

Status: Point in time view as at 17/11/2021. This version of this schedule contains provisions that are not valid for this point in time.
Changes to legislation: There are currently no known outstanding effects for the Environment Act 2021, SCHEDULE 3. (See end of Document for details)

SCHEDULES

VALID FROM 28/02/2022

SCHEDULE 3

Section 49

THE OFFICE FOR ENVIRONMENTAL PROTECTION: NORTHERN IRELAND

PART 1

THE OEP'S NORTHERN IRELAND FUNCTIONS

Monitoring and reporting on the Department's environmental improvement plans

- 1 (1) The OEP must monitor progress in improving the natural environment in accordance with the current environmental improvement plan.
- (2) The OEP must prepare a progress report for each annual reporting period.
- (3) A progress report for an annual reporting period is a report on progress made in that period in improving the natural environment in accordance with the current environmental improvement plan.
- (4) An annual reporting period is a period for which the Department must prepare a report under paragraph 2 of Schedule 2 (a "Schedule 2 report").
- (5) In reporting on progress made in an annual reporting period, the OEP must consider—
 - (a) the Schedule 2 report for that period,
 - (b) the data published by the Department under paragraph 5 of Schedule 2 that relates to that period, and
 - (c) any other reports, documents or information it considers appropriate.
- (6) A progress report for an annual reporting period may include—
 - (a) consideration of how progress could be improved, and
 - (b) consideration of the adequacy of the data published by the Department under paragraph 5 of Schedule 2.
- (7) The OEP must—
 - (a) arrange for its reports under this paragraph to be laid before the Northern Ireland Assembly, and
 - (b) publish them.
- (8) A progress report for an annual reporting period must be laid no later than 6 months after the Schedule 2 report for that period is laid before the Northern Ireland Assembly.

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- (9) The Department must—
- (a) respond to a report under this paragraph, and
 - (b) lay before the Northern Ireland Assembly, and publish, a copy of the response.
- (10) Where a report under this paragraph contains a recommendation for how progress could be improved, the response must address that recommendation.
- (11) The response—
- (a) must be laid no later than 12 months after the report is laid, and
 - (b) may be included in a Schedule 2 report.

Commencement Information

I1 Sch. 3 para. 1 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

Monitoring and reporting on environmental law

- 2
- (1) The OEP must monitor the implementation of Northern Ireland environmental law.
 - (2) The OEP may report on any matter concerned with the implementation of Northern Ireland environmental law.
 - (3) But the OEP must not monitor the implementation of, or report on, a matter within the remit of the Committee on Climate Change.
 - (4) A matter is within the remit of the Committee on Climate Change if it is a matter on which the Committee is, or may be, required to advise or report under Part 1, sections 34 to 36, or section 48 of the Climate Change Act 2008.
 - (5) The OEP must—
 - (a) arrange for its reports under this paragraph to be laid before the Northern Ireland Assembly, and
 - (b) publish them.
 - (6) The Department must—
 - (a) respond to a report under this paragraph, and
 - (b) lay before the Northern Ireland Assembly, and publish, a copy of the response.
 - (7) The response to a report under this paragraph must be laid no later than 3 months after the report is laid.

Commencement Information

I2 Sch. 3 para. 2 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

Advising on changes to Northern Ireland environmental law etc

- 3
- (1) The OEP must give advice to any Northern Ireland department about—
 - (a) any proposed change to Northern Ireland environmental law, or

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- (b) any other matter relating to the natural environment, on which that department requires it to give advice.
- (2) The Northern Ireland department may specify matters which the OEP is to take into account in giving the required advice.
- (3) The OEP may give advice to any Northern Ireland department about any changes to Northern Ireland environmental law proposed by that department.
- (4) Advice under this paragraph is to be given in writing to the Northern Ireland department concerned.
- (5) The OEP must publish—
 - (a) its advice, and
 - (b) if the advice is given under sub-paragraph (1), a statement of the matter on which it was required to give advice and any matters specified under sub-paragraph (2).
- (6) The Northern Ireland department concerned may, if it thinks fit, lay before the Northern Ireland Assembly—
 - (a) the advice, and
 - (b) any response that department may make to the advice.

Commencement Information

I3 Sch. 3 para. 3 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

Failure of relevant public authorities to comply with environmental law

- 4
- (1) Paragraphs 6 to 15 make provision about functions of the OEP in relation to failures by relevant public authorities to comply with relevant environmental law.
 - (2) For the purposes of those paragraphs, a reference to a relevant public authority failing to comply with relevant environmental law means the following conduct by that authority—
 - (a) unlawfully failing to take proper account of relevant environmental law when exercising its functions;
 - (b) unlawfully exercising, or failing to exercise, any function it has under relevant environmental law.

Commencement Information

I4 Sch. 3 para. 4 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

Meaning of relevant environmental law, relevant public authority etc

- 5
- (1) The following definitions apply for the purpose of this Part of this Schedule.
 - (2) “Relevant environmental law” means—
 - (a) in relation to a Northern Ireland public authority, UK environmental law or Northern Ireland environmental law;

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(b) in relation to any other relevant public authority, Northern Ireland environmental law.

(3) “Relevant public authority” means—

- (a) a Northern Ireland public authority, or
- (b) a person, other than a Northern Ireland public authority, carrying out any function of a public nature in or as regards Northern Ireland that is not a parliamentary function or a function of any of the following persons—
 - (i) the OEP;
 - (ii) a court or tribunal;
 - (iii) either House of Parliament;
 - (iv) the Northern Ireland Assembly.

(4) “Northern Ireland public authority” means—

- (a) a Northern Ireland department, or
- (b) a person carrying out a Northern Ireland devolved function (including an implementation body carrying out such a function) that is not a function in connection with proceedings in the Northern Ireland Assembly or a function of any of the following persons—
 - (i) the OEP;
 - (ii) a court or tribunal;
 - (iii) the Northern Ireland Assembly.

(5) “Northern Ireland devolved function” means a function of a public nature exercisable in or as regards Northern Ireland that could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998).

Commencement Information

I5 Sch. 3 para. 5 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

Complaints about relevant public authorities

- 6
- (1) A person may make a complaint to the OEP under this paragraph if the person believes that a relevant public authority has failed to comply with relevant environmental law.
 - (2) The OEP must prepare and publish a document which sets out the procedure by which complaints can be made.
 - (3) A complaint under this paragraph must be made in accordance with that procedure (as most recently published).
 - (4) A complaint under this paragraph may not be made by any person whose functions include functions of a public nature.
 - (5) A complaint about a relevant public authority may not be made under this paragraph if—
 - (a) the authority operates a procedure for considering complaints (“an internal complaints procedure”) under which the complaint could be considered, and

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- (b) that procedure has not been exhausted.
- (6) A complaint under this paragraph may not be made after the later of—
- (a) the end of the 1 year period beginning with the day on which the alleged failure that is the subject of the complaint last occurred, and
 - (b) if the substance of the complaint was subject to an internal complaints procedure, the end of the 3 month period beginning with the day on which that procedure was exhausted.
- (7) The OEP may waive the time limit in sub-paragraph (6) if it considers that there are exceptional reasons for doing so.

Commencement Information

I6 Sch. 3 para. 6 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

Investigations: relevant public authorities

- 7
- (1) The OEP may carry out an investigation under this paragraph if it receives a complaint made under paragraph 6 that, in its view, indicates that—
 - (a) a relevant public authority may have failed to comply with relevant environmental law, and
 - (b) if it has, the failure would be a serious failure.
 - (2) The OEP may carry out an investigation under this paragraph without having received such a complaint if it has information that, in its view, indicates that—
 - (a) a relevant public authority may have failed to comply with relevant environmental law, and
 - (b) if it has, the failure would be a serious failure.
 - (3) An investigation under this paragraph is an investigation into whether the relevant public authority has failed to comply with relevant environmental law.
 - (4) The OEP must notify the relevant public authority of the commencement of the investigation.
 - (5) The OEP must prepare a report on the investigation and provide it to the relevant public authority.
 - (6) The OEP is not required to prepare a report until it has concluded that it intends to take no further steps under this Part of this Schedule in relation to the alleged failure to comply with relevant environmental law that is the subject of the investigation.
 - (7) The OEP is not required to prepare a report if it has made a review application, or an application for judicial review by virtue of paragraph 13(1), in relation to the alleged failure.
 - (8) The report must set out—
 - (a) whether the OEP considers that the relevant public authority has failed to comply with relevant environmental law,
 - (b) the reasons the OEP came to that conclusion, and
 - (c) any recommendations the OEP may have (whether generally or for the relevant public authority) in light of those conclusions.

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- (9) The OEP may publish the report or parts of it.
- (10) If the public authority is not a Northern Ireland department, the OEP must also—
- (a) notify the relevant department of the commencement of the investigation, and
 - (b) provide the relevant department with the report prepared under subparagraph (5).
- (11) In this Part “the relevant department”, in relation to a failure (or alleged failure) of a relevant public authority to comply with relevant environmental law, means the Northern Ireland department that the OEP considers appropriate having regard to the nature of the authority and the nature of the failure.

Commencement Information

I7 Sch. 3 para. 7 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

Duty to keep complainants informed

- 8 (1) Where a person makes a complaint to the OEP alleging that a relevant public authority has failed to comply with relevant environmental law, the OEP must keep the complainant informed about its handling of the complaint.
- (2) In particular, the OEP must—
- (a) notify the complainant if it does not intend to consider the complaint because the complaint was not made in accordance with paragraph 6;
 - (b) notify the complainant if it has concluded that it will not be commencing an investigation under paragraph 7 in relation to the complaint;
 - (c) notify the complainant if it commences an investigation under paragraph 7 in relation to the complaint;
 - (d) if such an investigation is commenced, notify the complainant—
 - (i) where it provides a report under paragraph 7(5) to the relevant public authority that is the subject of the investigation, that it has provided it;
 - (ii) where it makes a review application (see paragraph 12), or an application for judicial review by virtue of paragraph 13(1), in relation to the alleged failure to comply with relevant environmental law that is the subject of the investigation, that it has made such an application;
 - (e) provide the complainant with a copy of any document published under paragraph 7(9) in relation to any investigation in relation to the complaint.

Commencement Information

I8 Sch. 3 para. 8 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

Information notices

- 9 (1) The OEP may give an information notice to a relevant public authority if—

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- (a) the OEP has reasonable grounds for suspecting that the authority has failed to comply with relevant environmental law, and
 - (b) it considers that the failure, if it occurred, would be serious.
- (2) An information notice is a notice which—
- (a) describes an alleged failure of a relevant public authority to comply with relevant environmental law,
 - (b) explains why the OEP considers that the alleged failure, if it occurred, would be serious, and
 - (c) requests that the authority provide such information relating to the allegation as may be specified in the notice.
- (3) The recipient of an information notice must—
- (a) respond in writing to the notice, and
 - (b) so far as is reasonably practicable, provide the OEP with the information requested in the notice.
- (4) The recipient of an information notice must comply with sub-paragraph (3) by—
- (a) the end of the 2 month period beginning with the day on which the notice was given, or
 - (b) such later date as may be specified in the notice.
- (5) The written response to an information notice must set out—
- (a) the recipient's response to the allegation described in the notice, and
 - (b) what steps (if any) the recipient intends to take in relation to the allegation.
- (6) The OEP may—
- (a) withdraw an information notice;
 - (b) give more than one information notice in respect of the same alleged failure of a relevant public authority to comply with relevant environmental law.
- (7) Where the OEP intends to give an information notice to a relevant public authority in respect of an alleged failure to comply with relevant environmental law which relates to emissions of greenhouse gases (within the meaning of the Climate Change Act 2008), the OEP—
- (a) must notify the Committee on Climate Change of its intention before it gives the notice to the authority, and
 - (b) must provide that Committee with such information relating to the alleged failure as the OEP considers appropriate.

Commencement Information

19 Sch. 3 para. 9 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

Decision notices

- 10 (1) The OEP may give a decision notice to a relevant public authority if—
- (a) the OEP is satisfied, on the balance of probabilities, that the authority has failed to comply with relevant environmental law, and
 - (b) it considers that the failure is serious.

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- (2) A decision notice is a notice that—
 - (a) describes a failure of a relevant public authority to comply with relevant environmental law,
 - (b) explains why the OEP considers that the failure is serious, and
 - (c) sets out the steps the OEP considers the authority should take in relation to the failure (which may include steps designed to remedy, mitigate or prevent reoccurrence of the failure).
- (3) The recipient of a decision notice must respond in writing to that notice by—
 - (a) the end of the 2 month period beginning with the day on which the notice was given, or
 - (b) such later date as may be specified in the notice.
- (4) The written response to a decision notice must set out—
 - (a) whether the recipient agrees that the failure described in the notice occurred,
 - (b) whether the recipient intends to take the steps set out in the notice, and
 - (c) what other steps (if any) the recipient intends to take in relation to the failure described in the notice.
- (5) The OEP—
 - (a) may not give a decision notice to a relevant public authority unless it has first given at least one information notice relating to the failure of the authority to comply with relevant environmental law that is described in the decision notice;
 - (b) may withdraw a decision notice.

Commencement Information

I10 Sch. 3 para. 10 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

Linked notices

- 11 (1) If the OEP gives an information notice or a decision notice to more than one relevant public authority in respect of the same or similar conduct, it may determine that those notices are linked.
- (2) A Northern Ireland department may request that the OEP determine that information notices or decision notices are linked and the OEP must have regard to that request.
- (3) The OEP must provide the recipient of an information notice or a decision notice (a “principal notice”) with a copy of every information notice or decision notice which is linked to it (and such a notice is referred to in this section as a “linked notice”).
- (4) The OEP must provide the recipient of a principal notice with a copy of any relevant correspondence, relating to a linked notice, between the OEP and the recipient of that linked notice.
- (5) The OEP must provide the recipient of a principal notice with a copy of any relevant correspondence between the OEP and the relevant department that relates to a linked notice.

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- (6) Sub-paragraph (5) does not apply where either the recipient of the principal notice or the linked notice is a Northern Ireland department.
- (7) If the OEP considers that an information notice or a decision notice relates to conduct that is the same as or similar to conduct that is the subject of a UK information notice or UK decision notice, it may determine that those notices are linked.
- (8) The OEP must provide the recipient of an information notice or a decision notice with—
- (a) a copy of every UK information notice or UK decision notice which is linked to it, and
 - (b) a copy of any relevant correspondence, relating to such a notice, between the OEP and the recipient of that notice.
- (9) The obligation to provide a copy of any notice or correspondence under this paragraph does not apply where the OEP considers that in the circumstances it would not be in the public interest to do so.
- (10) For the purposes of this paragraph, correspondence is relevant if—
- (a) it is not correspondence in connection with a review application or any other legal proceedings, and
 - (b) it is not correspondence sent by virtue of paragraph 14(1)(a) or (b).
- (11) In this Part of this Schedule—
- “UK decision notice” means a notice given under section 36;
 - “UK information notice” means a notice given under section 35.

Commencement Information

III Sch. 3 para. 11 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

Review application

- 12 (1) The OEP may make a review application in relation to conduct described in a decision notice given to a relevant public authority as a failure of the authority to comply with relevant environmental law, but only if—
- (a) it is satisfied, on the balance of probabilities, that the authority has failed to comply with relevant environmental law, and
 - (b) it considers that the failure is serious.
- (2) A review application is an application for judicial review in respect of conduct of a relevant public authority, and any reference in this Part of this Schedule to a review application is to an application made by virtue of sub-paragraph (1).
- (3) A review application may not be made before the earlier of—
- (a) the end of the period within which the authority must respond to the decision notice that precedes the application (see paragraph 10(3)), and
 - (b) the date on which the OEP receives the authority’s response to that notice.

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- (4) Subject to that, the OEP may make a review application at any time (and accordingly any time limit, that would otherwise apply to the making of a review application, does not apply).
- (5) The High Court may grant a remedy on a review application only if Condition A or Condition B is met.
- (6) Condition A is that the court is satisfied that granting the remedy would not—
 - (a) be likely to cause substantial hardship to, or substantially prejudice the rights of, any person other than the authority, or
 - (b) be detrimental to good administration.
- (7) Condition B is that Condition A is not met but the court is satisfied that—
 - (a) granting the remedy is necessary in order to prevent or mitigate serious damage to the natural environment or to human health, and
 - (b) there is an exceptional public interest reason to grant it.
- (8) If, on a review application, there is a finding that a relevant public authority has failed to comply with relevant environmental law, and the finding has not been overturned on appeal, the authority must publish a statement that sets out the steps it intends to take in light of the finding.
- (9) A statement under sub-paragraph (8) must be published before the end of the 2 month period beginning with the day the proceedings relating to the review application (including any appeal) conclude.
- (10) In this Part of this Schedule reference to an application for judicial review includes an application for the permission of the High Court to apply for judicial review.

Commencement Information

I12 Sch. 3 para. 12 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

Judicial review: powers to apply to prevent serious damage and to intervene

- 13 (1) The OEP may make an application for judicial review in relation to conduct of a relevant public authority (whether or not it has given an information notice or a decision notice to the authority in respect of that conduct) if—
 - (a) the OEP considers that the conduct constitutes a serious failure to comply with relevant environmental law, and
 - (b) the urgency condition is met.
- (2) The urgency condition is that making an application under sub-paragraph (1) (rather than proceeding under paragraphs 9 to 12) is necessary to prevent, or mitigate, serious damage to the natural environment or to human health.
- (3) If, on an application for judicial review made by virtue of sub-paragraph (1), there is a finding that a relevant public authority has failed to comply with relevant environmental law, and the finding has not been overturned on appeal, the authority must publish a statement that sets out the steps it intends to take in light of the finding.

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- (4) A statement under sub-paragraph (3) must be published before the end of the 2 month period beginning with the day the proceedings relating to the application for judicial review (including any appeal) conclude.
- (5) Sub-paragraph (6) applies to proceedings (including any appeal) that—
 - (a) are in respect of an application for judicial review, and
 - (b) relate to an alleged failure by a relevant public authority to comply with relevant environmental law (however the allegation is framed in those proceedings).
- (6) If the OEP considers that the alleged failure, if it occurred, would be serious, it may apply to intervene in the proceedings (whether it considers that the relevant public authority has, or has not, failed to comply with relevant environmental law).

Commencement Information

I13 Sch. 3 para. 13 not in force at Royal Assent, see s. 147(6)(7)

Duty of the OEP to involve the relevant department

- 14 (1) Where the recipient of an information notice or a decision notice is not a Northern Ireland department, the OEP must—
- (a) provide the relevant department with—
 - (i) a copy of the notice, and
 - (ii) a copy of any correspondence between the OEP and the recipient of the notice that relates to the notice (apart from correspondence sent by virtue of paragraph (b)), and
 - (b) provide the recipient of the notice with a copy of any correspondence between the OEP and the relevant department that relates to the notice (apart from correspondence sent by virtue of paragraph (a)).
- (2) The obligation to provide a copy of any notice or correspondence under sub-paragraph (1) does not apply where the OEP considers that in the circumstances it would not be in the public interest to do so.
- (3) Where the OEP makes a review application, or an application for judicial review by virtue of paragraph 13(1), in which the relevant department is not a party, it must provide the relevant department with—
- (a) a copy of the application, and
 - (b) a statement of whether the OEP considers the relevant department should participate in the review (for example, by applying to be a party).

Commencement Information

I14 Sch. 3 para. 14 not in force at Royal Assent, see s. 147(6)(7)

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Public statements

- 15 (1) Where the OEP gives an information notice or a decision notice, makes a review application or an application for judicial review by virtue of paragraph 13(1) or applies to intervene in a judicial review, it must publish a statement that—
- (a) states that the OEP has taken that step,
 - (b) describes the failure (or alleged failure) of a relevant public authority to comply with relevant environmental law in relation to which that step was taken, and
 - (c) sets out such further information as the OEP considers appropriate.
- (2) Sub-paragraph (1) does not apply if the OEP considers that in the circumstances it would not be in the public interest to publish a statement.

Commencement Information

I15 Sch. 3 para. 15 not in force at Royal Assent, see s. 147(6)(7)

Disclosures to the OEP

- 16 (1) No obligation of secrecy imposed by statute or otherwise prevents a person from—
- (a) in accordance with section 27(1), providing the OEP with information in connection with an investigation under paragraph 7, an information notice or a decision notice, or
 - (b) providing information to the OEP in accordance with paragraph 9(3)(b).
- (2) But nothing in this Part of this Schedule—
- (a) requires a person to provide the OEP with information that the person would be entitled to refuse to provide in civil proceedings on grounds of legal professional privilege (or, in Scotland, confidentiality of communications), or
 - (b) requires a person to provide the OEP with information that the person would be entitled, or required by any rule of law, to refuse to provide in civil proceedings on grounds of public interest immunity.
- (3) No obligation of secrecy imposed by statute or otherwise prevents the Northern Ireland Public Services Ombudsman from providing information to the OEP—
- (a) for purposes connected with the exercise of the OEP’s functions under paragraph 7;
 - (b) for purposes connected with the co-ordination of the OEP’s functions that relate to investigations under paragraph 7 and the Ombudsman’s functions that relate to investigations by the Ombudsman.
- (4) Nothing in this Part of this Schedule requires or authorises a disclosure of information that would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the duties imposed and powers conferred by this Part of this Schedule).
- (5) In this paragraph “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act).

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116 Sch. 3 para. 16 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

Confidentiality of proceedings

- 17 (1) The OEP must not disclose—
- (a) information obtained under paragraph [9\(3\)\(b\)](#), or
 - (b) correspondence between the OEP and a relevant public authority that—
 - (i) relates to a particular information notice or decision notice, or
 - (ii) is, or contains, such a notice.
- (2) Sub-paragraph (1) does not apply to a disclosure—
- (a) other than a disclosure of an information notice or a decision notice, made with the consent of the person who provided the information or correspondence;
 - (b) made for purposes connected with an investigation under paragraph [7](#) or section [33](#);
 - (c) made for purposes connected with the co-ordination of the OEP’s functions that relate to investigations under paragraph [7](#) and the Northern Ireland Public Services Ombudsman’s functions that relate to investigations by the Ombudsman;
 - (d) made for purposes connected with the co-ordination of the OEP’s functions that relate to investigations under section [33](#) and functions of a relevant ombudsman that relate to investigations by that ombudsman;
 - (e) made for the purposes of any publication of a report (or part of it) on an investigation under paragraph [7](#) or section [33](#);
 - (f) made for purposes connected with the exercise of the OEP’s functions under paragraphs [9](#) to [15](#) or sections [35](#) to [41](#) (enforcement);
 - (g) made to a devolved environmental governance body for purposes connected with the exercise of a devolved environmental governance function;
 - (h) made for purposes connected with the protection of the natural environment in a country or territory outside the United Kingdom, to an authority of that country or territory, or an international organisation, that has functions in connection with the protection of the natural environment in that country or territory;
 - (i) of information, or correspondence, that relates only to a matter in relation to which the OEP has concluded that it intends to take no further steps under this Part of this Schedule or under Chapter 2 of Part 1 of this Act.
- (3) A relevant public authority must not disclose correspondence between the OEP and that, or any other, relevant public authority that—
- (a) relates to a particular information notice, decision notice, UK information notice or UK decision notice, or
 - (b) is, or contains, such a notice.
- (4) Sub-paragraph (3) does not apply to a disclosure—
- (a) made—

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- (i) in the case of a disclosure of correspondence between another relevant public authority and the OEP other than correspondence that is, or contains, an information notice, a decision notice, a UK information notice or a UK decision notice, with the consent of that authority and the OEP, or
 - (ii) in any other case, with the specific or general consent of the OEP;
 - (b) made for purposes connected with co-operating with any investigation under paragraph 7 or section 33;
 - (c) made for purposes connected with responding to any information notice or decision notice;
 - (d) made for purposes connected with any proceedings in relation to a review application, an environmental review, a judicial review or a statutory review (within the meaning given by section 39(8)(b)).
- (5) The OEP may not give a person consent to disclose an information notice, a decision notice, a UK information notice or a UK decision notice unless that notice relates only to a matter in relation to which the OEP has concluded that it intends to take no further steps under this Part of this Schedule or under Chapter 2 of Part 1 of this Act.
- (6) If a relevant public authority requests the consent of the OEP to disclose correspondence that relates only to a matter in relation to which the OEP has concluded that it intends to take no further steps under this Part of this Schedule or under Chapter 2 of Part 1 of this Act, the OEP may not withhold that consent.
- (7) If information referred to in sub-paragraph (1) and held by the OEP, or referred to in sub-paragraph (3) and held by a relevant public authority, is environmental information for the purposes of the Environmental Information Regulations 2004 (S.I. 2004/3391) or the Environmental Information (Scotland) Regulations 2004 (S.S.I. 2004/520), it is held by that person, for the purposes of the application of those regulations to that information, in connection with confidential proceedings.

Commencement Information

I17 Sch. 3 para. 17 not in force at Royal Assent, see s. 147(6)(7)

Meaning of UK environmental law and Northern Ireland environmental law

- 18 (1) In this Part of this Schedule “UK environmental law” means anything that is environmental law for the purposes of Part 1 of this Act (see section 46), but not anything that is environmental law only for the purposes of section 20.
- (2) In this Part of this Schedule “Northern Ireland environmental law” means any Northern Ireland legislative provision that—
- (a) is mainly concerned with environmental protection, and
 - (b) is not concerned with an excluded matter.
- (3) Excluded matters are—
- (a) disclosure of or access to information;
 - (b) taxation, spending or the allocation of resources within government.
- (4) “Northern Ireland legislative provision” means—

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- (a) legislative provision contained in, or in an instrument made under, Northern Ireland legislation, and
 - (b) legislative provision not within paragraph (a) which, if contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Assembly and would not require the Secretary of State's consent.
- (5) The Department may by regulations provide that a Northern Ireland legislative provision specified in the regulations is, or is not, within the definition of “Northern Ireland environmental law” in sub-paragraph (2) (and this Part of this Schedule applies accordingly).
- (6) Before making regulations under sub-paragraph (5) the Department must consult—
- (a) the OEP, and
 - (b) any other persons the Department considers appropriate.
- (7) Regulations under sub-paragraph (5) are subject to the affirmative procedure.

Commencement Information

118 Sch. 3 para. 18 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

Interpretation of Part 1 of this Schedule: general

- 19 (1) In this Part of this Schedule—
- “application for judicial review” is to be read in accordance with paragraph 12(10);
 - “current environmental improvement plan” has the meaning it has in Schedule 2 (see paragraph 1(8) of that Schedule);
 - “decision notice” means a notice given under paragraph 10;
 - “the Department” means the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;
 - “devolved environmental governance body” has the meaning it has in Part 1 of this Act (see section 47);
 - “devolved environmental governance function” has the meaning it has in Part 1 of this Act (see section 47);
 - “environmental improvement plan” has the meaning it has in Schedule 2 (see paragraphs 1 and 3(10) of that Schedule);
 - “environmental protection” has the meaning it has in Schedule 2 (see paragraph 10 of that Schedule);
 - “environmental review” has the meaning it has in Part 1 of this Act (see section 38);
 - “implementation body” has the meaning it has in section 55 of the Northern Ireland Act 1998 (see subsection (3) of that section);
 - “improving the natural environment”, in relation to an environmental improvement plan, is to be read in accordance with paragraph 1(5) of Schedule 2;
 - “information notice” means a notice given under paragraph 9;
 - “natural environment” has the meaning it has in Schedule 2 (see paragraph 9 of that Schedule);

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“Northern Ireland devolved function” has the meaning given by paragraph 5(5);
 “OEP” has the meaning given by section 22;
 “parliamentary function” means a function in connection with proceedings in Parliament or the Northern Ireland Assembly;
 “relevant department” has the meaning given by paragraph 7(11);
 “relevant environmental law” has the meaning given by paragraph 5(2);
 “relevant ombudsman” has the meaning it has in Part 1 of this Act (see section 23);
 “relevant public authority” has the meaning given by paragraph 5(3);
 “review application” has the meaning given by paragraph 12(2);
 “UK decision notice” has the meaning given by paragraph 11(11);
 “UK information notice” has the meaning given by paragraph 11(11).

- (2) Section 41(3) of the [Interpretation Act \(Northern Ireland\) 1954 \(c. 33 \(N.I.\)\)](#) applies in relation to the laying of a document before the Northern Ireland Assembly under this Part of this Schedule, as it applies in relation to the laying of a statutory document under an Act of the Northern Ireland Assembly.

Commencement Information

I19 Sch. 3 para. 19 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

PART 2

AMENDMENTS OF THE OEP’S GENERAL FUNCTIONS

20 This Act is amended in accordance with paragraphs 21 to 30.

Commencement Information

I20 Sch. 3 para. 20 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

21 (1) Section 23 (principal objective of the OEP and exercise of its functions) is amended as follows.

(2) In subsection (6)—

(a) after paragraph (a) insert—

“(aa) how the OEP intends to determine whether failures to comply with relevant environmental law are serious for the purposes of paragraphs 7(1)(b) and (2)(b), 9(1)(b), 10(1)(b), 12(1)(b) and 13(1) and (6) of Schedule 3,”;

(b) at the end of paragraph (b) insert “or paragraph 13(2) of Schedule 3,”;

(c) omit the “and” at the end of paragraph (d);

(d) after paragraph (d) insert—

“(da) how the OEP intends to avoid any overlap between the exercise of its functions under paragraphs 6 to 8 of Schedule 3 (complaints) and the exercise by the Northern Ireland Public Services Ombudsman of its functions, and”.

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(3) In subsection (7)(c) after “environmental law” insert “or Northern Ireland environmental law”.

(4) After subsection (7) insert—

“(7A) In this section “relevant environmental law” and “Northern Ireland environmental law” have the meanings they have in Part 1 of Schedule 3 (see paragraphs 5 and 18(2) of that Schedule).”

(5) In subsection (8) after “sections 32 to 41” insert “and paragraphs 6 to 15 of Schedule 3”.

Commencement Information

I21 Sch. 3 para. 21 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

22 In section 24 (the OEP’s strategy: process), in subsection (1)(a) after “Parliament” insert “and the Northern Ireland Assembly”.

Commencement Information

I22 Sch. 3 para. 22 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

23 (1) Section 25 (guidance on the OEP’s enforcement policy and functions) is amended as follows.

(2) At the end of subsection (1) insert “, so far as relating to the OEP’s Part 1 enforcement functions.”

(3) In subsection (2)—

(a) in paragraph (a) after “policy,” insert “so far as relating to its Part 1 enforcement functions,”;

(b) in paragraph (b) for “enforcement functions” substitute “Part 1 enforcement functions”.

(4) In subsection (3) for “enforcement functions” substitute “Part 1 enforcement functions”.

Commencement Information

I23 Sch. 3 para. 23 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

24 After section 25 (guidance on the OEP’s enforcement policy and functions) insert—

“25A Guidance on the OEP’s Northern Ireland enforcement policy and functions

(1) The Department of Agriculture, Environment and Rural Affairs in Northern Ireland may issue guidance to the OEP on the matters listed in section 23(6) (OEP’s enforcement policy), so far as relating to the OEP’s Northern Ireland enforcement functions.

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- (2) The OEP must have regard to the guidance in—
 - (a) preparing its enforcement policy, so far as relating to its Northern Ireland enforcement functions, and
 - (b) exercising its Northern Ireland enforcement functions.
- (3) The OEP’s “Northern Ireland enforcement functions” are its functions under paragraphs 6 to 15 of Schedule 3.
- (4) Before issuing the guidance, the Department must—
 - (a) prepare a draft, and
 - (b) lay the draft before the Northern Ireland Assembly.
- (5) If before the end of the 21 day period the Northern Ireland Assembly passes a resolution in respect of the draft guidance, the Department must produce a response and lay it before the Assembly.
- (6) The Department may prepare and lay before the Northern Ireland Assembly the final guidance, but not before—
 - (a) if subsection (5) applies, the day on which the Department lays the response required by that subsection, or
 - (b) otherwise, the end of the 21 day period.
- (7) The final guidance has effect when it is laid before the Northern Ireland Assembly.
- (8) The Department must publish the guidance when it comes into effect.
- (9) The “21 day period” is the period of 21 sitting days beginning with the first sitting day after the day on which the draft guidance is laid under subsection (4).
- (10) “Sitting day” means a day on which the Northern Ireland Assembly sits.
- (11) The Department may revise the guidance at any time (and subsections (4) to (10) apply in relation to any revised guidance).”

Commencement Information

I24 Sch. 3 para. 24 not in force at Royal Assent, see s. 147(6)(7)

- 25 (1) Section 27 (co-operation duties of public authorities and the OEP) is amended as follows.
 - (2) In subsection (2)—
 - (a) in paragraph (d) for “, the Welsh Ministers, a Northern Ireland department or a Minister within the meaning of the Northern Ireland Act 1998” substitute “or the Welsh Ministers”;
 - (b) in paragraph (f) for “devolved functions” substitute “Scottish devolved functions or Welsh devolved functions”.
 - (3) In subsection (3) for “devolved functions”, in both places it occurs, substitute “Scottish devolved functions or Welsh devolved functions”.
 - (4) After subsection (3) insert—

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“(3A) An implementation body is only required to co-operate with the OEP by virtue of subsection (1) to the extent that co-operation is in relation to functions of that body exercisable in or as regards Northern Ireland.

In this subsection “implementation body” has the meaning it has in section 55 of the Northern Ireland Act 1998 (see subsection (3) of that section).”

Commencement Information

I25 Sch. 3 para. 25 not in force at Royal Assent, see s. 147(6)(7)

26 In section 37 (linked notices), after subsection (6) insert—

“(6A) If the OEP considers that an information notice or a decision notice relates to conduct that is the same as or similar to conduct that is the subject of a Northern Ireland information notice or Northern Ireland decision notice, it may determine that those notices are linked.

(6B) The OEP must provide the recipient of an information notice or a decision notice with—

- (a) a copy of every Northern Ireland information notice or Northern Ireland decision notice which is linked to it, and
- (b) a copy of any relevant correspondence, relating to such a notice, between the OEP and the recipient of that notice.”

Commencement Information

I26 Sch. 3 para. 26 not in force at Royal Assent, see s. 147(6)(7)

27 (1) Section 43 (confidentiality of proceedings) is amended as follows.

(2) In subsection (2)—

- (a) in paragraph (b) after “(investigations)” insert “or paragraph 7 of Schedule 3 (functions of the OEP in Northern Ireland)”;
- (b) after paragraph (c) insert—
 - “(ca) made for purposes connected with the co-ordination of the OEP’s functions that relate to investigations under paragraph 7 of Schedule 3 and the Northern Ireland Public Services Ombudsman’s functions that relate to investigations by the Ombudsman;”;
- (c) in paragraph (d) after “section 33” insert “or paragraph 7 of Schedule 3”;
- (d) in paragraph (e) after “sections 35 to 41” insert “or paragraphs 9 to 15 of Schedule 3”;
- (e) in paragraph (h) after “this Chapter” insert “or Part 1 of Schedule 3”.

(3) In subsection (3)(a) for “or decision notice” substitute “, decision notice, Northern Ireland information notice or Northern Ireland decision notice”.

(4) In subsection (4)—

- (a) in paragraph (a)(i) for “or a decision notice” substitute “, a decision notice, a Northern Ireland information notice or a Northern Ireland decision notice”;

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- (b) in paragraph (b) after “section 33” insert “or paragraph 7 of Schedule 3”;
 - (c) in paragraph (d) after “judicial review” insert “(which includes a review application)”.
- (5) In subsection (5)—
- (a) for “or a decision notice” substitute “, a decision notice, a Northern Ireland information notice or a Northern Ireland decision notice”;
 - (b) after “this Chapter” insert “or Part 1 of Schedule 3”.

(6) In subsection (6) after “this Chapter” insert “or Part 1 of Schedule 3”.

Commencement Information

I27 Sch. 3 para. 27 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

- 28 (1) Section 47 (interpretation of Part 1 of the Act) is amended as follows.
- (2) The existing text becomes subsection (1).
- (3) In that subsection—
- (a) in the definition of “devolved environmental governance function”—
 - (i) for “devolved function” substitute “Scottish devolved function or Welsh devolved function”;
 - (ii) after “this Part” insert “or Part 1 of Schedule 3 (functions of the OEP in Northern Ireland)”;
 - (b) at the appropriate places insert—
 - ““Northern Ireland decision notice” means a notice given under paragraph 10 of Schedule 3 (functions of the OEP in Northern Ireland);”;
 - ““Northern Ireland information notice” means a notice given under paragraph 9 of Schedule 3;”;
 - ““review application” has the meaning it has in Part 1 of Schedule 3 (see paragraph 12 of that Schedule);”;
 - ““Scottish devolved function” means a function exercisable in or as regards Scotland, the exercise of which would be within devolved competence (within the meaning of section 54 of the Scotland Act 1998);”;
 - ““Welsh devolved function” means a function exercisable in or as regards Wales that could be conferred by provision falling within the legislative competence of Senedd Cymru (see section 108A of the Government of Wales Act 2006).”.
- (4) After that subsection insert—
- “(2) Section 41(3) of the [Interpretation Act \(Northern Ireland\) 1954 \(c. 33 \(N.I.\)\)](#) applies in relation to the laying of a document before the Northern Ireland Assembly under this Part, as it applies in relation to the laying of a statutory document under an Act of the Northern Ireland Assembly.”

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Commencement Information

I28 Sch. 3 para. 28 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

- 29 (1) Schedule 1 is amended as follows.
- (2) In paragraph 1—
- (a) in sub-paragraph (1), after paragraph (a) insert—
- “(aa) a Northern Ireland member (who is to be a non-executive member),”;
- (b) in sub-paragraph (2) after “Secretary of State” insert “, the Northern Ireland Department”;
- (c) in sub-paragraph (3)—
- (i) for “In making those appointments,” substitute “When exercising their functions of appointment”;
- (ii) after “non-executive members” insert “(including the Northern Ireland member)”.
- (3) In paragraph 2 for sub-paragraphs (1) and (2) substitute—
- “(1) The Chair is to be appointed by the Secretary of State acting jointly with the Northern Ireland Department, other than the first Chair who is to be appointed by the Secretary of State.
- (2) The Northern Ireland member is to be appointed by the Northern Ireland Department after consulting the Secretary of State and the Chair.
- (2A) The other non-executive members are to be appointed by the Secretary of State after consulting the Northern Ireland Department and the Chair.
- (2B) The Northern Ireland Department must appoint as the Northern Ireland member a person with experience of—
- (a) Northern Ireland environmental law (within the meaning of Part 1 of Schedule 3),
- (b) environmental science in Northern Ireland, or
- (c) environmental regulation in Northern Ireland.”
- (4) In paragraph 3(3) after “Secretary of State” insert “and the Northern Ireland Department”.
- (5) In paragraph 5—
- (a) in sub-paragraph (4) after “of non-executive members” insert “(including the Northern Ireland member)”;
- (b) after that sub-paragraph insert—
- “(4A) The Northern Ireland Department must, in determining the length of a Northern Ireland member’s term, have regard to the desirability of securing that the appointments of non-executive members expire at different times.”;
- (c) for sub-paragraph (6) substitute—
- “(6) A non-executive member ceases to be a member of the OEP upon becoming its employee.

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(7) A non-executive member, other than the Northern Ireland member—

- (a) may resign from office by giving notice to the Secretary of State, and
- (b) may be removed from office by notice given by the Secretary of State, after consulting the Northern Ireland Department, on the grounds that the member—
 - (i) has without reasonable excuse failed to discharge the member’s functions, or
 - (ii) is, in the opinion of the Secretary of State, unable or unfit to carry out the member’s functions.

(8) The Northern Ireland member—

- (a) may resign from office by giving notice to the Northern Ireland Department, and
- (b) may be removed from office by notice given by the Northern Ireland Department after consulting the Secretary of State, on the grounds that the member—
 - (i) has without reasonable excuse failed to discharge the member’s functions, or
 - (ii) is, in the opinion of the Northern Ireland Department, unable or unfit to carry out the member’s functions.”

(6) In paragraph 10(4)—

- (a) in paragraph (b) after “section 28 or 29” insert “, or a report under paragraph 1 or 2 of Schedule 3 (functions of the OEP in Northern Ireland)”;
- (b) in paragraph (c) after “section 30(1) or (3)” insert “, or written advice to a Northern Ireland department under paragraph 3(1) or (3) of Schedule 3”;
- (c) in paragraph (d) after “information notice” insert “or a Northern Ireland information notice”;
- (d) in paragraph (e) after “decision notice” insert “or a Northern Ireland decision notice”;
- (e) after paragraph (g) insert—
 - “(ga) deciding whether to make a review application (see paragraph 12 of Schedule 3) or an application for judicial review by virtue of paragraph 13(1) of that Schedule or to intervene in proceedings that relate to a judicial review (see paragraph 13 of that Schedule);”.

(7) In paragraph 12—

- (a) in sub-paragraph (1)—
 - (i) after “Secretary of State”, in the first place it occurs, insert “and the Northern Ireland Department”;
 - (ii) after “must” insert “, between them,”;
 - (iii) for “the Secretary of State considers” substitute “they consider”;
- (b) in sub-paragraph (2)—
 - (i) after “Secretary of State”, in the first place it occurs, insert “, or the Northern Ireland Department,”;

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(ii) after “Secretary of State”, in the second place it occurs, insert “, or that department.”.

(8) In paragraph 13(2)(a) after “Parliament” insert “and the Northern Ireland Assembly”.

(9) In paragraph 14—

- (a) in sub-paragraph (3) after “Secretary of State” insert “and the Northern Ireland Department”;
- (b) in sub-paragraph (4) after “Secretary of State” insert “, the Northern Ireland Department”;
- (c) in sub-paragraph (5)(b) after “Secretary of State” insert “, the Northern Ireland Department”;
- (d) in sub-paragraph (6) after “Parliament” insert “and the Northern Ireland Assembly”.

(10) In paragraph 17 after “Secretary of State” insert “and the Northern Ireland Department”.

(11) After paragraph 23 insert—

“Meaning of “the Northern Ireland Department”

24 In this Schedule “the Northern Ireland Department” means the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.”

Commencement Information

I29 Sch. 3 para. 29 not in force at Royal Assent, see s. 147(6)(7)

30 (1) Schedule 2 (improving the natural environment: Northern Ireland) is amended as follows.

(2) In paragraph 3(4)(b) after “under paragraph 5” insert “and reports made by the OEP under paragraph 1 of Schedule 3”.

(3) In paragraph 4(4)(b) after “under paragraph 5” insert “and reports made by the OEP under paragraph 1 of Schedule 3”.

(4) In paragraph 11(1), at the appropriate place insert—
““OEP” has the meaning given by section 22;”.

Commencement Information

I30 Sch. 3 para. 30 not in force at Royal Assent, see s. 147(6)(7)

Status:

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Changes to legislation:

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