



# Environmental Protection Act 1990

## 1990 CHAPTER 43

### PART II

#### WASTE ON LAND

##### *Waste Management Licences*

#### 35 Waste management licences: general.

- [<sup>F1</sup>(1) A waste management licence is a licence granted by a waste regulation authority authorising the treatment, keeping or disposal of any specified description of controlled waste in or on specified land or the treatment or disposal of any specified description of controlled waste by means of specified mobile plant.
- (2) A licence shall be granted to the following person, that is to say—
- (a) in the case of a licence relating to the treatment, keeping or disposal of waste in or on land, to the person who is in occupation of the land; and
  - (b) in the case of a licence relating to the treatment or disposal of waste by means of mobile plant, to the person who operates the plant.
- (3) A licence shall be granted on such terms and subject to such conditions as appear to the waste regulation authority to be appropriate and the conditions may relate—
- (a) to the activities which the licence authorises, [<sup>F2</sup>and]
  - (b) to the precautions to be taken and works to be carried out in connection with or in consequence of those activities;
  - [<sup>F3</sup>(c) to the location of the boundaries of the specified land;]
- and accordingly requirements may be imposed in the licence which are to be complied with before the activities which the licence authorises have begun or after the activities which the licence authorises have ceased.
- (4) Conditions may require the holder of a licence to carry out works or do other things notwithstanding that he is not entitled to carry out the works or do the thing and any person whose consent would be required shall grant, or join in granting, the holder of

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the licence such rights in relation to the land as will enable the holder of the licence to comply with any requirements imposed on him by the licence.

- (5) Conditions may relate, where waste other than controlled waste is to be treated, kept or disposed of, to the treatment, keeping or disposal of that other waste.
- (6) The Secretary of State may, by regulations, make provision as to the conditions which are, or are not, to be included in a licence; and regulations under this subsection may make different provision for different circumstances.
- (7) The Secretary of State may, as respects any licence for which an application is made to a waste regulation authority, give to the authority directions as to the terms and conditions which are, or are not, to be included in the licence; and it shall be the duty of the authority to give effect to the directions.

<sup>F4</sup>[(7A) In any case where—

- (a) an entry is required under this section to be made in any record as to the observance of any condition of a licence, and
- (b) the entry has not been made,

that fact shall be admissible as evidence that that condition has not been observed.

<sup>F4</sup>(7B) Any person who—

- (a) intentionally makes a false entry in any record required to be kept under any condition of a licence, or
- (b) with intent to deceive, forges or uses a licence or makes or has in his possession a document so closely resembling a licence as to be likely to deceive,

shall be guilty of an offence.

<sup>F4</sup>(7C) A person guilty of an offence under subsection (7B) above shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.]

- (8) 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 in relation to licences.
- (9) A licence may not be surrendered by the holder except in accordance with section 39 below.
- (10) A licence is not transferable by the holder but the waste regulation authority may transfer it to another person under section 40 below.
- (11) A licence shall continue in force until [<sup>F5</sup>it ceases to have effect under subsection (11A) below,] it is revoked entirely by the waste regulation authority under section 38 below or it is surrendered or its surrender is accepted under section 39 below.

<sup>F6</sup>(11A) A licence shall cease to have effect if and to the extent that the treatment, keeping or disposal of waste authorised by the [<sup>F7</sup>license][<sup>F7</sup>licence] is authorised by a permit granted under regulations under section 2 of the Pollution Prevention and Control Act 1999][<sup>F8</sup>or by an authorisation under regulations under section 18 of the Regulatory Reform (Scotland) Act 2014].

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- (12) In this Part “licence” means a waste management licence and “site licence” and “mobile plant licence” mean, respectively, a licence authorising the treatment, keeping or disposal of waste in or on land and a licence authorising the treatment or disposal of waste by means of mobile plant.]

#### Textual Amendments

- F1** S. 35 repealed (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)
- F2** Word in s. 35(3) omitted (S.) (27.3.2011) by virtue of [The Waste \(Scotland\) Regulations 2011 \(S.I. 2011/226\)](#), regs. 1(1), **2(5)**
- F3** S. 35(3)(c) inserted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.I. 2011/226\)](#), regs. 1(1), **2(5)**
- F4** S. 35(7A)-(7C) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 66(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F5** Words in s. 35(11) inserted (E.W.) (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 Pt. 1 para. 5(a)** and inserted (S.) (28.9.2000) by S.S.I. 2000/323, reg. 36, **Sch. 10 Pt. 1 para. 3(4)(a)**
- F6** S. 35(11A) inserted (E.W.) (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 Pt. 1 para. 5(b)** and inserted (S.) (28.9.2000) by S.S.I. 2000/323, reg. 36, **Sch. 10 Pt. 1 para. 3(4)(b)**
- F7** Word in s. 35(11A) substituted (S.) (7.1.2013) by [The Pollution Prevention and Control \(Scotland\) Regulations 2012 \(S.S.I. 2012/360\)](#), reg. 1(2), **sch. 11 para. 1(4)** (with reg. 71)
- F8** Words in s. 35(11A) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), **sch. 3 para. 3(2)**; S.S.I. 2014/160, art. 2(1)(2), sch.

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

- C4** S. 35 amended (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 Pt. I para. 9(5)**
- C5** S. 35(11) extended (27.7.1999) by 1999 c. 24, **s.4(1)(3)(4)(5)(8)**

#### Commencement Information

- I2** S. 35 not in force at Royal Assent, see s. 164(3); s. 35(6) in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**; s. 35 in force in so far as not already in force at 1.5.1994 save for purposes of application to activities specified in art. 2(2) of the commencing S.I. and otherwise in force in relation to those activities in accordance with art. 3 of the commencing S.I. by S.I. 1994/1096, **arts. 2(2)(3)**, 3 (as amended by S.I. 1994/2487, **art. 2** and S.I. 1994/3234, **art. 2**)

### <sup>F9</sup>[35A Compensation where rights granted pursuant to section 35(4) or 38(9A).

[<sup>F10</sup>(1) This section applies in any case where—

- (a) the holder of a licence is required—
- (i) by the conditions of the licence; or
- (ii) by a requirement imposed under section 38(9) below,
- to carry out any works or do any other thing which he is not entitled to carry out or do;
- (b) a person whose consent would be required has, pursuant to the requirements of section 35(4) above or 38(9A) below, granted, or joined in granting, to the holder of the licence any rights in relation to any land; and
- (c) those rights, or those rights together with other rights, are such as will enable the holder of the licence to comply with any requirements imposed on him by the licence or, as the case may be, under section 38(9) below.

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- (2) In a case where this section applies, any person who has granted, or joined in granting, the rights in question shall be entitled to be paid compensation under this section by the holder of the licence.
- (3) The Secretary of State shall by regulations provide for the descriptions of loss and damage for which compensation is payable under this section.
- (4) The Secretary of State may by regulations—
- (a) provide for the basis on which any amount to be paid by way of compensation under this section is to be assessed;
  - (b) without prejudice to the generality of subsection (3) and paragraph (a) above, provide for compensation under this section to be payable in respect of—
    - (i) any effect of any rights being granted, or
    - (ii) any consequence of the exercise of any rights which have been granted;
  - (c) provide for the times at which any entitlement to compensation under this section is to arise or at which any such compensation is to become payable;
  - (d) provide for the persons or bodies by whom, and the manner in which, any dispute—
    - (i) as to whether any, and (if so) how much and when, compensation under this section is payable; or
    - (ii) as to the person to or by whom it shall be paid,
 is to be determined;
  - (e) provide for when or how applications may be made for compensation under this section;
  - (f) without prejudice to the generality of paragraph (d) above, provide for when or how applications may be made for the determination of any such disputes as are mentioned in that paragraph;
  - (g) without prejudice to the generality of paragraphs (e) and (f) above, prescribe the form in which any such applications as are mentioned in those paragraphs are to be made;
  - (h) make provision similar to any provision made by paragraph 8 of Schedule 19 to the <sup>M1</sup>Water Resources Act 1991;
  - (j) make different provision for different cases, including different provision in relation to different persons or circumstances;
  - (k) include such incidental, supplemental, consequential or transitional provision as the Secretary of State considers appropriate.]]

#### Textual Amendments

- F9** S. 35A inserted (1.2.1996 for limited purposes, 1.4.1998 in so far as it imposes a duty, or confers power, to make regulations and 1.4.1999 so far as not already in force) by 1995 c. 25, s. 120(1), **Sch. 22 para.67** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 2**; S.I. 1998/604, **art.2**; S.I. 1999/803, **art. 3**
- F10** S. 35A repealed (E.W.) (6.4.2008) by **The Environmental Permitting (England and Wales) Regulations 2007** (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)

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

- C6** S. 35A(4) applied by 1991 c. 57, s. 161B(6) (as inserted (21.9.1995 for limited purposes, 16.3.1999 for limited purposes and 29.4.1999 so far as not already in force) by 1995 c. 25, s. 120(1), **Sch. 22 para.162** (with ss. 7(6), 115, 117): S.I. 1995/1983, **art.3**; S.I. 1999/803, **art. 2**; S.I. 1999/1301, **art. 2**

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### Marginal Citations

M1 1991 c. 28.

## 36 Grant of licences. **E+W**

F11 .....

### Extent Information

E1 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

### Textual Amendments

F11 S. 36 repealed (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)

## 36 Grant of licences. **S**

- (1) An application for a licence shall be made—
- (a) in the case of an application for a site licence, to the waste regulation authority in whose area the land is situated; and
  - (b) in the case of an application for a mobile plant licence, to the waste regulation authority in whose area the operator of the plant has his principal place of business;

[<sup>F61</sup>and shall be made on a form provided for the purpose by the waste regulation authority and accompanied by such information as that authority reasonably requires and the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995.

<sup>F61</sup>(1A) Where an applicant for a licence fails to provide the waste regulation authority with any information required under subsection (1) above, the authority may refuse to proceed with the application, or refuse to proceed with it until the information is provided.]

- (2) A licence shall not be issued for a use of land for which planning permission is required in pursuance of the <sup>M4</sup>Town and Country Planning Act 1990 or the <sup>M5</sup>Town and Country Planning (Scotland) Act 1972 unless—
- (a) such planning permission is in force in relation to that use of the land, or
  - (b) an established use certificate is in force under section 192 of the said Act of 1990 or section 90 of the said Act of 1972 in relation to that use of the land.
- (3) Subject to subsection (2) above and subsection (4) below, a waste regulation authority to which an application for a licence has been duly made shall not reject the application if it is satisfied that the applicant is a fit and proper person unless it is satisfied that its rejection is necessary for the purpose of preventing—
- (a) pollution of the environment;
  - (b) harm to human health; or
  - (c) serious detriment to the amenities of the locality;

but paragraph (c) above is inapplicable where planning permission is in force in relation to the use to which the land will be put under the licence.

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- (4) Where the waste regulation authority proposes to issue a licence, the authority must, before it does so,—
  - (a) refer the proposal to [<sup>F62</sup>the appropriate planning authority] and the [<sup>F63</sup>safety regulator]; and
  - (b) consider any representations about the proposal which the [<sup>F62</sup>authority] or the [<sup>F64</sup>safety regulator] makes to it during the allowed period.

<sup>F65</sup>(5) .....

<sup>F65</sup>(6) .....

- (7) Where any part of the land to be used is [<sup>F66</sup>within a site of special scientific interest or any area in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6) has effect] and the waste regulation authority proposes to issue a licence, the authority must, before it does so—
  - (a) refer the proposal to the appropriate nature conservation body; and
  - (b) consider any representations about the proposal which the body makes to it during the allowed period;

and in this section any reference to the appropriate nature conservation body is a reference to [<sup>F67</sup>Natural England], [<sup>F68</sup>Scottish Natural Heritage] or the [<sup>F69</sup>Natural Resources Body for Wales], according as the land is situated in England, Scotland or Wales.

<sup>F70</sup>(8) .....

- (9) If within the period of four months beginning with the date on which a waste regulation authority received an application for the grant of a licence, or within such longer period as the authority and the applicant may at any time agree in writing, the authority has neither granted the licence in consequence of the application nor given notice to the applicant that the authority has rejected the application, the authority shall be deemed to have rejected the application.

<sup>F71</sup>[(9A) Subsection (9) above—

- (a) shall not have effect in any case where, by virtue of subsection (1A) above, the waste regulation authority refuses to proceed with the application in question, and
- (b) shall have effect in any case where, by virtue of subsection (1A) above, the waste regulation authority refuses to proceed with it until the required information is provided, with the substitution for the period of four months there mentioned of the period of four months beginning with the date on which the authority received the information.]

<sup>F72</sup>[(10) The period allowed to the appropriate planning authority, the [<sup>F73</sup>safety regulator] or the appropriate nature conservancy body for the making of representations under subsection (4) or (7) above about a proposal is the period of twenty-eight days beginning with the day on which the proposal is received by the waste regulation authority or such longer period as the waste regulation authority, the appropriate planning authority, the [<sup>F74</sup>safety regulator] or the body, as the case may be, agree in writing.

- (11) In this section—

“the appropriate planning authority” means—

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- (a) where the relevant land is situated in the area of a London borough council, that London borough council;
- (b) where the relevant land is situated in the City of London, the Common Council of the City of London;
- (c) where the relevant land is situated in a non-metropolitan county in England, the council of that county;
- (d) where the relevant land is situated in a National Park or the Broads, the National Park authority for that National Park or, as the case may be, the Broads Authority;
- (e) where the relevant land is situated elsewhere in England or Wales, the council of the district or, in Wales, the county or county borough, in which the land is situated;
- (f) where the relevant land is situated in Scotland, the council constituted under section 2 of the<sup>M6</sup>Local Government etc. (Scotland) Act 1994 for the area in which the land is situated;

“the Broads” has the same meaning as in the<sup>M7</sup>Norfolk and Suffolk Broads Act 1988;

“National Park authority”,<sup>F75</sup> . . . means a National Park authority established under section 63 of the Environment Act 1995 which has become the local planning authority for the National Park in question;

“the relevant land” means—

- (a) in relation to a site licence, the land to which the licence relates; and
- (b) in relation to a mobile plant licence, the principal place of business of the operator of the plant to which the licence relates.

[<sup>F76</sup>“the safety regulator” means—

- (a) where the relevant land is, or is on, a nuclear site (within the meaning of Part 3 of the Energy Act 2013), the Office for Nuclear Regulation;
- (b) otherwise, the Health and Safety Executive.]

<sup>F77</sup>(12) . . . . .

(13) The Secretary of State may by regulations amend the definition of “appropriate planning authority” in subsection (11) above.

(14) This section shall have effect subject to section 36A below.]

#### Extent Information

**E3** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

**F61** In s. 36: words including s. 36(1A) substituted (1.4.1996 for limited purposes and 1.4.1998 in so far as not already in force) for words following para. 36(1)(b) by 1995 c. 25, s. 120(1), **Sch. 22 para. 68(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with saving in art. 4); S.I. 1998/604, **art. 2**.

**F62** Words in s. 36(4)(a)(b) substituted (1.4.1996, subject to a saving with modifications in S.I. 1996/186, **art. 4**, in relation to certain applications for a licence made before 1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 68(3)(a)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F63** Words in s. 36(4)(a) substituted (S.) (1.4.2014) by The Energy Act 2013 (Office for Nuclear Regulation) (Consequential Amendments, Transitional Provisions and Savings) Order 2014 (S.I. 2014/469), art. 1(2), **Sch. 2 para. 12(2)(a)** (with Sch. 4)

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- F64** Words in s. 36(4)(b) substituted (S.) (1.4.2014) by The Energy Act 2013 (Office for Nuclear Regulation) (Consequential Amendments, Transitional Provisions and Savings) Order 2014 (S.I. 2014/469), art. 1(2), **Sch. 2 para. 12(2)(b)** (with Sch. 4)
- F65** S. 36(5)(6) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 68(4), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F66** Words in s. 36(7) substituted (S.) (29.11.2004) by Nature Conservation (Scotland) Act 2004 (asp 6), ss. 57, 59(2), **Sch. 7 para. 7** (with s. 55); S.S.I. 2004/495, **art. 2**
- F67** Words in s. 36(7) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 116**; S.I. 2006/2541, **art. 2**
- F68** Words in s. 36(7) substituted (1.4.1992) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), s. 4(10), **Sch. 2 para. 10(2)**; S.I. 1991/2633, **art. 4**
- F69** Words in s. 36(7) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 214** (with Sch. 7)
- F70** S. 36(8) repealed (1.4.2015 for S.) by Environmental Protection Act 1990 (c. 43), s. 164(3), **Sch. 16 Pt. II**; S.S.I. 2015/72, art. 2(2)(f)
- F71** S. 36(9A) inserted (1.4.1998) by 1995 c. 25, s. 120(1), **Sch. 22 para. 68(5)** (with ss. 7(6), 115, 117); S.I. 1998/604, **art. 2**.
- F72** S. 36(10)-(14) substituted (1.4.1996) for s. 36(10) by 1995 c. 25, s. 120(1), **Sch. 22 para. 68(6)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with saving in art. 4)
- F73** Words in s. 36(10) substituted (S.) (1.4.2014) by The Energy Act 2013 (Office for Nuclear Regulation) (Consequential Amendments, Transitional Provisions and Savings) Order 2014 (S.I. 2014/469), art. 1(2), **Sch. 2 para. 12(3)(a)** (with Sch. 4)
- F74** Words in s. 36(10) substituted (S.) (1.4.2014) by The Energy Act 2013 (Office for Nuclear Regulation) (Consequential Amendments, Transitional Provisions and Savings) Order 2014 (S.I. 2014/469), art. 1(2), **Sch. 2 para. 12(3)(b)** (with Sch. 4)
- F75** S. 36(11): words in the definition of "National Park" repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**
- F76** Words in s. 36(11) inserted (S.) (1.4.2014) by The Energy Act 2013 (Office for Nuclear Regulation) (Consequential Amendments, Transitional Provisions and Savings) Order 2014 (S.I. 2014/469), art. 1(2), **Sch. 2 para. 12(4)** (with Sch. 4)
- F77** S. 36(12) repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**

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

- C16** S. 36(2)(a) extended (S.) (27.5.1997) by 1997 c. 8, **ss. 150(7)(c), 278(2)**
- C17** S. 36(3) amended (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 Pt. I para. 9(7)**

#### Commencement Information

- I9** S. 36 partly in force; s. 36 not in force at Royal Assent see. s. 164(3); s. 36(1) in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**

#### Marginal Citations

- M4** 1990 c. 8.
- M5** 1972 c. 52.
- M6** 1994 c. 39.
- M7** 1988 c. 4.

## <sup>F12</sup>[36A Consultation before the grant of certain licences.

<sup>F13</sup>(1) This section applies where an application for a licence has been duly made to a waste regulation authority, and the authority proposes to issue a licence subject (by virtue of



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- section 35(4) above) to any condition which might require the holder of the licence to—
- (a) carry out any works, or
  - (b) do any other thing,
- which he might not be entitled to carry out or do.
- (2) Before issuing the licence, the waste regulation authority shall serve on every person appearing to the authority to be a person falling within subsection (3) below a notice which complies with the requirements set out in subsection (4) below.
  - (3) A person falls within this subsection if—
    - (a) he is the owner, lessee or occupier of any land; and
    - (b) that land is land in relation to which it is likely that, as a consequence of the licence being issued subject to the condition in question, rights will have to be granted by virtue of section 35(4) above to the holder of the licence.
  - (4) A notice served under subsection (2) above shall—
    - (a) set out the condition in question;
    - (b) indicate the nature of the works or other things which that condition might require the holder of the licence to carry out or do; and
    - (c) specify the date by which, and the manner in which, any representations relating to the condition or its possible effects are to be made to the waste regulation authority by the person on whom the notice is served.
  - (5) The date which, pursuant to subsection (4)(c) above, is specified in a notice shall be a date not earlier than the date on which expires the period—
    - (a) beginning with the date on which the notice is served, and
    - (b) of such length as may be prescribed in regulations made by the Secretary of State.
  - (6) Before the waste regulation authority issues the licence it must, subject to subsection (7) below, consider any representations made in relation to the condition in question, or its possible effects, by any person on whom a notice has been served under subsection (2) above.
  - (7) Subsection (6) above does not require the waste regulation authority to consider any representations made by a person after the date specified in the notice served on him under subsection (2) above as the date by which his representations in relation to the condition or its possible effects are to be made.
  - (8) In subsection (3) above—

“owner”, in relation to any land in England and Wales, means the person who—

    - (a) is for the time being receiving the rack-rent of the land, whether on his own account or as agent or trustee for another person; or
    - (b) would receive the rack-rent if the land were let at a rack-rent,

but does not include a mortgagee not in possession; and

“owner”, in relation to any land in Scotland, means a person (other than a creditor in a heritable security not in possession of the security subjects) for the time being entitled to receive or who would, if the land were let, be entitled to receive, the rents of the land in connection with which the word is used and includes a trustee, factor, guardian or curator and in the case of

*Status: Point in time view as at 02/06/2022.*

*Changes to legislation: Environmental Protection Act 1990, Cross Heading: Waste Management Licences is up to date with all changes known to be in force on or before 26 July 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)*

public or municipal land includes the persons to whom the management of the land is entrusted.]]

#### Textual Amendments

- F12** S. 36A inserted (1.4.1998 so far as it confers power to make regulations and 1.4.1999 so far as not already in force) by 1995 c. 25, s. 120(1), **Sch. 22 para.69** (with ss. 7(6), 115, 117); S.I. 1998/604, **art.2**; S.I. 1999/803, **art. 3**
- F13** S. 36A repealed (E.W.) (6.4.2008) by **The Environmental Permitting (England and Wales) Regulations 2007** (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)

### 37 Variation of licences.

[<sup>F14</sup>(1) While a licence issued by a waste regulation authority is in force, the authority may, subject to regulations under section 35(6) above and to [<sup>F15</sup>subsection (3)] [<sup>F15</sup>subsections (2A) and (3)] below,—

- (a) on its own initiative, modify the conditions of the licence to any extent which, in the opinion of the authority, is desirable and is unlikely to require unreasonable expense on the part of the holder; and
- (b) on the application of the licence holder accompanied by [<sup>F16</sup>the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995,] modify the conditions of his licence to the extent requested in the application.

(2) While a licence issued by a waste regulation authority is in force, the authority shall, except where it revokes the licence entirely under section 38 below, modify the conditions of the licence—

- (a) to the extent which in the opinion of the authority is required for the purpose of ensuring that the activities authorised by the licence do not cause pollution of the environment or harm to human health or become seriously detrimental to the amenities of the locality affected by the activities; and
- (b) to the extent required by any regulations in force under section 35(6) above.

[<sup>F17</sup>(2A) The conditions of a site licence may not be modified under subsection (1) so as to remove any of the specified land referred to in section 35(1) from the licence.]

(3) The Secretary of State may, as respects any licence issued by a waste regulation authority, give to the authority directions as to the modifications which are to be made in the conditions of the licence under subsection (1)(a) or (2)(a) above; and it shall be the duty of the authority to give effect to the directions.

(4) Any modification of a licence under this section shall be effected by notice served on the holder of the licence and the notice shall state the time at which the modification is to take effect.

(5) Section 36(4), <sup>F18</sup> . . . (7), <sup>F18</sup> . . . and (10) above shall with the necessary modifications apply to a proposal by a waste regulation authority to modify a licence under subsection (1) or (2)(a) above as they apply to a proposal to issue a licence, except that—

- (a) the authority may postpone the reference so far as the authority considers that by reason of an emergency it is appropriate to do so; and

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- (b) the authority need not consider any representations as respects a modification which, in the opinion of the waste regulation authority, will not affect any authority mentioned in the subsections so applied.
- (6) If within the period of two months beginning with the date on which a waste regulation authority received an application by the holder of a licence for a modification of it, or within such longer period as the authority and the applicant may at any time agree in writing, the authority has neither granted a modification of the licence in consequence of the application nor given notice to the applicant that the authority has rejected the application, the authority shall be deemed to have rejected the application.

<sup>F19</sup>[(7) This section shall have effect subject to section 37A below.]]

#### Textual Amendments

- F14** S. 37 repealed (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)
- F15** Words in s. 37(1) substituted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), regs. 1(1), **2(6)(a)**
- F16** Words in s. 37(1)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 70(1)** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3**
- F17** S. 37(2A) inserted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), regs. 1(1), **2(6)(b)**
- F18** Words in s. 37(5) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 70(2), **Sch. 24** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3**
- F19** S. 37(7) added (1.4.1999) by 1995 c. 25, s. 120(1), **Sch. 22 para. 70(3)** (with ss. 7(6), 115, 117); [S.I. 1999/803](#), **art. 3**

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

- C7** S. 37 excluded (S.) (30.3.2007) by [The Waste Management Licensing Amendment \(Waste Electrical and Electronic Equipment\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/172\)](#), **reg. 8(3)**
- C8** S. 37 excluded (E.W.) (3.11.2003) by [The End-of-Life Vehicles Regulations 2003 \(S.I. 2003/2635\)](#), regs. 1(2), **44(2)**, **46** (with regs. 3, 4)
- C9** S. 37(4) modified (27.7.1999) by 1999 c. 24, s. **4(6)(b)(8)**

#### Commencement Information

- I3** S. 37 not in force at Royal Assent, see s. 164(3); s. 37(3) in force for certain purposes at 18.2.1993 by [S.I. 1993/274](#), **art. 2(2)**; s. 37 in force in so far as not already in force at 1.5.1994 save for purposes of application to activities specified in art. 2(2) of the commencing S.I. and otherwise in force in relation to those activities in accordance with art. 3 of the commencing S.I. by [S.I. 1994/1096](#), **arts. 2(2)(3)**, 3 (as amended by [S.I. 1994/2487](#), **art. 2** and [S.I. 1994/3234](#), **art. 2**)

### <sup>F20</sup>**37A Consultation before certain variations.**

<sup>F21</sup>(1) This section applies where—

- (a) a waste regulation authority proposes to modify a licence under section 37(1) or (2)(a) above; and
- (b) the licence, if modified as proposed, would be subject to a relevant new condition.

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- (2) For the purposes of this section, a “relevant new condition” is any condition by virtue of which the holder of the licence might be required to carry out any works or do any other thing—
  - (a) which he might not be entitled to carry out or do, and
  - (b) which he could not be required to carry out or do by virtue of the conditions to which, prior to the modification, the licence is subject.
- (3) Before modifying the licence, the waste regulation authority shall serve on every person appearing to the authority to be a person falling within subsection (4) below a notice which complies with the requirements set out in subsection (5) below.
- (4) A person falls within this subsection if—
  - (a) he is the owner, lessee or occupier of any land; and
  - (b) that land is land in relation to which it is likely that, as a consequence of the licence being modified so as to be subject to the relevant new condition in question, rights will have to be granted by virtue of section 35(4) above to the holder of the licence.
- (5) A notice served under subsection (3) above shall—
  - (a) set out the relevant new condition in question;
  - (b) indicate the nature of the works or other things which that condition might require the holder of the licence to carry out or do but which he could not be required to carry out or do by virtue of the conditions (if any) to which, prior to the modification, the licence is subject; and
  - (c) specify the date by which, and the manner in which, any representations relating to the condition or its possible effects are to be made to the waste regulation authority by the person on whom the notice is served.
- (6) The date which, pursuant to subsection (5)(c) above, is specified in a notice shall be a date not earlier than the date on which expires the period—
  - (a) beginning with the date on which the notice is served, and
  - (b) of such length as may be prescribed in regulations made by the Secretary of State.
- (7) Before the waste regulation authority issues the licence it must, subject to subsection (8) below, consider any representations made in relation to the condition in question, or its possible effects, by any person on whom a notice has been served under subsection (3) above.
- (8) Subsection (7) above does not require the waste regulation authority to consider any representations made by a person after the date specified in the notice served on him under subsection (3) above as the date by which his representations in relation to the condition or its possible effects are to be made.
- (9) A waste regulation authority may postpone the service of any notice or the consideration of any representations required under the foregoing provisions of this section so far as the authority considers that by reason of an emergency it is appropriate to do so.
- (10) In subsection (3) above, “owner” has the same meaning as it has in subsection (3) of section 36A above by virtue of subsection (8) of that section.]]

*Status: Point in time view as at 02/06/2022.*

*Changes to legislation: Environmental Protection Act 1990, Cross Heading: Waste Management Licences is up to date with all changes known to be in force on or before 26 July 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)*

#### Textual Amendments

- F20** S. 37A inserted (1.4.1998 in so far as it confers power to make regulations and 1.4.1999 so far as not already in force) by 1995 c. 25, s. 120(1), **Sch. 22 para. 71** (with ss. 7(6), 115, 117); S.I. 1998/604, **art. 2**; S.I. 1999/803, **art. 3**
- F21** S. 37A repealed (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)

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

- C10** S. 37A excluded (S.) (30.3.2007) by [The Waste Management Licensing Amendment \(Waste Electrical and Electronic Equipment\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/172\)](#), **reg. 8(3)**
- C11** S. 37A excluded (E.W.) (3.11.2003) by [The End-of-Life Vehicles Regulations 2003 \(S.I. 2003/2635\)](#), regs. 1(2), **44(2)**, **46** (with regs. 3, 4)

### 38 Revocation and suspension of licences. **E+W**

F22

#### Extent Information

- E2** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F22** S. 38 repealed (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)

### 38 Revocation and suspension of licences. **S**

- (1) Where a licence granted by a waste regulation authority is in force and it appears to the authority—
- that the holder of the licence has ceased to be a fit and proper person by reason of his having been convicted of a relevant offence; or
  - that the continuation of the activities authorised by the licence would cause pollution of the environment or harm to human health or would be seriously detrimental to the amenities of the locality affected; and
  - that the pollution, harm or detriment cannot be avoided by modifying the conditions of the licence;
- the authority may exercise, as it thinks fit, either of the powers conferred by subsections (3) and (4) below.
- (2) Where a licence granted by a waste regulation authority is in force and it appears to the authority that the holder of the licence has ceased to be a fit and proper person by reason of the management of the activities authorised by the licence having ceased to be in the hands of a technically competent person, the authority may exercise the power conferred by subsection (3) below.
- (3) The authority may, under this subsection, revoke the licence so far as it authorises the carrying on of the activities specified in the licence or such of them as the authority specifies in revoking the licence.

*Status: Point in time view as at 02/06/2022.*

*Changes to legislation: Environmental Protection Act 1990, Cross Heading: Waste Management Licences is up to date with all changes known to be in force on or before 26 July 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)*

[<sup>F78</sup>(3A) In the case of a site licence, a revocation under subsection (3) may extend to the whole of the land to which the licence extends or to any part of it.]

(4) The authority may, under this subsection, revoke the licence entirely.

(5) [<sup>F79</sup>Subject to subsection (3A),] A licence revoked under subsection (3) above shall cease to have effect to authorise the carrying on of the activities specified in the licence or, as the case may be, the activities specified by the authority in revoking the licence but shall not affect the requirements imposed by the licence which the authority, in revoking the licence, specify as requirements which are to continue to bind the licence holder.

(6) Where a licence granted by a waste regulation authority is in force and it appears to the authority—

- (a) that the holder of the licence has ceased to be a fit and proper person by reason of the management of the activities authorised by the licence having ceased to be in the hands of a technically competent person; or
- (b) that serious pollution of the environment or serious harm to human health has resulted from, or is about to be caused by, the activities to which the licence relates or the happening or threatened happening of an event affecting those activities; and
- (c) that the continuing to carry on those activities, or any of those activities, in the circumstances will continue or, as the case may be, cause serious pollution of the environment or serious harm to human health;

the authority may suspend the licence so far as it authorises the carrying on of the activities specified in the licence or such of them as the authority specifies in suspending the licence.

[<sup>F80</sup>(6A) In the case of a site licence, the suspension may extend to the whole of the land to which the licence extends or to any part of it.]

(7) The Secretary of State may, if he thinks fit in relation to a licence granted by a waste regulation authority, give to the authority directions as to whether and in what manner the authority should exercise its powers under this section; and it shall be the duty of the authority to give effect to the directions.

(8) [<sup>F81</sup>Subject to subsection (6A),] A licence suspended under subsection (6) above shall, while the suspension has effect, be of no effect to authorise the carrying on of the activities specified in the licence or, as the case may be, the activities specified by the authority in suspending the licence.

(9) Where a licence is suspended under subsection (6) above, the authority, in suspending it or at any time while it is suspended, may require the holder of the licence to take such measures to deal with or avert the pollution or harm as the authority considers necessary.

[<sup>F82</sup>(9A) A requirement imposed under subsection (9) above may require the holder of a licence to carry out works or do other things notwithstanding that he is not entitled to carry out the works or do the thing and any person whose consent would be required shall grant, or join in granting, the holder of the licence such rights in relation to the land as will enable the holder of the licence to comply with any requirements imposed on him under that subsection.]

*Status: Point in time view as at 02/06/2022.*

*Changes to legislation: Environmental Protection Act 1990, Cross Heading: Waste Management Licences is up to date with all changes known to be in force on or before 26 July 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)*

- (9B) Subsections (2) to (8) of section 36A above shall, with the necessary modifications, apply where the authority proposes to impose a requirement under subsection (9) above which may require the holder of a licence to carry out any such works or do any such thing as is mentioned in subsection (9A) above as they apply where the authority proposes to issue a licence subject to any such condition as is mentioned in subsection (1) of that section, but as if—
- (a) the reference in subsection (3) of that section to section 35(4) above were a reference to subsection (9A) above; and
  - (b) any reference in those subsections—
    - (i) to the condition, or the condition in question, were a reference to the requirement; and
    - (ii) to issuing a licence were a reference to serving a notice, under subsection (12) below, effecting the requirement.
- (9C) The authority may postpone the service of any notice or the consideration of any representations required under section 36A above, as applied by subsection (9B) above, so far as the authority considers that by reason of an emergency it is appropriate to do so.]
- (10) A person who, without reasonable excuse, fails to comply with any requirement imposed under subsection (9) above otherwise than in relation to special waste shall be liable—
- (a) on summary conviction, to a fine of an amount not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (11) A person who, without reasonable excuse, fails to comply with any requirement imposed under subsection (9) above in relation to special waste shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both.
- (12) Any revocation or suspension of a licence or requirement imposed during the suspension of a licence under this section shall be effected by notice served on the holder of the licence and the notice shall state the time at which the revocation or suspension or the requirement is to take effect and, in the case of suspension, the period at the end of which, or the event on the occurrence of which, the suspension is to cease.
- <sup>F83</sup>(12A) If, in the case of a partial revocation referred to in subsection (3A), the authority is of the opinion that it is necessary to modify the conditions of the licence to take account of the revocation, it shall specify the necessary modifications in the notice served under subsection (12) and the modifications specified in the notice shall take effect on the date specified in the notice.]
- <sup>F84</sup>[(13) If a waste regulation authority is of the opinion that proceedings for an offence under subsection (10) or (11) above would afford an ineffectual remedy against a person who has failed to comply with any requirement imposed under subsection (9) above, the authority may take proceedings in the High Court or, in Scotland, in any court of competent jurisdiction for the purpose of securing compliance with the requirement.]

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### Extent Information

- E4** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

### Textual Amendments

- F78** S. 38(3A) inserted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), [regs. 1\(1\), 2\(7\)\(a\)](#)
- F79** Words in s. 38(5) inserted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), [regs. 1\(1\), 2\(7\)\(b\)](#)
- F80** S. 38(6A) inserted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), [regs. 1\(1\), 2\(7\)\(c\)](#)
- F81** Words in s. 38(8) inserted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), [regs. 1\(1\), 2\(7\)\(d\)](#)
- F82** S. 38(9A)-(9C) inserted (1.4.1998 in so far as it confers power to make regulations and 1.4.1999 so far as not already in force) by [1995 c. 25, s. 120\(1\)](#), [Sch. 22 para. 72\(1\)](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1998/604, art. 2](#); [S.I. 1999/803, art. 3](#)
- F83** S. 38(12A) inserted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), [regs. 1\(1\), 2\(7\)\(e\)](#)
- F84** S. 38(13) added (1.4.1996) by [1995 c. 25, s. 120\(1\)](#), [Sch. 22 para. 72\(2\)](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186, art. 3](#)

### Modifications etc. (not altering text)

- C18** S. 38 excluded (E.W.) (15.6.2002) by [The Landfill \(England and Wales\) Regulations 2002 \(S.I. 2002/1559\)](#), [regs. 15\(6\), 17\(1\), 18](#), [Sch. 4 para. 1\(8\)\(iii\)](#) (with [regs. 3, 4](#))  
S. 38 excluded (S.) (11.4.2003) by [The Landfill \(Scotland\) Regulations 2003 \(S.S.I. 2003/235\)](#), [regs. 1\(1\), 17\(6\), 20](#), [Sch. 5 para. 1\(5\)\(a\)\(iii\)](#) (with [regs. 3, 4](#))
- C19** S. 38(10)(11) restricted (27.7.1999) by [1999 c. 24, s. 4\(7\)\(8\)](#)
- C20** S. 38(12) modified (27.7.1999) by [1999 c. 24, s. 4\(6\)\(b\)\(8\)](#)

### Commencement Information

- I10** S. 38 not in force at Royal Assent, see [s. 164\(3\)](#); [s. 38\(7\)](#) in force for certain purposes at 18.2.1993 by [S.I. 1993/274, art. 2\(2\)](#); [s. 38](#) in force in so far as not already in force at 1.5.1994 save for purposes of application to activities specified in [art. 2\(2\)](#) of the commencing S.I. and otherwise in force in relation to those activities in accordance with [art. 3](#) of the commencing S.I. by [S.I. 1994/1096, arts. 2\(2\)\(3\), 3](#) (as amended by [S.I. 1994/2487, art. 2](#) and [S.I. 1994/3234, art. 2](#))

## 39 Surrender of licences.

[<sup>F23</sup>(1) A licence may be surrendered by its holder to the authority which granted it but, in the case of a site licence, only if the authority accepts the surrender.

(2) The following provisions apply to the surrender and acceptance of the surrender of a site licence.

[<sup>F24</sup>(2A) A surrender of a site licence may extend to the whole of the land to which the licence extends or to any part of it.]

(3) The holder of a site licence who desires to surrender it shall make an application for that purpose to the authority [<sup>F25</sup>on a form provided by the authority for the purpose, giving such information and accompanied by such evidence as the authority



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reasonably requires and accompanied by the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995.]

- (4) An authority which receives an application for the surrender of a site licence—
  - (a) shall inspect the land to which the [<sup>F26</sup>licence][<sup>F26</sup>application] relates, and
  - (b) may require the holder of the licence to furnish to it further information or further evidence.
- (5) The authority shall determine whether it is likely or unlikely that the condition of the land, so far as that condition is the result of the use of the land for the treatment, keeping or disposal of waste (whether or not in pursuance of the licence), will cause pollution of the environment or harm to human health.
- (6) If the authority is satisfied that the condition of the land is unlikely to cause the pollution or harm mentioned in subsection (5) above, the authority shall, subject to subsection (7) below, accept the surrender of the licence; but otherwise the authority shall refuse to accept it.
- (7) Where the authority proposes to accept the surrender of a site licence, the authority must, before it does so,—
  - (a) refer the proposal to [<sup>F27</sup>the appropriate planning authority]; and
  - (b) consider any representations about the proposal which [<sup>F27</sup>the appropriate planning authority] makes to it during the allowed period;

<sup>F28</sup> . . . .
- <sup>F29</sup>(8) . . . . .
- (9) Where the surrender of a licence is accepted under this section the authority shall issue to the applicant, with the notice of its determination, a certificate (a “certificate of completion”) stating that it is satisfied as mentioned in subsection (6) above and, on the issue of that certificate, the licence shall cease to have effect [<sup>F30</sup>or, in the case of a partial surrender referred to in subsection (2A), the licence shall cease to have effect in relation to the land to which the surrender extends] .
- <sup>F31</sup>(9A) If, in the case of a partial surrender referred to in subsection (2A), the authority is of the opinion that it is necessary to modify the conditions of the licence to take account of the surrender, it shall specify the necessary modifications in the notice of its determination issued under subsection (9) and the modifications specified in the notice shall take effect on the date specified in the notice.]
- (10) If within the period of three months beginning with the date on which an authority receives an application to surrender a licence, or within such longer period as the authority and the applicant may at any time agree in writing, the authority has neither issued a certificate of completion nor given notice to the applicant that the authority has rejected the application, the authority shall be deemed to have rejected the application.
- (11) Section 36(10) above applies for the interpretation of the “allowed period” in [<sup>F32</sup>subsection (7) above].
- <sup>F33</sup>(12) In this section—

“the appropriate planning authority” means—

  - (a) where the relevant land is situated in the area of a London borough council, that London borough council;
  - (b) where the relevant land is situated in the City of London, the Common Council of the City of London;

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- (c) where the relevant land is situated in a non-metropolitan county in England, the council of that county;
  - (d) where the relevant land is situated in a National Park or the Broads, the National Park authority for that National Park or, as the case may be, the Broads Authority;
  - (e) where the relevant land is situated elsewhere in England or Wales, the council of the district or, in Wales, the county or county borough, in which the land is situated;
  - (f) where the relevant land is situated in Scotland, the council constituted under section 2 of the <sup>M2</sup>Local Government etc. (Scotland) Act 1994 for the area in which the land is situated;
- “the Broads” has the same meaning as in the <sup>M3</sup>Norfolk and Suffolk Broads Act 1988;
- “National Park authority”, <sup>F34</sup> . . . means a National Park authority established under section 63 of the Environment Act 1995 which has become the local planning authority for the National Park in question;
- “the relevant land”, in the case of any site licence, means the land to which the licence relates.

<sup>F35</sup>(13) . . . . .

<sup>F33</sup>(14) The Secretary of State may by regulations amend the definition of “appropriate planning authority” in subsection (12) above.]]

#### Textual Amendments

- F23** S. 39 repealed (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)
- F24** S. 39(2A) inserted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), regs. 1(1), **2(8)(a)**
- F25** Words in s. 39(3) substituted (1.4.1996 for limited purposes and 1.4.1998 so far as not already in force) by 1995 c. 25, s. 120(1), **Sch. 22 para. 73(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**; S.I. 1998/604, **art.2**.
- F26** Word in s. 39(4)(a) substituted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), regs. 1(1), **2(8)(b)**
- F27** Words in s. 39(7)(a)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 73(3)(a)** (with ss. 7(6), 115, 117); S.I. 1996/1286, **art. 3**
- F28** In s. 39(7) words following para. (b) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 73(3)(b), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F29** S. 39(8) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 73(4), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F30** Words in s. 39(9) inserted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), regs. 1(1), **2(8)(c)**
- F31** S. 39(9A) inserted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), regs. 1(1), **2(8)(d)**
- F32** Words in s. 39(11) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 73(5)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F33** S. 39(12)-(14) added (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 73(6)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F34** In s. 39(12) in the definition of "National Park authority" words repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/2560, **art. 2**,Sch.

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**F35** S. 39(13) repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/2560, **art. 2**, Sch.

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

**C12** S. 39 excluded (E.W.) (15.6.2002) by **The Landfill (England and Wales) Regulations 2002** (S.I. 2002/1559), **regs. 15(6), 17(1), 18, Sch. 4 para. 1(8)(iii)** (with regs. 3, 4)  
S. 39 excluded (S.) (11.4.2003) by **The Landfill (Scotland) Regulations 2003** (S.S.I. 2003/235), **regs. 1(1), 17(6), 20, Sch. 5 para. 1(5)(a)(iii)** (with regs. 3, 4)

#### **Commencement Information**

**I4** S. 39 not in force at Royal Assent, see s. 164(3); s. 39(3) in force at 18.2.1993 by **S.I. 1993/274, art. 2(1)**; s. 39 in force in so far as not already in force at 1.5.1994 save for purposes of application to activities specified in art. 2(2) of the commencing S.I. and otherwise in force in relation to those activities in accordance with art. 3 of the commencing S.I. by **S.I. 1994/1096, arts. 2(2)(3), 3** (as amended by **S.I. 1994/2487, art. 2** and **S.I. 1994/3234, art. 2**)

#### **Marginal Citations**

**M2** 1994 c. 39.  
**M3** 1988 c. 4.

## **40 Transfer of licences.**

[<sup>F36</sup>(1) A licence may be transferred to another person in accordance with subsections (2) to (6) below and may be so transferred whether or not the licence is partly revoked or suspended under any provision of this Part.

[<sup>F37</sup>(1A) In the case of a site licence, a transfer under subsection (1) may extend to the whole of the land to which the licence extends or to any part of it, and in this Part “transfer” and cognate expressions used in relation to a site licence include such a partial transfer.]

(2) Where the holder of a licence desires that the licence be transferred to another person (“the proposed transferee”) the licence holder and the proposed transferee shall jointly make an application to the waste regulation authority which granted the licence for a transfer of it.

(3) An application under subsection (2) above for the transfer of a licence shall be made [<sup>F38</sup>on a form provided by the authority for the purpose, accompanied by such information as the authority may reasonably require, the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995] and the licence.

(4) If, on such an application, the authority is satisfied that the proposed transferee is a fit and proper person the authority shall effect a transfer of the licence to the proposed transferee.

(5) [<sup>F39</sup>Subject to subsections (5A) to (5C),] the authority shall effect a transfer of a licence under the foregoing provisions of this section by causing the licence to be endorsed with the name and other particulars of the proposed transferee as the holder of the licence from such date specified in the endorsement as may be agreed with the applicants.

[<sup>F40</sup>(5A) The authority shall effect a partial transfer of a licence by—

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- (a) issuing a new licence to the transferee as respects the land to which the transfer relates; and
  - (b) returning the original licence to the holder endorsed to record that there has been a transfer, the particulars of the land transferred and the land to which the original licence now relates.
- (5B) In the case of a partial transfer, the conditions included in the new licence and original licence after the transfer shall be the same as the conditions included in the original licence immediately before the transfer in so far as they are relevant to the sites covered by the new licence and the original licence respectively, but subject to such modifications as, in the opinion of the authority, are necessary to take account of the transfer.
- (5C) A partial transfer shall take effect from such date as may be agreed with the applicants and specified in the endorsement and new licence.]
- (6) If within the period of two months beginning with the date on which the authority receives an application for the transfer of a licence, or within such longer period as the authority and the applicants may at any time agree in writing, the authority has neither effected a transfer of the licence nor given notice to the applicants that the authority has rejected the application, the authority shall be deemed to have rejected the application.]

#### Textual Amendments

- F36** S. 40 repealed (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)
- F37** S. 40(1A) inserted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), regs. 1(1), **2(9)(a)**
- F38** Words in s. 40(3) substituted (1.4.1996 for limited purposes and 1.4.1998 so far as not already in force) by 1995 c. 25, s. 120(1), **Sch. 22 para.74** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**; S.I. 1998/604, **art.2**.
- F39** Words in s. 40(5) inserted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), regs. 1(1), **2(9)(b)**
- F40** S. 40(5A)-(5C) inserted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), regs. 1(1), **2(9)(c)**

#### Commencement Information

- I5** S. 40 not in force at Royal Assent, see s. 164(3); s. 40(3) in force at 18.2.1993 by [S.I. 1993/274](#), **art. 2(1)**; s. 40 in force in so far as not already in force at 1.5.1994 save for purposes of application to activities specified in art. 2(2) of the commencing S.I. and otherwise in force in relation to those activities in accordance with art. 3 of the commencing S.I. by [S.I. 1994/1096](#), **arts. 2(2)(3)**, 3 (as amended by [S.I. 1994/2487](#), **art. 2** and [S.I. 1994/3234](#), **art. 2**)

### [<sup>F41</sup>40A Consolidated Licences

- (1) Subsection (2) applies where—
- (a) a licence has been varied, or affected by a partial revocation, surrender or transfer;
  - (b) there is more than one site licence held by the same person and applying to the same site; or
  - (c) there is more than one mobile plant licence held by the same person.

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- (2) The authority may replace the licence or licences, as the case may be, with a consolidated licence.
- (3) A consolidated licence must not contain any new conditions in respect of any land, mobile plant or activity.]

**Textual Amendments**

**F41** S. 40A inserted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), regs. [1\(1\)](#), [2\(10\)](#)

<sup>F42</sup>**41** .....

**Textual Amendments**

**F42** S. 41 repealed (1.4.1996) by [1995 c. 25, s. 120\(1\)\(3\)](#), [Sch. 22 para. 75](#), [Sch.24](#) (with ss. [7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186](#), [art.3](#)

**42 Supervision of licensed activities.**

[<sup>F43</sup>(1) While a licence is in force it shall be the duty of the waste regulation authority which granted the licence to take the steps needed—

- (a) for the purpose of ensuring that the activities authorised by the licence do not cause pollution of the environment or harm to human health or become seriously detrimental to the amenities of the locality affected by the activities; and
- (b) for the purpose of ensuring that the conditions of the licence are complied with.

<sup>F44</sup>(2) .....

(3) For the purpose of performing the duty imposed on it by subsection (1) above, any officer of the authority authorised in writing for the purpose by the authority may, if it appears to him that by reason of an emergency it is necessary to do so, carry out work on the land or in relation to plant or equipment on the land to which the licence relates or, as the case may be, in relation to the mobile plant to which the licence relates.

(4) Where a waste regulation authority incurs any expenditure by virtue of subsection (3) above, the authority may recover the amount of the expenditure from [<sup>F45</sup>the holder, or (as the case may be) the former holder, of the licence], except where the holder or former holder of the licence shows that there was no emergency requiring any work or except such of the expenditure as he shows was unnecessary.

(5) Where it appears to a waste regulation authority that a condition of a licence granted by it is not being complied with [<sup>F46</sup>or is likely not to be complied with,] then, without prejudice to any proceedings under section 33(6) above, the authority may—

<sup>F47</sup>[(a) serve on the holder of the licence a notice—

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- (i) stating that the authority is of the opinion that a condition of the licence is not being complied with or, as the case may be, is likely not to be complied with;
  - (ii) specifying the matters which constitute the non-compliance or, as the case may be, which make the anticipated non-compliance likely;
  - (iii) specifying the steps which must be taken to remedy the non-compliance or, as the case may be, to prevent the anticipated non-compliance from occurring; and
  - (iv) specifying the period within which those steps must be taken; and]
  - (b) if in the opinion of the authority the licence holder [<sup>F48</sup>has not taken the steps specified in the notice within the period so specified,] exercise any of the powers specified in subsection (6) below.
- (6) The powers which become exercisable in the event mentioned in subsection (5)(b) above are the following—
- (a) to revoke the licence so far as it authorises the carrying on of the activities specified in the licence or such of them as the authority specifies in revoking the licence;
  - (b) to revoke the licence entirely; and
  - (c) to suspend the licence so far as it authorises the carrying on of the activities specified in the licence or, as the case may be, the activities specified by the authority in suspending the licence.
- [<sup>F49</sup>(6ZA) In the case of a site licence, a revocation under subsection (6)(a) or a suspension under subsection (6)(c) may relate to the whole of the land to which the licence relates or to any part of it.]
- <sup>F50</sup>[(6A) If a waste regulation authority is of the opinion that revocation or suspension of the licence, whether entirely or to any extent, under subsection (6) above would afford an ineffectual remedy against a person who has failed to comply with any requirement imposed under subsection (5)(a) above, the authority may take proceedings in the High Court or, in Scotland, in any court of competent jurisdiction for the purpose of securing compliance with the requirement.]
- (7) Where a licence is revoked or suspended under subsection (6) above, [<sup>F51</sup>[<sup>F52</sup>(3A), (5), (12) and (12A)] or, as the case may be, subsections (8) to (12) of section 38] above shall apply with the necessary modifications as they respectively apply to revocations or suspensions of licences under that section; <sup>F53</sup> . . .
- (8) The Secretary of State may, if he thinks fit in relation to a licence granted by a waste regulation authority, give to the authority directions as to whether and in what manner the authority should exercise its powers under this section; and it shall be the duty of the authority to give effect to the directions.]

#### Textual Amendments

- F43** S. 42 repealed (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)
- F44** S. 42(2) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 76(2)**, **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**
- F45** Words in s. 42(4) substituted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 76(3)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

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- F46** Words in s. 42(5) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 76(4)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**
- F47** S. 42(5)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 76(5)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**
- F48** Words in s. 42(5)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 76(6)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**
- F49** S. 42(6ZA) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(11)(a)**
- F50** S. 42(6A) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 76(7)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**
- F51** Words in s. 42(7) substituted (19.7.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 76(8)(a)** (with ss. 7(6), 115, 117)
- F52** Words in s. 42(7) substituted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(11)(b)**
- F53** Words in s. 42(7) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 76(8)(b)**, **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

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

- C13** S. 42 modified (27.7.1999) by 1999 c. 24, **s. 4(6)(c)(8)**
- C14** S. 42 excluded (E.W.) (15.6.2002) by The Landfill (England and Wales) Regulations 2002 (S.I. 2002/1559), regs. 15(6), 17(1), 18, **Sch. 4 para. 1(8)(iii)** (with regs. 3, 4)  
S. 42 excluded (S.) (11.4.2003) by The Landfill (Scotland) Regulations 2003 (S.S.I. 2003/235), regs. 1(1), 17(6), 20, **Sch. 5 para. 1(5)(a)(iii)** (with regs. 3, 4)

**Commencement Information**

- I6** S. 42 not in force at Royal Assent, see s. 164(3); s. 42(8) in force for certain purposes at 18.2.1993 by S.I. 1993/274, **art. 2(2)**; s. 42 in force in so far as not already in force at 1.5.1994 save for purposes of application to activities specified in art. 2(2) of the commencing S.I. and otherwise in force in relation to those activities in accordance with art. 3 of the commencing S.I. by S.I. 1994/1096, **arts. 2(2)(3)**, 3 (as amended by S.I. 1994/2487, **art. 2** and S.I. 1994/3234, **art. 2**)

**43 Appeals to Secretary of State from decisions with respect to licences.**

- [<sup>F54</sup>(1) Where, except in pursuance of a direction given by the Secretary of State,—
- (a) an application for a licence or a modification of the conditions of a licence is rejected;
  - (b) a licence is granted subject to conditions;
  - (c) the conditions of a licence are modified;
  - (d) a licence is suspended;
  - (e) a licence is revoked under section 38 or 42 above;
  - (f) an application to surrender a licence is rejected; or
  - (g) an application for the transfer of a licence is rejected;
- then, except in the case of an application for a transfer, the applicant for the licence or, as the case may be, the holder or former holder of it may appeal from the decision to the Secretary of State and, in the case of an application for a transfer, the proposed transferee may do so.
- (2) Where an appeal is made to the Secretary of State—
- <sup>F55</sup>(a) .....
  - <sup>F55</sup>(b) .....



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- (c) if a party to the appeal so requests, or the Secretary of State so decides, the appeal shall be or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held or held to any extent in private).

<sup>F56</sup>[(2A) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).]

- (3) Where, on such an appeal, the Secretary of State or other person determining the appeal determines that the decision of the authority shall be altered it shall be the duty of the authority to give effect to the determination.
- (4) While an appeal is pending in a case falling within subsection (1)(c) or (e) above, the decision in question shall, subject to subsection (6) below, be ineffective; and if the appeal is dismissed or withdrawn the decision shall become effective from the end of the day on which the appeal is dismissed or withdrawn.
- (5) Where an appeal is made in a case falling within subsection (1)(d) above, the bringing of the appeal shall have no effect on the decision in question.
- (6) Subsection (4) above shall not apply to a decision modifying the conditions of a licence under section 37 above or revoking a licence under section 38 or 42 above in the case of which the notice effecting the modification or revocation includes a statement that in the opinion of the authority it is necessary for the purpose of preventing or, where that is not practicable, minimising pollution of the environment or harm to human health that that subsection should not apply.
- (7) Where the decision under appeal is one falling within subsection (6) above or is a decision to suspend a licence, if, on the application of the holder or former holder of the licence, the Secretary of State or other person determining the appeal determines that the authority acted unreasonably in excluding the application of subsection (4) above or, as the case may be, in suspending the licence, then—
- (a) if the appeal is still pending at the end of the day on which the determination is made, subsection (4) above shall apply to the decision from the end of that day; and
  - (b) the holder or former holder of the licence shall be entitled to recover compensation from the authority in respect of any loss suffered by him in consequence of the exclusion of the application of that subsection or the suspension of the licence;
- and any dispute as to a person's entitlement to such compensation or as to the amount of it shall be determined by arbitration or in Scotland by a single arbiter appointed, in default of agreement between the parties concerned, by the Secretary of State on the application of any of the parties.
- (8) Provision may be made by the Secretary of State by regulations with respect to appeals under this section and in particular—
- (a) as to the period within which and the manner in which appeals are to be brought; and
  - (b) as to the manner in which appeals are to be considered.]

#### Textual Amendments

**F54** S. 43 repealed (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)



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- F55** S. 43(2)(a)(b) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para.77, **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**
- F56** S. 43(2A) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 77** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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

- C15** S. 43: power to delegate functions conferred (1.4.1996) by 1995 c. 25, s. **114(2)(a)(iii)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

#### Commencement Information

- I7** S. 43 not in force at Royal Assent, see s. 164(3); s. 43(8) in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**; s. 43 in force in so far as not already in force at 1.5.1994 save for purposes of application to activities specified in art. 2(2) of the commencing S.I. and otherwise in force in relation to those activities in accordance with art. 3 of the commencing S.I. by S.I. 1994/1096, **arts. 2(2)(3)**, 3 (as amended by S.I. 1994/2487, **art. 2** and S.I. 1994/3234, **art. 2**)

#### [<sup>F57</sup>44 Offences of making false or misleading statements or false entries.

- (1) A person who—
- in purported compliance with a requirement to furnish any information imposed by or under any provision of this Part, [<sup>F58</sup>or] will need corrections
  - [<sup>F59</sup>for the purpose of obtaining for himself or another any grant of a licence, any modification of the conditions of a licence, any acceptance of the surrender of a licence or any transfer of a licence,]
- makes a statement which he knows to be false or misleading in a material particular, or recklessly makes any statement which is false or misleading in a material particular, commits an offence.
- (2) [<sup>F60</sup>A person who intentionally makes a false entry in any record required to be kept by virtue of a licence commits an offence.]
- (3) A person who commits an offence under this section shall be liable—
- on summary conviction, to a fine not exceeding the statutory maximum;
  - on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.]

#### Textual Amendments

- F57** S. 44 substituted (1.4.1996) by 1995 c. 25, s. 112, **Sch. 19 para. 4(1)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F58** Word in s. 44(1)(a) repealed (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), regs. 73, 74(2), Sch. 21 para. 11(a), **Sch. 23** (with reg. 72, Sch. 4)
- F59** S. 44(1)(b) repealed (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), regs. 73, 74(2), Sch. 21 para. 11(b), **Sch. 23** (with reg. 72, Sch. 4)
- F60** S. 44(2) repealed (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), regs. 73, 74(2), Sch. 21 para. 11(b), **Sch. 23** (with reg. 72, Sch. 4)

#### Commencement Information

- I8** S. 44 not in force at Royal Assent, see s. 164(3); s. 44 in force at 1.5.1994 save for purposes of application to activities specified in art. 2(2) of the commencing S.I. and otherwise in force in relation

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to those activities in accordance with art. 3 of the commencing S.I. by S.I. 1994/1096, **arts. 2(2)(3), 3** (as amended by S.I. 1994/2487, **art. 2** and S.I. 1994/3234, **art. 2**)

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