



# Environment Act 1995

## 1995 CHAPTER 25

### PART V

#### MISCELLANEOUS, GENERAL AND SUPPLEMENTAL PROVISIONS

##### *Waste*

#### **92 National waste strategy.**

- (1) Before section 45 of the <sup>M1</sup>Environmental Protection Act 1990 there shall be inserted—

**“44A National waste strategy: England and Wales.**

- (1) The Secretary of State shall as soon as possible prepare a statement (“the strategy”) containing his policies in relation to the recovery and disposal of waste in England and Wales.
- (2) The strategy shall consist of or include—
- (a) a statement which relates to the whole of England and Wales; or
  - (b) two or more statements which between them relate to the whole of England and Wales.
- (3) The Secretary of State may from time to time modify the strategy.
- (4) Without prejudice to the generality of what may be included in the strategy, the strategy must include—
- (a) a statement of the Secretary of State’s policies for attaining the objectives specified in Schedule 2A to this Act;
  - (b) provisions relating to each of the following, that is to say—
    - (i) the type, quantity and origin of waste to be recovered or disposed of;
    - (ii) general technical requirements; and

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- (iii) any special requirements for particular wastes.
- (5) In preparing the strategy or any modification of it, the Secretary of State—
- (a) shall consult the Environment Agency,
  - (b) shall consult—
    - (i) such bodies or persons appearing to him to be representative of the interests of local government, and
    - (ii) such bodies or persons appearing to him to be representative of the interests of industry,
 as he may consider appropriate, and
  - (c) may consult such other bodies or persons as he considers appropriate.
- (6) Without prejudice to any power to give directions conferred by section 40 of the Environment Act 1995, the Secretary of State may give directions to the Environment Agency requiring it—
- (a) to advise him on the policies which are to be included in the strategy;
  - (b) to carry out a survey of or investigation into—
    - (i) the kinds or quantities of waste which it appears to that Agency is likely to be situated in England and Wales,
    - (ii) the facilities which are or appear to that Agency likely to be available or needed in England and Wales for recovering or disposing of any such waste,
    - (iii) any other matter upon which the Secretary of State wishes to be informed in connection with his preparation of the strategy or any modification of it,
 and to report its findings to him.
- (7) A direction under subsection (6)(b) above—
- (a) shall specify or describe the matters or the areas which are to be the subject of the survey or investigation; and
  - (b) may make provision in relation to the manner in which—
    - (i) the survey or investigation is to be carried out, or
    - (ii) the findings are to be reported or made available to other persons.
- (8) Where a direction is given under subsection (6)(b) above, the Environment Agency shall, in accordance with any requirement of the direction,—
- (a) before carrying out the survey or investigation, consult—
    - (i) such bodies or persons appearing to it to be representative of local planning authorities, and
    - (ii) such bodies or persons appearing to it to be representative of the interests of industry,
 as it may consider appropriate; and
  - (b) make its findings available to those authorities.
- (9) In this section—
- “local planning authority” has the same meaning as in the <sup>M2</sup>Town and Country Planning Act 1990;
- “strategy” includes the strategy as modified from time to time and
- “statement” shall be construed accordingly.

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- (10) This section makes provision for the purpose of implementing Article 7 of the <sup>M3</sup>directive of the Council of the European Communities, dated 15th July 1975, on waste, as amended by—
- (a) the <sup>M4</sup>directive of that Council, dated 18th March 1991, amending directive [75/442/EEC](#) on waste; and
  - (b) the <sup>M5</sup>directive of that Council, dated 23rd December 1991, standardising and rationalising reports on the implementation of certain Directives relating to the environment.

#### 44B National waste strategy: Scotland.

- (1) SEPA shall as soon as possible prepare a statement (“the strategy”) containing its policies in relation to the recovery and disposal of waste in Scotland.
- (2) SEPA may from time to time modify the strategy.
- (3) Without prejudice to the generality of what may be included in the strategy, the strategy must include—
  - (a) a statement of SEPA’s policies for attaining the objectives specified in Schedule 2A to this Act;
  - (b) provisions relating to each of the following, that is to say—
    - (i) the type, quantity and origin of waste to be recovered or disposed of;
    - (ii) general technical requirements; and
    - (iii) any special requirements for particular wastes.
- (4) In preparing the strategy or any modification of it SEPA shall consult—
  - (a) such bodies or persons appearing to it to be representative of the interests of industry as it may consider appropriate;
  - (b) such local authorities as appear to it to be likely to be affected by the strategy or modification,and may consult such other bodies or persons as it considers appropriate.
- (5) Without prejudice to any power to give directions conferred by section 40 of the Environment Act 1995, the Secretary of State may give directions to SEPA—
  - (a) as to the policies which are to be included in the strategy;
  - (b) requiring it to carry out a survey or investigation into—
    - (i) the kinds or quantities of waste which it appears to it is likely to be situated in Scotland,
    - (ii) the facilities which are or appear to it likely to be available or needed in Scotland for recovering or disposing of any such waste,
    - (iii) any other matter which the Secretary of State considers appropriate in connection with its preparation of the strategy or any modifications of it.
- (6) A direction under subsection (5)(b) above—
  - (a) shall specify or describe the matters or the areas which are to be the subject of the survey or investigation; and
  - (b) may make provision in relation to the manner in which—

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- (i) the survey or investigation is to be carried out, or
  - (ii) the findings are to be reported or made available to other persons.
- (7) Where a direction is given under subsection (5)(b) above SEPA shall, in accordance with any requirement of the direction—
- (a) before carrying out the survey or investigation, consult—
    - (i) such bodies or persons appearing to it to be representative of planning authorities, and
    - (ii) such bodies or persons appearing to it to be representative of the interests of industry,
 as it may consider appropriate; and
  - (b) make its findings available to those authorities.
- (8) In this section—
- “planning authority” means an authority within the meaning of section 172 of the <sup>M6</sup>Local Government (Scotland) Act 1973;
  - “strategy” includes the strategy as modified from time to time and “statement” shall be construed accordingly.
- (9) This section makes provision for the purpose of implementing Article 7 of the <sup>M7</sup>directive of the Council of the European Communities dated 15th July 1975 on waste, as amended by—
- (a) the <sup>M8</sup>directive of that Council dated 18th March 1991 amending directive [75/442/EEC](#) on waste; and
  - (b) the <sup>M9</sup>directive of that Council dated 23rd December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment.”
- (2) After Schedule 2 to that Act there shall be inserted the Schedule set out in Schedule 12 to this Act.

#### Marginal Citations

<b>M1</b>	<a href="#">1990 c. 43.</a>
<b>M2</b>	<a href="#">1990 c. 8.</a>
<b>M3</b>	<a href="#">91/692/EEC.</a>
<b>M4</b>	<a href="#">91/156/EEC.</a>
<b>M5</b>	<a href="#">75/442/EEC.</a>
<b>M6</b>	<a href="#">1973 c. 65.</a>
<b>M7</b>	<a href="#">91/692/EEC.</a>
<b>M8</b>	<a href="#">91/156/EEC.</a>
<b>M9</b>	<a href="#">75/442/EEC.</a>

### 93 Producer responsibility: general.

- (1) For the purpose of promoting or securing an increase in the re-use, recovery or recycling of products or materials, the Secretary of State may by regulations make provision for imposing producer responsibility obligations on such persons, and in respect of such products or materials, as may be prescribed.

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- (2) The power of the Secretary of State to make regulations shall be exercisable only after consultation with bodies or persons appearing to him to be representative of bodies or persons whose interests are, or are likely to be, substantially affected by the regulations which he proposes to make.
- (3) Except in the case of regulations for the implementation of—
- (a) any obligations of the United Kingdom under the Community Treaties, or
  - (b) any international agreement to which the United Kingdom is for the time being a party,
- the power to make regulations shall be exercisable only where the Secretary of State, after such consultation as is required by subsection (2) above, is satisfied as to the matters specified in subsection (6) below.
- (4) The powers conferred by subsection (1) above shall also be exercisable, in a case falling within paragraph (a) or (b) of subsection (3) above, for the purpose of sustaining at least a minimum level of (rather than promoting or securing an increase in) re-use, recovery or recycling of products or materials.
- (5) In making regulations by virtue of paragraph (a) or (b) of subsection (3) above, the Secretary of State shall have regard to the matters specified in subsection (6) below; and in its application in relation to the power conferred by virtue of subsection (4) above, subsection (6) below shall have effect as if—
- (a) any reference to an increase in the re-use, recovery or recycling of products or materials were a reference to the sustaining of at least a minimum level of re-use, recovery or recycling of the products or materials in question, and
  - (b) any reference to the production of environmental or economic benefits included a reference to the sustaining of at least a minimum level of any such existing benefits,
- and any reference in this section or section 94 below to securing or achieving any such benefits shall accordingly include a reference to sustaining at least a minimum level of any such existing benefits.
- (6) The matters mentioned in subsections (3) and (5) above are—
- (a) that the proposed exercise of the power would be likely to result in an increase in the re-use, recovery or recycling of the products or materials in question;
  - (b) that any such increase would produce environmental or economic benefits;
  - (c) that those benefits are significant as against the likely costs resulting from the imposition of the proposed producer responsibility obligation;
  - (d) that the burdens imposed on businesses by the regulations are the minimum necessary to secure those benefits; and
  - (e) that those burdens are imposed on persons most able to make a contribution to the achievement of the relevant targets—
    - (i) having regard to the desirability of acting fairly between persons who manufacture, process, distribute or supply products or materials; and
    - (ii) taking account of the need to ensure that the proposed producer responsibility obligation is so framed as to be effective in achieving the purposes for which it is to be imposed;
- but nothing in sub-paragraph (i) of paragraph (e) above shall be taken to prevent regulations imposing a producer responsibility obligation on any class or description of person to the exclusion of any others.

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- (7) The Secretary of State shall have a duty to exercise the power to make regulations in the manner which he considers best calculated to secure that the exercise does not have the effect of restricting, distorting or preventing competition or, if it is likely to have any such effect, that the effect is no greater than is necessary for achieving the environmental or economic benefits mentioned in subsection (6) above.
- (8) In this section—
- “prescribed” means prescribed in regulations;
  - “product” and “material” include a reference to any product or material (as the case may be) at a time when it becomes, or has become, waste;
  - “producer responsibility obligation” means the steps which are required to be taken by relevant persons of the classes or descriptions to which the regulations in question apply in order to secure attainment of the targets specified or described in the regulations;
  - “recovery”, in relation to products or materials, includes—
    - (a) composting, or any other form of transformation by biological processes, of products or materials; or
    - (b) the obtaining, by any means, of energy from products or materials;
  - “regulations” means regulations under this section;
  - “relevant persons”, in the case of any regulations or any producer responsibility obligation, means persons of the class or description to which the producer responsibility obligation imposed by the regulations applies;
  - “relevant targets” means the targets specified or described in the regulations imposing the producer responsibility obligation in question;
- and regulations may prescribe, in relation to prescribed products or materials, activities, or the activities, which are to be regarded for the purposes of this section and sections 94 and 95 below or any regulations as re-use, recovery or recycling of those products or materials.
- (9) The power to make regulations shall be exercisable by statutory instrument.
- (10) Subject to the following provisions of this section, a statutory instrument containing regulations shall not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (11) Subsection (10) above shall not apply to a statutory instrument by reason only that it contains regulations varying any relevant targets.
- (12) A statutory instrument which, by virtue of subsection (11) above, is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **94 Producer responsibility: supplementary provisions.**

- (1) Without prejudice to the generality of section 93 above, regulations may, in particular, make provision for or with respect to—
- (a) the classes or descriptions of person to whom the producer responsibility obligation imposed by the regulations applies;
  - (b) the classes or descriptions of products or materials in respect of which the obligation applies;

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- (c) the targets which are to be achieved with respect to the proportion (whether by weight, volume or otherwise) of the products or materials in question which are to be re-used, recovered or recycled, whether generally or in any prescribed way;
- (d) particulars of the obligation imposed by the regulations;
- (e) the registration of persons who are subject to a producer responsibility obligation and who are not members of registered exemption schemes, the imposition of requirements in connection with such registration, the variation of such requirements, the making of applications for such registration, the period for which any such registration is to remain in force and the cancellation of any such registration;
- (f) the approval, or withdrawal of approval, of exemption schemes by the Secretary of State;
- (g) the imposition of requirements on persons who are not members of registered exemption schemes to furnish certificates of compliance to the appropriate Agency;
- (h) the approval of persons by the appropriate Agency for the purpose of issuing certificates of compliance;
- (j) the registration of exemption schemes, the imposition of conditions in connection with such registration, the variation of such conditions, the making of applications for such registration and the period for which any such registration is to remain in force;
- (k) the requirements which must be fulfilled, and the criteria which must be met, before an exemption scheme may be registered;
- (l) the powers of the appropriate Agency in relation to applications received by it for registration of exemption schemes;
- (m) the cancellation of the registration of an exemption scheme;
- <sup>F1</sup>(n) .....
- <sup>F2</sup>(o) .....
- <sup>F3</sup>(oa) .....
- (p) the fees, or the method of determining the fees, which are to be paid to the appropriate Agency—
  - (i) in respect of the approval of persons for the purpose of issuing certificates of compliance;
  - (ii) on the making of an application for registration of an exemption scheme;
  - (iii) in respect of the subsistence of the registration of that scheme;
  - (iv) on submission to the appropriate Agency of a certificate of compliance;
  - (v) on the making of an application for, or for the renewal of, registration of a person required to register under the regulations;
  - (vi) in respect of the renewal of the registration of that person;
- (q) appeals against the refusal of registration, the imposition of conditions in connection with registration, or the cancellation of the registration, of any exemption scheme;
- (r) the procedure on any such appeal;
- (s) cases, or classes of case,—
  - (i) in which an exemption scheme is, or is not, to be treated as registered, or

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- (ii) in which a person is, or is not, to be treated as a member of a registered exemption scheme,
  - pending the determination or withdrawal of an appeal, and otherwise with respect to the position of persons and exemption schemes pending such determination or withdrawal;
  - (t) the imposition on the appropriate Agency of a duty to monitor compliance with any of the obligations imposed by the regulations;
  - (u) the imposition on prescribed persons of duties to maintain records, and furnish to the Secretary of State or to the appropriate Agency returns, in such form as may be prescribed of such information as may be prescribed for any purposes of, or for any purposes connected with, or related to, sections 93 to 95 of this Act or any regulations;
  - (w) the imposition on the appropriate Agency of a duty to maintain, and make available for inspection by the public, a register containing prescribed information relating to registered exemption schemes or persons required to register under the regulations;
  - (y) the powers of entry and inspection which are exercisable by a new Agency for the purposes of its functions under the regulations;
  - F<sup>4</sup>(ya) .....
- (2) If it appears to the Secretary of State—
  - (a) that any action proposed to be taken by the operator of a registered exemption scheme would be incompatible with—
    - (i) any obligations of the United Kingdom under the Community Treaties, or
    - (ii) any international agreement to which the United Kingdom is for the time being a party, or
  - (b) that any action which the operator of such a scheme has power to take is required for the purpose of implementing any such obligations or agreement, he may direct that operator not to take or, as the case may be, to take the action in question.
- (3) Regulations may make provision as to which of the new Agencies is the appropriate Agency for the purposes of any function conferred or imposed by or under this section or section 93 above, or for the purposes of the exercise of that function in relation to the whole or a prescribed part of Great Britain, and may make provision for things done or omitted to be done by either new Agency in relation to any part of Great Britain to be treated for prescribed purposes as done or omitted to be done by the other of them in relation to some other part of Great Britain.
- (4) Persons issuing certificates of compliance shall act in accordance with guidance issued for the purpose by the appropriate Agency, which may include guidance as to matters which are, or are not, to be treated as evidence of compliance or as evidence of non-compliance.
- (5) In making any provision in relation to fees, regard shall be had to the desirability of securing that the fees received by each new Agency under the regulations are sufficient to meet the costs and expenses incurred by that Agency in the performance of its functions under the regulations.
- (6) In this section—



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“the appropriate Agency”, subject to regulations made by virtue of subsection (3) above, means—

- (a) in relation to England and Wales, the Agency;
- (b) in relation to Scotland, SEPA;

“certificate of compliance” means a certificate issued by a person approved for the purpose by the appropriate Agency to the effect that that person is satisfied that the person in respect of whom the certificate is issued is complying with any producer responsibility obligation to which he is subject;

<sup>F5</sup> .....

“exemption scheme” means a scheme which is (or, if it were to be registered in accordance with the regulations, would be) a scheme whose members for the time being are, by virtue of the regulations and their membership of that scheme, exempt from the requirement to comply with the producer responsibility obligation imposed by the regulations;

“new Agency” means the Agency or SEPA;

“operator”, in relation to an exemption scheme, includes any person responsible for establishing, maintaining or managing the scheme;

“registered exemption scheme” means an exemption scheme which is registered pursuant to regulations;

and expressions used in this section and in section 93 above have the same meaning in this section as they have in that section.

<sup>F6</sup>( 6A) .....

(7) Regulations—

- (a) may make different provision for different cases;
- (b) without prejudice to the generality of paragraph (a) above, may impose different producer responsibility obligations in respect of different classes or descriptions of products or materials and for different classes or descriptions of person or exemption scheme;
- (c) may include incidental, consequential, supplemental or transitional provision.

(8) Any direction under this section—

- (a) may include such incidental, consequential, supplemental or transitional provision as the Secretary of State considers necessary or expedient; and
- (b) shall, on the application of the Secretary of State, be enforceable by injunction or, in Scotland, by interdict or by an order for specific performance under section 45 of the <sup>M10</sup>Court of Session Act 1988.

#### Textual Amendments

- F1** S. 94(1)(n) ceases to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 2 para. 7\(2\)\(a\)](#) (with reg. 6(2))
- F2** S. 94(1)(o) repealed (1.3.2000) by [S.I. 2000/311](#), [art. 28\(1\)\(2\)](#)
- F3** S. 94(1)(oa) ceases to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 2 para. 7\(2\)\(a\)](#) (with reg. 6(2))
- F4** S. 94(1)(ya) ceases to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 2 para. 7\(2\)\(a\)](#) (with reg. 6(2))

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- F5** Words in s. 94(6) cease to have effect (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 2 para. 7(2)(b)** (with reg. 6(2))
- F6** S. 94(6A) ceases to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 2 para. 7(2)(c)** (with reg. 6(2))

**Marginal Citations**

- M10** 1988 c. 36.

**<sup>F7</sup> 94A Producer responsibility: competition matters.**

.....

**Textual Amendments**

- F7** S. 94A ceases to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 2 para. 7(3)** (with reg. 6(2))

**95 Producer responsibility: offences.**

- (1) Regulations may make provision for a person who contravenes a prescribed requirement of the regulations to be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (2) Where an offence under any provision of the regulations committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (3) Where the affairs of a body corporate are managed by its members, subsection (2) above shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (4) Where the commission by any person of an offence under the regulations is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this section whether or not proceedings for the offence are taken against the first-mentioned person.
- (5) Expressions used in this section and in section 93 or 94 above have the same meaning in this section as they have in that section.

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