



# Environmental Protection Act 1990

## 1990 CHAPTER 43

### PART I

#### INTEGRATED POLLUTION CONTROL AND AIR POLLUTION CONTROL BY LOCAL AUTHORITIES

##### *Preliminary*

#### **1 Preliminary.**

- (1) The following provisions have effect for the interpretation of this Part.
- (2) The “environment” consists of 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.
- (3) “Pollution of the environment” means pollution of the environment due to the release (into any environmental medium) from any process of substances which are capable of causing harm to man or any other living organisms supported by the environment.
- (4) “Harm” means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes offence caused to any of his senses or harm to his property; and “harmless” has a corresponding meaning.
- (5) “Process” means any activities carried on in Great Britain, whether on premises or by means of mobile plant, which are capable of causing pollution of the environment and “prescribed process” means a process prescribed under section 2(1) below.
- (6) For the purposes of subsection (5) above—
  - “activities” means industrial or commercial activities or activities of any other nature whatsoever (including, with or without other activities, the keeping of a substance);
  - “Great Britain” includes so much of the adjacent territorial sea as is, or is treated as, relevant territorial waters for the purposes of [F1Part III of the

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Water Resources Act 1991] or, as respects Scotland, Part II of the <sup>M1</sup>Control of Pollution Act 1974; and

“mobile plant” means plant which is designed to move or to be moved whether on roads or otherwise.

- (7) The “enforcing authority”, in relation to England and Wales, is [<sup>F2</sup>the Environment Agency or the local authority by which], under section 4 below, the functions conferred or imposed by this Part otherwise than on the Secretary of State are for the time being exercisable in relation respectively to releases of substances into the environment or into the air; and “local enforcing authority” means any such local authority.
- [<sup>F3</sup>(8) In relation to Scotland, references to the “enforcing authority” and a “local enforcing authority” are references to the Scottish Environment Protection Agency (in this Part referred to as “SEPA”).]
- (9) “Authorisation” means an authorisation for a process (whether on premises or by means of mobile plant) granted under section 6 below; and a reference to the conditions of an authorisation is a reference to the conditions subject to which at any time the authorisation has effect.
- (10) A substance is “released” into any environmental medium whenever it is released directly into that medium whether it is released into it within or outside Great Britain and “release” includes—
- (a) in relation to air, any emission of the substance into the air;
  - (b) in relation to water, any entry (including any discharge) of the substance into water;
  - (c) in relation to land, any deposit, keeping or disposal of the substance in or on land;
- and for this purpose “water” and “land” shall be construed in accordance with subsections (11) and (12) below.
- (11) For the purpose of determining into what medium a substance is released—
- (a) any release into—
    - (i) the sea or the surface of the seabed,
    - (ii) any river, watercourse, lake, loch or pond (whether natural or artificial or above or below ground) or reservoir or the surface of the riverbed or of other land supporting such waters, or
    - (iii) ground waters,
 is a release into water;
  - (b) any release into—
    - (i) land covered by water falling outside paragraph (a) above or the water covering such land; or
    - (ii) the land beneath the surface of the seabed or of other land supporting waters falling within paragraph (a)(ii) above,
 is a release into land; and
  - (c) any release into a sewer (within the meaning of [<sup>F4</sup>the Water Industry Act 1991] or, in relation to Scotland, of the <sup>M2</sup>Sewerage (Scotland) Act 1968) shall be treated as a release into water;

but a sewer and its contents shall be disregarded in determining whether there is pollution of the environment at any time.

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(12) In subsection (11) above “ground waters” means any waters contained in underground strata, or in—

- (a) a well, borehole or similar work sunk into underground strata, including any adit or passage constructed in connection with the well, borehole or work for facilitating the collection of water in the well, borehole or work; or
- (b) any excavation into underground strata where the level of water in the excavation depends wholly or mainly on water entering it from the strata.

(13) “Substance” shall be treated as including electricity or heat and “prescribed substance” has the meaning given by section 2(7) below.

[<sup>F5</sup>(14) In this Part “the appropriate Agency” means—

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

#### Textual Amendments

- F1** Words in s. 1(6) substituted (1. 12. 1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 2, 4(1), [Sch. 1 para. 56\(1\)\(a\)](#)
- F2** Words in s. 1(7) substituted (1.4.1996) by [1995 c. 25, s. 120\(1\)](#), [Sch. 22 para. 45\(2\)](#)(with ss. 7(6), 115, 117); [S.I. 1996/186, art.3](#)
- F3** S. 1(8) substituted (1.4.1996) by [1995 c. 25, s. 120\(1\)](#), [Sch. 22 para. 45\(3\)](#)(with ss. 7(6), 115, 117); [S.I. 1996/186, art.3](#)
- F4** Words in s. 1(11)(c) substituted (1. 12. 1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 2, 4(2), [Sch. 1 para. 56\(1\)\(b\)](#)
- F5** S. 1(14) added (1.4.1996) by virtue of [1995 c. 25, s. 120\(1\)](#), [Sch. 22 para. 45\(4\)](#)(with ss. 7(6), 115, 117); [S.I. 1996/186, art.3](#)

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

- C1** Definitions in s. 1 applied (E.W.) (1. 12. 1991) by [Water Industry Act 1991 \(c. 56, SIF 130\)](#), [ss. 138\(4\)\(a\), 223](#) (with [ss. 82\(3\), 186\(1\), 222\(1\)](#)), [Sch. 14 para. 6](#)  
S. 1 applied (1.3.1996) by [1986 c. 44, s. 4](#) (as substituted (1.3.1996) by [1995 c. 45, s. 1](#); [S.I. 1996/218, art. 2](#))

#### Marginal Citations

- M1** [1974 c. 40.](#)  
**M2** [1968 c. 47.](#)

## 2 Prescribed processes and prescribed substances.

- (1) The Secretary of State may, by regulations, prescribe any description of process as a process for the carrying on of which after a prescribed date an authorisation is required under section 6 below.
- (2) Regulations under subsection (1) above may frame the description of a process by reference to any characteristics of the process or the area or other circumstances in which the process is carried on or the description of person carrying it on.
- (3) Regulations under subsection (1) above may prescribe or provide for the determination under the regulations of different dates for different descriptions of persons and may include such transitional provisions as the Secretary of State considers necessary or expedient as respects the making of applications for authorisations and suspending the

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application of section 6(1) below until the determination of applications made within the period allowed by the regulations.

- (4) Regulations under subsection (1) above shall, as respects each description of process, designate it as one for central control or one for local control.
- (5) The Secretary of State may, by regulations, prescribe any description of substance as a substance the release of which into the environment is subject to control under sections 6 and 7 below.
- (6) Regulations under subsection (5) above may—
  - (a) prescribe separately, for each environmental medium, the substances the release of which into that medium is to be subject to control; and
  - (b) provide that a description of substance is only prescribed, for any environmental medium, so far as it is released into that medium in such amounts over such periods, in such concentrations or in such other circumstances as may be specified in the regulations;
 and in relation to a substance of a description which is prescribed for releases into the air, the regulations may designate the substance as one for central control or one for local control.
- (7) In this Part “prescribed substance” means any substance of a description prescribed in regulations under subsection (5) above or, in the case of a substance of a description prescribed only for releases in circumstances specified under subsection (6)(b) above, means any substance of that description which is released in those circumstances.

### **3 Emission etc. limits and quality objectives.**

- (1) The Secretary of State may make regulations under subsection (2) or (4) below establishing standards, objectives or requirements in relation to particular prescribed processes or particular substances.
- (2) Regulations under this subsection may—
  - (a) in relation to releases of any substance from prescribed processes into any environmental medium, prescribe standard limits for—
    - (i) the concentration, the amount or the amount in any period of that substance which may be so released; and
    - (ii) any other characteristic of that substance in any circumstances in which it may be so released;
  - (b) prescribe standard requirements for the measurement or analysis of, or of releases of, substances for which limits have been set under paragraph (a) above; and
  - (c) in relation to any prescribed process, prescribe standards or requirements as to any aspect of the process.
- (3) Regulations under subsection (2) above may make different provision in relation to different cases, including different provision in relation to different processes, descriptions of person, localities or other circumstances.
- (4) Regulations under this subsection may establish for any environmental medium (in all areas or in specified areas) quality objectives or quality standards in relation to any substances which may be released into that or any other medium from any process.
- (5) The Secretary of State may make plans for—

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- (a) establishing limits for the total amount, or the total amount in any period, of any substance which may be released into the environment in, or in any area within, the United Kingdom;
  - (b) allocating quotas as respects the release of substances to persons carrying on processes in respect of which any such limit is established;
  - (c) establishing limits of the descriptions specified in subsection (2)(a) above so as progressively to reduce pollution of the environment;
  - (d) the progressive improvement in the quality objectives and quality standards established by regulations under subsection (4) above;
- and the Secretary of State may, from time to time, revise any plan so made.
- (6) Regulations or plans under this section may be made for any purposes of this Part or for other purposes.
- (7) The Secretary of State shall give notice in the London, Edinburgh and Belfast Gazettes of the making and the revision of any plan under subsection (5) above and shall make the documents containing the plan, or the plan as so revised, available for inspection by members of the public at the places specified in the notice.
- <sup>F6</sup>(8) .....

**Textual Amendments**

**F6** S. 3(8) repealed (2.12.1999) by 1998 c. 47, s. 100(2), **Sch. 15** (with s. 95); S.I. 1999/3209, art. 2, **Sch.**

**4 Discharge and scope of functions.**

- (1) This section determines the authority by whom the functions conferred or imposed by this Part otherwise than on the Secretary of State are exercisable and the purposes for which they are exercisable.
- (2) Those functions, in their application to prescribed processes designated for central control, shall be functions of [<sup>F7</sup>the appropriate Agency], and shall be exercisable for the purpose of preventing or minimising pollution of the environment due to the release of substances into any environmental medium.
- (3) Subject to subsection (4) below, those functions, in their application to prescribed processes designated for local control, shall be functions of—
- [<sup>F8</sup>(a) in the case of a prescribed process carried on (or to be carried on) by means of a mobile plant, where the person carrying on the process has his principal place of business—
    - (i) in England and Wales, the local authority in whose area that place of business is;
    - (ii) in Scotland, SEPA;
  - (b) in any other cases, where the prescribed processes are (or are to be) carried on—
    - (i) in England and Wales, the local authority in whose area they are (or are to be) carried on;
    - (ii) in Scotland, SEPA;]

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and the functions applicable to such processes shall be exercisable for the purpose of preventing or minimising pollution of the environment due to the release of substances into the air (but not into any other environmental medium).

- (4) The Secretary of State may, as respects the functions under this Part being exercised by a local authority specified in the direction, direct that those functions shall be exercised instead by [<sup>F9</sup>the Environment Agency] while the direction remains in force or during a period specified in the direction.
- [<sup>F10</sup>(4A) In England and Wales, a local authority, in exercising the functions conferred or imposed on it under this Part by virtue of subsection (3) above, shall have regard to the strategy for the time being published pursuant to section 80 of the Environment Act 1995.]
- (5) A transfer of functions under subsection (4) above to [<sup>F11</sup>the Environment Agency] does not make them exercisable by [<sup>F11</sup>that Agency] for the purpose of preventing or minimising pollution of the environment due to releases of substances into any other environmental medium than the air.
- (6) A direction under subsection (4) above may transfer those functions as exercisable in relation to all or any description of prescribed processes carried on by all or any description of persons (a “general direction”) or in relation to a prescribed process carried on by a specified person (a “specific direction”).
- (7) A direction under subsection (4) above may include such saving and transitional provisions as the Secretary of State considers necessary or expedient.
- (8) The Secretary of State, on giving or withdrawing a direction under subsection (4) above, shall—
- (a) in the case of a general direction—
    - (i) forthwith serve notice of it on [<sup>F12</sup>the Environment Agency] and on the local enforcing authorities affected by the direction; and
    - (ii) cause notice of it to be published as soon as practicable in the London Gazette <sup>F13</sup> . . . and in at least one newspaper circulating in the area of each authority affected by the direction;
  - (b) in the case of a specific direction—
    - (i) forthwith serve notice of it on [<sup>F12</sup>the Environment Agency], the local enforcing authority and the person carrying on or appearing to the Secretary of State to be carrying on the process affected, and
    - (ii) cause notice of it to be published as soon as practicable in the London Gazette <sup>F13</sup> . . . and in at least one newspaper circulating in the authority’s area;

and any such notice shall specify the date at which the direction is to take (or took) effect and (where appropriate) its duration.
- [<sup>F14</sup>(8A) The requirements of sub-paragraph (ii) of paragraph (a) or, as the case may be, of paragraph (b) of subsection (8) above shall not apply in any case where, in the opinion of the Secretary of State, the publication of notice in accordance with that sub-paragraph would be contrary to the interests of national security.
- (8B) Subsections (4) to (8A) above shall not apply to Scotland.]
- [<sup>F15</sup>(9) It shall be the duty of local authorities to follow such developments in technology and techniques for preventing or reducing pollution of the environment due to releases of

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substances from prescribed processes as concern releases into the air of substances from prescribed processes designated for local control.]

(10) It shall be the duty of [<sup>F16</sup>the Environment Agency, SEPA] and the local enforcing authorities to give effect to any directions given to them under any provision of this Part.

(11) In this Part “local authority” means, subject to subsection (12) below—

(a) in Greater London, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple;

(b) [<sup>F17</sup>in England <sup>F17</sup>. . .], outside Greater London, a district council and the Council of the Isles of Scilly; <sup>F18</sup>. . .

[<sup>F19</sup>(bb) in Wales, a county council or county borough council;]

<sup>F18</sup>(c) . . . . .

(12) Where, by an order under section 2 of the <sup>M3</sup>Public Health (Control of Disease) Act 1984, a port health authority has been constituted for any port health district, the port health authority shall have by virtue of this subsection, as respects its district, the functions conferred or imposed by this Part and no such order shall be made assigning those functions; and “local authority” and “area” shall be construed accordingly.

#### Textual Amendments

- F7** Words in s. 4(2) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 46(2)**(with ss. 7(6), 115); **S.I. 1996/186, art. 3**
- F8** S. 4(3)(a)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 46(3)**(with ss. 7(6), 115); **S.I. 1996/186, art. 3**
- F9** Words in s. 4(4) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 46(4)**(with ss. 7(6), 115); **S.I. 1996/186, art. 3**
- F10** S. 4(4A) inserted (23.12.1997) by 1995 c. 25, s. 120(1), **Sch. 22 para. 46(5)** (with ss. 7(6), 115); **S.I. 1997/3044, art.2**
- F11** Words in s. 4(5) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 46(6)(a)(b)**(with ss. 7(6), 115); **S.I. 1996/186, art. 3**
- F12** Words in s. 4(8) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 46(7)(a)**(with ss. 7(6), 115); **S.I. 1996/186, art. 3**
- F13** Words in s. 4(8) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 46(7)(b), **Sch. 24** (with ss. 7(6), 115); **S.I. 1996/186, art. 3**
- F14** S. 4(8A)(8B) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 46(8)**(with ss. 7(6), 115); **S.I. 1996/186, art. 3**
- F15** S. 4(9) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 46(9)**(with ss. 7(6), 115); **S.I. 1996/186, art. 3**
- F16** Words in s. 4(10) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 46(10)**(with ss. 7(6), 115); **S.I. 1996/186, art. 3**
- F17** S. 4(11)(b): words 'In England and Wales' inserted and words 'and Wales' repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 46(11)(a)**, **Sch. 24** (with ss. 7(6), 115); **S.I. 1996/186, art. 3** words 'In England' expressed to be inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(1)** (with s. 54(7), **Sch. 17 paras. 22, 23(2)**); **S.I. 1996/396, art. 3**, Sch. 1 (which insertion by 1994 c. 19 falls (*prosp.*) by reason of the repeal of 1994 c. 19, **Sch. 9 para. 17(1)** by 1999 c. 24, s. 6(2), **Sch. 3**)
- F18** S. 4(11)(c) and the word immediately preceding it repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 46(11)(b)**, **Sch. 24** (with ss. 7(6), 115); **S.I. 1996/186, art. 3**
- F19** S. 4(11)(bb) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 19 para. 17(1)** (with s. 54(7), **Sch. 17 paras. 22, 23(2)**); **S.I. 1996/396, art. 3, Sch. 1**

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**Marginal Citations**

**M3** 1984 c. 22.

**F20** 5 .....

**Textual Amendments**

**F20** S. 5 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 47, **Sch.24**; S.I. 1996/186, **art.3**



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