



Environment Act 1995

1995 CHAPTER 25

PART I

THE ENVIRONMENT AGENCY AND THE SCOTTISH ENVIRONMENT PROTECTION AGENCY

CHAPTER III

MISCELLANEOUS, GENERAL AND SUPPLEMENTAL PROVISIONS RELATING TO THE NEW AGENCIES

Charging schemes

42 Approval of charging schemes

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 - (a) consider any representations or objections duly made to him and not withdrawn; and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

by that new Agency to meet such of the costs and expenses (whether of a revenue or capital nature)—

- (a) which it incurs in carrying out its functions,
- (b) in the case of environmental licences which are authorisations under section 13(1) of the Radioactive Substances Act 1993—
 - (i) which the Minister incurs in carrying out his functions under or in consequence of that Act, and
 - (ii) which the Secretary of State incurs under that Act in carrying out in relation to Scotland or Wales such of his functions under or in consequence of that Act as are exercised by the Minister in relation to England,

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

- (4) Without prejudice to the generality of the expression “costs and expenses”, in determining for the purposes of subsection (3) above the amounts of the costs and expenses which the Secretary of State considers it appropriate to attribute to the carrying out of a new Agency’s or the Minister’s or the Secretary of State’s functions in relation to the activities to which environmental licences of any particular description relate, the Secretary of State—
 - (a) shall take into account any determination of the new Agency’s financial duties under section 44 below; and
 - (b) may include amounts in respect of the depreciation of, and the provision of a return on, such assets as are held by the new Agency, the Minister or the Secretary of State, as the case may be, for purposes connected with the carrying out of the functions in question.
- (5) If and to the extent that a charging scheme relates to any licence under Chapter II of Part II of the 1991 Act (abstraction and impounding), the Secretary of State may consider it appropriate to attribute to the carrying out of the Agency’s functions in relation to activities to which such a licence relates any costs and expenses incurred by the Agency in carrying out any of its functions under Part II of that Act or under section 6(2) above.
- (6) Subsection (5) above is without prejudice to what costs and expenses the Secretary of State may consider it appropriate to attribute to the carrying out of any functions of a new Agency, the Minister or the Secretary of State in relation to activities to which environmental licences of any particular description relate.
- (7) The consent of the Treasury shall be required for the giving of approval to a charging scheme and, if and to the extent that the scheme relates to authorisations by the Agency under section 13 of the Radioactive Substances Act 1993 (disposal of radioactive waste), the consent of the Minister shall also be required.
- (8) It shall be the duty of a new Agency to take such steps as it considers appropriate for bringing the provisions of any charging scheme made by it which is for the time being in force to the attention of persons likely to be affected by them.
- (9) If and to the extent that any sums recovered by a new Agency by way of charges prescribed by charging schemes may fairly be regarded as so recovered for the purpose of recovering the amount required to meet (whether in whole or in part)—

- (a) such of the costs and expenses incurred by the Secretary of State as fall within subsection (3) above, or
- (b) such of the costs and expenses incurred by the Minister as fall within that subsection,

those sums shall be paid by that new Agency to the Secretary of State or, as the case may be, to the Minister.

(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 paragraph (a) or paragraph (b) of that subsection shall be determined—

- (a) in the case of costs and expenses falling within paragraph (a) of that subsection, by the Secretary of State; and
- (b) in the case of costs and expenses falling within paragraph (b) of that subsection, by the Secretary of State and the Minister.

(11) In this section “charging scheme” has the same meaning as in section 41 above.