



Environmental Protection Act 1990

1990 CHAPTER 43

PART II **U.K.**

WASTE ON LAND

Supplemental

73 **Appeals and other provisions relating to legal proceedings and civil liability.** **E** **+W+S**

- (1) An appeal against any decision of a magistrates' court under this Part (other than a decision made in criminal proceedings) shall lie to the Crown Court at the instance of any party to the proceedings in which the decision was given if such an appeal does not lie to the Crown Court by virtue of any other enactment.
- (2) In Scotland an appeal against any decision of the sheriff under this Part (other than a decision made in criminal proceedings) shall lie to the Court of Session at the instance of any party to the proceedings in which the decision was given if such an appeal does not lie to the Court of Session by virtue of any other enactment.
- (3) Where a person appeals to the Crown Court or the Court of Session against a decision of a magistrates' court or the sheriff dismissing an appeal against any requirement imposed under this Part which was suspended pending determination of that appeal, the requirement shall again be suspended pending the determination of the appeal to the Crown Court or Court of Session.
- (4) Where an appeal against a decision of any authority lies to a magistrates' court or to the sheriff by virtue of any provision of this Part, it shall be the duty of the authority to include in any document by which it notifies the decision to the person concerned a statement indicating that such an appeal lies and specifying the time within which it must be brought.
- (5) Where on an appeal to any court against or arising out of a decision of any authority under this Part the court varies or reverses the decision it shall be the duty of the authority to act in accordance with the court's decision.

Status: Point in time view as at 01/04/1992. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Environmental Protection Act 1990, Cross Heading: Supplemental is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (6) Where any damage is caused by waste which has been deposited in or on land, any person who deposited it, or knowingly caused or knowingly permitted it to be deposited, in either case so as to commit an offence under section 33(1) or 63(2) above, is liable for the damage except where the damage—
- (a) was due wholly to the fault of the person who suffered it; or
 - (b) was suffered by a person who voluntarily accepted the risk of the damage being caused;
- but without prejudice to any liability arising otherwise than under this subsection.
- (7) The matters which may be proved by way of defence under section 33(7) above may be proved also by way of defence to an action brought under subsection (6) above.
- (8) In subsection (6) above—
- “damage” includes the death of, or injury to, any person (including any disease and any impairment of physical or mental condition); and
- “fault” has the same meaning as in the ^{M1}Law Reform (Contributory Negligence) Act 1945.
- (9) For the purposes of the following enactments—
- (a) the ^{M2}Fatal Accidents Act 1976;
 - (b) the Law Reform (Contributory Negligence) Act 1945; and
 - (c) the ^{M3}Limitation Act 1980;
- and for the purposes of any action of damages in Scotland arising out of the death of, or personal injury to, any person, any damage for which a person is liable under subsection (6) above shall be treated as due to his fault.

Extent Information

E1 For extent see s. 164(4)(5).

Commencement Information

II S. 73 wholly in force at 1.5.1994; s. 73 not in force at Royal Assent, see s. 164(3); s. 73(1)-(5) in force at 1.4.1992 by S.I. 1992/266, art. 3; s. 73 in force in so far as not already in force at 1.5.1994 by S.I. 1994/1096, art. 2(1)

Marginal Citations

M1 1945 c. 28.
M2 1976 c. 30.
M3 1980 c. 58.

VALID FROM 16/03/2006

[^{F1}73A Use of fixed penalty receipts **E+W**

- (1) The Environment Agency must pay amounts received by it under section 34A above to the Secretary of State.
- (2) A waste collection authority may use amounts received by it under section 34A or 47ZA above (its “fixed penalty receipts”) only for the purposes of—

Status: Point in time view as at 01/04/1992. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Environmental Protection Act 1990, Cross Heading: Supplemental is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) its functions under this Part (including functions relating to the enforcement of offences under this Part); and
 - (b) such other of its functions as may be specified in regulations made by the appropriate person.
- (3) Regulations under subsection (2)(b) above may (in particular) have the effect that a waste collection authority may use its fixed penalty receipts for the purposes of any of its functions.
- (4) A waste collection authority must supply the appropriate person with such information relating to its use of its fixed penalty receipts as the appropriate person may require.
- (5) The appropriate person may by regulations—
 - (a) make provision for what a waste collection authority is to do with its fixed penalty receipts—
 - (i) pending their being used for the purposes of functions of the authority referred to in subsection (2) above;
 - (ii) if they are not so used before such time after their receipt as may be specified by the regulations;
 - (b) make provision for accounting arrangements in respect of a waste collection authority's fixed penalty receipts.
- (6) The provision that may be made under subsection (5)(a)(ii) above includes (in particular) provision for the payment of sums to a person (including the appropriate person) other than the waste collection authority.
- (7) Before making regulations under this section, the appropriate person must consult—
 - (a) the waste collection authorities to which the regulations are to apply;
 - (b) such other persons as the appropriate person thinks fit.
- (8) Regulations under this section may make different provision for different purposes (including different provision in relation to different authorities or different descriptions of authority).
- (9) The powers to make regulations conferred by this section are, for the purposes of subsection (1) of section 100 of the Local Government Act 2003, to be regarded as included among the powers mentioned in subsection (2) of that section.]

Textual Amendments

- F1** S. 73A inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) by [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#), **ss. 52**, **108**; [S.I. 2006/768](#), **art. 3**; [S.I. 2006/795](#), **art. 2(3)**, **Sch. 2**; [S.I. 2006/2797](#), **art. 4**

VALID FROM 18/02/1993

74 Meaning of “fit and proper person”. **E+W+S**

- (1) The following provisions apply for the purposes of the discharge by a waste regulation authority of any function under this Part which requires the authority

Status: Point in time view as at 01/04/1992. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Environmental Protection Act 1990, Cross Heading: Supplemental is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

to determine whether a person is or is not a fit and proper person to hold a waste management licence.

- (2) Whether a person is or is not a fit and proper person to hold a licence is to be determined by reference to the carrying on by him of the activities which are or are to be authorised by the licence and the fulfilment of the requirements of the licence.
- (3) Subject to subsection (4) below, a person shall be treated as not being a fit and proper person if it appears to the authority—
 - (a) that he or another relevant person has been convicted of a relevant offence;
 - (b) that the management of the activities which are or are to be authorised by the licence are not or will not be in the hands of a technically competent person; or
 - (c) that the person who holds or is to hold the licence has not made and either has no intention of making or is in no position to make financial provision adequate to discharge the obligations arising from the licence.
- (4) The authority may, if it considers it proper to do so in any particular case, treat a person as a fit and proper person notwithstanding that subsection (3)(a) above applies in his case.
- (5) It shall be the duty of waste regulation authorities to have regard to any guidance issued to them by the Secretary of State with respect to the discharge of their functions of making the determinations to which this section applies.
- (6) The Secretary of State may, by regulations, prescribe the offences that are relevant for the purposes of subsection (3)(a) above and the qualifications and experience required of a person for the purposes of subsection (3)(b) above.
- (7) For the purposes of subsection (3)(a) above, another relevant person shall be treated, in relation to the licence holder or proposed licence holder, as the case may be, as having been convicted of a relevant offence if—
 - (a) any person has been convicted of a relevant offence committed by him in the course of his employment by the holder or, as the case may be, the proposed holder of the licence or in the course of the carrying on of any business by a partnership one of the members of which was the holder or, as the case may be, the proposed holder of the licence;
 - (b) a body corporate has been convicted of a relevant offence committed when the holder or, as the case may be, the proposed holder of the licence was a director, manager, secretary or other similar officer of that body corporate; or
 - (c) where the holder or, as the case may be, the proposed holder of the licence is a body corporate, a person who is a director, manager, secretary or other similar officer of that body corporate—
 - (i) has been convicted of a relevant offence; or
 - (ii) was a director, manager, secretary or other similar officer of another body corporate at a time when a relevant offence for which that other body corporate has been convicted was committed.

Status: Point in time view as at 01/04/1992. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Environmental Protection Act 1990, Cross Heading: Supplemental is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Commencement Information

- I2** S. 74 wholly in force at 1.5.1994; s. 74 not in force at Royal Assent, see s. 164(3); s. 74(6) in force at 18.2.1993 by [S.I. 1993/274](#), [art. 2\(1\)](#); s. 74 in force in so far as not already in force at 1.5.1994 by [S.I. 1994/1096](#), [art. 2\(1\)](#)

75 Meaning of “waste” and household, commercial and industrial waste and special waste. **E+W+S**

- (1) The following provisions apply for the interpretation of this Part.
- (2) “Waste” includes—
 - (a) any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process; and
 - (b) any substance or article which requires to be disposed of as being broken, worn out, contaminated or otherwise spoiled;but does not include a substance which is an explosive within the meaning of the ^{M4}Explosives Act 1875.
- (3) Any thing which is discarded or otherwise dealt with as if it were waste shall be presumed to be waste unless the contrary is proved.
- (4) “Controlled waste” means household, industrial and commercial waste or any such waste.
- (5) Subject to subsection (8) below, “household waste” means waste from—
 - (a) domestic property, that is to say, a building or self-contained part of a building which is used wholly for the purposes of living accommodation;
 - (b) a caravan (as defined in section 29(1) of the ^{M5}Caravan Sites and Control of Development Act 1960) which usually and for the time being is situated on a caravan site (within the meaning of that Act);
 - (c) a residential home;
 - (d) premises forming part of a university or school or other educational establishment;
 - (e) premises forming part of a hospital or nursing home.
- (6) Subject to subsection (8) below, “industrial waste” means waste from any of the following premises—
 - (a) any factory (within the meaning of the ^{M6}Factories Act 1961);
 - (b) any premises used for the purposes of, or in connection with, the provision to the public of transport services by land, water or air;
 - (c) any premises used for the purposes of, or in connection with, the supply to the public of gas, water or electricity or the provision of sewerage services; or
 - (d) any premises used for the purposes of, or in connection with, the provision to the public of postal or telecommunications services.
- (7) Subject to subsection (8) below, “commercial waste” means waste from premises used wholly or mainly for the purposes of a trade or business or the purposes of sport, recreation or entertainment excluding—
 - (a) household waste;
 - (b) industrial waste;

Status: Point in time view as at 01/04/1992. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Environmental Protection Act 1990, Cross Heading: Supplemental is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (c) waste from any mine or quarry and waste from premises used for agriculture within the meaning of the ^{M7}Agriculture Act 1947 or, in Scotland, the ^{M8}Agriculture (Scotland) Act 1948; and
 - (d) waste of any other description prescribed by regulations made by the Secretary of State for the purposes of this paragraph.
- (8) Regulations made by the Secretary of State may provide that waste of a description prescribed in the regulations shall be treated for the purposes of provisions of this Part prescribed in the regulations as being or not being household waste or industrial waste or commercial waste; but no regulations shall be made in respect of such waste as is mentioned in subsection (7)(c) above and references to waste in subsection (7) above and this subsection do not include sewage (including matter in or from a privy) except so far as the regulations provide otherwise.
- (9) “Special waste” means controlled waste as respects which regulations are in force under section 62 above.

Commencement Information

I3 S. 75 wholly in force at 31.5.1991 see s. 164(3) and [S.I. 1991/1319, art. 2](#)

Marginal Citations

M4 1875 c. 17.
M5 1960 c. 62.
M6 1961 c. 34.
M7 1947 c. 48.
M8 1948 c. 45.

76 Application of this Part to Isles of Scilly. **E+W+S**

This Part shall have effect in its application to the Isles of Scilly with such modifications as the Secretary of State may by order specify.

77 Transition from Control of Pollution Act 1974 to this Part. **E+W+S**

- (1) This section has effect for the purposes of the transition from the provisions of Part I of the ^{M9}Control of Pollution Act 1974 (“the 1974 Act”) to the corresponding provisions of this Part of this Act and in this section—

“existing disposal authority” has the same meaning as in section 32 above;

“existing disposal licence” means a disposal licence under section 5 of the 1974 Act subsisting on the day appointed under section 164(3) below for the repeal of sections 3 to 10 of the 1974 Act and “relevant appointed day for licences” shall be construed accordingly;

“existing disposal plan” means a plan under section 2 of the 1974 Act subsisting on the day appointed under section 164(3) below for the repeal of that section and “relevant appointed day for plans” shall be construed accordingly;

“relevant part of its undertaking”, in relation to an existing disposal authority, has the same meaning as in section 32 above; and

“the vesting date”, in relation to an existing disposal authority and its waste disposal contractors, means the vesting date under Schedule 2 to this Act.

Status: Point in time view as at 01/04/1992. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Environmental Protection Act 1990, Cross Heading: Supplemental is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) An existing disposal licence shall, on and after the relevant appointed day for licences, be treated as a site licence until it expires or otherwise ceases to have effect; and accordingly it shall be variable and subject to revocation or suspension under this Part of this Act and may not be surrendered or transferred except under this Part of this Act.
- (3) The restriction imposed by section 33(1) above shall not apply in relation to land occupied by an existing disposal authority for which a resolution of the authority subsists under section 11 of the 1974 Act on the relevant appointed day for licences until the following date, that is to say—
 - (a) in the case of an authority which transfers the relevant part of its undertaking in accordance with a scheme under Schedule 2 to this Act, the date which is the vesting date for that authority; and
 - (b) in any other case, the date on which the authority transfers, or ceases itself to carry on, the relevant part of its undertaking or ceases to provide places at which and plant and equipment by means of which controlled waste can be disposed of or deposited for the purposes of disposal.
- (4) Any existing disposal plan of an existing disposal authority shall, on and after the relevant appointed day for plans, be treated as the plan of that authority under section 50 above and that section shall accordingly have effect as if references in it to “the plan” included the existing disposal plan of that authority.
- (5) Subsection (4) above applies to Scotland and, for the purposes of that application, “existing disposal authority” means any authority constituted as a disposal authority for any area before the day appointed for this section to come into force and “that authority” means the waste disposal authority for that area under section 30(2) above.
- (6) Subject to subsection (7) below, as respects any existing disposal authority—
 - (a) the restriction imposed by section 51(1) of this Act on the means whereby the authority arranges for the disposal of controlled waste shall not apply to the authority—
 - (i) in the case of an authority which transfers the relevant part of its undertaking in accordance with a scheme under Schedule 2 to this Act, until the date which is the vesting date for that authority; and
 - (ii) in any other case, until the date on which the authority transfers, or ceases itself to carry on, the relevant part of its undertaking or ceases to provide places at which and plant and equipment by means of which controlled waste can be disposed of or deposited for the purposes of disposal; and
 - (b) on and after that date, section 14(4) of the 1974 Act shall not authorise the authority to arrange for the disposal of controlled waste except by means of arrangements made (in accordance with Part II of Schedule 2 to this Act) with waste disposal contractors.
- (7) The Secretary of State may, as respects any existing disposal authority, direct that the restriction imposed by section 51(1) above shall not apply in the case of that authority until such date as he specifies in the direction and where he does so paragraph (a) of subsection (6) above shall not apply and paragraph (b) shall be read as referring to the date so specified.
- (8) In section 14(4) of the 1974 Act, after the words “this subsection”, there shall be inserted the words “but subject to subsection (6) of section 77 of the Environmental

Status: Point in time view as at 01/04/1992. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Environmental Protection Act 1990, Cross Heading: Supplemental is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Protection Act 1990 as respects any time after the date applicable to the authority under paragraph (a) or (b) of that subsection”.

- (9) As respects any existing disposal authority, until the date which is, under subsection (6) (a) above, the date until which the restriction imposed by section 51(1) of this Act is disappplied,—
- (a) the powers conferred on a waste disposal authority by section 55(2)(a) and (b) of this Act as respects the recycling of waste and the use of waste to produce heat or electricity shall be treated as powers which the authority may exercise itself; and
 - (b) the power conferred on a waste disposal authority by section 48(4) of this Act to object to a waste collection authority having waste recycled where the disposal authority has made arrangements with a waste disposal contractor for the contractor to recycle the waste shall be available to the waste disposal authority where it itself has the waste recycled.

Modifications etc. (not altering text)

C1 S. 77(2) extended (27.7.1999) by 1999 c. 24, s. 4(3)(5)(8)

Commencement Information

I4 S. 77 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, art. 2

Marginal Citations

M9 1974 c. 40.

78 This Part and radioactive substances. **E+W+S**

Except as provided by regulations made by the Secretary of State under this section, nothing in this Part applies to radioactive waste within the meaning of the ^{M10}Radioactive Substances Act 1960; but regulations may—

- (a) provide for prescribed provisions of this Part to have effect with such modifications as the Secretary of State considers appropriate for the purposes of dealing with such radioactive waste;
- (b) make such modifications of the Radioactive Substances Act 1960 and any other Act as the Secretary of State considers appropriate.

Commencement Information

I5 S. 78 wholly in force at 13.12.1991 see s. 164(3) and S.I. 1991/2829, art. 2.

Marginal Citations

M10 1960 c. 34.

Status:

Point in time view as at 01/04/1992. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation:

Environmental Protection Act 1990, Cross Heading: Supplemental is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.