and
  - (h) such other persons as he considers it appropriate to consult.
- (4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument; and any statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F14** S. 36(3)(da) substituted (S.) (1.4.2002) by 2002 asp 3, s. 71(2), **Sch. 7 para. 24(2)** (with s. 67); S.S.I. 2002/118, **art. 2(3)**

## CHAPTER III

### MISCELLANEOUS, GENERAL AND SUPPLEMENTAL PROVISIONS RELATING TO THE NEW AGENCIES

#### *Additional general powers and duties*

### 37 Incidental general functions.

- (1) Each new Agency (that is to say, in this Part, the Agency or SEPA)—
- (a) may do anything which, in its opinion, is calculated to facilitate, or is conducive or incidental to, the carrying out of its functions; and
  - (b) without prejudice to the generality of that power, may, for the purposes of, or in connection with, the carrying out of those functions, acquire and dispose of

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*Status: Point in time view as at 01/04/2003. This version of this part contains provisions that are prospective.*

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land and other property and carry out such engineering or building operations as it considers appropriate;

and the Agency may institute criminal proceedings in England and Wales.

- (2) It shall be the duty of each new Agency to provide the Secretary of State or the Minister with such advice and assistance as he may request.
- (3) Subject to subsection (4) below, each new Agency may provide for any person, whether in or outside the United Kingdom, advice or assistance, including training facilities, as respects any matter in which that new Agency has skill or experience.
- (4) Without prejudice to any power of either new Agency apart from subsection (3) above to provide advice or assistance of the kind mentioned in that subsection, the power conferred by that subsection shall not be exercised in a case where the person for whom the advice or assistance is provided is outside the United Kingdom, except with the consent in writing of the appropriate Minister which consent may be given subject to such conditions as the Minister giving it thinks fit.
- (5) Each new Agency—
  - (a) shall make arrangements for the carrying out of research and related activities (whether by itself or by others) in respect of matters to which its functions relate; and
  - (b) may make the results of any such research or related activities available to any person in return for payment of such fee as it considers appropriate.
- (6) Subsection (5) above shall not be taken as preventing a new Agency from making the results of any research available to the public free of charge whenever it considers it appropriate to do so.
- (7) Each new Agency may by agreement with any person charge that person a fee in respect of work done, or services or facilities provided, as a result of a request made by him for advice or assistance, whether of a general or specific character, in connection with any matter involving or relating to environmental licences.
- (8) Subsection (7) above—
  - (a) is without prejudice to the generality of the powers of either new Agency to make charges; but
  - (b) is subject to any such express provision with respect to charging by the new Agency in question as is contained in the other provisions of this Part or in any other enactment.
- (9) In this section “engineering or building operations”, without prejudice to the generality of that expression, includes—
  - (a) the construction, alteration, improvement, maintenance or demolition of any building or structure or of any reservoir, watercourse, dam, weir, well, borehole or other works; and
  - (b) the installation, modification or removal of any machinery or apparatus.

#### **Commencement Information**

**I3** S. 37 wholly in force at 1.4.1996; s. 37 not in force at Royal Assent see s. 125(3); s. 37(1)(2)(9) in force at 28.7.1995 by S.I. 1995/1983, art. 2; s. 37(3)-(8) in force at 1.4.1996 by S.I. 1996/186, art 3

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### **38 Delegation of functions by Ministers etc. to the new Agencies.**

- (1) Agreements may be made between—
  - (a) any Minister of the Crown, and
  - (b) a new Agency,authorising the new Agency (or any of its employees) to exercise on behalf of that Minister, with or without payment, any eligible function of his.
- (2) An agreement under subsection (1) above shall not authorise the new Agency (or any of its employees) to exercise on behalf of a Minister of the Crown any function which consists of a power to make regulations or other instruments of a legislative character or a power to fix fees or charges.
- (3) An agreement under this section may provide for any eligible function to which it relates to be exercisable by the new Agency in question (or any of its employees)—
  - (a) either wholly or to such extent as may be specified in the agreement;
  - (b) either generally or in such cases or areas as may be so specified; or
  - (c) either unconditionally or subject to the fulfilment of such conditions as may be so specified.
- (4) Subsection (5) below applies where, by virtue of an agreement under this section, a new Agency (or any of its employees) is authorised to exercise any function of a Minister of the Crown.
- (5) Subject to subsection (6) below, anything done or omitted to be done by the new Agency (or an employee of the new Agency) in, or in connection with, the exercise or purported exercise of the function shall be treated for all purposes as done or omitted to be done by that Minister in his capacity as such.
- (6) Subsection (5) above shall not apply—
  - (a) for the purposes of so much of any agreement made between that Minister and the new Agency as relates to the exercise of the function; or
  - (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that subsection.
- (7) An agreement under this section shall not prevent a Minister of the Crown exercising any function to which the agreement relates.
- (8) Where a Minister of the Crown has power to include, in any arrangements which he makes in relation to the performance by him of an eligible function, provision for the making of payments to him—
  - (a) by other parties to the arrangements, or
  - (b) by persons who use any facilities or services provided by him pursuant to the arrangements or in relation to whom the function is otherwise exercisable,he may include in any such arrangements provision for the making of such payments to him or a new Agency in cases where the new Agency (or any of its employees) acts on his behalf by virtue of an agreement under this section.
- (9) The power conferred on a Minister of the Crown by subsection (1) above is in addition to any other power by virtue of which functions of his may be exercised by other persons on his behalf.
- (10) In this section—

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“eligible function” means any function of a Minister of the Crown which the Secretary of State, having regard to the functions conferred or imposed upon the new Agency in question under or by virtue of this Act or any other enactment, considers can appropriately be exercised by that new Agency (or any of its employees) on behalf of that Minister;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975.

**Modifications etc. (not altering text)**

C2 S. 38 modified (30.6.1999) by S.I. 1999/1746, arts. 1(1), 5(1); S.I. 1998/3178, art. 3

**Marginal Citations**

M63 1975 c. 26.

**39 General duty of the new Agencies to have regard to costs and benefits in exercising powers.**

- (1) Each new Agency—
- (a) in considering whether or not to exercise any power conferred upon it by or under any enactment, or
  - (b) in deciding the manner in which to exercise any such power,
- shall, unless and to the extent that it is unreasonable for it to do so in view of the nature or purpose of the power or in the circumstances of the particular case, take into account the likely costs and benefits of the exercise or non-exercise of the power or its exercise in the manner in question.
- (2) The duty imposed upon a new Agency by subsection (1) above does not affect its obligation, nevertheless, to discharge any duties, comply with any requirements, or pursue any objectives, imposed upon or given to it otherwise than under this section.

**40 Ministerial directions to the new Agencies.**

- (1) The appropriate Minister may give a new Agency directions of a general or specific character with respect to the carrying out of any of its functions.
- (2) The appropriate Minister may give a new Agency such directions of a general or specific character as he considers appropriate for the implementation of—
  - (a) any obligations of the United Kingdom under the Community Treaties, or
  - (b) any international agreement to which the United Kingdom is for the time being a party.
- (3) Any direction under subsection (2) above shall be published in such manner as the Minister giving it considers appropriate for the purpose of bringing the matters to which it relates to the attention of persons likely to be affected by them; and—
  - (a) copies of the direction shall be made available to the public; and
  - (b) notice shall be given—
    - (i) in the case of a direction given to the Agency, in the London Gazette, or
    - (ii) in the case of a direction given to SEPA, in the Edinburgh Gazette,

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of the giving of the direction and of where a copy of the direction may be obtained.

- (4) The provisions of subsection (3) above shall have effect in relation to any direction given to a new Agency under an enactment other than subsection (2) above for the implementation of—
- (a) any obligations of the United Kingdom under the Community Treaties, or
  - (b) any international agreement to which the United Kingdom is for the time being a party,
- as those provisions have effect in relation to a direction given under subsection (2) above.
- (5) In determining—
- (a) any appeal against, or reference or review of, a decision of a new Agency, or
  - (b) any application transmitted from a new Agency,
- the body or person making the determination shall be bound by any direction given under this section or any other enactment by a Minister of the Crown to the new Agency to the same extent as the new Agency.
- (6) Any power to give a direction under this section shall be exercisable, except in an emergency, only after consultation with the new Agency concerned.
- (7) Any power of the appropriate Minister to give directions to a new Agency otherwise than by virtue of this section shall be without prejudice to any power to give directions conferred by this section.
- (8) It is the duty of a new Agency to comply with any direction which is given to that new Agency by a Minister of the Crown under this section or any other enactment.

**Modifications etc. (not altering text)**

C3 S. 40 modified (30.6.1999) by S.I. 1999/1746, arts. 1(1), 5(2); S.I. 1998/3178, art. 3

*Charging schemes*

**41 Power to make schemes imposing charges.**

- (1) Subject to the following provisions of this section and section 42 below—
- (a) in the case of any particular licence under Chapter II of Part II of the 1991 Act (abstraction and impounding), the Agency may require the payment to it of such charges as may from time to time be prescribed;
  - (b) in relation to other environmental licences, there shall be charged by and paid to a new Agency such charges as may from time to time be prescribed; and
  - (c) as a means of recovering costs incurred by it in performing functions conferred by regulations under section 62 of the 1990 Act (dangerous or intractable waste) each of the new Agencies may require the payment to it of such charges as may from time to time be prescribed;

and in this section “prescribed” means specified in, or determined under, a scheme (in this section referred to as a “charging scheme”) made under this section by the new Agency in question.

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- (2) As respects environmental licences, charges may be prescribed in respect of—
- (a) the grant or variation of an environmental licence, or any application for, or for a variation of, such a licence;
  - (b) the subsistence of an environmental licence;
  - (c) the transfer (where permitted) of an environmental licence to another person, or any application for such a transfer;
  - (d) the renewal (where permitted) of an environmental licence, or any application for such a renewal;
  - (e) the surrender (where permitted) of an environmental licence, or any application for such a surrender; or
  - (f) any application for the revocation (where permitted) of an environmental licence.
- (3) A charging scheme may, for the purposes of subsection (2)(b) above, impose—
- (a) a single charge in respect of the whole of any relevant licensed period;
  - (b) separate charges in respect of different parts of any such period; or
  - (c) both such a single charge and such separate charges;
- and in this subsection “relevant licensed period” means the period during which an environmental licence is in force or such part of that period as may be prescribed.
- (4) Without prejudice to subsection (7)(a) below, a charging scheme may, as respects environmental licences, provide for different charges to be payable according to—
- (a) the description of environmental licence in question;
  - (b) the description of authorised activity in question;
  - (c) the scale on which the authorised activity in question is carried on;
  - (d) the description or amount of the substance to which the authorised activity in question relates;
  - (e) the number of different authorised activities carried on by the same person.
- (5) A charging scheme—
- (a) shall specify, in relation to any charge prescribed by the scheme, the description of person who is liable to pay the charge; and
  - (b) may provide that it shall be a condition of an environmental licence of any particular description that any charge prescribed by a charging scheme in relation to an environmental licence of that description is paid in accordance with the scheme.
- (6) Without prejudice to subsection (5)(b) above, if it appears to a new Agency that any charges due and payable to it in respect of the subsistence of an environmental licence have not been paid, it may, in accordance with the appropriate procedure, suspend or revoke the environmental licence to the extent that it authorises the carrying on of an authorised activity.
- (7) A charging scheme may—
- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities;
  - (b) provide for the times at which, and the manner in which, the charges prescribed by the scheme are to be paid;
  - (c) revoke or amend any previous charging scheme;

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- (d) contain supplemental, incidental, consequential or transitional provision for the purposes of the scheme.
- (8) If and to the extent that a charging scheme relates to licences under Chapter II of Part II of the 1991 Act (abstraction and impounding), the scheme shall have effect subject to any provision made by or under sections 125 to 130 of that Act (exemption from charges, imposition of special charges for spray irrigation, and charges in respect of abstraction from waters of the British Waterways Board).
- (9) A new Agency shall not make a charging scheme unless the provisions of the scheme have been approved by the Secretary of State under section 42 below.
- (10) In this section—  
     “the appropriate procedure” means such procedure as may be specified or described in regulations made for the purpose by the Secretary of State;  
     “authorised activity” means any activity to which an environmental licence relates.
- (11) Any power to make regulations under this section shall be exercisable by statutory instrument; and a statutory instrument containing any such regulations shall be subject to annulment pursuant to a resolution of either House of Parliament.

#### Modifications etc. (not altering text)

- C4** S. 41 applied (with modifications) (2.12.1998) by [S.I. 1998/2746, reg. 16\(1\)](#)  
 S. 41: certain functions made exercisable only after consultation with the Assembly (W.) (1.7.1999) by [S.I. 1999/672, art. 5, Sch. 2](#)

#### Commencement Information

- I4** S. 41 wholly in force at 1.4.1996; s. 41 not in force at Royal Assent see s. 125(3); s. 41 in force for specified purposes at 21.9.1995 by [S.I. 1995/1983, art. 3](#); s. 41 in force for further specified purposes at 1.2.1996 by [S.I. 1996/186, art 2](#); s. 41 in force at 1.4.1996 insofar as not already in force by [S.I. 1996/186, art 3](#)

## 42 Approval of charging schemes.

- (1) Before submitting a proposed charging scheme to the Secretary of State for his approval, a new Agency shall, in such manner as it considers appropriate for bringing it to the attention of persons likely to be affected by the scheme, publish a notice—
- setting out its proposals; and
  - specifying the period within which representations or objections with respect to the proposals may be made to the Secretary of State.
- (2) Where any proposed charging scheme has been submitted to the Secretary of State for his approval, he shall, in determining whether or not to approve the scheme or to approve it subject to modifications,—
- consider any representations or objections duly made to him and not withdrawn; and
  - have regard to the matter specified in subsection (3) below.
- (3) The matter mentioned in subsection (2)(b) above is the desirability of ensuring that, in the case of each of the descriptions of environmental licence specified in the paragraphs of the definition of that expression in section 56 below, the amounts

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recovered by the new Agency in question by way of charges prescribed by charging schemes are the amounts which, taking one year with another, need to be recovered by that new Agency to meet such of the costs and expenses (whether of a revenue or capital nature)—

- (a) which it incurs in carrying out its functions,
- (b) in the case of environmental licences which are authorisations under section 13(1) of the <sup>M64</sup>Radioactive Substances Act 1993—
  - (i) which the [<sup>F15</sup>Food Standards Agency] incurs in carrying out [<sup>F15</sup>its] functions under or in consequence of that Act, and
  - <sup>F16</sup>(ii) . . . . .

as the Secretary of State may consider it appropriate to attribute to the carrying out of those functions in relation to activities to which environmental licences of the description in question relate.

- (4) Without prejudice to the generality of the expression “costs and expenses”, in determining for the purposes of subsection (3) above the amounts of the costs and expenses which the Secretary of State considers it appropriate to attribute to the carrying out of a new Agency’s or the [<sup>F17</sup>Food Standard Agency’s] functions in relation to the activities to which environmental licences of any particular description relate, the Secretary of State—
  - (a) shall take into account any determination of the new Agency’s financial duties under section 44 below; and
  - (b) may include amounts in respect of the depreciation of, and the provision of a return on, such assets as are held by the new Agency, [<sup>F18</sup>or the Food Standards Agency], for purposes connected with the carrying out of the functions in question.
- (5) If and to the extent that a charging scheme relates to any licence under Chapter II of Part II of the 1991 Act (abstraction and impounding), the Secretary of State may consider it appropriate to attribute to the carrying out of the Agency’s functions in relation to activities to which such a licence relates any costs and expenses incurred by the Agency in carrying out any of its functions under Part II of that Act or under section 6(2) above.
- (6) Subsection (5) above is without prejudice to what costs and expenses the Secretary of State may consider it appropriate to attribute to the carrying out of any functions of a new Agency, the Minister or the Secretary of State in relation to activities to which environmental licences of any particular description relate.
- (7) The consent of the Treasury shall be required for the giving of approval to a charging scheme [<sup>F19</sup>submitted by the Agency]. . . .
- (8) It shall be the duty of a new Agency to take such steps as it considers appropriate for bringing the provisions of any charging scheme made by it which is for the time being in force to the attention of persons likely to be affected by them.
- (9) If and to the extent that any sums recovered by a new Agency by way of charges prescribed by charging schemes may fairly be regarded as so recovered for the purpose of recovering the amount required to meet (whether in whole or in part)—[<sup>F20</sup>such of the costs and expenses incurred by the Food Standards Agency as fall within subsection (3) above] those sums shall be paid by that new Agency [<sup>F21</sup>to the Food Standards Agency].



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- (10) For the purposes of subsection (9) above, any question as to the extent to which any sums may fairly be regarded as recovered for the purpose of recovering the amount required to meet the costs and expenses falling within [F22 that subsection shall be determined by the Secretary of State].
- (11) In this section “charging scheme” has the same meaning as in section 41 above.

#### Textual Amendments

- F15** Words in s. 42(3)(b)(i) substituted (1.4.2000) by 1999 c. 28, s. 40(1)(2), **Sch. 5 para. 44(1)(2)(a)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F16** S. 42(3)(b)(ii) repealed (1.4.2000) by 1999 c. 28, s. 40(1)(2)(4), Sch. 5 para. 44(1)(2)(b), **Sch. 6** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F17** Words in s. 42(4) substituted (1.4.2000) by 1999 c. 28, s. 40(1)(2), **Sch. 5 para. 44(1)(3)(s)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F18** Words in s. 42(4)(b) substituted (1.4.2000) by 1999 c. 28, s. 40(1)(2), **Sch. 5 para. 44(1)(3)(b)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F19** Words in s. 42(7) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(3)**; S.I. 1998/3178, **art. 3**
- F20** Words in s. 42(9) substituted for paras. (a) and (b) (1.4.2000) by 1999 c. 28, s. 40(1)(2), **Sch. 5 para. 44(1)(5)(a)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F21** Words in s. 42(9) substituted (1.4.2000) by 1999 c. 28, s. 40(1)(2), **Sch. 5 para. 44(1)(5)(b)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F22** Words in s. 42(10) substituted (1.4.2000) by 1999 c. 28, s. 40(1)(2), **Sch. 5 para. 44(1)(6)** (with s. 38, 40(2)); S.I. 2000/1066, **art. 2**

#### Modifications etc. (not altering text)

- C5** S. 42 applied (with modifications) (2.12.1998) by S.I. 1998/2746, **reg. 16(1)**  
 S. 42: certain functions made exercisable only after consultation with the Assembly (W.) (1.7.1999) by S.I. 1999/672, art. 5, **Sch. 2**  
 S. 42 modified (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**

#### Marginal Citations

- M64** 1993 c. 12.

### *Incidental power to impose charges*

#### **43 Incidental power of the new Agencies to impose charges.**

Without prejudice to the generality of its powers by virtue of section 37(1)(a) above and subject to any such express provision with respect to charging by a new Agency as is contained in the preceding provisions of this Chapter or any other enactment, each new Agency shall have power to fix and recover charges for services and facilities provided in the course of carrying out its functions.

#### Modifications etc. (not altering text)

- C6** S. 43 modified (15.8.2002) by S.I. 2002/1998, **art. 24(1)** (with art. 33)

*Status: Point in time view as at 01/04/2003. This version of this part contains provisions that are prospective.*

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### *General financial provisions*

#### **44 General financial duties.**

- (1) The appropriate Ministers may—
  - (a) after consultation with a new Agency, and
  - (b) [<sup>F23</sup>in the case of the Agency only] with the approval of the Treasury, determine the financial duties of that new Agency; and different determinations may be made for different functions and activities of the new Agency.
- (2) The appropriate Ministers shall give a new Agency notice of every determination of its financial duties under this section, and such a determination may—
  - (a) relate to a period beginning before, on, or after, the date on which it is made;
  - (b) contain supplemental provisions; and
  - (c) be varied by a subsequent determination.
- (3) The appropriate Minister may, after consultation with <sup>F24</sup> . . . a new Agency, [<sup>F25</sup>and, in the case of the Agency only, after consultation with Treasury,] give a direction to that new Agency requiring it to pay to him an amount equal to the whole or such part as may be specified in the direction of any sum, or any sum of a description, so specified which is or has been received by that new Agency.
- (4) Where it appears to the appropriate Minister that a new Agency has a surplus, whether on capital or revenue account, he may, after consultation with the Treasury [<sup>F26</sup>(in the case of the Agency only)] and the new Agency, direct the new Agency to pay to him such amount not exceeding the amount of that surplus as may be specified in the direction.
- (5) In the case of the Agency—
  - (a) subsection (1) above is subject to section 118 of the 1991 Act (special duties with respect to flood defence revenue);
  - (b) subsection (3) above is subject to sections 118(1)(a) and 119(1) of the 1991 Act (special duties with respect to flood defence revenue and funds raised for fishery purposes under local enactments); and
  - (c) subsection (4) above is subject to sections 118(1)(b) and 119(2) of the 1991 Act (which provide for flood defence revenue and certain funds raised under local enactments to be disregarded in determining whether there is a surplus).

#### **Textual Amendments**

- F23** Words in s. 44(1)(b) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(4)**; S.I. 1998/3178, **art. 3**
- F24** Words in s. 44(3) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(5)(a)(i)**, Pt. IV; S.I. 1998/3178, **art. 3**
- F25** Words in s. 44(3) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(5)(a)(ii)**; S.I. 1998/3178, **art. 3**
- F26** Words in s. 44(4) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(5)(b)**; S.I. 1998/3178, **art. 3**

#### **Modifications etc. (not altering text)**

- C7** S. 44(1): Treasury approval requirement continued (1.7.1999) by virtue of S.I. 1999/672, **art. 2, Sch. 1**

*Status: Point in time view as at 01/04/2003. This version of this part contains provisions that are prospective.*

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## 45 Accounts and records.

- (1) Each new Agency shall—
  - (a) keep proper accounts and proper accounting records; and
  - (b) prepare in respect of each accounting year a statement of accounts giving a true and fair view of the state of affairs and the income and expenditure of the new Agency.
- (2) Every statement of accounts prepared by a new Agency in accordance with this section shall comply with any requirement which the appropriate Ministers have [<sup>F27</sup>in the case of the Agency only], with the consent of the Treasury, notified in writing to the new Agency and which relates to any of the following matters, namely—
  - (a) the information to be contained in the statement;
  - (b) the manner in which that information is to be presented;
  - (c) the methods and principles according to which the statement is to be prepared.
- (3) In this section—
 

“accounting records”, in the case of a new Agency, includes all books, papers and other records of the new Agency relating to, or to matters dealt with in, the accounts required to be kept by virtue of this section;

“accounting year”, subject to subsection (4) below, means, in relation to a new Agency, a financial year.
- (4) If the Secretary of State so directs in relation to any accounting year of either new Agency, that accounting year shall end with such date other than the next 31st March as may be specified in the direction; and, where the Secretary of State has given such a direction, the following accounting year shall begin with the day after the date so specified and, subject to any further direction under this subsection, shall end with the next 31st March.

### Textual Amendments

**F27** Words in s. 45(2) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 120(4)(b); S.I. 1998/3178, art. 3

### Modifications etc. (not altering text)

**C8** S. 45(2): Treasury consent requirement continued (1.7.1999) by S.I. 1999/672, art. 2, Sch. 1

## [<sup>F28</sup>46 Audit.

- (1) The accounts of each new Agency shall be audited by an auditor appointed for each accounting year by the Secretary of State.
- (2) A person shall not be qualified for appointment under subsection (1) above unless—
  - (a) he is eligible for appointment as a company auditor under Part II of the <sup>M65</sup>Companies Act 1989; and
  - (b) he would not be ineligible for appointment as company auditor of the new Agency in question by virtue of section 27 of that Act (ineligibility on ground of lack of independence), if that new Agency were a body to which section 384 of the <sup>M66</sup>Companies Act 1985 (duty to appoint auditor) applies.
- (3) A copy of—

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(a) any accounts of a new Agency which are audited under subsection (1) above, and

(b) the report made on those accounts by the auditor,

shall be sent to each of the appropriate Ministers as soon as reasonably practicable after the report is received by the new Agency; and the Secretary of State shall lay before each House of Parliament a copy of those accounts and that report.

(4) The Comptroller and Auditor General—

(a) shall be entitled to inspect the contents of all accounts and accounting records of a new Agency; and

(b) may report to the House of Commons the results of any inspection carried out by him under paragraph (a) above;

and section 6 of the <sup>M67</sup>National Audit Act 1983 (examinations of economy, efficiency and effectiveness) accordingly applies to each new Agency.

(5) In this section—

“accounting records” has the same meaning as in section 45 above;

“accounting year” has the same meaning as in section 45 above;

“accounts”, in relation to the Agency, includes any statement under section 45 above.]

#### Textual Amendments

**F28** S. 46 ceases to have effect so far as relating to the Scottish Environment Protection Agency (S.) (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 13(2)**; S.S.I. 2000/10, **art. 2(3)**

#### Modifications etc. (not altering text)

**C9** S. 46(3) modified (1.7.1999) by S.I. 1999/672, **art. 2, Sch. 1**

#### Marginal Citations

**M65** 1989 c. 40.

**M66** 1985 c. 6.

**M67** 1983 c. 44.

#### [<sup>F29</sup> 46A Audit: SEPA

(1) SEPA shall send the statement of accounts for each accounting year to the Scottish Ministers by such time as they may direct.

(2) The Scottish Ministers shall send the statement of accounts to the Auditor General for Scotland for auditing.

(3) In this section, “accounting year” has the same meaning as in section 45 above.]

#### Textual Amendments

**F29** S. 46A inserted (S.) (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 13(3)**; S.S.I. 2000/10, **art. 2(3)**

*Status: Point in time view as at 01/04/2003. This version of this part contains provisions that are prospective.*

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#### 47 Grants to the new Agencies.

The appropriate Minister may, [<sup>F30</sup>in the case of the Agency only] with the approval of the Treasury, make to a new Agency grants of such amounts, and on such terms, as he thinks fit.

##### Textual Amendments

**F30** Words in s. 47 inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 120(4)(c); S.I. 1998/3178, art. 3

#### 48 Borrowing powers. **E+W**

- (1) Each new Agency shall be entitled to borrow in accordance with the following provisions of this section, but not otherwise.
- (2) Subject to subsection (5) below, each new Agency may—
  - (a) with the consent of the appropriate Minister, and
  - (b) [<sup>F31</sup>in the case of the Agency only] with the approval of the Treasury, borrow temporarily in sterling, by way of overdraft or otherwise, from persons other than the appropriate Ministers, such sums as it may require for meeting its obligations and carrying out its functions.
- (3) Subject to subsection (5) below, each new Agency may borrow from the appropriate Minister, by way of temporary loan or otherwise, such sums in sterling as it may require for meeting its obligations and carrying out its functions.
- (4) Any consent under subsection (2)(a) above may be granted subject to conditions.
- (5) The aggregate amount outstanding in respect of the principal of sums borrowed under this section by a new Agency shall not at any time exceed—
  - (a) in the case of the Agency, £100 million or such greater sum, not exceeding £160 million, as the Ministers may by order specify; or
  - (b) in the case of SEPA, £5 million or such greater sum, not exceeding £10 million, as the Secretary of State may by order specify.
- (6) The power to make an order under subsection (5) above shall be exercisable by statutory instrument; but no order shall be made under that subsection unless a draft of the order has been laid before, and approved by a resolution of, the House of Commons.

##### Extent Information

**E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

##### Textual Amendments

**F31** Words in s. 48(2) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 120(4)(a); S.I. 1998/3178, art. 3

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## 48 Borrowing powers. **S**

- (1) Each new Agency shall be entitled to borrow in accordance with the following provisions of this section, but not otherwise.
- (2) Subject to <sup>F40</sup>subsections (5) and (5A)] below, each new Agency may—
  - (a) with the consent of the appropriate Minister, and
  - (b) <sup>F41</sup>in the case of the Agency only] with the approval of the Treasury, borrow temporarily in sterling, by way of overdraft or otherwise, from persons other than the appropriate Ministers, such sums as it may require for meeting its obligations and carrying out its functions.
- (3) Subject to <sup>F40</sup>subsections (5) and (5A)] below, each new Agency may borrow from the appropriate Minister, by way of temporary loan or otherwise, such sums in sterling as it may require for meeting its obligations and carrying out its functions.
- (4) Any consent under subsection (2)(a) above may be granted subject to conditions.
- (5) The aggregate amount outstanding in respect of the principal of sums borrowed under this section by a new Agency shall not at any time exceed—
  - (a) in the case of the Agency, £100 million or such greater sum, not exceeding £160 million, as the Ministers may by order specify; <sup>F42</sup> . . .
  - <sup>F42</sup>(b) . . . . .
- <sup>F43</sup>(5A) In any financial year the net amount of sums borrowed by SEPA under this section shall not exceed the amount specified for that year for the purposes of this section in a Budget Act.
- <sup>F43</sup>(5B) In subsection (5A) above, “net amount” means the amount of sums borrowed in the financial year less any repayments made during that year (otherwise than by way of interest) in respect of sums borrowed in that or any other year.]
- (6) The power to make an order under subsection (5) above shall be exercisable by statutory instrument; but no order shall be made under that subsection unless a draft of the order has been laid before, and approved by a resolution of, the House of Commons.

### Extent Information

- E2** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

### Textual Amendments

- F40** Words in s. 48(2)(3) substituted (S.) (1.4.2000) by 2000 asp 1, s. 8, **Sch. 1 para. 7(2)(a)**; S.S.I. 2000/10, **art. 2(3)**
- F41** Words in s. 48(2) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(4)(a)**; S.I. 1998/3178, **art. 3**
- F42** S. 48(5)(b) and the preceding “or” repealed (S.) (1.4.2000) by 2000 asp 1, s. 8, **Sch. 1 para. 7(2)(b)**; S.S.I. 2000/10, **art. 2(3)**
- F43** S. 48(5A)(5B) inserted (S.) (1.4.2000) by 2000 asp 1, s. 8, **Sch. 1**; S.S.I. 2000/10, **art. 2(3)**



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#### 49 Government loans to the new Agencies.

- (1) The appropriate Minister may, [<sup>F32</sup>in the case of the Agency only], with the approval of the Treasury, lend to a new Agency any sums which it has power to borrow under section 48(3) above.
- (2) Any loan made under this section by one of the appropriate Ministers shall be repaid to him at such times and by such methods, and interest on the loan shall be paid to him at such rates and at such times, as that Minister may with the approval of the Treasury from time to time determine.
- [<sup>F33</sup>(3) If in any financial year any of the appropriate Ministers lends any sums to a new Agency under this section, he shall—
  - (a) prepare in respect of that financial year an account of the sums so lent by him; and
  - (b) send that account to the Comptroller and Auditor General before the end of September in the following financial year;
 and the form of the account and the manner of preparing it shall be such as the Treasury may direct.
- (4) The Comptroller and Auditor General shall examine, certify and report on each account sent to him under this section and shall lay copies of it and of his report before each House of Parliament.
- (5) The Treasury may issue to any of the appropriate Ministers—
  - (a) out of the National Loans Fund, or
  - (b) out of money provided by Parliament,
 such sums as are necessary to enable him to make loans to a new Agency under this section; and any sums received by a Minister of the Crown in pursuance of subsection (2) above shall be paid into the National Loans Fund or, as the case may be, the Consolidated Fund.]

#### Textual Amendments

**F32** Words in s. 49(1) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(4)(c)**; S.I. 1998/3178, **art. 3**

**F33** S. 49(3)-(5) cease to have effect so far as relating to the Scottish Environment Protection Agency (S.) (1.4.2000) by virtue of 2000 asp 1, s. 8, **Sch. 1 para. 7(3)**; S.S.I. 2000/10, **art. 2(3)**

#### Modifications etc. (not altering text)

**C10** S. 49(1)(2): Treasury approval requirement continued (1.7.1999) by virtue of S.I. 1999/672, **art. 2, Sch. 1**

#### 50 Government guarantees of a new Agency's borrowing.

- (1) The appropriate Minister may, [<sup>F34</sup>in the case of the Agency only] with the consent of the Treasury, guarantee, in such manner and on such conditions as he may think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sum which a new Agency borrows from any person.
- (2) A Minister who gives a guarantee under this section shall forthwith lay a statement of the guarantee before each House of Parliament.

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- (3) Where any sum is paid out for fulfilling a guarantee under this section, the Minister who gave the guarantee shall, as soon as reasonably practicable after the end of each financial year (beginning with that in which the sum is paid out and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged), lay before each House of Parliament a statement relating to that sum.
- (4) If any sums are paid out in fulfilment of a guarantee under this section, the new Agency which borrowed the sum by reference to which the guarantee was given shall make to the Minister who gave the guarantee, at such times and in such manner as he may from time to time direct,—
- (a) payments of such amounts as he may so direct in or towards repayment of the sums so paid out; and
  - (b) payments of interest, at such rate as he may so direct, on what is outstanding for the time being in respect of sums so paid out;
- and the consent of the Treasury shall be required for the giving of a direction under this subsection [<sup>F35</sup>in the case of the Agency only].

#### **Textual Amendments**

**F34** Words in s. 50(1) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 120(4); S.I. 1998/3178, art. 3

**F35** Words in s. 50(4) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 120(6); S.I. 1998/3178, art. 3

### *Information*

#### **51 Provision of information by the new Agencies.**

- (1) A new Agency shall furnish the appropriate Minister with all such information as he may reasonably require relating to—
- (a) the new Agency's property;
  - (b) the carrying out and proposed carrying out of its functions; and
  - (c) its responsibilities generally.
- (2) Information required under this section shall be furnished in such form and manner, and be accompanied or supplemented by such explanations, as the appropriate Minister may reasonably require.
- (3) The information which a new Agency may be required to furnish to the appropriate Minister under this section shall include information which, although it is not in the possession of the new Agency or would not otherwise come into the possession of the new Agency, is information which it is reasonable to require the new Agency to obtain.
- (4) A requirement for the purposes of this section shall be contained in a direction which—
- (a) may describe the information to be furnished in such manner as the Minister giving the direction considers appropriate; and
  - (b) may require the information to be furnished on a particular occasion, in particular circumstances or from time to time.
- (5) For the purposes of this section a new Agency shall—



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- (a) permit any person authorised for the purpose by the appropriate Minister to inspect and make copies of the contents of any accounts or other records of the new Agency; and
- (b) give such explanation of them as that person or the appropriate Minister may reasonably require.

## 52 Annual report.

- (1) As soon as reasonably practicable after the end of each financial year, each new Agency shall prepare a report on its activities during that year and shall send a copy of that report to each of the appropriate Ministers.
- (2) Every such report shall set out any directions under section 40 above which have been given to the new Agency in question during the year to which the report relates, other than directions given under subsection (1) of that section which are identified to that new Agency in writing by the appropriate Minister as being directions the disclosure of which would, in his opinion, be contrary to the interests of national security.
- (3) The Secretary of State shall lay a copy of every such report before each House of Parliament and shall arrange for copies of every such report to be published in such manner as he considers appropriate.
- (4) A new Agency's annual report shall be in such form and contain such information as may be specified in any direction given to the new Agency by the appropriate Ministers.

### Modifications etc. (not altering text)

- C11 S. 52(1) modified (30.6.1999) by S.I. 1999/1746, arts. 1(1), 10(1); S.I. 1998/3178, art. 3  
 S. 52(1) modified (1.7.1999) by S.I. 1999/672, art. 2, Sch. 1

### *Supplemental provisions*

## 53 Inquiries and other hearings.

- (1) Without prejudice to any other provision of this Act or any other enactment by virtue of which an inquiry or other hearing is authorised or required to be held, the appropriate Minister may cause an inquiry or other hearing to be held if it appears to him expedient to do so—
  - (a) in connection with any of the functions of a new Agency; or
  - (b) in connection with any of his functions in relation to a new Agency.
- (2) Subsections (2) to (5) of section 250 of the <sup>M68</sup>Local Government Act 1972 (which contain supplementary provisions with respect to local inquiries held in pursuance of that section) shall apply to inquiries or other hearings under this section or any other enactment—
  - (a) in connection with any of the functions of the Agency, or
  - (b) in connection with any functions of the Secretary of State or the Minister in relation to the Agency,
 as they apply to inquiries under that section, but taking the reference in subsection (4) of that section to a local authority as including a reference to the Agency.

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- (3) The provisions of subsections (2) to (8) of section 210 of the <sup>M69</sup>Local Government (Scotland) Act 1973 (which relate to the holding of local inquiries) shall apply to inquiries or other hearings held under this section or any other enactment—
- (a) in connection with any of the functions of SEPA, or
  - (b) in connection with any functions of the Secretary of State in relation to SEPA, as they apply to inquiries held under that section.

#### Marginal Citations

**M68** 1972 c. 70.

**M69** 1973 c. 65.

#### 54 Appearance in legal proceedings.

In England and Wales, a person who is authorised by the Agency to prosecute on its behalf in proceedings before a magistrates' court shall be entitled to prosecute in any such proceedings although not of counsel or a solicitor.

#### 55 Continuity of exercise of functions: the new Agencies.

- (1) The abolition of—
- (a) the National Rivers Authority,
  - (b) the London Waste Regulation Authority, or
  - (c) a river purification board,
- shall not affect the validity of anything done by that Authority or board before the transfer date.
- (2) Anything which, at the transfer date, is in the process of being done by or in relation to a transferor in the exercise of, or in connection with, any of the transferred functions may be continued by or in relation to the transferee.
- (3) Anything done by or in relation to a transferor before the transfer date in the exercise of, or otherwise in connection with, any of the transferred functions, shall, so far as is required for continuing its effect on and after that date, have effect as if done by or in relation to the transferee.
- (4) Subsection (3) above applies in particular to—
- (a) any decision, determination, declaration, designation, agreement or instrument made by a transferor;
  - (b) any regulations or byelaws made by a transferor;
  - (c) any licence, permission, consent, approval, authorisation, exemption, dispensation or relaxation granted by or to a transferor;
  - (d) any notice, direction or certificate given by or to a transferor;
  - (e) any application, request, proposal or objection made by or to a transferor;
  - (f) any condition or requirement imposed by or on a transferor;
  - (g) any fee or charge paid by or to a transferor;
  - (h) any appeal allowed by or in favour of or against a transferor;
  - (j) any proceedings instituted by or against a transferor.

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- (5) Any reference in the foregoing provisions of this section to anything done by or in relation to a transferor includes a reference to anything which, by virtue of any enactment, is treated as having been done by or in relation to that transferor.
- (6) Any reference to a transferor in any document constituting or relating to anything to which the foregoing provisions of this section apply shall, so far as is required for giving effect to those provisions, be construed as a reference to the transferee.
- (7) The foregoing provisions of this section—
- (a) are without prejudice to any provision made by this Act in relation to any particular functions; and
  - (b) shall not be construed as continuing in force any contract of employment made by a transferor;
- and the Secretary of State may, in relation to any particular functions, by order exclude, modify or supplement any of the foregoing provisions of this section or make such other transitional provisions as he thinks necessary or expedient.
- (8) Where, by virtue of any provision of Schedule 15 to this Act, the Minister is the transferor in the case of any functions, he shall have the same powers under subsection (7) above in relation to those functions as the Secretary of State.
- (9) The power to make an order under subsection (7) above shall be exercisable by statutory instrument; and any statutory instrument containing such an order shall be subject to annulment pursuant to a resolution of either House of Parliament.
- (10) In this section—
- “the transferee”, in the case of any transferred functions, means the new Agency whose functions they become by virtue of any provision made by or under this Act;
- “transferred functions” means any functions which, by virtue of any provision made by or under this Act, become functions of a new Agency; and
- “transferor” means any body or person any or all of whose functions become, by virtue of any provision made by or under this Act, functions of a new Agency.

#### Commencement Information

**I5** S. 55 wholly in force at 1.4.1996; s. 55 not in force at Royal Assent see s. 125(3); s. 55(7)-(10) in force at 1.2.1996 by S.I. 1996/186, art 2; s. 55(1)-(6) in force at 1.4.1996 by S.I. 1996/186, art 3

## 56 Interpretation of Part I.

- (1) In this Part of this Act, except where the context otherwise requires—
- “the 1951 Act” means the <sup>M70</sup>Rivers (Prevention of Pollution) (Scotland) Act 1951;
- “the 1990 Act” means the <sup>M71</sup>Environmental Protection Act 1990;
- “the 1991 Act” means the <sup>M72</sup>Water Resources Act 1991;
- “the appropriate Minister”—
- (a) in the case of the Agency, means the Secretary of State or the Minister; and
  - (b) in the case of SEPA, means the Secretary of State;

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“the appropriate Ministers”—

- (a) in the case of the Agency, means the Secretary of State and the Minister;  
and
- (b) in the case of SEPA, means the Secretary of State;

“conservancy authority” has the meaning given by section 221(1) of the 1991 Act;

“costs” includes—

- (a) costs to any person; and
- (b) costs to the environment;

“disposal authority”—

- (a) in the application of this Part in relation to the Agency, has the same meaning as it has in Part I of the <sup>M73</sup>Control of Pollution Act 1974 by virtue of section 30(1) of that Act; and
- (b) in the application of this Part in relation to SEPA, has the meaning assigned to it by section 30(2) of that Act;

[<sup>F36</sup>“the environment” means all, or any, of the following media, namely, the air, water and land (and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground); ]

“environmental licence”, in the application of this Part in relation to the Agency, means any of the following—

- (a) registration of a person as a carrier of controlled waste under section 2 of the <sup>M74</sup>Control of Pollution (Amendment) Act 1989,
- (aa) [<sup>F37</sup>a permit granted by the Agency under regulations under section 2 of the Pollution Prevention and Control Act 1999;]
- (b) an authorisation under Part I of the 1990 Act, other than any such authorisation granted by a local enforcing authority,
- (c) a waste management licence under Part II of that Act,
- (d) a licence under Chapter II of Part II of the 1991 Act,
- (e) a consent for the purposes of section 88(1)(a), 89(4)(a) or 90 of that Act,
- (f) registration under the <sup>M75</sup>Radioactive Substances Act 1993,
- (g) an authorisation under that Act,
- (h) registration of a person as a broker of controlled waste under the <sup>M76</sup>Waste Management Licensing Regulations 1994,
- (j) registration in respect of an activity falling within paragraph 45(1) or (2) of Schedule 3 to those Regulations,

so far as having effect in relation to England and Wales;

“environmental licence”, in the application of this Part in relation to SEPA, means any of the following—

- (a) a consent under Part II of the <sup>M77</sup>Control of Pollution Act 1974,
- (aa) [<sup>F38</sup>a permit granted by SEPA under regulations under section 2 of the Pollution Prevention and Control Act 1999]
- (b) registration of a person as a carrier of controlled waste under section 2 of the <sup>M78</sup>Control of Pollution (Amendment) Act 1989,
- (c) an authorisation under Part I of the 1990 Act,
- (d) a waste management licence under Part II of that Act,
- (e) a licence under section 17 of the <sup>M79</sup>Natural Heritage (Scotland) Act 1991,

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- (f) registration under the <sup>M80</sup>Radioactive Substances Act 1993,
- (g) an authorisation under that Act,
- (h) registration of a person as a broker of controlled waste under the <sup>M81</sup>Waste Management Licensing Regulations 1994,
- (j) [<sup>F39</sup>registration in respect of an activity falling within paragraph 7, 9, 19, 45(1) or (2) of Schedule 3 to those Regulations, except where the waste which is the subject of the activity consists wholly or mainly of agricultural waste within the meaning of those Regulations;]

so far as having effect in relation to Scotland;

“flood defence functions”, in relation to the Agency, has the same meaning as in the 1991 Act;

“harbour authority” has the meaning given by section 221(1) of the 1991 Act;

“local authority”, in the application of this Part in relation to SEPA, means a district or islands council in Scotland;

“the Minister” means the Minister of Agriculture, Fisheries and Food;

“the Ministers” means the Secretary of State and the Minister;

“navigation authority” has the meaning given by section 221(1) of the 1991 Act;

“new Agency” means the Agency or SEPA;

“river purification authority” means a river purification authority within the meaning of the 1951 Act;

“river purification board” means a river purification board established by virtue of section 135 of the <sup>M82</sup>Local Government (Scotland) Act 1973;

“the transfer date” means such date as the Secretary of State may by order made by statutory instrument appoint as the transfer date for the purposes of this Part; and different dates may be appointed for the purposes of this Part—

- (i) as it applies for or in connection with transfers under or by virtue of Chapter I above, and
- (ii) as it applies for or in connection with transfers under or by virtue of Chapter II above;

“waste regulation authority”—

(a) in the application of this Part in relation to the Agency, means any authority in England or Wales which, by virtue of section 30(1) of the 1990 Act, is a waste regulation authority for the purposes of Part II of that Act; and

(b) in the application of this Part in relation to SEPA, means any council which, by virtue of section 30(1)(g) of the 1990 Act, is a waste regulation authority for the purposes of Part II of that Act.

(2) In relation to any time on or after 1st April 1996—

- (a) subsection (1) above shall have effect as if, in the definition of “local authority”, for the words “district or islands council in Scotland” there were substituted the words “council constituted under section 2 of the <sup>M83</sup>Local Government etc. (Scotland) Act 1994”; and
- (b) in section 22(3)(a)(iv) above the reference to an islands council shall be construed as a reference to a council mentioned in section 3(1) of the Local Government etc. (Scotland) Act 1994.

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*Status: Point in time view as at 01/04/2003. This version of this part contains provisions that are prospective.*

*Changes to legislation: Environment Act 1995, Part I is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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- (3) Where by virtue of any provision of this Part any function of a Minister of the Crown is exercisable concurrently by different Ministers, that function shall also be exercisable jointly by any two or more of those Ministers.

#### Textual Amendments

- F36** Definition of “the environment” in s. 56(1) substituted (21.3.2000 (E.W.) and 29.9.2000 (S.)) by 1999 c. 24, s. 6(1), **Sch. 2 para. 17**; S.I. 2000/800, **art. 2**; S.S.I. 2000/322, **art. 2**
- F37** S. 56(1): para. (aa) in the definition of “environmental licence” in relation to the Environment Agency inserted (E.W.) (1.8.2000) by S.I. 2000/1973, **reg. 39**, **Sch. 10 para. 15**
- F38** S. 56(1): para. (aa) in the definition of “environmental licence” in relation to SEPA inserted (S.) (28.9.2000) by S.S.I. 2000/323, **regs. 1(1), 36**, **Sch. 10 para. 5(2)**
- F39** Words in s. 56(1) substituted (S.) (1.4.2003) by Waste Management Licensing Amendment (Scotland) Regulations 2003 (S.S.I. 2003/171), **reg. 2(2)**

#### Marginal Citations

- M70** 1951 c. 66.  
**M71** 1990 c. 43.  
**M72** 1991 c. 57.  
**M73** 1974 c. 40.  
**M74** 1989 c. 14.  
**M75** 1993 c. 12.  
**M76** S.I. 1994/1056.  
**M77** 1974 c. 40.  
**M78** 1989 c. 14.  
**M79** 1991 c. 28.  
**M80** 1993 c. 12.  
**M81** S.I. 1994/1056.  
**M82** 1973 c. 65.  
**M83** 1994 c. 39.

**Status:**

Point in time view as at 01/04/2003. This version of this part contains provisions that are prospective.

**Changes to legislation:**

Environment Act 1995, Part I is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.