



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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- (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.

Modifications etc. (not altering text)

- C1** S. 1: transfer of functions (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), 5 (with art. 24)

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 ^{M1}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 ^{M2}Land Drainage Act 1991 and the functions transferred to the Authority by virtue of section 136(8) of the ^{M3}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 ^{F1}... the ^{M4}Sea Fisheries Regulation Act 1966, the ^{M5}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 ^{M6}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 ^{M7}Control of Pollution (Amendment) Act 1989, or

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- (ii) Part II of the ^{M8}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 ^{M9}Control of Pollution Act 1974;
 - (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 ^{M10}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 ^{M11}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 ^{M12}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 ^{M13}Radioactive Substances Act 1993 (power to dispose of radioactive waste);
 - (b) his functions under Chapter III of Part IV of the ^{M14}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 ^{M15}Sludge (Use in Agriculture) Regulations 1989 (which relate to the provision of information and the testing of soil).

^{F2}(3)

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Textual Amendments

- F1** Words in s. 2(1)(a)(v) omitted (E.W.) (27.3.2009) by virtue of [The Aquatic Animal Health \(England and Wales\) Regulations 2009 \(S.I. 2009/463\)](#), [reg. 1\(2\)](#), [Sch. 2 para. 9\(a\)](#) (with [reg. 2\(2\)](#)) and words in s. 2(1)(a)(v) omitted (S.) (27.3.2009) by virtue of [The Aquatic Animal Health \(Scotland\) Regulations 2009 \(S.S.I. 2009/85\)](#), [reg. 1\(2\)\(c\)](#), [sch. 2 para. 9\(a\)](#) (with [reg. 2.](#))
- F2** S. 2(3) repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 13](#)

Marginal Citations

- M1** 1991 c. 57.
- M2** 1991 c. 59.
- M3** 1989 c. 15.
- M4** 1966 c. 38.
- M5** 1975 c. 51.
- M6** 1989 c. 15.
- M7** 1989 c. 14.
- M8** 1990 c. 43.
- M9** 1974 c. 40.
- M10** 1993 c. 12.
- M11** 1906 c. 14.
- M12** 1974 c. 37.
- M13** 1993 c. 12.
- M14** 1991 c. 56.
- M15** 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.

- F3(2)
- F3(3)
- F3(4)
- F3(5)
- F3(6)
- F3(7)

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(8) Schedule 2 to this Act shall have effect in relation to transfers by or under this section.

Textual Amendments

F3 S. 3(2)-(7) repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 13](#)

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 [^{F4}Secretary of State] shall from time to time give guidance to the Agency with respect to objectives which [^{F5}the Secretary of State considers] 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 [^{F6}Secretary of State considers] it appropriate for the Agency to make, by the discharge of its functions, towards attaining the objective of achieving sustainable development.
- (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 [^{F7}after consultation with—
 - (a) the Agency,
 - (b) Natural England, and
 - (c) such other persons as] the [^{F8}Secretary of State considers] 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 [^{F9}Secretary of State] 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 [^{F10}Secretary of State] shall arrange for any guidance given under this section to be published in such manner as [^{F11}the Secretary of State considers] appropriate.

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Textual Amendments

- F4** Words in s. 4(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 362(2)(a)** (with Sch. 7)
- F5** Words in s. 4(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 362(2)(b)** (with Sch. 7)
- F6** Words in s. 4(3) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 362(3)** (with Sch. 7)
- F7** Words in s. 4(5) substituted (1.10.2006) by [Natural Environment and Rural Communities Act 2006 \(c. 16\)](#), s. 107, **Sch. 11 para. 140**; S.I. 2006/2541, art. 2 (with Sch.)
- F8** Words in s. 4(5)(c) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 362(3)** (with Sch. 7)
- F9** Words in s. 4(7) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 362(4)** (with Sch. 7)
- F10** Words in s. 4(9) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 362(5)(a)** (with Sch. 7)
- F11** Words in s. 4(9) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 362(5)(b)** (with Sch. 7)

[^{F12}CHAPTER 1A

GENERAL FUNCTIONS OF THE AGENCY AND THE NATURAL RESOURCES BODY FOR WALES]

Textual Amendments

- F12** Pt. I Ch. 1A heading inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 363(1)** (with Sch. 7)

5 General functions with respect to pollution control.

- (1) [^{F13}An appropriate 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) [^{F14}An appropriate 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 [^{F15}the appropriate national authority] to do so, [^{F16}an appropriate 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 [^{F17}the appropriate national authority]; or

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- (b) prepare and send to ^{F18}the appropriate national authority] a report identifying—
- (i) the options which the ^{F19}appropriate 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 ^{F19}appropriate agency] pursuant to sub-paragraph (i) above.
- (4) ^{F20}An appropriate agency] 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 ^{F21}an appropriate agency], mean respectively its powers or its functions under or by virtue of the following enactments, that is to say—
- (a) the ^{M16}Alkali, &c, Works Regulation Act 1906;
 - (b) Part I of the ^{M17}Health and Safety at Work etc. Act 1974;
 - (c) Part I of the ^{M18}Control of Pollution Act 1974;
 - (d) the ^{M19}Control of Pollution (Amendment) Act 1989;
 - (e) Parts^{F22} 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 ^{M20}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) ^{F23}the ^{M21}Radioactive Substances Act 1993;]
 - ^{F24}(i) regulations under section 2 of the Pollution Prevention and Control Act 1999;]
 - ^{F25}(i) regulations under section 2 of the Pollution Prevention and Control Act 1999;]
 - (j) regulations made by virtue of section 2(2) of the ^{M22}European Communities Act 1972, to the extent that the regulations relate to pollution.
- ^{F26}(6) But in relation to the Natural Resources Body for Wales, “pollution control powers” and “pollution control functions” do not include powers or functions which—
- (a) were exercisable by the Countryside Council for Wales or the Forestry Commissioners immediately before 1 April 2013; and
 - (b) are functions of that Body by virtue of the Natural Resources Body for Wales (Functions) Order 2013.]

Textual Amendments

- F13** Words in s. 5(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 364\(2\)](#) (with Sch. 7)
- F14** Words in s. 5(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 364\(3\)](#) (with Sch. 7)
- F15** Words in s. 5(3) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 364\(4\)\(a\)\(i\)](#) (with Sch. 7)
- F16** Words in s. 5(3) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 364\(4\)\(a\)\(ii\)](#) (with Sch. 7)
- F17** Words in s. 5(3)(a) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 364\(4\)\(b\)](#) (with Sch. 7)

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- F18** Words in s. 5(3)(b) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 364(4)(c)(i)** (with Sch. 7)
- F19** Words in s. 5(3)(b) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 364(4)(c)(ii)** (with Sch. 7)
- F20** Words in s. 5(4) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 364(5)** (with Sch. 7)
- F21** Words in s. 5(5) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 364(5)** (with Sch. 7)
- F22** Word in s. 5(5)(e) repealed (1.4.2015 for S.) by Pollution Prevention and Control Act 1999 (c. 24), s. 7(3), **Sch. 3**; S.S.I. 2015/74, art. 2(2)(g)
- F23** S. 5(5)(h) repealed (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 13(2), **Sch. 28** (with reg. 1(2), Sch. 4)
- F24** S. 5(5)(i) inserted (1.4.2015 for S.) by Pollution Prevention and Control Act 1999 (c. 24), s. 7(3), **Sch. 2 para. 15**; S.S.I. 2015/74, art. 2(1)
- F25** 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**
- F26** S. 5(6) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 364(6)** (with Sch. 7)

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

- M16** 1906 c. 14.
M17 1974 c. 37.
M18 1974 c. 40.
M19 1989 c. 14.
M20 1991 c. 56.
M21 1993 c. 12.
M22 1972 c. 68.

6 General provisions with respect to water.

- (1) It shall be the duty of [^{F27}an appropriate 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 [^{F27}an appropriate 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.
- (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 ^{F28} ...; and

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- (b) of securing the proper use of water resources in England ^{F28}...^{F29}(including the efficient use of those resources)];

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 ^{M23}Water Industry Act 1991 (general duty to maintain water supply system).

^{F30}(2A) The Natural Resources Body for Wales must take all such action as it may from time to time consider, in accordance with any directions given under article 11 of the Natural Resources Body for Wales (Establishment) Order 2012 (S.I.2012/1903), to be necessary or expedient for the purpose—

- (a) of conserving, redistributing or otherwise augmenting water resources in Wales; and
 (b) of securing the proper use of water resources in Wales (including the efficient use of those resources);

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 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

^{F31}except so much of those inland waters as are in England.]

^{F32}(3A) Subsection (3) above shall apply to—

- (a) sections 3 and 4 of the Water Act 2003; and
 (b) such of the related water resources provisions as apply in relation to those sections by virtue of section 33(2) of the Water Act 2003,

as it applies to the provisions referred to in that subsection.]

^{F33}(4) The Agency shall in relation to England and ^{F34}the Natural Resources Body for Wales shall in relation to] Wales exercise a general supervision over all matters relating to flood and coastal erosion risk management, in accordance with Part 1 of the Flood and Water Management Act 2010.]

(5) The Agency's flood defence functions shall extend to the territorial sea adjacent to England ^{F35}... in so far as—

- (a) ^{F36}the region of any Regional Flood and Coastal 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.

^{F37}(5A) The flood defence functions of the Natural Resources Body for Wales extend to the territorial sea adjacent to Wales.]

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- (6) It shall be the duty of [^{F38}an appropriate agency] to maintain, improve and develop [^{F39}fisheries of—
- (a) salmon, trout, eels, lampreys, smelt and freshwater fish, and
 - (b) fish of such other description as may be specified for the purposes of this subsection by order under section 40A of the Salmon and Freshwater Fisheries Act 1975.]
- (7) The area in respect of which the Agency shall carry out its functions relating to fisheries shall be the whole of England ^{F40}..., together with—
- (a) such part of the territorial sea adjacent to England ^{F40}... as extends for six miles from the baselines from which the breadth of that sea is measured,
 - (b) in the case of—
 - ^{F41}(i)
 - (ii) the ^{M24}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 ^{M25}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,
- but, in the case of the enactments specified in paragraph (b) above, excluding the River Tweed.
- [^{F42}(7A) The area in respect of which the Natural Resources Body for Wales shall carry out its functions relating to fisheries shall be the whole of Wales, together with such part of the territorial sea adjacent to Wales as extends for six miles from the baselines from which the breadth of that sea is measured.]
- (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;
- [^{F43}“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 ^{M26}Tweed Fisheries Amendment Act 1859 as amended by byelaws.
- [^{F44}“salmon”, “trout”, “eels”, “smelt”, “fish” and “freshwater fish” have the same meanings as in the Salmon and Freshwater Fisheries Act 1975].
- [^{F45}(9) For the purposes of this section, the parts of the territorial sea which are adjacent to Wales, and which are therefore not adjacent to England, are the parts of the sea which are treated as adjacent to Wales for the purposes of section 158 of the Government of Wales Act 2006.]

Textual Amendments

- F27** Words in s. 6(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 365\(2\)](#) (with Sch. 7)

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- F28** Words in s. 6(2) omitted (1.4.2013) by virtue of The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 365(3)** (with Sch. 7)
- F29** Words in s. 6(2)(b) inserted (E.W.) (1.4.2004) by Water Act 2003 (c. 37), **ss. 72, 105(3)**; S.I. 2004/641, art. 3(s) (with Sch. 3 para. 7)
- F30** S. 6(2A) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 365(4)** (with Sch. 7)
- F31** Words in s. 6(3) inserted (1.1.2018) by Water Act 2003 (c. 37), **ss. 73, 105(3)**; S.I. 2017/1043, art. 2(e)
- F32** S. 6(3A) inserted (1.4.2006) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 15(2)**; S.I. 2006/984, art. 2(s)(i)
- F33** S. 6(4) substituted (E.W.) (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 52** (with s. 49(1)(6)); S.I. 2011/694, art. 3(i)
- F34** Words in s. 6(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 365(5)** (with Sch. 7)
- F35** Words in s. 6(5) omitted (E.W.) (14.7.2017) by virtue of Environment (Wales) Act 2016 (anaw 3), s. 88(3)(c), **Sch. 2 para. 22(a)**; S.I. 2017/714, art. 2
- F36** Words in s. 6(5)(a) substituted (14.7.2014) by Water Act 2014 (c. 21), s. 94(2)(r), **Sch. 10 para. 16**
- F37** S. 6(5A) inserted (E.W.) (14.7.2017) by Environment (Wales) Act 2016 (anaw 3), s. 88(3)(c), **Sch. 2 para. 22(b)**; S.I. 2017/714, art. 2
- F38** Words in s. 6(6) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 365(7)** (with Sch. 7)
- F39** Words in s. 6(6) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 230(2), 324(3)**; S.I. 2009/3345, art. 2, Sch. para. 14
- F40** Words in s. 6(7) omitted (1.4.2013) by virtue of The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 365(8)** (with Sch. 7)
- F41** S. 6(7)(b)(i) omitted (E.W.) (27.3.2009) by virtue of The Aquatic Animal Health (England and Wales) Regulations 2009 (S.I. 2009/463), reg. 1(2), **Sch. 2 para. 9(b)** (with reg. 2(2)) and s. 6(7)(b)(i) omitted (S.) (27.3.2009) by virtue of The Aquatic Animal Health (Scotland) Regulations 2009 (S.S.I. 2009/85), reg. 1(2)(c), **sch. 2 para. 9(b)** (with reg. 2.)
- F42** S. 6(7A) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 365(9)** (with Sch. 7)
- F43** 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**
- F44** Words in s. 6(8) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 230(3), 324(3)**; S.I. 2009/3345, art. 2, Sch. para. 14
- F45** S. 6(9) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 365(10)** (with Sch. 7)

Marginal Citations

- M23** 1991 c. 56.
M24 1975 c. 51.
M25 1975 c. 51.
M26 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,

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- (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 ^{M27}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;
 - (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 ^{M28}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.

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- (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.
- (7) In this section—
- “building” includes structure;
- “pollution control functions”, in relation to the Agency, has the same meaning as in section 5 above.

Marginal Citations

M27 1991 c. 56.

M28 1991 c. 56.

8 Environmental duties with respect to sites of special interest.

- (1) Where [^{F46}Natural England]^{F47} ... is of the opinion that any area of land in England ^{F48} ...

- (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 [^{F49}an appropriate agency] or by an authorisation given by [^{F49}an appropriate agency],

[^{F50}Natural England] shall notify the fact that the land is of special interest for that reason [^{F51}to the appropriate agency].

- [^{F52}(1A) Where the Natural Resources Body for Wales is of the opinion that any area of land 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,

the Natural Resources Body for Wales shall notify the fact that the land is of special interest for that reason to the Agency.]

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- (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 [^{F53}an appropriate agency] or by an authorisation given by [^{F53}an appropriate agency],
- the National Park authority or Broads Authority shall notify the [^{F54}appropriate 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 [^{F55}an appropriate agency] has received a notification under subsection (1) [^{F56}, (1A)] 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 [^{F57}appropriate 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 [^{F58}Natural England], [^{F59}the Natural Resources Body 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;
- “the Broads” has the same meaning as in the ^{M29}Norfolk and Suffolk Broads Act 1988; and
- “National Park authority”, ^{F60} . . . , means a National Park authority established under section 63 below which has become the local planning authority for the National Park in question.

^{F61}(6)

Textual Amendments

- F46** Words in s. 8(1) substituted (1.10.2006) by [Natural Environment and Rural Communities Act 2006 \(c. 16\), s. 107, Sch. 11 para. 141\(2\)\(a\)](#); S.I. 2006/2541, art. 2 (with Sch.)
- F47** Words in s. 8(1) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 366\(2\)\(a\)\(i\)](#) (with Sch. 7)
- F48** Words in s. 8(1) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 366\(2\)\(a\)\(ii\)](#) (with Sch. 7)
- F49** Words in s. 8(1)(b) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 366\(2\)\(b\)](#) (with Sch. 7)
- F50** Words in s. 8(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 366\(2\)\(c\)\(i\)](#) (with Sch. 7)
- F51** Words in s. 8(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 366\(2\)\(c\)\(ii\)](#) (with Sch. 7)

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- F52** S. 8(1A) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 366(3)** (with Sch. 7)
- F53** Words in s. 8(2)(b) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 366(4)(a)** (with Sch. 7)
- F54** Words in s. 8(2) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 366(4)(b)** (with Sch. 7)
- F55** Words in s. 8(3) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 366(5)(a)** (with Sch. 7)
- F56** Word in s. 8(3) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 366(5)(b)** (with Sch. 7)
- F57** Words in s. 8(3) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 366(5)(c)** (with Sch. 7)
- F58** Words in s. 8(4) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), s. 107, **Sch. 11 para. 141(3)**; S.I. 2006/2541, art. 2 (with Sch.)
- F59** Words in s. 8(4) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 366(6)** (with Sch. 7)
- F60** 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.**
- F61** 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

M29 1988 c. 4.

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

- [^{F62}(1) The appropriate national authority shall have power by order to approve any code of practice issued (whether by the appropriate national authority or by another person) for the purpose of—
- (a) giving practical guidance to an appropriate agency with respect to any of the matters for the purposes of which the provisions specified in subsection (5) have effect, and
 - (b) promoting what appear to the appropriate national authority to be desirable practices by an appropriate agency with respect to those matters,
- and may at any time by such an order approve a modification of such a code or withdraw its approval of such a code or modification.]
- (2) In discharging its duties under [^{F63}the provisions specified in subsection (5), an appropriate 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) [^{F64}The Secretary of State shall not] make an order under this section unless he has first consulted—
- (a) the Agency;
 - (b) [^{F65}Natural England]^{F66} ...;
 - (c) the Historic Buildings and Monuments Commission for England;
 - (d) the Sports Council ^{F67} ...; and
 - (e) such other persons as he considers it appropriate to consult.
- [^{F68}(3A) The Welsh Ministers shall not make an order under this section unless they have first consulted—

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- (a) the Natural Resources Body for Wales;
 - (b) the Sports Council for Wales; and
 - (c) such other persons as they consider it appropriate to consult.]
- (4) The power ^{F69}... 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 [^{F70}(in the case of an order made by the Secretary of State) or of the National Assembly for Wales (in the case of an order made by the Welsh Ministers)].
- [^{F71}(5) The provisions referred to in subsections (1) and (2) are—
- (a) in relation to the Agency, sections 6(1), 7 and 8;
 - (b) in relation to the Natural Resources Body for Wales—
 - (i) sections 6(1) and 8; and
 - (ii) articles 5A, 5C, 5D^{F72}, 5E] and 5G of the Natural Resources Body for Wales (Establishment) Order 2012 (S.I.2012/1903).]

Textual Amendments

- F62** S. 9(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 367(2)** (with Sch. 7)
- F63** Words in s. 9(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 367(3)** (with Sch. 7)
- F64** Words in s. 9(3) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 367(4)(a)** (with Sch. 7)
- F65** Words in s. 9(3)(b) substituted (1.10.2006) by [Natural Environment and Rural Communities Act 2006 \(c. 16\)](#), s. 107, **Sch. 11 para. 142**; S.I. 2006/2541, art. 2 (with Sch.)
- F66** Words in s. 9(3)(b) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 367(4)(b)** (with Sch. 7)
- F67** Words in s. 9(3)(d) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 367(4)(c)** (with Sch. 7)
- F68** S. 9(3A) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 367(5)** (with Sch. 7)
- F69** Words in s. 9(4) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 367(6)(a)** (with Sch. 7)
- F70** Words in s. 9(4) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 367(6)(b)** (with Sch. 7)
- F71** S. 9(5) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 367(7)** (with Sch. 7)
- F72** Word in s. 9(5)(b)(ii) omitted (E.W.) (21.5.2016) by virtue of [Environment \(Wales\) Act 2016 \(anaw 3\)](#), s. 88(2)(a), **Sch. 2 para. 6(2)**

Modifications etc. (not altering text)

- C2** S. 9(3) excluded (1.7.1999) by [S.I. 1999/672](#), art. 2, **Sch. 1**

[^{F73}9A **Duty of the Agency to cooperate with the Natural Resources Body for Wales**

The Agency must cooperate with the Natural Resources Body for Wales, and coordinate its activities with those of the Natural Resources Body for Wales, as may be appropriate in the circumstances.]

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Textual Amendments

F73 S. 9A inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 368** (with Sch. 7)

10 Incidental functions of the Agency [^{F74}and the Natural Resources Body for Wales].

(1) This section has effect—

(a) for the purposes of section 37(1) below, as it applies in relation to the Agency;
^{F75} ...

[^{F76}(aa) for the purposes of article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (S.I.2012/1903), in relation to the Natural Resources Body for Wales; and]

(b) for the construction of any other enactment which, by reference to the functions of [^{F77}an appropriate agency], confers any power on or in relation to [^{F77}an appropriate agency];

and any reference in this section to “the relevant purposes” is a reference to the purposes described in paragraphs (a) [^{F78}, (aa)] and (b) above.

(2) For the relevant purposes, the functions of [^{F79}an appropriate agency] shall be taken to include the protection against pollution of—

(a) any waters, whether on the surface or underground, which belong to the [^{F80}appropriate agency] or any water undertaker or from which the [^{F80}appropriate 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 [^{F80}appropriate agency] or any water undertaker or which the [^{F80}appropriate 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 [^{F80}appropriate 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 [^{F81}an appropriate 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 ^{M30}Water Industry Act 1991 applies.

(4) For the relevant purposes, the functions of [^{F82}an appropriate 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 [^{F83}appropriate agency] .

(5) For the relevant purposes, the functions of [^{F84}an appropriate agency] shall be taken to include the provision of houses and other buildings for the use of persons employed

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by the [^{F85}appropriate 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
 “supply of water in bulk” means a supply of water for distribution by a water undertaker taking the supply.

Textual Amendments

- F74** Words in s. 10 heading inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 369(6)** (with Sch. 7)
- F75** Word in s. 10(1)(a) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 369(2)(a)** (with Sch. 7)
- F76** S. 10(1)(aa) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 369(2)(b)** (with Sch. 7)
- F77** Words in s. 10(1)(b) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 369(2)(c)** (with Sch. 7)
- F78** Word in s. 10(1)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 369(2)(d)** (with Sch. 7)
- F79** Words in s. 10(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 369(3)(a)** (with Sch. 7)
- F80** Words in s. 10(2)(a)-(c) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 369(3)(b)** (with Sch. 7)
- F81** Words in s. 10(3) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 369(4)** (with Sch. 7)
- F82** Words in s. 10(4) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 369(5)(a)** (with Sch. 7)
- F83** Words in s. 10(4) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 369(5)(b)** (with Sch. 7)
- F84** Words in s. 10(5) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 369(5)(a)** (with Sch. 7)
- F85** Words in s. 10(5) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 369(5)(b)** (with Sch. 7)

Marginal Citations

M30 1991 c. 56.

Advisory committees

^{F86}[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.

*Status: Point in time view as at 01/09/2018. 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 03 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)*

- (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

F86 S. 11 repealed (W.) (1.4.2002) by [S.I. 2002/784](#), [art. 2\(2\)](#)

^{F87} **12 Environment protection advisory committees.**

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Textual Amendments

F87 S. 12 repealed (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [arts. 1\(2\), 9\(2\)](#) (with Sch. 7)

^{F88} **13 Regional and local fisheries advisory committees.**

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Textual Amendments

F88 S. 13 repealed (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [arts. 1\(2\), 9\(2\)](#) (with Sch. 7)

Flood defence committees

14 Regional flood defence committees.

[^{F89}(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.

(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)

- (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.

Status: Point in time view as at 01/09/2018. 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 03 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)

- (4) In this section “old committee” means a regional flood defence committee for the purposes of section 9 of the 1991 Act.]

Textual Amendments

F89 Ss. 14-19 repealed (E.W.) (1.4.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), [Sch. 2 para. 53](#) (with s. 49(1)(6)); S.I. 2011/694, art. 3(i)

15 Composition of regional flood defence committees.

[^{F89}(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—

- (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.

Status: Point in time view as at 01/09/2018. This version of this part contains provisions that are prospective.

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- (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.]

Textual Amendments

F89 Ss. 14-19 repealed (E.W.) (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), Sch. 2 para. 53 (with s. 49(1)(6)); S.I. 2011/694, art. 3(i)

16 Change of composition of regional flood defence committee.

- [^{F89}(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
 - (b) substitute for the number of members determined by the Agency some other number not less than seventeen.

Status: Point in time view as at 01/09/2018. This version of this part contains provisions that are prospective.

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- (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.]

Textual Amendments
F89 Ss. 14-19 repealed (E.W.) (1.4.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), [Sch. 2 para. 53](#) (with s. 49(1)(6)); S.I. 2011/694, art. 3(i)

^{F89} 16A Power to alter composition of regional flood defence committees in Wales

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Textual Amendments
F89 Ss. 14-19 repealed (E.W.) (1.4.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), [Sch. 2 para. 53](#) (with s. 49(1)(6)); S.I. 2011/694, art. 3(i)

^{F89} 16B Effect of order under section 16A

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Status: Point in time view as at 01/09/2018. This version of this part contains provisions that are prospective.

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Textual Amendments

F89 Ss. 14-19 repealed (E.W.) (1.4.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), [Sch. 2 para. 53](#) (with s. 49(1)(6)); S.I. 2011/694, art. 3(i)

17 Local flood defence schemes and local flood defence committees.

- [^{F89}(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 ^{M31}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—
- (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 [^{F90}sections 18 and 18A] 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—

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- (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.]

Textual Amendments

F89 Ss. 14-19 repealed (E.W.) (1.4.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), [Sch. 2 para. 53](#) (with s. 49(1)(6)); S.I. 2011/694, art. 3(i)

F90 Words in s. 17(3) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 66\(3\)](#), 105(3); S.I. 2004/641, [art. 3\(q\)](#) (with [Sch. 3 para. 7](#))

Marginal Citations

M31 1991 c. 60.

18 Composition of local flood defence committees.

- [^{F89}(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.
- (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.

Status: Point in time view as at 01/09/2018. This version of this part contains provisions that are prospective.

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- (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.]

Textual Amendments

F89 Ss. 14-19 repealed (E.W.) (1.4.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), [Sch. 2 para. 53](#) (with s. 49(1)(6)); S.I. 2011/694, art. 3(i)

[^{F91}18A Power to revoke local flood defence schemes

- [^{F89}(1) The Secretary of State may by order made by statutory instrument revoke any local flood defence scheme.
- (2) The power to make an order under this section shall include power to make such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (3) The provision which may be made under subsection (2) above includes provision altering—
- (a) the total number of members of the regional flood defence committee in whose area the local flood defence district created by the scheme was situated; and
 - (b) the total number of such members to be appointed by the constituent councils of that committee,
- and subsections (7) and (8) of section 16 of this Act shall apply in relation to so much of an order under this section as is made by virtue of this subsection as they apply in relation to an order under subsection (5) of that section.
- (4) Paragraphs 2 to 6 of Schedule 4 to this Act, apart from paragraph 3(3), apply in relation to an order under this section as they apply in relation to an order under that Schedule,

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reading references there to the relevant Minister as references to the Secretary of State.]]

Textual Amendments

- F89** Ss. 14-19 repealed (E.W.) (1.4.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), [Sch. 2 para. 53](#) (with s. 49(1)(6)); S.I. 2011/694, art. 3(i)
- F91** S. 18A inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 66\(2\)](#), 105(3); S.I. 2004/641, [art. 3\(q\)](#) (with [Sch. 3 para. 7](#))

19 Membership and proceedings of flood defence committees.

[^{F89}Schedule 5 to this Act shall have effect in relation to regional flood defence committees and local flood defence committees.]

Textual Amendments

- F89** Ss. 14-19 repealed (E.W.) (1.4.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), [Sch. 2 para. 53](#) (with s. 49(1)(6)); S.I. 2011/694, art. 3(i)

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.

[^{F92}20A General purpose of SEPA

- (1) SEPA is to carry out the functions conferred on it by or under this Act or any other enactment for the purpose of protecting and improving the environment (including managing natural resources in a sustainable way).
- (2) In carrying out its functions for that purpose SEPA must, except to the extent that it would be inconsistent with subsection (1) to do so, contribute to—
 - (a) improving the health and well being of people in Scotland, and
 - (b) achieving sustainable economic growth.
- (3) In subsection (1), “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

Status: Point in time view as at 01/09/2018. 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 03 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)

Textual Amendments

F92 S. 20A inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 51, 61(2)**; [S.S.I. 2014/160, art. 2\(1\)\(2\)](#)

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) [F93their functions with respect to water resources under or by virtue of Part III of the Rivers (Prevention of Pollution) (Scotland) Act 1951 (in this Part referred to as “the 1951 Act”) and Part II of the Natural Heritage (Scotland) Act 1991;]
 - (ii) their functions with respect to water pollution under or by virtue of [F94Part III of the 1951 Act, the M32Rivers (Prevention of Pollution) (Scotland) Act 1965 and]Part II of the M33Control of Pollution Act 1974;
 - (iii) [F95their 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) [F96their functions with respect to flood warning systems under or by virtue of Part VI of the M34Agriculture 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 M35Control 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) [F97the 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 M36Control of Pollution Act 1974;]
 - (d) [F98the 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) [F99the functions of the chief inspector for Scotland appointed under section 4(2)(b) of the M37Radioactive 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) [F100the functions conferred or imposed by or under the M38Alkali, &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;]
 - F101(g)

Status: Point in time view as at 01/09/2018. This version of this part contains provisions that are prospective.

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- (h) [^{F102}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—
- ^{F103}(a)
- (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 ^{M39}Clean Air Act 1993 with respect to the creation of smoke control areas by local authorities; and
- (d) [^{F104}his functions under section 30(1) of the ^{M40}Radioactive Substances Act 1993 (power to dispose of radioactive waste).]
- ^{F105}(3)

Textual Amendments

- F93** S. 21(1)(a)(i) repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 29(2)(a)(i)**; S.S.I. 2014/160, art. 2(1)(2)
- F94** Words in s. 21(1)(a)(ii) repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 29(2)(a)(ii)**; S.S.I. 2014/160, art. 2(1)(2)
- F95** S. 21(1)(a)(iii) repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 29(2)(a)(i)**; S.S.I. 2014/160, art. 2(1)(2)
- F96** S. 21(1)(a)(iv) repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 29(2)(a)(i)**; S.S.I. 2014/160, art. 2(1)(2)
- F97** S. 21(1)(c) repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 29(2)(a)(iii)**; S.S.I. 2014/160, art. 2(1)(2)
- F98** S. 21(1)(d) repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 29(2)(a)(iii)**; S.S.I. 2014/160, art. 2(1)(2)
- F99** S. 21(1)(e) repealed (S.) (1.9.2018) by The Environmental Authorisations (Scotland) Regulations 2018 (S.S.I. 2018/219), reg. 1, **sch. 7 para. 1 Table** (with reg. 78, sch. 5 para. 2)
- F100** S. 21(1)(f) repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 29(2)(a)(iii)**; S.S.I. 2014/160, art. 2(1)(2)
- F101** S. 21(1)(g) repealed (26.2.2015) by The Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2015 (S.I. 2015/374), arts. 1(1), **6(2)(a)**
- F102** S. 21(1)(h) repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 29(2)(a)(iii)**; S.S.I. 2014/160, art. 2(1)(2)
- F103** S. 21(2)(a) repealed (26.2.2015) by The Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2015 (S.I. 2015/374), arts. 1(1), **6(2)(b)**
- F104** S. 21(2)(d) repealed (S.) (1.9.2018) by The Environmental Authorisations (Scotland) Regulations 2018 (S.S.I. 2018/219), reg. 1, **sch. 7 para. 1 Table** (with reg. 78, sch. 5 para. 2)
- F105** S. 21(3) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 13**

Marginal Citations

- M32** 1965 c. 13.
M33 1974 c. 40.
M34 1970 c. 40.
M35 1989 c. 14.
M36 1974 c. 40.

Status: Point in time view as at 01/09/2018. 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 03 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)

M37 1993 c. 12.

M38 1906 c. 14.

M39 1993 c. 11.

M40 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;
- (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.

^{F106}(2)

^{F106}(3)

^{F106}(4)

^{F106}(5)

^{F106}(6)

^{F106}(7)

^{F106}(8)

(9) Schedule 2 to this Act shall have effect in relation to transfers by or under this section.

Textual Amendments

F106 S. 22(2)-(8) repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 13](#)

23 Functions of staff commission.

[^{F107}The functions of the staff commission established under section 12 of the ^{M41}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.]

Status: Point in time view as at 01/09/2018. This version of this part contains provisions that are prospective.

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Textual Amendments

F107 S. 23 repealed (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), **sch. 3 para. 29(3)**; S.S.I. 2014/160, art. 2(1)(2)

Marginal Citations

M41 1994 c. 39.

Other functions etc. of SEPA

PROSPECTIVE

^{F108}24 Consultation with respect to drainage works.

.....

Textual Amendments

F108 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)

^{F109}25 Assessing flood risk.

.....

Textual Amendments

F109 S. 25 repealed (S.) (26.11.2009) by [Flood Risk Management \(Scotland\) Act 2009 \(asp 6\)](#), s. 97(1), **sch. 3 para. 7** (with s. 91); S.S.I. 2009/393, art. 2, sch.

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 ^{M42}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

M42 1947 c. 42.

Status: Point in time view as at 01/09/2018. This version of this part contains provisions that are prospective.

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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;
 - (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.

[^{F110}(4) In subsection (1) above, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

Textual Amendments

F110 S. 27(4) added (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), **sch. 3 para. 43(2)**; S.S.I. 2014/160, art. 2(1)(2)

Modifications etc. (not altering text)

C3 S. 27 applied (with modifications) (S.) (26.11.2009) by [Flood Risk Management \(Scotland\) Act 2009 \(asp 6\)](#), **ss. 78, 97(1)** (with s. 91); S.S.I. 2009/393, art. 2, sch.

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 ^{M43}Private Legislation Procedure (Scotland) Act 1936; or
 - (b) oppose any private legislation in Parliament.

Status: Point in time view as at 01/09/2018. This version of this part contains provisions that are prospective.

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- (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
 M43 1936 c. 52.

29 Procedure relating to making of byelaws.

The following provisions of the ^{M44}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.”

Marginal Citations
 M44 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;
 - ^{F111}(b)
 - ^{F111}(c)
 - ^{F111}(d)
 - (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.

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- (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.

[^{F112}(4) In subsection (3) above, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

Textual Amendments

F111 S. 30(1)(b)-(d) repealed (S.) (1.1.2013) by Public Records (Scotland) Act 2011 (asp 12), ss. 14(c), 16(1); S.S.I. 2012/247, art. 2

F112 S. 30(4) added (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), sch. 3 para. 43(3); S.S.I. 2014/160, art. 2(1)(2)

General powers and duties

31 Guidance on [^{F113}SEPA's general purpose and 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.

[^{F114}(2A) The Scottish Ministers may give guidance to SEPA with respect to the carrying out of its duties under section 20A.]

- (3) In performing its functions, SEPA shall have regard to guidance given under this section.
- (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 [^{F115}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 ^{F116}. . .
- (6) If, within the period mentioned in subsection (5) above, [^{F115}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 [^{F115}the Scottish Parliament] is dissolved or prorogued or ^{F117}. . . 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.

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Textual Amendments

- F113** Words in s. 31 title inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 14\(3\)](#); S.S.I. 2014/160, art. 2(1)(2)
- F114** S. 31(2A) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 14\(2\)](#); S.S.I. 2014/160, art. 2(1)(2)
- F115** 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](#)
- F116** 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](#)
- F117** 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](#)

Modifications etc. (not altering text)

- C4** S. 31: transfer of functions (10.7.2008) by [The Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2008 \(S.I. 2008/1776\)](#), arts. 1(1), 2, [Sch.](#)

32 General environmental and recreational duties.

- [^{F118}(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
 - (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 ^{M45}Natural Heritage (Scotland) Act 1991.]

Status: Point in time view as at 01/09/2018. This version of this part contains provisions that are prospective.

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Textual Amendments

F118 S. 32 repealed (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\), s. 61\(2\), sch. 3 para. 14\(4\)](#); [S.S.I. 2014/160, art. 2\(1\)\(2\)](#)

Marginal Citations

M45 1991 c. 28.

33 ^{F119}General duties as respects the state of the environment and effects of pollution.]

- (1) ^{F120}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 ^{F121}shall^{F121} may], for the purpose—
 - (a) of facilitating the carrying out of its ^{F122}pollution control] functions; or
 - (b) of enabling it to form an opinion of the general state of ^{F123}pollution of] the environment,
compile information relating to ^{F124}such pollution]^{F124}the general state of the environment] (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) ^{F125}SEPA shall follow developments in technology and techniques for preventing or minimising, or remedying or mitigating the effects of, pollution of the environment.]
- (5) ^{F126}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 ^{M46}Alkali, &c. Works Regulation Act 1906;
 - (b) ^{F127}... Parts I, IA and II of the ^{M47}Control of Pollution Act 1974;
 - (c) Part I of the ^{M48}Health and Safety at Work etc. Act 1974;
 - (d) the ^{M49}Control of Pollution (Amendment) Act 1989;
 - (e) Parts I, II and IIA of the 1990 Act;
 - (f) section 19 of the ^{M50}Clean Air Act 1993;
 - (g) the ^{M51}Radioactive Substances Act 1993;
 - ^{F128}(ga) regulations under section 2 of the Pollution Prevention and Control Act 1999;]^{F129} ...

Status: Point in time view as at 01/09/2018. This version of this part contains provisions that are prospective.

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- (h) regulations made by virtue of section 2(2) of the ^{M52}European Communities Act 1972, to the extent that the regulations relate to pollution ^{F130}and;
- (i) the [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#) and any regulations made under that Act.]]

Textual Amendments

- F119** S. 33 title substituted (S.) (30.6.2014) by virtue of [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 14\(6\)](#); S.S.I. 2014/160, art. 2(1)(2)
- F120** S. 33(1) repealed (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 14\(5\)\(a\)](#); S.S.I. 2014/160, art. 2(1)(2)
- F121** Word in s. 33(2) substituted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 14\(5\)\(b\)\(i\)](#); S.S.I. 2014/160, art. 2(1)(2)
- F122** Words in s. 33(2)(a) repealed (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 14\(5\)\(b\)\(ii\)](#); S.S.I. 2014/160, art. 2(1)(2)
- F123** Words in s. 33(2)(b) repealed (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 14\(5\)\(b\)\(iii\)](#); S.S.I. 2014/160, art. 2(1)(2)
- F124** Words in s. 33(2) substituted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 14\(5\)\(b\)\(iv\)](#); S.S.I. 2014/160, art. 2(1)(2)
- F125** S. 33(4) repealed (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 14\(5\)\(a\)](#); S.S.I. 2014/160, art. 2(1)(2)
- F126** S. 33(5) repealed (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 14\(5\)\(a\)](#); S.S.I. 2014/160, art. 2(1)(2)
- F127** Words in s. 33(5)(b) omitted (S.) (1.4.2006) by virtue of [The Water Environment \(Consequential and Savings Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/181\)](#), [sch. Pt. 4 para. 8\(2\)\(a\)](#)
- F128** 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](#)
- F129** Word in s. 33(5) omitted (S.) (1.4.2006) by virtue of [The Water Environment \(Consequential and Savings Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/181\)](#), [sch. Pt. 4 para. 8\(2\)\(b\)](#)
- F130** S. 33(5)(i) and word inserted (S.) (1.4.2006) by [The Water Environment \(Consequential and Savings Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/181\)](#), [sch. Pt. 4 para. 8\(2\)\(c\)](#)

Marginal Citations

- M46** 1906 c. 14.
M47 1974 c. 40.
M48 1974 c. 37.
M49 1989 c. 14.
M50 1993 c. 11.
M51 1993 c. 12.
M52 1972 c. 68.

34 General duties with respect to water.

^{F131}^{F132}(1)

- (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.

Status: Point in time view as at 01/09/2018. This version of this part contains provisions that are prospective.

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F¹³³(3)

F¹³³(4)]

Textual Amendments

F131 S. 34(1) 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)

F132 S. 34 repealed (S.) (30.6.2014) by *Regulatory Reform (Scotland) Act 2014 (asp 3)*, s. 61(2), **sch. 3 para. 14(7)**; S.S.I. 2014/160, art. 2(1)(2)

F133 S. 34(3)(4) 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)

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

[^{F134}(1) Where an area of land—

- (a) has been designated, under section 6(2) of the ^{M53}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

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- (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.]

Textual Amendments

F134 S. 35 repealed (S.) (29.11.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#), s. 59(2), **Sch. 7 para. 10(1)** (with s. 55(2)); S.S.I. 2004/495, art. 2

Marginal Citations

M53 1991 c. 28.

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

- [^{F135}(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^[F136], 34(2) and 35^[F136] and 34(2)] 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^[F137], 34(2) or 35^[F137] or 34(2)] 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;
 - [^{F138}(da) Scottish Water;]
 - (g) [^{F139}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.]

Status: Point in time view as at 01/09/2018. 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 03 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)

Textual Amendments

- F135** S. 36 repealed (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 14\(8\)](#); S.S.I. 2014/160, art. 2(1)(2)
- F136** Words in s. 36(1)(a) substituted (S.) (29.11.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#), s. 59(2), [Sch. 7 para. 10\(2\)\(a\)](#) (with s. 55(2)); S.S.I. 2004/495, art. 2
- F137** Words in s. 36(2) substituted (S.) (29.11.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#), s. 59(2), [Sch. 7 para. 10\(2\)\(b\)](#) (with s. 55(2)); S.S.I. 2004/495, art. 2
- F138** 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\(3\)](#)
- F139** S. 36(3)(g) repealed (S.) (25.6.2003) by [Water Industry \(Scotland\) Act 2002 Consequential Provisions Order 2003 \(S.S.I. 2003/331\)](#), art. 1, [Sch. para. 7](#)

CHAPTER III

MISCELLANEOUS, GENERAL AND SUPPLEMENTAL PROVISIONS RELATING TO THE NEW AGENCIES [^{F140}AND THE NATURAL RESOURCES BODY FOR WALES]

Textual Amendments

- F140** Words in [Pt. I Ch. III](#) heading inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 370](#) (with [Sch. 7](#))

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 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.

Status: Point in time view as at 01/09/2018. 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 03 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)

- (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.
- [^{F141}(8A) In subsection (8) above, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]
- (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.

Textual Amendments

F141 S. 37(8A) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 43\(4\)](#); S.S.I. 2014/160, art. 2(1)(2)

Modifications etc. (not altering text)

C5 S. 37(2)(4) functions cease to be exercisable (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), 6 (with art. 24)

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](#)

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

- (1) Agreements may be made between—
- (a) any Minister of the Crown, and

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- (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—
- “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;

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[^{F142cc}enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;]

“Minister of the Crown” has the same meaning as in the Ministers of the ^{M54}Crown Act 1975.

Textual Amendments

F142 Words in s. 38(10) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 43\(5\)](#); S.S.I. 2014/160, art. 2(1)(2)

Modifications etc. (not altering text)

C6 S. 38 modified (30.6.1999) by [S.I. 1999/1746](#), [arts. 1\(1\), 5\(1\)](#); [S.I. 1998/3178](#), [art. 3](#)

C7 S. 38 functions cease to be exercisable (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), [arts. 1\(2\), 6](#) (with art. 24)

Marginal Citations

M54 1975 c. 26.

39 General duty of the [^{F143}new Agencies][^{F143}Agency] to have regard to costs and benefits in exercising powers.

- (1) [^{F144}Each new][^{F144}The] 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 [^{F145}a new][^{F145}the] 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.

Textual Amendments

F143 Word in s. 39 title substituted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 14\(10\)](#); S.S.I. 2014/160, art. 2(1)(2)

F144 Word in s. 39(1) substituted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 14\(9\)\(a\)](#); S.S.I. 2014/160, art. 2(1)(2)

F145 Word in s. 39(2) substituted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 14\(9\)\(b\)](#); S.S.I. 2014/160, art. 2(1)(2)

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.

Status: Point in time view as at 01/09/2018. This version of this part contains provisions that are prospective.

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- (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 [F146]EU 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,
 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 [F146]EU 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.
- [F147](9) In this section, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]
- [F148](9) For the purposes of this section, the “appropriate Minister” in relation to the Agency is—
- (a) in any case not falling within paragraph (b), the Secretary of State;
 - (b) in the case of a direction under subsection (1)—
 - (i) which would have any effect in Wales, or

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- (ii) which relates to water resources management, water supply, rivers or other watercourses, control of pollution of water resources, sewerage or land drainage, and which would have any effect in the catchment areas of the rivers Dee, Wye and Severn,
the Secretary of State or the Welsh Ministers.
- (10) The Secretary of State may give a direction falling within subsection (9)(b) only after consulting the Welsh Ministers.
- (11) The Welsh Ministers may give a direction under this section only with the consent of the Secretary of State.]

Textual Amendments

- F146** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))
- F147** S. 40(9) added (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), **sch. 3 para. 43(6)**; S.S.I. 2014/160, art. 2(1)(2)
- F148** S. 40(9)-(11) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 371** (with Sch. 7)

Modifications etc. (not altering text)

- C8** S. 40 modified (30.6.1999) by [S.I. 1999/1746](#), arts. 1(1), 5(2); [S.I. 1998/3178](#), art. 3
- C9** S. 40 modified (E.W.) (2.1.2004) by [The Water Environment \(Water Framework Directive\) \(England and Wales\) Regulations 2003 \(S.I. 2003/3242\)](#), regs. 1(a), **20(1)** (with reg. 1(c))
- C10** S. 40: transfer of functions (10.7.2008) by [The Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2008 \(S.I. 2008/1776\)](#), arts. 1(1), 2, **Sch.**
- C11** S. 40 modified (E.W.) (10.4.2017) by [The Water Environment \(Water Framework Directive\) \(England and Wales\) Regulations 2017 \(S.I. 2017/407\)](#), regs. 1(a), **36(1)** (with reg. 1(c))

Charging schemes

41 Power to make schemes imposing charges.

- (1) Subject to the following provisions of this section and ^{F149}sections 41B, 41C and 4] below—
- (a) in the case of any particular licence under Chapter II of Part II of the 1991 Act (abstraction and impounding), ^{F150}an appropriate 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 ^{F151}the Agency, the Natural Resources Body for Wales or SEPA] such charges as may from time to time be prescribed; ^{F152}...
- ^{F153}(ba) as a means of recovering costs incurred by it in performing functions conferred by the Reservoirs Act 1975 ^{F154}an appropriate agency] may require the payment to it of such charges as may from time to time be prescribed;]
- (c) ^{F155}as a means of recovering costs incurred by it in performing functions conferred by regulations made for the purpose of implementing ^{F156}Directive 2008/98/EC to the extent that it relates to hazardous waste (within the meaning given by Article 3(2) of that Directive)]^{F157}an appropriate agency] may require the payment to it of such charges as may from time to time be prescribed;]^{F158}^{F159}...

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- (d) as a means of recovering costs incurred by it in performing functions conferred by Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste, as amended from time to time, [^{F160}the Agency, the Natural Resources Body for Wales or SEPA] may require the payment to it of such charges as may from time to time be prescribed;]^{F161}^{F162}...
 - (e) as a means of recovering costs incurred by it in performing functions conferred by Regulation (EC) No. 850/2004 of the European Parliament and of the Council on persistent organic pollutants and amending Directive 79/117/EEC as amended from time to time, [^{F163}the Agency, the Natural Resources Body for Wales or SEPA] may require the payment to it of such charges as may from time to time be prescribed;]
 - ^{F164}(f) as a means of recovering costs incurred by it in performing functions conferred by regulations under section 79 of the Climate Change (Scotland) Act 2009 (asp 12), SEPA may require the payment to it of such charges as may from time to time be prescribed;]
 - ^{F165}(f) as a means of recovering costs incurred by it in performing functions conferred by regulations made for the purposes of implementing Council Directive 2006/117/Euratom on the supervision and control of shipments of radioactive waste and spent fuel (as amended from time to time), [^{F166}an appropriate agency] may require the payment to it of such charges as may from time to time be prescribed;]
 - ^{F167}(g) as a means of recovering costs incurred by it in performing functions conferred by regulations made for the purpose of implementing Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators, as amended from time to time, [^{F168}the Agency, the Natural Resources Body for Wales or SEPA] may require the payment to it of such charges as may from time to time be [^{F169}prescribed;]
 - ^{F170}(h) as a means of recovering costs incurred by it in performing functions conferred by regulation 8A of the Greenhouse Gas Emissions Trading Scheme (Amendment) and National Inventory Regulations 2005, the Agency may require the payment to it of such charges as may from time to time be prescribed;
 - [^{F171}(k) as a means of recovering costs incurred by it in performing functions conferred by Regulation EU 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008^{F172}, the Agency, the Natural Resources Body for Wales or SEPA may require the payment to it of such charges as may from time to time be prescribed;]
 - ^{F173}(i)
 - ^{F173}(j)]
- 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 [^{F174}body] in question.

- (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;

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- (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.
 - [^{F175}(g) any other approval, consent, consideration or determination carried out by the Agency relating to any obligations of the United Kingdom under the [^{F146}EU] Treaties or any application for such an approval of consent, consideration or determination.]
- ^{F176}(2A)
- (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 [^{F177}the Agency, the Natural Resources Body for Wales or SEPA] 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;
 - (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

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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 [^{F178}Canal & River Trust]).

(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.

[^{F179}(9A) The Natural Resources Body for Wales may not make a charging scheme unless the provisions of the scheme have been approved by the Welsh Ministers under section 42.]

(10) In this section—

^{F180} ...

“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.

^{F181} ...

^{F180} ...

[^{F182}(10A) Any power of the Secretary of State to make regulations under this section is exercisable in relation to Wales only after consultation with the Welsh Ministers.]

(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.

Textual Amendments

F146 Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

F149 Words in s. 41(1) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **16(2)** (with arts. 24, 28)

F150 Words in s. 41(1)(a) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 372(2)(a)** (with Sch. 7)

F151 Words in s. 41(1)(b) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 372(2)(b)** (with Sch. 7)

F152 Word in s. 41(1)(b) omitted (12.7.2007) by virtue of [The Transfrontier Shipment of Waste Regulations 2007 \(S.I. 2007/1711\)](#), regs. 1, **46(1)(a)** (with reg. 3)

F153 S. 41(1)(ba) inserted (E.W.) (1.10.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 4 para. 39** (with s. 49(1)(6)); S.I. 2011/2204, art. 3(1)(h)

F154 Words in s. 41(1)(ba) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 372(2)(c)** (with Sch. 7)

F155 S. 41(1)(c) substituted (E.) (16.7.2005) by [The Hazardous Waste \(England and Wales\) Regulations 2005 \(S.I. 2005/894\)](#), regs. 1(1)(b), **59** (with regs. 59(3), 75) and s. 41(1)(c) substituted (W.) (16.7.2005) by [The Hazardous Waste \(Wales\) Regulations 2005 \(S.I. 2005/1806\)](#), regs. 1(2)(ii), **59(2)** (with regs. 12-17, 71)

F156 Words in s. 41(1)(c) substituted (E.W.) (29.3.2011) by [The Waste \(England and Wales\) Regulations 2011 \(S.I. 2011/988\)](#), reg. 1(2), **Sch. 4 para. 4(2)** (with regs. 2, 47(2))

F157 Words in s. 41(1)(c) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 372(2)(e)** (with Sch. 7)

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- F158** Word in s. 41(1)(c) omitted (3.12.2007) by virtue of The Persistent Organic Pollutants Regulations 2007 (S.I. 2007/3106), regs. 1, **9(1)(a)**
- F159** S. 41(1)(d) and word inserted (12.7.2007) by The Transfrontier Shipment of Waste Regulations 2007 (S.I. 2007/1711), regs. 1, **46(1)(b)** (with reg. 3)
- F160** Words in s. 41(1)(d) substituted (1.5.2014) by The Transfrontier Shipment of Waste (Amendment) Regulations 2014 (S.I. 2014/861), regs. 1, **22** (with reg. 23)
- F161** Word in s. 41(1)(d) omitted (25.12.2008) by virtue of The Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008 (S.I. 2008/3087), regs. 1, **17(1)(a)** (with reg. 3)
- F162** S. 41(1)(e) and word inserted (3.12.2007) by The Persistent Organic Pollutants Regulations 2007 (S.I. 2007/3106), regs. 1, **9(1)(b)**
- F163** Words in s. 41(1)(e) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 372(2)(d)** (with Sch. 7)
- F164** S. 41(1)(f) inserted (S.) (31.10.2009) by Climate Change (Scotland) Act 2009 (asp 12), s. 100(2), **sch. 2 para. 2** (with s. 95); S.S.I. 2009/341, art. 2(2)(c)
- F165** S. 41(1)(f) inserted (25.12.2008) by The Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008 (S.I. 2008/3087), regs. 1, **17(1)(b)** (with reg. 3)
- F166** Words in s. 41(1)(f) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 372(2)(e)** (with Sch. 7)
- F167** S. 41(1)(g) inserted (5.5.2009) by The Waste Batteries and Accumulators Regulations 2009 (S.I. 2009/890), reg. 1(2), **Sch. 8 para. 1(2)**
- F168** Word in s. 41(1)(g) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 372(2)(f)** (with Sch. 7)
- F169** Word in s. 41(1)(g) substituted (1.1.2012) by The Greenhouse Gas Emissions Trading Scheme (Amendment) (Registries and Fees etc.) Regulations 2011 (S.I. 2011/2911), reg. 1(1), **Sch. para. 22(a)** (with Sch. para ss. 33-36)
- F170** S. 41(1)(h)-(j) inserted (1.1.2012) by The Greenhouse Gas Emissions Trading Scheme (Amendment) (Registries and Fees etc.) Regulations 2011 (S.I. 2011/2911), reg. 1(1), **Sch. para. 22(a)** (with Sch. para ss. 33-36)
- F171** S. 41(1)(k) inserted (1.1.2018) by The Control of Mercury (Enforcement) Regulations 2017 (S.I. 2017/1200), regs. 2(1), **48** (with reg. 1(2))
- F172** OJ No L 137, 24.5.2017, p1.
- F173** S. 41(1)(i)(j) omitted (3.12.2012) by virtue of The Greenhouse Gas Emissions Trading Scheme (Amendment) (Charging Schemes) Regulations 2012 (S.I. 2012/2788), regs. 1, **4(a)**
- F174** Word in s. 41(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 372(2)(g)** (with Sch. 7)
- F175** S. 41(2)(g) added (S.) (11.4.2003) by The Landfill (Scotland) Regulations 2003 (S.S.I. 2003/235), reg. 21, **Sch. 6 para. 1** (with regs. 4, 6)
- F176** S. 41(2A) omitted (6.4.2010) by virtue of The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2009 (S.I. 2009/3381), regs. 1(1)(b), **13(2)(a)** (with regs. 1(2), 16(2))
- F177** Words in s. 41(6) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 372(3)** (with Sch. 7)
- F178** Words in s. 41(8) substituted (2.7.2012) by The British Waterways Board (Transfer of Functions) Order 2012 (S.I. 2012/1659), art. 1(2), **Sch. 3 para. 13** (with arts. 4-6)
- F179** S. 41(9A) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 372(4)** (with Sch. 7)
- F180** Words in s. 41(10) omitted (3.12.2012) by virtue of The Greenhouse Gas Emissions Trading Scheme (Amendment) (Charging Schemes) Regulations 2012 (S.I. 2012/2788), regs. 1, **4(b)**
- F181** Words in s. 41(10) omitted (6.4.2010) by virtue of The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2009 (S.I. 2009/3381), regs. 1(1)(b), **13(2)(b)** (with regs. 1(2), 16(2))

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F182 S. 41(10A) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **16(3)** (with arts. 24, 28)

Modifications etc. (not altering text)

- C12** 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**
- C13** S. 41 restricted (E.W.) (3.11.2003) by [End-of-Life Vehicles Regulations 2003 \(S.I. 2003/2635\)](#), regs. 1(2)(b), **49(2)** (with regs. 3, 4)
- C14** S. 41 applied (with modifications) by SI 2002/1559, Sch. 4 para. 5(15) (as inserted (E.W.) (15.5.2006) by [The Waste Management \(England and Wales\) Regulations 2006 \(S.I. 2006/937\)](#), regs. 1(2), **9(15)**)
- C15** S. 41 applied (S.) (13.11.2014) by [The Sulphur Content of Liquid Fuels \(Scotland\) Regulations 2014 \(S.S.I. 2014/258\)](#), **reg. 1(1)**, **sch. para. 8** (with reg. 3)
- C16** S. 41(10): transfer of functions (10.7.2008) by [The Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2008 \(S.I. 2008/1776\)](#), arts. 1(1), 2, **Sch.**

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**

[^{F183}41A [^{F184}Charges in respect of [^{F185}the EU greenhouse gas emissions trading scheme]]

[^{F186}(1) Each of the [^{F187}charging authorities] may require the payment to it of such charges as may from time to time be prescribed—

- (a) as a means of recovering costs incurred by it in performing functions conferred under or by virtue of regulations made for the purpose of implementing the EU ETS Directive;
- (b) in respect of—
 - (i) an application to open an account that, under the [^{F188}Registries Regulation 2013], is required to be held in a trading scheme registry;
 - (ii) the subsistence of such an account;
 - (iii) the updating of information provided to the Agency in relation to such an account;

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 [^{F189}charging authority] in question.

(1A) 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;
- (d) contain supplemental, incidental, consequential or transitional provision for the purposes of the scheme.

(1B) A charging scheme must specify, in relation to any charge prescribed by the scheme, the description of person who is liable to pay the charge.

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- (1C) A [^{F190}charging authority] may not make a charging scheme unless the provisions of the scheme have been approved by the Secretary of State [^{F191}, the Welsh Ministers] or the Scottish Ministers under section 42.]
- (2) If the Agency—
- (a) proposes to prescribe [^{F192}charges under subsection (1)(b)] or to amend any provision for such charges included in a charging scheme, and
 - (b) notifies [^{F193}another charging authority] of its proposals,
- the Agency and [^{F194}that other charging authority] shall each include in a charging scheme (subject to approval by the Secretary of State [^{F195}, the Welsh Ministers][^{F196}or the Scottish Ministers under section 42]) provision giving effect to the proposals.
- (3) If the Agency revises any proposals of which it has given notification under subsection (2) above, and notifies [^{F197}the relevant charging authority] accordingly, the obligations imposed by that subsection apply in relation to the proposals as revised.
- (4) A notification under subsection (2) or (3) above shall include details of the amount of the proposed charges.
- (5) [^{F198}The Natural Resources Body for Wales and]SEPA shall pass on to the Agency any [^{F199}charges under subsection (1)(b)] that [^{F200}they receive] .
- (6) A charging scheme made by the Agency may require the payment to the Agency of such charges as may from time to time be prescribed in respect of—
- [^{F201}(a) an application to open an account in a trading scheme registry, other than one that under the [^{F202}Registries Regulation 2013] is required to be held in that registry;]
 - (b) the subsistence of such an account;
 - (c) the updating of information provided to the Agency in relation to such an account.
- [^{F203}(7) In this section—
- “charging authority” means the Agency, the Natural Resources Body for Wales or SEPA;
- “the Registries Regulation 2013” means Commission Regulation (EU) No 389/2013 establishing a Union Registry pursuant to [Directive 2003/87/EC](#) of the European Parliament and of the Council, Decisions No [290/2004/EC](#) and No [406/2009/EC](#) of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011, as amended from time to time; and
- “trading scheme registry” means any registry operated by the Agency for the purpose of meeting the obligations of the United Kingdom referred to in Articles 4(3) and 5(1) of the Registries Regulation 2013.]]

Textual Amendments

F183 S. 41A inserted (21.4.2005) by [The Greenhouse Gas Emissions Trading Scheme Regulations 2005](#) (S.I. 2005/925), **Sch. 6 para. 1(2)** (with reg. 3)

F184 Words in s. 41A heading substituted (1.1.2012) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(Registries and Fees etc.\) Regulations 2011](#) (S.I. 2011/2911), reg. 1(1), **Sch. para. 23(a)** (with Sch. para ss. 33-36)

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- F185** Words in s. 41A heading substituted (3.12.2012) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(Charging Schemes\) Regulations 2012 \(S.I. 2012/2788\)](#), regs. 1, **5(2)**
- F186** Ss. 41A(1)-(1C) substituted for s. 41A(1) (3.12.2012) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(Charging Schemes\) Regulations 2012 \(S.I. 2012/2788\)](#), regs. 1, **5(3)**
- F187** Words in s. 41A(1) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **17(2)(a)** (with art. 24)
- F188** Words in s. 41A(1)(b)(i) substituted (31.1.2014) by [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **13(2)**
- F189** Words in s. 41A(1) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **17(2)(b)** (with art. 24)
- F190** Words in s. 41A(1C) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **17(3)(a)** (with art. 24)
- F191** Words in s. 41A(1C) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **17(3)(b)** (with art. 24)
- F192** Words in s. 41A(2) substituted (3.12.2012) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(Charging Schemes\) Regulations 2012 \(S.I. 2012/2788\)](#), regs. 1, **5(4)(a)**
- F193** Words in s. 41A(2)(b) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **17(4)(a)** (with art. 24)
- F194** Words in s. 41A(2) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **17(4)(b)(i)** (with art. 24)
- F195** Words in s. 41A(2) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **17(4)(b)(ii)** (with art. 24)
- F196** Words in s. 41A(2) substituted (3.12.2012) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(Charging Schemes\) Regulations 2012 \(S.I. 2012/2788\)](#), regs. 1, **5(4)(b)**
- F197** Words in s. 41A(3) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **17(5)** (with art. 24)
- F198** Words in s. 41A(5) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **17(6)(a)** (with art. 24)
- F199** Words in s. 41A(5) substituted (3.12.2012) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(Charging Schemes\) Regulations 2012 \(S.I. 2012/2788\)](#), regs. 1, **5(5)**
- F200** Words in s. 41A(5) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **17(6)(b)** (with art. 24)
- F201** S. 41A(6)(a) substituted (3.12.2012) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(Charging Schemes\) Regulations 2012 \(S.I. 2012/2788\)](#), regs. 1, **5(6)**
- F202** Words in s. 41A(6)(a) substituted (31.1.2014) by [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **13(2)**
- F203** S. 41A(7) substituted (31.1.2014) by [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **13(3)**

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[^{F204}41B. Charging schemes in respect of abstraction and impounding licences: joint charging schemes

- (1) A charging scheme under section 41 relating to licences under Chapter II of Part II of the 1991 Act may be made by both of the appropriate agencies acting jointly (referred to in this section as a “joint charging scheme”), if that scheme prescribes charges in relation to licences granted within a combined area that—
 - (a) is partly in England and partly in Wales; and
 - (b) includes all of, or any part of, the catchment areas of the rivers Dee, Wye and Severn.
- (2) A joint charging scheme must—
 - (a) designate the combined area to which it applies; and
 - (b) specify the manner in which the sums recovered by way of charges prescribed by the scheme are to be apportioned between, and paid to, each appropriate agency.
- (3) Subsections (9) and (9A) of section 41 do not apply to joint charging schemes.
- (4) Subject to subsection (5), the appropriate agencies may not make a joint charging scheme unless the provisions of the scheme have been approved under section 42 by the Secretary of State and the Welsh Ministers acting jointly.
- (5) Section 42 applies in relation to joint charging schemes as though references in that section to—
 - (a) anything done by or in relation to either the Secretary of State or the Welsh Ministers were references to that thing being done by or in relation to the Secretary of State and the Welsh Ministers acting jointly;
 - (b) a charging authority were references to both of the appropriate agencies acting jointly.
- (6) This section does not affect any power of an appropriate agency to make a charging scheme under section 41.

Textual Amendments

F204 Ss. 41B, 41C inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **19** (with arts. 24, 28)

41C. Charging schemes in respect of abstraction and impounding licences: cross-border arrangements

- (1) An appropriate agency may not make or revise a relevant charging scheme unless it has—
 - (a) notified the other appropriate agency of its proposal; and
 - (b) had regard to any information provided by the other appropriate agency relating to costs or expenses—
 - (i) which the other appropriate agency has incurred or expects to incur, and
 - (ii) in respect of which the other appropriate agency considers that the relevant charging scheme should make provision.

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- (2) Subsection (1) does not apply to a joint charging scheme made in accordance with section 41B.
- (3) An appropriate agency may not, without the consent of the other appropriate agency, enter into any agreement, or any variation of an agreement, as a result of which it will be liable to incur costs or expenses—
- (a) in respect of which it would expect a relevant charging scheme made by the other appropriate agency (or by both of the appropriate agencies acting jointly) to make provision; and
 - (b) which would, if an existing relevant charging scheme were revised to make provision for the purpose of recovering the amount required to meet those costs or expenses in full, result in a significant increase in the charges payable under that charging scheme.
- (4) Either appropriate agency may refer the question of whether consent should be given for the purposes of subsection (3) for determination by the Secretary of State and the Welsh Ministers acting jointly.
- (5) The Secretary of State and the Welsh Ministers, acting jointly—
- (a) may give guidance to the appropriate agencies as to the exercise of the appropriate agencies' functions under this section;
 - (b) must arrange for any guidance given under this subsection to be published in such manner as they consider appropriate.
- (6) The appropriate agencies must have regard to any guidance given under subsection (5).
- (7) In this section, “relevant charging scheme” means a charging scheme under section 41 which relates to any extent to licences granted under Chapter II of Part II of the 1991 Act in respect of abstractions from, or impounding of, waters in the catchment areas of the rivers Dee, Wye and Severn.]

Textual Amendments

F204 Ss. 41B, 41C inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **19** (with arts. 24, 28)

42 Approval of charging schemes.

- (1) Before submitting a proposed charging scheme to the Secretary of State [^{F205}or the Welsh Ministers for approval, a charging authority] 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—
- (a) setting out its proposals; and
 - (b) specifying the period within which representations or objections with respect to the proposals may be made to the Secretary of State [^{F206}or, as the case may be, the Welsh Ministers].
- (2) Where any proposed charging scheme has been submitted to the Secretary of State [^{F207}or the Welsh Ministers for] approval, he [^{F208}or they] shall, in determining whether or not to approve the scheme or to approve it subject to modifications,—

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- (a) consider any representations or objections duly made to him [^{F209}or them] and not withdrawn; and
 - [^{F210}(b) have regard to—
 - (i) in the case of a charging scheme made under section 41, the matter specified in subsection (3);
 - (ii) in the case of a charging scheme made under section 41A, the matter specified in subsection (3A).]
- (3) The matter mentioned in subsection [^{F211}(2)(b)(i)] 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 recovered by the [^{F212}charging authority] 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 [^{F212}charging authority] 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) [^{F213}in the case of environmental licences which are authorisations [^{F214}for radioactive substances activities under the Environmental Authorisations (Scotland) Regulations 2018]—
 - [^{F213}which the Food Standards Agency incurs in carrying out its functions in relation to environmental permits under [^{F218}the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154)] concerning the disposal of radioactive waste within the meaning of those Regulations.]
 - [^{F219}(c) in the case of licences granted by the Agency under Chapter II of Part II of the 1991 Act (abstraction and impounding), which the Natural Resources Body for Wales incurs in carrying out its functions under Part II of that Act or section 6(2A) above in the catchment areas of the rivers Dee, Wye and Severn for purposes connected with abstractions from, or impounding of, waters in England,
 - (d) in the case of licences granted by the Natural Resources Body for Wales under Chapter II of Part II of the 1991 Act (abstraction and impounding), which the Agency incurs in carrying out its functions under Part II of that Act or section 6(2) above in the catchment areas of the rivers Dee, Wye and Severn for purposes connected with abstractions from, or impounding of, waters in Wales,]
- as the Secretary of State [^{F220}or, as the case may be, the Welsh Ministers] 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.
- [^{F221}(3A) The matter mentioned in subsection (2)(b)(ii) above is the desirability of ensuring that the amounts recovered by the [^{F222}charging authority] 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 [^{F222}charging authority] to meet such of the costs and expenses (whether of a revenue or capital nature) which it incurs in carrying out its functions in relation to the matters described in section 41A(1) as the Secretary of State [^{F223}or, as the case may be, the Welsh Ministers] may consider it appropriate to attribute to the carrying out of those functions.]
- (4) Without prejudice to the generality of the expression “costs and expenses”, in determining for the purposes of subsection (3) [^{F224}or (3A)] above the amounts of the costs and expenses which the Secretary of State considers [^{F225}or which the Welsh Ministers consider] it appropriate to attribute to the carrying out of a [^{F226}charging

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- authority's] or the [^{F227}Food Standard Agency's] functions ^{F228}..., the Secretary of State [^{F229}or the Welsh Ministers]—
- (a) shall take into account any determination of the [^{F230}charging authority's] financial duties under section 44 below [^{F231}or (in the case of the Natural Resources Body for Wales) under article 13 of the Natural Resources Body for Wales (Establishment) Order 2012 (S.I.2012/1903)]; 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 [^{F232}charging authority], [^{F233}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 [^{F234}or the Welsh Ministers (as the case may be)] may consider it appropriate to attribute to the carrying out of [^{F235}an appropriate agency's] functions in relation to activities to which such a licence relates any costs and expenses incurred by the [^{F236}appropriate agency] in carrying out any of its functions under Part II of that Act or under section 6(2) [^{F237}or (2A)] above.
- (6) Subsection (5) above is without prejudice to what costs and expenses the Secretary of State [^{F238}or the Welsh Ministers] may consider it appropriate to attribute to the carrying out of any functions of a [^{F239}charging authority], 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 [^{F240}submitted by the Agency][^{F241}or by both of the appropriate agencies acting jointly]
- (8) It shall be the duty of a [^{F242}charging authority] 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 [^{F243}charging authority] 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)—[^{F244}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 [^{F243}charging authority][^{F245}to the Food Standards Agency].
- [^{F246}(9A) The Agency must pay to the Natural Resources Body for Wales any sums which the Agency recovers under a charging scheme made under section 41 (other than a joint charging scheme made in accordance with section 41B) that may fairly be regarded as recovered for the purpose of meeting (in whole or in part) any costs and expenses incurred, or deemed to have been incurred, by the Body in carrying out its functions under Part II of the 1991 Act or section 6(2A) above.
- (9B) The Natural Resources Body for Wales must pay to the Agency any sums which the Body recovers under a charging scheme made under section 41 (other than a joint charging scheme made in accordance with section 41B) that may fairly be regarded as recovered for the purpose of meeting (in whole or in part) any costs and expenses incurred by the Agency in carrying out its functions under Part II of the 1991 Act or section 6(2) above, other than costs and expenses that are deemed to have been incurred by the Body.

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- (9C) Any sums recovered by an appropriate agency by way of charges prescribed by a joint charging scheme made in accordance with section 41B must be apportioned between, and paid to, each appropriate agency in the manner specified by the scheme pursuant to section 41B(2)(b).
- (9D) For the purposes of subsections (9A) and (9B), costs or expenses are deemed to have been incurred by the Natural Resources Body for Wales if the liability for those costs or expenses was transferred from the Agency to the Body on 1st April 2013—
- (a) by a transfer scheme made by the Welsh Ministers under section 23 of the Public Bodies Act 2011; or
 - (b) by virtue of article 10 of, and paragraph 2 of Schedule 7 to, the Natural Resources Body for Wales (Functions) Order 2013.]
- (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 [F247] that subsection shall be determined by the Secretary of State].
- [F248] (10A) Any dispute as to the apportionment or payment of sums under subsection (9A), (9B) or (9C) shall be determined by the Secretary of State and the Welsh Ministers acting jointly.]
- [F249] (11) In this section “charging scheme” means a scheme made under section 41 or 41A [F250] and “charging authority” means the body that makes or proposes to make a charging scheme].]
- [F251] (12) In the application of this section to Scotland, the references to the Food Standards Agency are to be read as references to Food Standards Scotland.]

Textual Amendments

- F205** Words in s. 42(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 373(2)(a)** (with Sch. 7)
- F206** Words in s. 42(1)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 373(2)(b)** (with Sch. 7)
- F207** Words in s. 42(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 373(3)(a)(i)** (with Sch. 7)
- F208** Words in s. 42(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 373(3)(a)(ii)** (with Sch. 7)
- F209** Words in s. 42(2)(a) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 373(3)(b)** (with Sch. 7)
- F210** S. 42(2)(b) substituted (3.12.2012) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(Charging Schemes\) Regulations 2012 \(S.I. 2012/2788\)](#), regs. 1, **6(2)**
- F211** Word in s. 42(3) substituted (3.12.2012) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(Charging Schemes\) Regulations 2012 \(S.I. 2012/2788\)](#), regs. 1, **6(3)**
- F212** Words in s. 42(3) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 373(4)(a)** (with Sch. 7)
- F213** S. 42(3)(b) substituted (E.W.) (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 13(3)** (with reg. 1(2), Sch. 4)
- F214** Words in s. 42(3)(b) substituted (S.) (1.9.2018) by [The Environmental Authorisations \(Scotland\) Regulations 2018 \(S.S.I. 2018/219\)](#), reg. 1, **sch. 6 para. 3(a)** (with reg. 78, sch. 5 para. 2)
- F215** 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**

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- F216** Words in s. 42(3)(b) substituted (S.) (1.9.2018) by The Environmental Authorisations (Scotland) Regulations 2018 (S.S.I. 2018/219), reg. 1, **sch. 6 para. 3(b)** (with reg. 78, sch. 5 para. 2)
- F217** 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**
- F218** Words in s. 42(3)(b) substituted (E.W.) (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), **Sch. 29 Pt. 1 para. 13(2)** (with regs. 1(3), 77-79, Sch. 4)
- F219** S. 42(3)(c)(d) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Natural Resources Body for Wales (Consequential Provision) Order 2013 (S.I. 2013/1821), arts. 1(2), **20(2)** (with art. 24)
- F220** Words in s. 42(3) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 373(4)(b)** (with Sch. 7)
- F221** S. 42(3A) inserted (3.12.2012) by The Greenhouse Gas Emissions Trading Scheme (Amendment) (Charging Schemes) Regulations 2012 (S.I. 2012/2788), regs. 1, **6(4)**
- F222** Words in s. 42(3A) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by The Natural Resources Body for Wales (Consequential Provision) Order 2013 (S.I. 2013/1821), arts. 1(2), **18(2)** (with art. 24)
- F223** Words in s. 42(3A) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Natural Resources Body for Wales (Consequential Provision) Order 2013 (S.I. 2013/1821), arts. 1(2), **18(3)** (with art. 24)
- F224** Words in s. 42(4) inserted (3.12.2012) by The Greenhouse Gas Emissions Trading Scheme (Amendment) (Charging Schemes) Regulations 2012 (S.I. 2012/2788), regs. 1, **6(5)(a)**
- F225** Words in s. 42(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 373(5)(a)(i)** (with Sch. 7)
- F226** Words in s. 42(4) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 373(5)(a)(ii)** (with Sch. 7)
- F227** 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**
- F228** Words in s. 42(4) omitted (3.12.2012) by virtue of The Greenhouse Gas Emissions Trading Scheme (Amendment) (Charging Schemes) Regulations 2012 (S.I. 2012/2788), regs. 1, **6(5)(b)**
- F229** Words in s. 42(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 373(5)(a)(iii)** (with Sch. 7)
- F230** Words in s. 42(4)(a) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 373(5)(b)(i)** (with Sch. 7)
- F231** Words in s. 42(4)(a) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 373(5)(b)(ii)** (with Sch. 7)
- F232** Words in s. 42(4)(b) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 373(5)(c)** (with Sch. 7)
- F233** 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**
- F234** Words in s. 42(5) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 373(6)(a)** (with Sch. 7)
- F235** Words in s. 42(5) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 373(6)(b)** (with Sch. 7)
- F236** Words in s. 42(5) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 373(6)(c)** (with Sch. 7)
- F237** Words in s. 42(5) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 373(6)(d)** (with Sch. 7)
- F238** Words in s. 42(6) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 373(7)(a)** (with Sch. 7)
- F239** Words in s. 42(6) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 373(7)(b)** (with Sch. 7)

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- F240** 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**
- F241** Words in s. 42(7) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Natural Resources Body for Wales (Consequential Provision) Order 2013 (S.I. 2013/1821), arts. 1(2), **20(3)** (with art. 24)
- F242** Words in s. 42(8) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 373(8)** (with Sch. 7)
- F243** Words in s. 42(9) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 373(8)** (with Sch. 7)
- F244** 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**
- F245** 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**
- F246** S. 42(9A)-(9D) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Natural Resources Body for Wales (Consequential Provision) Order 2013 (S.I. 2013/1821), arts. 1(2), **20(4)** (with arts. 24, 28)
- F247** 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**
- F248** S. 42(10A) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Natural Resources Body for Wales (Consequential Provision) Order 2013 (S.I. 2013/1821), arts. 1(2), **20(5)** (with art. 24)
- F249** S. 42(11) substituted (3.12.2012) by The Greenhouse Gas Emissions Trading Scheme (Amendment) (Charging Schemes) Regulations 2012 (S.I. 2012/2788), regs. 1, **6(6)**
- F250** Words in s. 42(11) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 373(9)** (with Sch. 7)
- F251** S. 42(12) inserted (S.) (1.4.2015) by Food (Scotland) Act 2015 (asp 1), s. 63(2), **sch. para. 6** (with s. 62); S.S.I. 2015/99, art. 2

Modifications etc. (not altering text)

- C17** 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**
- C18** S. 42 applied (with modifications) by SI 2002/1559, Sch. 4 para. 5(15) (as inserted (E.W.) (15.5.2006) by The Waste Management (England and Wales) Regulations 2006 (S.I. 2006/937), regs. 1(2), **9(15)**)
- C19** S. 42: transfer of functions (10.7.2008) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2008 (S.I. 2008/1776), arts. 1(1), 2, **Sch.**
- C20** S. 42 modified (with effect in accordance with art. 1(3) of the amending S.I.) by The Natural Resources Body for Wales (Consequential Provision) Order 2013 (S.I. 2013/1821), arts. 1(2), **21** (with art. 24)

Incidental power to impose charges

43 Incidental power of the new Agencies to impose charges.

[^{F252}(1)] 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.

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[^{F253}(2) In subsection (1) above, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

Textual Amendments

F252 S. 43 renumbered as s. 43(1) (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 43\(7\)\(a\)](#); S.S.I. 2014/160, art. 2(1)(2)

F253 S. 43(2) added (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 43\(7\)\(b\)](#); S.S.I. 2014/160, art. 2(1)(2)

Modifications etc. (not altering text)

C21 S. 43 modified (15.8.2002) by [S.I. 2002/1998](#), [art. 24\(1\)](#) (with [art. 33](#))

General financial provisions

44 General financial duties.

- (1) The appropriate Ministers may—
 - (a) after consultation with a new Agency, and
 - (b) [^{F254}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 ^{F255} . . . a new Agency, [^{F256}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 [^{F257}(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).

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Textual Amendments

- F254** 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**
- F255** 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**
- F256** 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**
- F257** 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)

- C22** S. 44 functions cease to be exercisable (with effect in accordance with art. 1(3) of the amending S.I.) by **The Natural Resources Body for Wales (Consequential Provision) Order 2013 (S.I. 2013/1821)**, arts. 1(2), 6 (with art. 24)
- C23** S. 44(1): Treasury approval requirement continued (1.7.1999) by virtue of S.I. 1999/672, art. 2, **Sch. 1**

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 [^{F258}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

- F258** 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**

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Modifications etc. (not altering text)

- C24** S. 45(2): Treasury consent requirement continued (1.7.1999) by S.I. 1999/672, art. 2, Sch. 1
- C25** S. 45(2) functions cease to be exercisable (with effect in accordance with art. 1(3) of the amending S.I.) by The Natural Resources Body for Wales (Consequential Provision) Order 2013 (S.I. 2013/1821), arts. 1(2), 7 (with art. 24)

[^{F259}46 Audit.

- (1) The accounts of each new Agency^{[^{F260}}, with the exception of those accounts of the Agency that relate to a financial year ending on or after 31st March 2004,] 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 [^{F261}statutory auditor under Part 42 of the Companies Act 2006] ; and
 - ^{[^{F262}(b)} if the appointment were an appointment as a statutory auditor, he would not be prohibited from acting by virtue of section 1214 of that Act (independence requirement).]
- (3) A copy of—
- (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.
- [[] The Agency shall send a copy of its accounts in respect of each financial year ending on ^{F263}(3A) or after 31st March 2004 to the Comptroller and Auditor General as soon as reasonably practicable after the end of the financial year to which the accounts relate.
- (3B) The Comptroller and Auditor General shall examine, certify and report on any accounts sent to him by the Agency under subsection (3A) and shall lay before each House of Parliament a copy of those accounts and his report on them.]
- (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 ^{M55}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.]

Status: Point in time view as at 01/09/2018. 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 03 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)

Textual Amendments

- F259** 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)**
- F260** Words in s. 46(1) inserted (23.5.2003) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2003 (S.I. 2003/1326), arts. 1, **19(2)**
- F261** Words in s. 46(2)(a) substituted (6.4.2008) by virtue of The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 1(ss)** (with arts. 6, 11, 12)
- F262** S. 46(2)(b) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 19** (with arts. 6, 11, 12)
- F263** S. 46(3A)(3B) inserted (23.5.2003) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2003 (S.I. 2003/1326), arts. 1, **19(3)**

Modifications etc. (not altering text)

- C26** S. 46(3) modified (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**
- C27** S. 46(4) functions cease to be exercisable (with effect in accordance with art. 1(3) of the amending S.I.) by The Natural Resources Body for Wales (Consequential Provision) Order 2013 (S.I. 2013/1821), arts. 1(2), **10** (with arts. 24, 26)

Marginal Citations

- M55** 1983 c. 44.

[^{F264} 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

- F264** 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)**

47 Grants to the new Agencies.

The appropriate Minister may, [^{F265}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

- F265** 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**

Status: Point in time view as at 01/09/2018. This version of this part contains provisions that are prospective.

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Modifications etc. (not altering text)

- C28** Ss. 47-52 functions cease to be exercisable (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **8** (with art. 24)

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) [^{F266}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

- F266** 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](#)

Modifications etc. (not altering text)

- C28** Ss. 47-52 functions cease to be exercisable (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **8** (with art. 24)

Status: Point in time view as at 01/09/2018. 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 03 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)

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 ^{F313}subsections (5) and (5A)] below, each new Agency may—
 - (a) with the consent of the appropriate Minister, and
 - (b) ^{F314}[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 ^{F313}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; ^{F315} . . .
 - ^{F315}(b)
- ^{F316}(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.
- ^{F316}(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

- F313** 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)**
- F314** 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**
- F315** 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)**
- F316** 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)**

Status: Point in time view as at 01/09/2018. 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 03 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)

Modifications etc. (not altering text)

- C28** Ss. 47-52 functions cease to be exercisable (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **8** (with art. 24)

49 Government loans to the new Agencies.

- (1) The appropriate Minister may, [^{F267}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.
- [^{F268}(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

- F267** 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](#)
- F268** 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)

- C28** Ss. 47-52 functions cease to be exercisable (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **8** (with art. 24)
- C29** S. 49(1)(2): 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 01/09/2018. This version of this part contains provisions that are prospective.

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C30 S. 49(3)(4) functions cease to be exercisable (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **10** (with arts. 24, 26)

50 Government guarantees of a new Agency's borrowing.

- (1) The appropriate Minister may, [^{F269}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.
- (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 [^{F270}in the case of the Agency only].

Textual Amendments

F269 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**

F270 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**

Modifications etc. (not altering text)

C28 Ss. 47-52 functions cease to be exercisable (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **8** (with art. 24)

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—

Status: Point in time view as at 01/09/2018. This version of this part contains provisions that are prospective.

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- (a) the new Agency’s property;
- (b) the carrying out and proposed carrying out of its functions; and
- (c) its responsibilities generally.

[^{F271}(1A) Nothing in this section authorises the disclosure by SEPA of protected taxpayer information which was obtained by SEPA in connection with a function of Revenue Scotland delegated to it by Revenue Scotland under section 4(1)(b) of the Revenue Scotland and Tax Powers Act 2014 (asp 16).]

- (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—
 - (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.

[^{F272}(6) In subsection (1A), “protected taxpayer information” has the meaning given by section 14 of the Revenue Scotland and Tax Powers Act 2014 (asp 16).]

Textual Amendments

F271 S. 51(1A) inserted (S.) (1.1.2015) by [Revenue Scotland and Tax Powers Act 2014 \(asp 16\)](#), s. 260(2), [sch. 4 para. 2\(2\)\(a\)](#) (with [ss. 257-259](#)); S.S.I. 2014/370, art. 2

F272 S. 51(6) inserted (S.) (1.1.2015) by [Revenue Scotland and Tax Powers Act 2014 \(asp 16\)](#), s. 260(2), [sch. 4 para. 2\(2\)\(b\)](#) (with [ss. 257-259](#)); S.S.I. 2014/370, art. 2

Modifications etc. (not altering text)

C28 Ss. 47-52 functions cease to be exercisable (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), [8](#) (with art. 24)

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.

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- (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)

- C28** Ss. 47-52 functions cease to be exercisable (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **8** (with art. 24)
- C31** 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.
- [^{F273}(1A) 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 Welsh Ministers may cause an inquiry or other hearing to be held if it appears to them expedient to do so—
 - (a) in connection with any of the relevant environmental functions of the Natural Resources Body for Wales; or
 - (b) in connection with any of their functions in relation to the relevant environmental functions of that Body.]
 - (2) Subsections (2) to (5) of section 250 of the ^{M56}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 [^{F274}or any of the relevant environmental functions of the Natural Resources Body for Wales], or
 - (b) in connection with any functions of the Secretary of State or the Minister in relation to the Agency [^{F275}or any functions of the Welsh Ministers in relation

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to the relevant environmental functions of the Natural Resources Body for Wales],

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 [^{F276}or, as the case may be, the Natural Resources Body for Wales].

(3) The provisions of subsections (2) to (8) of section 210 of the ^{M57}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.

[^{F277}(4) In subsections (1) and (3) above, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

[^{F278}(4) In this section, “relevant environmental functions” means—

- (a) pollution control functions (within the meaning of section 5); and
- (b) any functions relating to water resources, flood and coastal erosion risk management or fisheries.]

Textual Amendments

- F273** S. 53(1A) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 374(2)** (with Sch. 7)
- F274** Words in s. 53(2)(a) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 374(3)(a)** (with Sch. 7)
- F275** Words in s. 53(2)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 374(3)(b)** (with Sch. 7)
- F276** Words in s. 53(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 374(3)(c)** (with Sch. 7)
- F277** S. 53(4) added (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), **sch. 3 para. 43(8)**; S.S.I. 2014/160, art. 2(1)(2)
- F278** S. 53(4) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 374(4)** (with Sch. 7)

Modifications etc. (not altering text)

- C32** S. 53(1)(a): transfer of functions (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **9(2)** (with art. 24)
- C33** S. 53(1)(b) functions cease to be exercisable (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **9(1)** (with art. 24)
- C34** S. 53(2): transfer of functions (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **9(2)** (with art. 24)

Marginal Citations

- M56** 1972 c. 70.
M57 1973 c. 65.

Status: Point in time view as at 01/09/2018. This version of this part contains provisions that are prospective.

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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 ^{F279}....

Textual Amendments

F279 Words in s. 54 repealed (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), s. 211(2), Sch. 21 para. 117, [Sch. 23](#) (with ss. 29, 192, 193); [S.I. 2009/3250](#), art. 2(h)(i)(ix)

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.
- (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—

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- (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—

^{F280} ...

“the 1990 Act” means the ^{M58}Environmental Protection Act 1990;

“the 1991 Act” means the ^{M59}Water Resources Act 1991;

[^{F281}“appropriate agency” means the Agency or the Natural Resources Body for Wales;]

“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;

“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;

[^{F281}“the appropriate national authority” means—

- (a) in relation to the Agency, the Secretary of State;

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(b) in relation to the Natural Resources Body for Wales, the Welsh Ministers;]

[^{F282}“the catchment areas of the rivers Dee, Wye and Severn” has the meaning given by article 1(3) of the National Assembly for Wales (Transfer of Functions) Order 1999;]

“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 ^{M60}Control of Pollution Act 1974 by virtue of section 30(1) of that Act; and

(b) [^{F283}in the application of this Part in relation to SEPA, has the meaning assigned to it by section 30(2) of that Act;]

[^{F284}“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 [^{F285}an appropriate agency], means any of the following—

(a) registration of a person as a carrier of controlled waste under section 2 of the ^{M61}Control of Pollution (Amendment) Act 1989,

(aa) [^{F286}a permit granted by the appropriate agency under—

(i) regulations made under section 2 of the Pollution Prevention and Control Act 1999, other than regulations made for the purpose of implementing the EUETS Directive,

(ii) regulations made under section 61 of the Water Act 2014.]

(b) [^{F287}an authorisation under Part I of the 1990 Act, other than any such authorisation granted by a local enforcing authority,]

(c) ^{F288} ...

(d) a licence under Chapter II of Part II of the 1991 Act,

(e) ^{F289} ...

(f) ^{F289} ...

(g) ^{F289} ...

(h) [^{F290}registration of a person as a broker of or dealer in controlled waste under any provision which gives effect in England and Wales to Article 26(b) of Directive 2008/98/EC of the European Parliament and of the Council on waste,]

(j) [^{F291}registration under Schedule 2 to [^{F292}the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154)] of an establishment or undertaking in relation to a WEEE operation (as defined by paragraph 1 of Schedule 2 to those Regulations),]

(k) ^{F293} ...

(l) [^{F294}approval of a scheme under regulation 55 of the Waste Electrical and Electronic Regulations 2013 (“the WEEE Regulations”).]

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- (m) [^{F295}compliance with the condition in regulation 57(f)(i) of the WEEE Regulations in relation to a scheme mentioned in paragraph (l).]
- (n) [^{F296}approval of an authorised treatment facility or exporter under regulation 61 of the WEEE Regulations.]
- (o) [^{F297}extension of approval of an exporter under regulation 62 of the WEEE 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) ^{F298} ...
- (aa) [^{F299}a permit granted by SEPA under regulations under section 2 of the Pollution Prevention and Control Act 1999 [^{F300}, other than regulations made for the purpose of implementing the EU ETS Directive]],
- (ab) [^{F301}an authorisation under regulations under section 18 of the Regulatory Reform (Scotland) Act 2014,]
- (b) registration of a person as a carrier of controlled waste under section 2 of the ^{M62}Control of Pollution (Amendment) Act 1989 [^{F302}or as a professional collector or transporter of waste under paragraph 12 of Schedule 4 to the Waste Management Licensing (Scotland) Regulations 2011],
- (c) [^{F287}an authorisation under Part I of the 1990 Act,]
- (d) a waste management licence under Part II of that Act,
- (e) ^{F298} ...
- (f) ^{F303} ...
- (g) ^{F303} ...
- (h) [^{F304}registration of a person as a broker of, or dealer in, controlled waste under the Waste Management Licensing (Scotland) Regulations 2011,]
- (j) [^{F305}registration in respect of an activity falling within paragraph 7, 8(2), 9, 10, 12, 19, 42, 45(1) or (2), 46 [^{F306}, 47 or 51 of Schedule 1] to those Regulations, except where the waste which is the subject of the activity consists of agricultural waste within the meaning of those Regulations,]
- (ja) [^{F307}registration in respect of an activity falling within paragraph 17, 18, 36 or 39 of Schedule 3 to those Regulations, where the waste which is the subject of the activity consists of or includes waste batteries or accumulators to which Directive [2006/66/EC](#) of the European Parliament and of the Council on batteries and accumulators applies, and those batteries or accumulators have been collected in accordance with Article 8 of that Directive,]
- (k) ^{F293} ...
- (l) [^{F308}approval of a scheme under regulation 55 of the Waste Electrical and Electronic Regulations 2013 (“the WEEE Regulations”).]
- (m) [^{F309}compliance with the condition in regulation 57(f)(i) of the WEEE Regulations in relation to a scheme mentioned in paragraph (l).]
- (n) [^{F310}approval of an authorised treatment facility or exporter under regulation 61 of the WEEE Regulations.]
- (o) [^{F311}extension of approval of an exporter under regulation 62 of the WEEE Regulations.]

so far as having effect in relation to Scotland;

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[^{F312}“the EU ETS Directive” means Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emissions allowance trading within the Community and amending Council Directive 96/61/EC, as amended from time to time;]

“flood defence functions”, in relation to [^{F285}an appropriate 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 ^{M63}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 ^{M64}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.

(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.

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Textual Amendments

- F280** Words in s. 56(1) omitted (S.) (1.4.2006) by virtue of The Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 (S.S.I. 2006/181), **sch. Pt. 4 para. 8(3)(a)**
- F281** Words in s. 56(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 375(2)** (with Sch. 7)
- F282** Words in s. 56(1) inserted (18.7.2013) by The Natural Resources Body for Wales (Consequential Provision) Order 2013 (S.I. 2013/1821), arts. 1(2), **30** (with art. 24)
- F283** Words in s. 56(1) repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 29(4)**; S.S.I. 2014/160, art. 2(1)(2)
- F284** 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**
- F285** Words in s. 56(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 375(3)** (with Sch. 7)
- F286** Words in s. 56(1) substituted (E.W.) (6.4.2016) by The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016 (S.I. 2016/475), reg. 1(2), **Sch. 3 para. 3(2)** (with regs. 31-33)
- F287** Words in s. 56(1) repealed (1.4.2015 for S.) by Pollution Prevention and Control Act 1999 (c. 24), s. 7(3), **Sch. 3**; S.S.I. 2015/74, art. 2(2)(g)
- F288** Words in s. 56(1) repealed (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 1(1)(b), Sch. 21 para. 23(2)(a), **Sch. 23** (with reg. 72, Sch. 4)
- F289** Words in s. 56(1) repealed (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 13(4), **Sch. 28** (with reg. 1(2), Sch. 4)
- F290** Words in s. 56(1) substituted (E.W.) (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), reg. 1(2), **Sch. 4 para. 4(3)** (with regs. 2, 47(2))
- F291** Words in s. 56(1) substituted (6.4.2010) by The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2009 (S.I. 2009/3381), regs. 1(1)(b), **13(3)** (with regs. 1(2), 16(3))
- F292** Words in s. 56(1) substituted (E.W.) (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), **Sch. 29 Pt. 1 para. 13(3)** (with regs. 1(3), 77-79, Sch. 4)
- F293** Words in s. 56(1) omitted (3.12.2012) by virtue of The Greenhouse Gas Emissions Trading Scheme (Amendment) (Charging Schemes) Regulations 2012 (S.I. 2012/2788), regs. 1, **7(a)(ii)**
- F294** Words in s. 56(1) substituted (1.1.2014) by The Waste Electrical and Electronic Equipment Regulations 2013 (S.I. 2013/3113), regs. 1(2), **94(1)(a)** (with regs. 10, 49, 50, 87(4))
- F295** Words in s. 56(1) substituted (1.1.2014) by The Waste Electrical and Electronic Equipment Regulations 2013 (S.I. 2013/3113), regs. 1(2), **94(1)(b)** (with regs. 10, 49, 50, 87(4))
- F296** Words in s. 56(1) substituted (1.1.2014) by The Waste Electrical and Electronic Equipment Regulations 2013 (S.I. 2013/3113), regs. 1(2), **94(1)(c)** (with regs. 10, 49, 50, 87(4))
- F297** Words in s. 56(1) substituted (1.1.2014) by The Waste Electrical and Electronic Equipment Regulations 2013 (S.I. 2013/3113), regs. 1(2), **94(1)(d)** (with regs. 10, 49, 50, 87(4))
- F298** Words in s. 56(1) omitted (S.) (1.4.2006) by virtue of The Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 (S.S.I. 2006/181), **sch. Pt. 4 para. 8(3)(b)**
- F299** 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)**
- F300** Words in s. 56(1) inserted (3.12.2012) by The Greenhouse Gas Emissions Trading Scheme (Amendment) (Charging Schemes) Regulations 2012 (S.I. 2012/2788), regs. 1, **7(a)(i)**
- F301** Words in s. 56 inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 5(2)**; S.S.I. 2014/160, art. 2(1)(2)
- F302** Words in s. 56(1) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **3(2)(a)**
- F303** Words in s. 56(1) repealed (S.) (1.9.2018) by The Environmental Authorisations (Scotland) Regulations 2018 (S.S.I. 2018/219), reg. 1, **sch. 7 para. 1** (with reg. 78, sch. 5 para. 2)
- F304** Words in s. 56(1) substituted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **3(2)(b)**

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- F305** Words in s. 56(1) substituted (S.) (1.12.2006) by [The Waste Management Licensing Amendment \(Scotland\) Regulations 2006 \(S.S.I. 2006/541\)](#), regs. 1(1), **10(2)** (with regs. 11, 12)
- F306** Words in s. 56(1) substituted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), regs. 1(1), **3(2)(c)**
- F307** Words in s. 56(1) inserted (S.) (6.7.2009) by [The Waste Batteries \(Scotland\) Regulations 2009 \(S.S.I. 2009/247\)](#), regs. 1(1), **5** (with regs. 8-10)
- F308** Words in s. 56(1) substituted (1.1.2014) by [The Waste Electrical and Electronic Equipment Regulations 2013 \(S.I. 2013/3113\)](#), regs. 1(2), **94(2)(a)** (with regs. 10, 49, 50, 87(4))
- F309** Words in s. 56(1) substituted (1.1.2014) by [The Waste Electrical and Electronic Equipment Regulations 2013 \(S.I. 2013/3113\)](#), regs. 1(2), **94(2)(b)** (with regs. 10, 49, 50, 87(4))
- F310** Words in s. 56(1) substituted (1.1.2014) by [The Waste Electrical and Electronic Equipment Regulations 2013 \(S.I. 2013/3113\)](#), regs. 1(2), **94(2)(c)** (with regs. 10, 49, 50, 87(4))
- F311** Words in s. 56(1) substituted (1.1.2014) by [The Waste Electrical and Electronic Equipment Regulations 2013 \(S.I. 2013/3113\)](#), regs. 1(2), **94(2)(d)** (with regs. 10, 49, 50, 87(4))
- F312** Words in s. 56(1) inserted (3.12.2012) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(Charging Schemes\) Regulations 2012 \(S.I. 2012/2788\)](#), regs. 1, **7(b)**

Marginal Citations

- M58** 1990 c. 43.
M59 1991 c. 57.
M60 1974 c. 40.
M61 1989 c. 14.
M62 1989 c. 14.
M63 1973 c. 65.
M64 1994 c. 39.

Status:

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