



# Environment Act 1995

## 1995 CHAPTER 25

### PART I

#### THE ENVIRONMENT AGENCY AND THE SCOTTISH ENVIRONMENT PROTECTION AGENCY

#### CHAPTER I

##### THE ENVIRONMENT AGENCY

##### *Establishment of the Agency*

#### **1 The Environment Agency.**

- (1) There shall be a body corporate to be known as the Environment Agency or, in Welsh, Asiantaeth yr Amgylchedd (in this Act referred to as “the Agency”), for the purpose of carrying out the functions transferred or assigned to it by or under this Act.
- (2) The Agency shall consist of not less than eight nor more than fifteen members of whom—
  - (a) three shall be appointed by the Minister; and
  - (b) the others shall be appointed by the Secretary of State.
- (3) The Secretary of State shall designate—
  - (a) one of the members as the chairman of the Agency, and
  - (b) another of them as the deputy chairman of the Agency.
- (4) In appointing a person to be a member of the Agency, the Secretary of State or, as the case may be, the Minister shall have regard to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to the functions of the Agency.
- (5) Subject to the provisions of section 38 below, the Agency shall not be regarded—

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- (a) as the servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown; or
  - (b) by virtue of any connection with the Crown, as exempt from any tax, duty, rate, levy or other charge whatsoever, whether general or local;
- and the Agency's property shall not be regarded as property of, or property held on behalf of, the Crown.
- (6) The provisions of Schedule 1 to this Act shall have effect with respect to the Agency.

*Transfer of functions, property etc. to the Agency*

## 2 Transfer of functions to the Agency.

- (1) On the transfer date there shall by virtue of this section be transferred to the Agency—
- (a) the functions of the National Rivers Authority, that is to say—
    - (i) its functions under or by virtue of Part II (water resources management) of the <sup>M1</sup>Water Resources Act 1991 (in this Part referred to as “the 1991 Act”);
    - (ii) its functions under or by virtue of Part III of that Act (control of pollution of water resources);
    - (iii) its functions under or by virtue of Part IV of that Act (flood defence) and the <sup>M2</sup>Land Drainage Act 1991 and the functions transferred to the Authority by virtue of section 136(8) of the <sup>M3</sup>Water Act 1989 and paragraph 1(3) of Schedule 15 to that Act (transfer of land drainage functions under local statutory provisions and subordinate legislation);
    - (iv) its functions under or by virtue of Part VII of the 1991 Act (land and works powers);
    - (v) its functions under or by virtue of the <sup>M4</sup>Diseases of Fish Act 1937, the <sup>M5</sup>Sea Fisheries Regulation Act 1966, the <sup>M6</sup>Salmon and Freshwater Fisheries Act 1975, Part V of the 1991 Act or any other enactment relating to fisheries;
    - (vi) the functions as a navigation authority, harbour authority or conservancy authority which were transferred to the Authority by virtue of Chapter V of Part III of the <sup>M7</sup>Water Act 1989 or paragraph 23(3) of Schedule 13 to that Act or which have been transferred to the Authority by any order or agreement under Schedule 2 to the 1991 Act;
    - (vii) its functions under Schedule 2 to the 1991 Act;
    - (viii) the functions assigned to the Authority by or under any other enactment, apart from this Act;
  - (b) the functions of waste regulation authorities, that is to say, the functions conferred or imposed on them by or under—
    - (i) the <sup>M8</sup>Control of Pollution (Amendment) Act 1989, or
    - (ii) Part II of the <sup>M9</sup>Environmental Protection Act 1990 (in this Part referred to as “the 1990 Act”),
 or assigned to them by or under any other enactment, apart from this Act;
  - (c) the functions of disposal authorities under or by virtue of the waste regulation provisions of the <sup>M10</sup>Control of Pollution Act 1974;

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- (d) the functions of the chief inspector for England and Wales constituted under section 16(3) of the 1990 Act, that is to say, the functions conferred or imposed on him by or under Part I of that Act or assigned to him by or under any other enactment, apart from this Act;
  - (e) the functions of the chief inspector for England and Wales appointed under section 4(2)(a) of the <sup>M11</sup>Radioactive Substances Act 1993, that is to say, the functions conferred or imposed on him by or under that Act or assigned to him by or under any other enactment, apart from this Act;
  - (f) the functions conferred or imposed by or under the <sup>M12</sup>Alkali, &c, Works Regulation Act 1906 (in this section referred to as “the 1906 Act”) on the chief, or any other, inspector (within the meaning of that Act), so far as exercisable in relation to England and Wales;
  - (g) so far as exercisable in relation to England and Wales, the functions in relation to improvement notices and prohibition notices under Part I of the <sup>M13</sup>Health and Safety at Work etc. Act 1974 (in this section referred to as “the 1974 Act”) of inspectors appointed under section 19 of that Act by the Secretary of State in his capacity as the enforcing authority responsible in relation to England and Wales for the enforcement of the 1906 Act and section 5 of the 1974 Act; and
  - (h) the functions of the Secretary of State specified in subsection (2) below.
- (2) The functions of the Secretary of State mentioned in subsection (1)(h) above are the following, that is to say—
- (a) so far as exercisable in relation to England and Wales, his functions under section 30(1) of the <sup>M14</sup>Radioactive Substances Act 1993 (power to dispose of radioactive waste);
  - (b) his functions under Chapter III of Part IV of the <sup>M15</sup>Water Industry Act 1991 in relation to special category effluent, within the meaning of that Chapter, other than any function of making regulations or of making orders under section 139 of that Act;
  - (c) so far as exercisable in relation to England and Wales, the functions conferred or imposed on him by virtue of his being, for the purposes of Part I of the 1974 Act, the authority which is by any of the relevant statutory provisions made responsible for the enforcement of the 1906 Act and section 5 of the 1974 Act;
  - (d) so far as exercisable in relation to England and Wales, his functions under, or under regulations made by virtue of, section 9 of the 1906 Act (registration of works), other than any functions of his as an appellate authority or any function of making regulations;
  - (e) so far as exercisable in relation to England and Wales, his functions under regulations 7(1) and 8(2) of, and paragraph 2(2)(c) of Schedule 2 to, the <sup>M16</sup>Sludge (Use in Agriculture) Regulations 1989 (which relate to the provision of information and the testing of soil).
- (3) The National Rivers Authority and the London Waste Regulation Authority are hereby abolished.

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#### Marginal Citations

- M1** 1991 c. 57.
- M2** 1991 c. 59.
- M3** 1989 c. 15.
- M4** 1937 c. 33.

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<b>M5</b>	1966 c. 38.
<b>M6</b>	1975 c. 51.
<b>M7</b>	1989 c. 15.
<b>M8</b>	1989 c. 14.
<b>M9</b>	1990 c. 43.
<b>M10</b>	1974 c. 40.
<b>M11</b>	1993 c. 12.
<b>M12</b>	1906 c. 14.
<b>M13</b>	1974 c. 37.
<b>M14</b>	1993 c. 12.
<b>M15</b>	1991 c. 56.
<b>M16</b>	S.I. 1989/1263.

### 3 Transfer of property, rights and liabilities to the Agency.

- (1) On the transfer date—
- (a) the property, rights and liabilities—
    - (i) of the National Rivers Authority, and
    - (ii) of the London Waste Regulation Authority,
 shall, by virtue of this paragraph, be transferred to and vested in the Agency;
  - (b) any property, rights or liabilities which are the subject of—
    - (i) a scheme made under the following provisions of this section by the Secretary of State, or
    - (ii) a scheme made under those provisions by a body which is a waste regulation authority and approved (with or without modifications) under those provisions by the Secretary of State,
 shall be transferred to and vested in the Agency by and in accordance with the scheme.
- (2) The Secretary of State may, before the transfer date, make a scheme for the transfer to the Agency of such of—
- (a) his property, rights and liabilities, or
  - (b) the property, rights and liabilities of any of the inspectors or chief inspectors mentioned in subsection (1) of section 2 above,
- as appear to the Secretary of State appropriate to be so transferred in consequence of the transfer of any functions to the Agency by virtue of any of paragraphs (d) to (h) of that subsection.
- (3) It shall be the duty of every body which is a waste regulation authority, other than the London Waste Regulation Authority—
- (a) to make a scheme, after consultation with the Agency, for the transfer to the Agency of such of the body's property, rights and liabilities as appear to the body appropriate to be so transferred in consequence of the transfer of any functions to the Agency by virtue of section 2(1)(b) or (c) above; and
  - (b) to submit that scheme to the Secretary of State for his approval before such date as he may direct.
- (4) Any body preparing a scheme in pursuance of subsection (3) above shall take into account any guidance given by the Secretary of State as to the provisions which he regards as appropriate for inclusion in the scheme.

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- (5) Where a scheme under subsection (3) above is submitted to the Secretary of State, he may—
- (a) approve the scheme;
  - (b) approve the scheme subject to such modifications as he considers appropriate;
- or
- (c) reject the scheme;
- but the power conferred on the Secretary of State by paragraph (b) above shall only be exercisable after consultation with the body which submitted the scheme to him and with the Agency.
- (6) The Secretary of State may, in the case of any body which is required to make a scheme under subsection (3) above, himself make a scheme for the transfer to the Agency of such of the body's property, rights or liabilities as appear to him appropriate to be so transferred in consequence of the transfer of any functions to the Agency by virtue of section 2(1)(b) or (c) above, if—
- (a) the body fails to submit a scheme under subsection (3) above to him for approval before the due date; or
  - (b) the Secretary of State rejects a scheme under that subsection submitted to him by that body;
- but nothing in this subsection shall prevent the Secretary of State from approving any scheme which may be submitted to him after the due date.
- (7) The Secretary of State may, at any time before the transfer date, modify any scheme made or approved by him under this section but only after consultation with the Agency and, in the case of a scheme which was approved by him (with or without modifications), after consultation with the body which submitted the scheme to him for approval.
- (8) Schedule 2 to this Act shall have effect in relation to transfers by or under this section.

#### Commencement Information

- II** S. 3 not in force at Royal Assent see s. 125(3); s. 3(2)-(8) in force at 28.7.1995 by [S.I. 1995/1983](#), [art. 2](#); s. 3(1) in force at 1.4.1996 by [S.I. 1996/186](#), [art 3](#)

## 4 Principal aim and objectives of the Agency.

- (1) It shall be the principal aim of the Agency (subject to and in accordance with the provisions of this Act or any other enactment and taking into account any likely costs) in discharging its functions so to protect or enhance the environment, taken as a whole, as to make the contribution towards attaining the objective of achieving sustainable development mentioned in subsection (3) below.
- (2) The Ministers shall from time to time give guidance to the Agency with respect to objectives which they consider it appropriate for the Agency to pursue in the discharge of its functions.
- (3) The guidance given under subsection (2) above must include guidance with respect to the contribution which, having regard to the Agency's responsibilities and resources, the Ministers consider it appropriate for the Agency to make, by the discharge of its functions, towards attaining the objective of achieving sustainable development.

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- (4) In discharging its functions, the Agency shall have regard to guidance given under this section.
- (5) The power to give guidance to the Agency under this section shall only be exercisable after consultation with the Agency and such other bodies or persons as the Ministers consider it appropriate to consult in relation to the guidance in question.
- (6) A draft of any guidance proposed to be given under this section shall be laid before each House of Parliament and the guidance shall not be given until after the period of 40 days beginning with the day on which the draft was so laid or, if the draft is laid on different days, the later of the two days.
- (7) If, within the period mentioned in subsection (6) above, either House resolves that the guidance, the draft of which was laid before it, should not be given, the Ministers shall not give that guidance.
- (8) In reckoning any period of 40 days for the purposes of subsection (6) or (7) above, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (9) The Ministers shall arrange for any guidance given under this section to be published in such manner as they consider appropriate.

## **5 General functions with respect to pollution control.**

- (1) The Agency's pollution control powers shall be exercisable for the purpose of preventing or minimising, or remedying or mitigating the effects of, pollution of the environment.
- (2) The Agency shall, for the purpose—
  - (a) of facilitating the carrying out of its pollution control functions, or
  - (b) of enabling it to form an opinion of the general state of pollution of the environment,
 compile information relating to such pollution (whether the information is acquired by the Agency carrying out observations or is obtained in any other way).
- (3) If required by either of the Ministers to do so, the Agency shall—
  - (a) carry out assessments (whether generally or for such particular purpose as may be specified in the requirement) of the effect, or likely effect, on the environment of existing or potential levels of pollution of the environment and report its findings to that Minister; or
  - (b) prepare and send to that Minister a report identifying—
    - (i) the options which the Agency considers to be available for preventing or minimising, or remedying or mitigating the effects of, pollution of the environment, whether generally or in cases or circumstances specified in the requirement; and
    - (ii) the costs and benefits of such options as are identified by the Agency pursuant to sub-paragraph (i) above.
- (4) The Agency shall follow developments in technology and techniques for preventing or minimising, or remedying or mitigating the effects of, pollution of the environment.

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- (5) In this section, “pollution control powers” and “pollution control functions”, in relation to the Agency, mean respectively its powers or its functions under or by virtue of the following enactments, that is to say—
- (a) the <sup>M17</sup>Alkali, &c, Works Regulation Act 1906;
  - (b) Part I of the <sup>M18</sup>Health and Safety at Work etc. Act 1974;
  - (c) Part I of the <sup>M19</sup>Control of Pollution Act 1974;
  - (d) the <sup>M20</sup>Control of Pollution (Amendment) Act 1989;
  - (e) Parts I, II and IIA of the 1990 Act (integrated pollution control etc, waste on land and contaminated land);
  - (f) Chapter III of Part IV of the <sup>M21</sup>Water Industry Act 1991 (special category effluent);
  - (g) Part III and sections 161 to 161D of the 1991 Act (control of pollution of water resources);
  - (h) the <sup>M22</sup>Radioactive Substances Act 1993;
  - [<sup>F1</sup>(i) regulations under section 2 of the Pollution Prevention and Control Act 1999;]
  - (j) regulations made by virtue of section 2(2) of the <sup>M23</sup>European Communities Act 1972, to the extent that the regulations relate to pollution.

#### Textual Amendments

- F1** S. 5(5)(i) inserted (21.3.2000 for E.W and otherwise *prosp.*) by 1999 c. 24, ss. 6(1), 7(3), **Sch. 2 para. 15**; S.I. 2000/800, **art. 2**

#### Commencement Information

- I2** S. 5 wholly in force at 1.4.1996; s. 5 not in force at Royal Assent see s. 125(3); s. 5(2)(5) in force at 1.2.1996 by S.I. 1996/186, **art 2**; s. 5(1)(3)(4) in force at 1.4.1996 by S.I. 1996/186, **art 3**

#### Marginal Citations

- M17** 1906 c. 14.  
**M18** 1974 c. 37.  
**M19** 1974 c. 40.  
**M20** 1989 c. 14.  
**M21** 1991 c. 56.  
**M22** 1993 c. 12.  
**M23** 1972 c. 68.

## 6 General provisions with respect to water.

- (1) It shall be the duty of the Agency, to such extent as it considers desirable, generally to promote—
- (a) the conservation and enhancement of the natural beauty and amenity of inland and coastal waters and of land associated with such waters;
  - (b) the conservation of flora and fauna which are dependent on an aquatic environment; and
  - (c) the use of such waters and land for recreational purposes;

and it shall be the duty of the Agency, in determining what steps to take in performance of the duty imposed by virtue of paragraph (c) above, to take into account the needs of persons who are chronically sick or disabled. This subsection is without prejudice to the duties of the Agency under section 7 below.

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- (2) It shall be the duty of the Agency to take all such action as it may from time to time consider, in accordance with any directions given under section 40 below, to be necessary or expedient for the purpose—
- (a) of conserving, redistributing or otherwise augmenting water resources in England and Wales; and
  - (b) of securing the proper use of water resources in England and Wales<sup>F2</sup>(including the efficient use of those resources)];
- but nothing in this subsection shall be construed as relieving any water undertaker of the obligation to develop water resources for the purpose of performing any duty imposed on it by virtue of section 37 of the <sup>M24</sup>Water Industry Act 1991 (general duty to maintain water supply system).
- (3) The provisions of the 1991 Act relating to the functions of the Agency under Chapter II of Part II of that Act and the related water resources provisions so far as they relate to other functions of the Agency shall not apply to so much of any inland waters as—
- (a) are part of the River Tweed;
  - (b) are part of the River Esk or River Sark at a point where either of the banks of the river is in Scotland; or
  - (c) are part of any tributary stream of the River Esk or the River Sark at a point where either of the banks of the tributary stream is in Scotland.
- (4) Subject to section 106 of the 1991 Act (obligation to carry out flood defence functions through committees), the Agency shall in relation to England and Wales exercise a general supervision over all matters relating to flood defence.
- (5) The Agency's flood defence functions shall extend to the territorial sea adjacent to England and Wales in so far as—
- (a) the area of any regional flood defence committee includes any area of that territorial sea; or
  - (b) section 165(2) or (3) of the 1991 Act (drainage works for the purpose of defence against sea water or tidal water, and works etc to secure an adequate outfall for a main river) provides for the exercise of any power in the territorial sea.
- (6) It shall be the duty of the Agency to maintain, improve and develop salmon fisheries, trout fisheries, freshwater fisheries and eel fisheries.
- (7) The area in respect of which the Agency shall carry out its functions relating to fisheries shall be the whole of England and Wales, together with—
- (a) such part of the territorial sea adjacent to England and Wales as extends for six miles from the baselines from which the breadth of that sea is measured,
  - (b) in the Ecase of—
    - (i) the <sup>M25</sup>Diseases of Fish Act 1937,
    - (ii) the <sup>M26</sup>Salmon and Freshwater Fisheries Act 1975,
    - (iii) Part V of the 1991 Act (general control of fisheries), and
    - (iv) subsection (6) above,
 so much of the River Esk, with its banks and tributary streams up to their source, as is situated in Scotland, and
  - (c) in the case of sections 31 to 34 and 36(2) of the <sup>M27</sup>Salmon and Freshwater Fisheries Act 1975 as applied by section 39(1B) of that Act, so much of the catchment area of the River Esk as is situated in Scotland,



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but, in the case of the enactments specified in paragraph (b) above, excluding the River Tweed.

(8) In this section—

“miles” means international nautical miles of 1,852 metres;

“the related water resources provisions” has the same meaning as it has in the 1991 Act;

[<sup>F3</sup>“the River Esk” means that River as defined by section 111(4) of the Scotland Act 1998 or as such definition as may be modified by an order under section 111(1) of that Act;]

“the River Tweed” means “the river” within the meaning of the <sup>M28</sup>Tweed Fisheries Amendment Act 1859 as amended by byelaws.

#### Textual Amendments

**F2** Words in s. 6(2)(b) inserted (E.W.) (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 72, 105(3)**; [S.I. 2004/641](#), **art. 3(s)** (with [Sch. 3 para. 7](#))

**F3** S. 6: definition of “the River Esk” inserted (30.6.1999) by [S.I. 1999/1746](#), **arts. 1(1), 5(3)**; [S.I. 1998/3178](#), **art. 3**

#### Marginal Citations

**M24** 1991 c. 56.

**M25** 1937 c. 33.

**M26** 1975 c. 51.

**M27** 1975 c. 51.

**M28** 1859 c. lxx.

## 7 General environmental and recreational duties.

(1) It shall be the duty of each of the Ministers and of the Agency, in formulating or considering—

(a) any proposals relating to any functions of the Agency other than its pollution control functions, so far as may be consistent—

(i) with the purposes of any enactment relating to the functions of the Agency,

(ii) in the case of each of the Ministers, with the objective of achieving sustainable development,

(iii) in the case of the Agency, with any guidance under section 4 above,

(iv) in the case of the Secretary of State, with his duties under section 2 of the <sup>M29</sup>Water Industry Act 1991,

so to exercise any power conferred on him or it with respect to the proposals as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest;

(b) any proposals relating to pollution control functions of the Agency, to have regard to the desirability of conserving and enhancing natural beauty and of conserving flora, fauna and geological or physiographical features of special interest;

(c) any proposal relating to any functions of the Agency—

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- (i) to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural, engineering or historic interest;
  - (ii) to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects; and
  - (iii) to have regard to any effect which the proposals would have on the economic and social well-being of local communities in rural areas.
- (2) Subject to subsection (1) above, it shall be the duty of each of the Ministers and of the Agency, in formulating or considering any proposals relating to any functions of the Agency—
- (a) to have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountains, moor, heath, down, cliff or foreshore and other places of natural beauty;
  - (b) to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural, engineering or historic interest; and
  - (c) to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility.
- (3) Subsections (1) and (2) above shall apply so as to impose duties on the Agency in relation to—
- (a) any proposals relating to the functions of a water undertaker or sewerage undertaker,
  - (b) any proposals relating to the management, by the company holding an appointment as such an undertaker, of any land for the time being held by that company for any purpose whatever (whether or not connected with the carrying out of the functions of a water undertaker or sewerage undertaker), and
  - (c) any proposal which by virtue of section 156(7) of the <sup>M30</sup>Water Industry Act 1991 (disposals of protected land) falls to be treated for the purposes of section 3 of that Act as a proposal relating to the functions of a water undertaker or sewerage undertaker,
- as they apply in relation to proposals relating to the Agency's own functions, other than its pollution control functions.
- (4) Subject to obtaining the consent of any navigation authority, harbour authority or conservancy authority before doing anything which causes obstruction of, or other interference with, navigation which is subject to the control of that authority, it shall be the duty of the Agency to take such steps as are—
- (a) reasonably practicable, and
  - (b) consistent with the purposes of the enactments relating to the functions of the Agency,
- for securing, so long as the Agency has rights to the use of water or land associated with water, that those rights are exercised so as to ensure that the water or land is made available for recreational purposes and is so made available in the best manner.
- (5) It shall be the duty of the Agency, in determining what steps to take in performance of any duty imposed by virtue of subsection (4) above, to take into account the needs of persons who are chronically sick or disabled.

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- (6) Nothing in this section, the following provisions of this Act or the 1991 Act shall require recreational facilities made available by the Agency to be made available free of charge.
- (7) In this section—
- “building” includes structure;
  - “pollution control functions”, in relation to the Agency, has the same meaning as in section 5 above.

#### Marginal Citations

M29 1991 c. 56.

M30 1991 c. 56.

## 8 Environmental duties with respect to sites of special interest.

- (1) Where [<sup>F4</sup>English Nature] or the Countryside Council for Wales is of the opinion that any area of land in England or, as the case may be, in Wales—
- (a) is of special interest by reason of its flora, fauna or geological or physiographical features, and
  - (b) may at any time be affected by schemes, works, operations or activities of the Agency or by an authorisation given by the Agency,
- that Council shall notify the fact that the land is of special interest for that reason to the Agency.
- (2) Where a National Park authority or the Broads Authority is of the opinion that any area of land in a National Park or in the Broads—
- (a) is land in relation to which the matters for the purposes of which sections 6(1) and 7 above (other than section 7(1)(c)(iii) above) have effect are of particular importance, and
  - (b) may at any time be affected by schemes, works, operations or activities of the Agency or by an authorisation given by the Agency,
- the National Park authority or Broads Authority shall notify the Agency of the fact that the land is such land, and of the reasons why those matters are of particular importance in relation to the land.
- (3) Where the Agency has received a notification under subsection (1) or (2) above with respect to any land, it shall consult the notifying body before carrying out or authorising any works, operations or activities which appear to the Agency to be likely—
- (a) to destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; or
  - (b) significantly to prejudice anything the importance of which is one of the reasons why the matters mentioned in subsection (2) above are of particular importance in relation to that land.
- (4) Subsection (3) above shall not apply in relation to anything done in an emergency where particulars of what is done and of the emergency are notified to [<sup>F4</sup>English Nature], the Countryside Council for Wales, the National Park authority in question or, as the case may be, the Broads Authority as soon as practicable after that thing is done.

*Status: Point in time view as at 12/07/2004. This version of this Act contains provisions that are prospective.*

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(5) In this section—

“authorisation” includes any consent or licence;

“the Broads” has the same meaning as in the <sup>M31</sup>Norfolk and Suffolk Broads Act 1988; and

“National Park authority”, <sup>F5</sup> . . . , means a National Park authority established under section 63 below which has become the local planning authority for the National Park in question.

<sup>F6</sup>(6) . . . . .

#### Textual Amendments

**F4** Words in s. 8(1)(4) substituted (30.1.2001) by 2000 c. 37, ss. 73(4), 103(2), **Sch. 8 para. 1(t)(i)**

**F5** Words in definition of  
 “National Park authority”  
 in s. 8(6) 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.**

**F6** S. 8(6) 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.**

#### Marginal Citations

**M31** 1988 c. 4.

## 9 Codes of practice with respect to environmental and recreational duties.

(1) Each of the Ministers shall have power by order to approve any code of practice issued (whether by him or by another person) for the purpose of—

- (a) giving practical guidance to the Agency with respect to any of the matters for the purposes of which sections 6(1), 7 and 8 above have effect, and
- (b) promoting what appear to him to be desirable practices by the Agency with respect to those matters,

and may at any time by such an order approve a modification of such a code or withdraw his approval of such a code or modification.

(2) In discharging its duties under section 6(1), 7 or 8 above, the Agency shall have regard to any code of practice, and any modifications of a code of practice, for the time being approved under this section.

(3) Neither of the Ministers shall make an order under this section unless he has first consulted—

- (a) the Agency;
- (b) the [<sup>F7</sup>Countryside Agency], [<sup>F8</sup>English Nature] and the Countryside Council for Wales;
- (c) the Historic Buildings and Monuments Commission for England;
- (d) the Sports Council and the Sports Council for Wales; and
- (e) such other persons as he considers it appropriate to consult.

(4) The power of each of the Ministers to make an order under this section shall be exercisable by statutory instrument; and any statutory instrument containing such an

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order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F7** Words in s. 9(3)(b) substituted (20.2.1999) by S.I. 1999/416, art. 3, **Sch. 1 para. 17(2)**  
**F8** Words in s. 9(3)(b) substituted (30.1.2001) by 2000 c. 37, ss. 73(4), 103(2), **Sch. 8 para. 1(t)(ii)**

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

- C1** S. 9(3) excluded (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**

## 10 Incidental functions of the Agency.

- (1) This section has effect—
- (a) for the purposes of section 37(1) below, as it applies in relation to the Agency; and
  - (b) for the construction of any other enactment which, by reference to the functions of the Agency, confers any power on or in relation to the Agency; and any reference in this section to “the relevant purposes” is a reference to the purposes described in paragraphs (a) and (b) above.
- (2) For the relevant purposes, the functions of the Agency shall be taken to include the protection against pollution of—
- (a) any waters, whether on the surface or underground, which belong to the Agency or any water undertaker or from which the Agency or any water undertaker is authorised to take water;
  - (b) without prejudice to paragraph (a) above, any reservoir which belongs to or is operated by the Agency or any water undertaker or which the Agency or any water undertaker is proposing to acquire or construct for the purpose of being so operated; and
  - (c) any underground strata from which the Agency or any water undertaker is for the time being authorised to abstract water in pursuance of a licence under Chapter II of Part II of the 1991 Act (abstraction and impounding).
- (3) For the relevant purposes, the functions of the Agency shall be taken to include joining with or acting on behalf of one or more relevant undertakers for the purpose of carrying out any works or acquiring any land which at least one of the undertakers with which it joins, or on whose behalf it acts, is authorised to carry out or acquire for the purposes of—
- (a) any function of that undertaker under any enactment; or
  - (b) any function which is taken to be a function of that undertaker for the purposes to which section 217 of the <sup>M32</sup>Water Industry Act 1991 applies.
- (4) For the relevant purposes, the functions of the Agency shall be taken to include the provision of supplies of water in bulk, whether or not such supplies are provided for the purposes of, or in connection with, the carrying out of any other function of the Agency.
- (5) For the relevant purposes, the functions of the Agency shall be taken to include the provision of houses and other buildings for the use of persons employed by the Agency and the provision of recreation grounds for persons so employed.

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(6) In this section—

“relevant undertaker” means a water undertaker or sewerage undertaker; and  
“supply of water in bulk” means a supply of water for distribution by a water undertaker taking the supply.

#### Marginal Citations

M32 1991 c. 56.

### *Advisory committees*

#### [<sup>F9</sup>11 **Advisory committee for Wales.**

- (1) The Secretary of State shall establish and maintain a committee for advising him with respect to matters affecting, or otherwise connected with, the carrying out in Wales of the Agency’s functions.
- (2) The committee shall consist of such persons as may from time to time be appointed by the Secretary of State.
- (3) The committee shall meet at least once a year.
- (4) The Secretary of State may pay to the members of the committee such sums by way of reimbursement (whether in whole or in part) for loss of remuneration, for travelling expenses and for other out-of-pocket expenses as he may determine.]

#### Textual Amendments

F9 S. 11 repealed (W.) (1.4.2002) by S.I. 2002/784, art. 2(2)

#### 12 **Environment protection advisory committees.**

- (1) It shall be the duty of the Agency—
  - (a) to establish and maintain advisory committees, to be known as Environment Protection Advisory Committees, for the different regions of England and Wales;
  - (b) to consult the advisory committee for any region as to any proposals of the Agency relating generally to the manner in which the Agency carries out its functions in that region; and
  - (c) to consider any representations made to it by the advisory committee for any region (whether in response to consultation under paragraph (b) above or otherwise) as to the manner in which the Agency carries out its functions in that region.
- (2) The advisory committee for any region shall consist of—
  - (a) a chairman appointed by the Secretary of State; and
  - (b) such other members as the Agency may appoint in accordance with the provisions of the approved membership scheme for that region.

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- (3) In appointing the chairman of any advisory committee, the Secretary of State shall have regard to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to the functions of the committee.
- (4) The members of advisory committees appointed by virtue of subsection (2)(b) above—
  - (a) must not be members of the Agency; but
  - (b) must be persons who appear to the Agency to have a significant interest in matters likely to be affected by the manner in which the Agency carries out any of its functions in the region of the advisory committee in question.
- (5) The duty imposed by subsection (1)(a) above to establish and maintain advisory committees is a duty to establish and maintain an advisory committee for each area which the Agency considers it appropriate for the time being to regard as a region of England and Wales for the purposes of this section.
- (6) It shall be the duty of the Agency, in determining the regions for which advisory committees are established and maintained under this section, to ensure that one of those regions consists wholly or mainly of, or of most of, Wales.
- (7) For the purposes of this section, functions of the Agency which are carried out in any area of Scotland, or of the territorial sea, which is adjacent to any region for which an advisory committee is maintained, shall be regarded as carried out in that region.
- (8) Schedule 3 to this Act shall have effect with respect to advisory committees.
- (9) In this section—
  - “advisory committee” means an advisory committee under this section;
  - “approved membership scheme” means a scheme, as in force for the time being, prepared by the Agency and approved (with or without modification) by the Secretary of State under Schedule 3 to this Act which makes provision with respect to the membership of the advisory committee for a region.

### **13 Regional and local fisheries advisory committees.**

- (1) It shall be the duty of the Agency—
  - (a) to establish and maintain advisory committees of persons who are not members of the Agency but appear to it to be interested in salmon fisheries, trout fisheries, freshwater fisheries or eel fisheries in the different parts of the controlled area; and
  - (b) to consult those committees as to the manner in which the Agency is to perform its duty under section 6(6) above.
- (2) If the Agency, with the consent of the Ministers, so determines, it shall also be under a duty to consult those committees, or such of them as may be specified or described in the determination, as to—
  - (a) the manner in which it is to perform its duties under or by virtue of such of the enactments relating to recreation, conservation or navigation as may be the subject of the determination, or
  - (b) such matters relating to recreation, conservation or navigation as may be the subject of the determination.

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- (3) Where, by virtue of subsection (2) above, the Agency is under a duty to consult those committees or any of them, there may be included among the members of the committees in question persons who are not members of the Agency but who appear to it to be interested in matters—
- (a) likely to be affected by the manner in which it performs the duties to which the determination in question relates, or
  - (b) which are the subject of the determination,
- if the Ministers consent to the inclusion of persons of that description.
- (4) The duty to establish and maintain advisory committees imposed by subsection (1) above is a duty to establish and maintain—
- (a) a regional advisory committee for each such region of the controlled area as the Agency considers it appropriate for the time being to regard as a region of that area for the purposes of this section; and
  - (b) such local advisory committees as the Agency considers necessary to represent—
    - (i) the interests referred to in subsection (1)(a) above, and
    - (ii) where persons may be appointed members of those committees by virtue of subsection (3) above by reference to any such interests as are mentioned in that subsection, the interests in question,
 in the different parts of each such region.
- (5) It shall be the duty of the Agency in determining the regions for which regional advisory committees are established and maintained under this section to ensure that one of those regions consists (apart from territorial waters) wholly or mainly of, or of most of, Wales.
- (6) In addition to any members appointed under the foregoing provisions of this section, there shall, in the case of each regional advisory committee established and maintained under this section, also be a chairman appointed—
- (a) by the Secretary of State, in the case of the committee established and maintained for the region described in subsection (5) above; or
  - (b) by the Minister, in any other case.
- (7) There shall be paid by the Agency—
- (a) to the chairman of any regional or local advisory committee established and maintained under this section such remuneration and such travelling and other allowances; and
  - (b) to any other members of that committee such sums by way of reimbursement (whether in whole or in part) for loss of remuneration, for travelling expenses or for any other out-of-pocket expenses,
- as may be determined by one of the Ministers.
- (8) In this section “the controlled area” means the area specified in section 6(7) above in respect of which the Agency carries out functions under section 6(6) above and Part V of the 1991 Act.



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### *Flood defence committees*

#### **14 Regional flood defence committees.**

- (1) There shall be committees, known as regional flood defence committees, for the purpose of carrying out the functions which fall to be carried out by such committees by virtue of this Act and the 1991 Act.
- (2) Subject to Schedule 4 to this Act (which makes provision for the alteration of the boundaries of and the amalgamation of the areas of regional flood defence committees)
  - (a) there shall be a regional flood defence committee for each of the areas for which there was an old committee immediately before the transfer date; but
  - (b) where under section 165(2) or (3) of the 1991 Act any function of the Agency falls to be carried out at a place beyond the seaward boundaries of the area of any regional flood defence committee, that place shall be assumed for the purposes of this Act and the 1991 Act to be within the area of the regional flood defence committee to whose area the area of sea where that place is situated is adjacent.
- (3) The Agency shall maintain a principal office for the area of each regional flood defence committee.
- (4) In this section “old committee” means a regional flood defence committee for the purposes of section 9 of the 1991 Act.

#### **15 Composition of regional flood defence committees.**

- (1) Subject to subsection (2) below, a regional flood defence committee shall consist of the following, none of whom shall be a member of the Agency, that is to say—
  - (a) a chairman and a number of other members appointed by the relevant Minister;
  - (b) two members appointed by the Agency;
  - (c) a number of members appointed by or on behalf of the constituent councils.
- (2) Any person who immediately before the transfer date is, by virtue of his appointment—
  - (a) by a Minister of the Crown,
  - (b) by or on behalf of any council, or
  - (c) by the National Rivers Authority,the chairman or a member of an old committee which, by virtue of section 14 above, is replaced by a new committee shall be treated, on and after that date, for the remainder of the period for which he would, under the terms of his appointment, have held office in relation to the old committee, as if he had been appointed as the chairman or, as the case may be, a member of the new committee, and on the same terms, by that Minister or, as the case may be, by or on behalf of that council or, in the case of a person appointed by the National Rivers Authority, by the Agency.
- (3) Subject to section 16 below and to any order under Schedule 4 to this Act amalgamating the areas of any two or more regional flood defence committees—

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- (a) the total number of members of a new committee for any area shall be the same as the total number of members of the old committee for that area immediately before the transfer date;
  - (b) the number of members to be appointed to a new committee for any area by or on behalf of each of the constituent councils or, as the case may be, jointly by or on behalf of more than one of them shall be the same as the number of members of the old committee for that area which fell to be so appointed immediately before the transfer date.
- (4) In any case where—
- (a) the appointment of one or more members of a regional flood defence committee is (by virtue of subsection (3) above or an order under section 16(5) below), to be made jointly by more than one constituent council, and
  - (b) the councils by whom that appointment is to be made are unable to agree on an appointment,
- the member or members in question shall be appointed by the relevant Minister on behalf of those councils.
- (5) In appointing a person to be the chairman or a member of a regional flood defence committee under subsection (1)(a) or (c) or (4) above the relevant Minister or, as the case may be, a constituent council shall have regard to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to the functions of the committee.
- (6) The councils of every county, county borough, metropolitan district or London borough any part of which is in the area of a regional flood defence committee shall be the constituent councils for the regional flood defence committee for that area, and the Common Council of the City of London shall be a constituent council for the regional flood defence committee for any area which comprises any part of the City.
- (7) In this section—
- “old committee” has the same meaning as in section 14 above;
  - “new committee” means a regional flood defence committee established under section 14 above;
  - “the relevant Minister”—
- (a) in relation to the regional flood defence committee for an area the whole or the greater part of which is in Wales, means the Secretary of State; and
  - (b) in relation to any other regional flood defence committee, means the Minister.

## **16 Change of composition of regional flood defence committee.**

- (1) The Agency may, in accordance with the following provisions of this section, from time to time make a determination varying the total number of members of a regional flood defence committee.
- (2) The Agency shall submit any determination under subsection (1) above to the relevant Minister.
- (3) For the purposes of this section—
  - (a) the total number of members of a regional flood defence committee shall not be less than eleven; and

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- (b) any determination by the Agency under subsection (1) above that a regional flood defence committee should consist of more than seventeen members shall be provisional and shall take effect only if the relevant Minister makes an order under subsection (4) below.
- (4) If the Agency submits a provisional determination to the relevant Minister with respect to any regional flood defence committee and he considers that the committee should consist of more than seventeen members, he may by order made by statutory instrument—
- (a) confirm it; or
  - (b) substitute for the number of members determined by the Agency some other number not less than seventeen.
- (5) Subject to the following provisions of this section, whenever—
- (a) the total number of members of a regional flood defence committee is varied under this section, or
  - (b) the relevant Minister considers it necessary or expedient to make an order under this subsection,
- the relevant Minister shall by order made by statutory instrument specify the number of members to be appointed to the committee by each of the constituent councils.
- (6) An order under subsection (5) above shall relate—
- (a) where paragraph (a) of that subsection applies, to times after the coming into force of the variation; and
  - (b) where paragraph (b) of that subsection applies, to such times as are specified in the order.
- (7) An order under subsection (5) above shall be so framed that the total number of members appointed under section 15(1)(a) and (b) above is one less than the number of those appointed by or on behalf of constituent councils.
- (8) For the purpose of determining for the purposes of subsection (5) above the number of persons to be appointed to a regional flood defence committee by or on behalf of each constituent council, the relevant Minister—
- (a) if he considers it to be inappropriate that that council should appoint a member of the committee, or
  - (b) if he considers that one or more members should be appointed jointly by that council and one or more other constituent councils,
- may include provision to that effect in the order.
- (9) In this section—
- “member”, in relation to a regional flood defence committee, includes the chairman of the committee;
- “the relevant Minister” has the same meaning as in section 15 above.

## <sup>F10</sup>16A Power to alter composition of regional flood defence committees in Wales

- (1) This section applies in relation to any regional flood defence committee which satisfies (or, upon the coming into force of an order made under Schedule 4 to this Act, will satisfy) both of the conditions in subsection (2) below (a “Welsh committee”).
- (2) The conditions are—

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- (a) the whole or the greater part of the committee’s area is in Wales; and
  - (b) no local flood defence scheme is in force in relation to the area of the committee.
- (3) The National Assembly for Wales may by order made by statutory instrument make provision determining—
- (a) the total number of members of a Welsh committee; and
  - (b) the method of selection and appointment of the chairman and other members of the committee (including who is to appoint them).
- (4) An order under subsection (3) above may—
- (a) apply either to Welsh committees generally or to a particular Welsh committee;
  - (b) include such supplemental, consequential and transitional provision as the National Assembly for Wales considers appropriate.
- (5) In relation to a Welsh committee whose area is not wholly in Wales—
- (a) the power to make an order under subsection (3) above may be exercised only with the agreement of the Secretary of State; and
  - (b) a statutory instrument containing an order under that subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) An order under subsection (3) above shall not be considered local in nature for the purposes of section 58(6) of the Government of Wales Act 1998 (definition of “Assembly general subordinate legislation”).
- (7) Section 15 above (or, where the order is being made in conjunction with an order under Schedule 4 to this Act, that Schedule) shall not apply for the purposes of making an order under subsection (3) above.

#### Textual Amendments

**F10** Ss. 16A, 16B inserted (E.W.) (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 67, 105(3)**; S.I. 2004/910, **art. 2(1)(a)**

### 16B Effect of order under section 16A

- (1) Sections 15 and 16 above and section 18A(3) below shall not apply to a regional flood defence committee in respect of which an order under section 16A above is in force.
- (2) In relation to any such committee, section 18 below shall have effect as if—
- (a) paragraph (b) of subsection (4) read “other members appointed in accordance with and subject to the terms of the local flood defence scheme”; and
  - (b) paragraph (c) of subsection (4), and subsection (5), were omitted.
- (3) In relation to any such committee whose membership does not include any member appointed by or on behalf of a constituent council, Schedule 5 to this Act shall have effect as if—
- (a) in paragraph 1(1), the words “other than those appointed by or on behalf of one or more constituent councils” were omitted;
  - (b) sub-paragraphs (2), (3) and (4) of paragraph 1 were omitted; and

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(c) paragraphs 2 and 9 were omitted.]

#### Textual Amendments

**F10** Ss. 16A, 16B inserted (E.W.) (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 67, 105(3); S.I. 2004/910, art. 2(1)(a)

### 17 Local flood defence schemes and local flood defence committees.

- (1) A scheme, known as a local flood defence scheme, may be made by the Agency, in accordance with the following provisions of this section—
- (a) for the creation in the area of a regional flood defence committee of one or more districts, to be known as local flood defence districts; and
  - (b) for the constitution, membership, functions and procedure of a committee for each such district, to be known as the local flood defence committee for that district.
- (2) Any local flood defence scheme which was made under the 1991 Act or continued in force by virtue of paragraph 14(1) of Schedule 2 to the <sup>M33</sup>Water Consolidation (Consequential Provisions) Act 1991 and which, immediately before the transfer date, is in force in relation to the area of a regional flood defence committee, shall on and after that date have effect, and may be amended or revoked, as if it were a local flood defence scheme made under this section in relation to that area; and, accordingly, subject to any such amendment or revocation—
- (a) any local flood defence district created by that scheme and in being immediately before that date shall be treated, on and after that date, as a local flood defence district created by a scheme under this section in relation to the area of that regional flood defence committee; and
  - (b) any local flood defence committee created by that scheme for any such district and in being immediately before that date shall be treated, on and after that date, as the local flood defence committee for that district.
- (3) A regional flood defence committee may at any time submit to the Agency—
- (a) a local flood defence scheme for any part of their area for which there is then no such scheme in force; or
  - (b) a scheme varying a local flood defence scheme or revoking such a scheme and, if the committee think fit, replacing it with another such scheme;
- and references in the following provisions of this section and in <sup>F11</sup> sections 18 and 18A ]below to local flood defence schemes are references to schemes under either of paragraphs (a) and (b) above.
- (4) Before submitting a scheme to the Agency under subsection (3) above, a regional flood defence committee shall consult—
- (a) every local authority any part of whose area will fall within the area to which the scheme is proposed to relate; and
  - (b) such organisations representative of persons interested in flood defence (within the meaning of Part IV of the 1991 Act) or agriculture as the regional flood defence committee consider to be appropriate.
- (5) It shall be the duty of the Agency to send any scheme submitted to it under subsection (3) above to one of the Ministers.

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- (6) A local flood defence scheme may define a local flood defence district—
- (a) by reference to the districts which were local land drainage districts immediately before 1st September 1989;
  - (b) by reference to the area of the regional flood defence committee in which that district is situated;
  - (c) by reference to a map;
- or partly by one of those means and partly by another or others.
- (7) A local flood defence scheme may contain incidental, consequential and supplementary provisions.
- (8) Either of the Ministers may approve a local flood defence scheme with or without modifications; and any scheme approved under this subsection shall come into force on a date fixed by the Minister approving it.

#### **Textual Amendments**

**F11** Words in s. 17(3) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 66(3)**, 105(3); S.I. 2004/641, art. 3(q) (with [Sch. 3 para. 7](#))

#### **Marginal Citations**

**M33** 1991 c. 60.

## **18 Composition of local flood defence committees.**

- (1) Subject to subsections (2) and (3) below, a local flood defence scheme shall provide that any local flood defence committee to which it relates shall consist of not less than eleven and not more than fifteen members.
- (2) A regional flood defence committee may include in a local flood defence scheme which they submit to the Agency a recommendation that a committee to which the scheme relates should consist of a number of members greater than fifteen; and a scheme so submitted shall be taken to provide for the number of members of a committee if it contains a recommendation under this subsection relating to that committee.
- (3) The power conferred on each of the Ministers by section 17(8) above shall include power to direct that a committee to which a recommendation under subsection (2) above relates shall consist either of the recommended number of members or of some other number of members greater than fifteen.
- (4) A local flood defence committee shall consist of—
  - (a) a chairman appointed from among their own members by the regional flood defence committee;
  - (b) other members appointed by that committee; and
  - (c) members appointed, in accordance with and subject to the terms of the local flood defence scheme, by or on behalf of constituent councils.
- (5) The number of members appointed to a local flood defence committee by or on behalf of constituent councils shall be one more than the total number of members appointed by the regional flood defence committee.

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- (6) In appointing a person to be a member of a local flood defence committee, the regional flood defence committee shall have regard to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to the functions of the committee to which he is appointed.
- (7) Any person who, immediately before the transfer date is, by virtue of an appointment by an old regional committee or by or on behalf of any council, the chairman or a member of a local flood defence committee which is continued in force by virtue of section 17(2) above shall be treated, on and after that date, for the remainder of the period for which he would, under the terms of his appointment, have held office in relation to the local flood defence committee—
- (a) as if he had been appointed as such under this section by the regional flood defence committee or, as the case may be, by or on behalf of that council; and
  - (b) in the case of the chairman, as if he were a member of the regional flood defence committee.
- (8) The councils of every county, county borough, metropolitan district or London borough any part of which is in a local flood defence district shall be the constituent councils for the local flood defence committee for that district, and the Common Council of the City of London shall be a constituent council for the local flood defence committee of any local flood defence district which comprises any part of the City.
- (9) In this section “old regional committee” means a regional flood defence committee for the purposes of section 9 of the 1991 Act.

#### [<sup>F12</sup>18A Power to revoke local flood defence schemes

- (1) The Secretary of State may by order made by statutory instrument revoke any local flood defence scheme.
- (2) The power to make an order under this section shall include power to make such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (3) The provision which may be made under subsection (2) above includes provision altering—
  - (a) the total number of members of the regional flood defence committee in whose area the local flood defence district created by the scheme was situated; and
  - (b) the total number of such members to be appointed by the constituent councils of that committee,
 and subsections (7) and (8) of section 16 of this Act shall apply in relation to so much of an order under this section as is made by virtue of this subsection as they apply in relation to an order under subsection (5) of that section.
- (4) Paragraphs 2 to 6 of Schedule 4 to this Act, apart from paragraph 3(3), apply in relation to an order under this section as they apply in relation to an order under that Schedule, reading references there to the relevant Minister as references to the Secretary of State.]

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### Textual Amendments

- F12** S. 18A inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 66(2)**, 105(3); S.I. 2004/641, art. 3(q) (with Sch. 3 para. 7)

## 19 Membership and proceedings of flood defence committees.

Schedule 5 to this Act shall have effect in relation to regional flood defence committees and local flood defence committees.

## CHAPTER II

### THE SCOTTISH ENVIRONMENT PROTECTION AGENCY

#### *Establishment of SEPA*

## 20 The Scottish Environment Protection Agency.

- (1) There shall be a body to be known as the Scottish Environment Protection Agency (in this Act referred to as “SEPA”), for the purpose of carrying out the functions transferred or assigned to it by or under this Act.
- (2) Schedule 6 to this Act shall have effect with respect to SEPA.

#### *Transfer of functions, property etc. to SEPA*

## 21 Transfer of functions to SEPA.

- (1) On the transfer date there shall by virtue of this section be transferred to SEPA—
  - (a) the functions of river purification authorities, that is to say—
    - (i) their functions with respect to water resources under or by virtue of Part III of the <sup>M34</sup>Rivers (Prevention of Pollution) (Scotland) Act 1951 (in this Part referred to as “the 1951 Act”) and Part II of the <sup>M35</sup>Natural Heritage (Scotland) Act 1991;
    - (ii) their functions with respect to water pollution under or by virtue of Part III of the 1951 Act, the <sup>M36</sup>Rivers (Prevention of Pollution) (Scotland) Act 1965 and Part II of the <sup>M37</sup>Control of Pollution Act 1974;
    - (iii) their functions as enforcing authority, in relation to releases of substances into the environment, under or by virtue of Part I of the 1990 Act;
    - (iv) their functions with respect to flood warning systems under or by virtue of Part VI of the <sup>M38</sup>Agriculture Act 1970; and
    - (v) the functions assigned to them by or under any other enactment apart from this Act;
  - (b) the functions of waste regulation authorities, that is to say, the functions conferred or imposed on them by or under—
    - (i) the <sup>M39</sup>Control of Pollution (Amendment) Act 1989; or



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- (ii) Part II of the 1990 Act,
- or assigned to them by or under any other enactment apart from this Act;
- (c) the functions of disposal authorities under or by virtue of sections 3 to 10, 16, 17(1)(a) and 17(2)(b) to (d) of the <sup>M40</sup>Control of Pollution Act 1974;
- (d) the functions of the chief inspector for Scotland constituted under section 16(3) of the 1990 Act, that is to say, the functions conferred or imposed on him by or under Part I of that Act or assigned to him by or under any other enactment apart from this Act;
- (e) the functions of the chief inspector for Scotland appointed under section 4(2) (b) of the <sup>M41</sup>Radioactive Substances Act 1993, that is to say, the functions conferred or imposed on him by or under that Act or assigned to him by or under any other enactment apart from this Act;
- (f) the functions conferred or imposed by or under the <sup>M42</sup>Alkali, &c, Works Regulation Act 1906 (in this section referred to as “the 1906 Act”) on the chief, or any other, inspector (within the meaning of that Act), so far as exercisable in relation to Scotland;
- (g) so far as exercisable in relation to Scotland, the functions in relation to improvement notices and prohibition notices under Part I of the <sup>M43</sup>Health and Safety at Work etc. Act 1974 (in this section referred to as “the 1974 Act”) of inspectors appointed under section 19 of that Act by the Secretary of State in his capacity as enforcing authority responsible in relation to Scotland for the enforcement of the 1906 Act and section 5 of the 1974 Act;
- (h) the functions of local authorities as enforcing authority, in relation to releases of substances into the air, under or by virtue of Part I of the 1990 Act; and
- (i) the functions of the Secretary of State specified in subsection (2) below.
- (2) The functions of the Secretary of State mentioned in subsection (1)(i) above are, so far as exercisable in relation to Scotland—
- (a) the functions conferred or imposed on him by virtue of his being, for the purposes of Part I of the 1974 Act, the authority which is by any of the relevant statutory provisions made responsible for the enforcement of the 1906 Act and section 5 of the 1974 Act;
- (b) his functions under, or under regulations made by virtue of, section 9 of the 1906 Act (registration of works), other than any functions of his as an appellate authority or any function of making regulations;
- (c) his functions under section 19 of the <sup>M44</sup>Clean Air Act 1993 with respect to the creation of smoke control areas by local authorities; and
- (d) his functions under section 30(1) of the <sup>M45</sup>Radioactive Substances Act 1993 (power to dispose of radioactive waste).
- (3) River purification boards shall be dissolved on the transfer date.

#### Marginal Citations

**M34** 1951 c. 66.

**M35** 1991 c. 28.

**M36** 1965 c. 13.

**M37** 1974 c. 40.

**M38** 1970 c. 40.

**M39** 1989 c. 14.

**M40** 1974 c. 40.

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**M41** 1993 c. 12.  
**M42** 1906 c. 14.  
**M43** 1974 c. 37.  
**M44** 1993 c. 11.  
**M45** 1993 c. 12.

## 22 Transfer of property, rights and liabilities to SEPA.

- (1) On the transfer date—
- (a) the property, rights and liabilities of every river purification board shall, by virtue of this paragraph, be transferred to and vested in SEPA;
  - (b) any property, rights and liabilities which are the subject of a scheme under this section—
    - (i) made by the Secretary of State; or
    - (ii) made by a local authority and approved by the Secretary of State,
 shall be transferred to and vested in SEPA by and in accordance with the scheme.
- (2) The Secretary of State may, before the transfer date, make a scheme for the transfer to SEPA of such of—
- (a) his property, rights and liabilities; or
  - (b) the property, rights and liabilities of any of the inspectors or chief inspectors mentioned in subsection (1) of section 21 above,
- as appear to the Secretary of State appropriate to be so transferred in consequence of the transfer of any functions to SEPA by virtue of that subsection.
- (3) It shall be the duty of every local authority to make a scheme, after consultation with SEPA, for the transfer to SEPA of—
- (a) such of the authority's property and rights as are held by it for the purposes of its functions as—
    - (i) a waste regulation authority;
    - (ii) a disposal authority under or by virtue of the provisions mentioned in section 21(1)(c) above;
    - (iii) enforcing authority, in relation to releases of substances into the air, by virtue of Part I of the 1990 Act; and
    - (iv) in the case of an islands council, a river purification authority; and
  - (b) such of its liabilities as are liabilities to which it is subject by virtue of its being an authority mentioned in paragraph (a)(i) to (iv) above,
- and to submit that scheme to the Secretary of State for his approval before such date as he may direct.
- (4) Any local authority preparing a scheme in pursuance of subsection (3) above shall take into account any guidance given by the Secretary of State as to the provisions which he regards as appropriate for inclusion in the scheme.
- (5) Where a scheme under subsection (3) above is submitted to the Secretary of State, he may—
- (a) approve the scheme;
  - (b) approve the scheme subject to such modifications as he considers appropriate;
- or

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(c) reject the scheme;

but the power conferred on the Secretary of State by paragraph (b) above shall be exercisable only after consultation with the local authority which submitted the scheme to him and with SEPA.

(6) The Secretary of State may, in the case of any local authority which is required to make a scheme under subsection (3) above, himself make a scheme for the transfer to SEPA of such of the body's property, rights or liabilities as are mentioned in paragraph (a) or (b) of that subsection, if—

- (a) the authority fails to submit a scheme under that subsection to him for his approval before the due date; or
- (b) the Secretary of State rejects a scheme under that subsection submitted to him by the authority;

but nothing in this subsection shall prevent the Secretary of State from approving any scheme which may be submitted to him after the due date.

(7) Where the Secretary of State makes a transfer scheme under subsection (6) above, he may recover his reasonable expenses in doing so, or such proportion of those expenses as he thinks fit, from the local authority in question by such means as appear to him to be appropriate including, without prejudice to that generality, setting off the expenses payable by the local authority against revenue support grant or non-domestic rate income payable by the Secretary of State to the local authority under paragraph 3 of Schedule 12 to the <sup>M46</sup>Local Government Finance Act 1992.

(8) The Secretary of State may, at any time before the transfer date, modify any scheme made or approved by him under this section but only after consultation with SEPA and, in the case of a scheme which was approved by him (with or without modifications), after consultation with the local authority which submitted the scheme to him for approval.

(9) Schedule 2 to this Act shall have effect in relation to transfers by or under this section.

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#### Marginal Citations

M46 1992 c. 14.

## 23 Functions of staff commission.

The functions of the staff commission established under section 12 of the <sup>M47</sup>Local Government etc. (Scotland) Act 1994 shall include—

- (a) considering and keeping under review the arrangements for the transfer to SEPA, in consequence of this Act or of any scheme made under it, of staff employed by local authorities;
- (b) considering such staffing problems arising out of, consequential on or connected with any provision of, or scheme made under, this Act as may be referred to them by the Secretary of State or by any local authority;
- (c) advising the Secretary of State as to the steps necessary to safeguard the interests of the staff referred to in paragraph (a) above.

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#### Marginal Citations

M47 1994 c. 39.

### *Other functions etc. of SEPA*

PROSPECTIVE

#### <sup>F13</sup>24 Consultation with respect to drainage works.

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#### Textual Amendments

F13 S. 24 repealed (S.) (1.4.2006) by [The Water Environment \(Consequential and Savings Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/181\)](#), art. 1, **sch. Pt. 1** (with sch. Pt. 3)

#### 25 Assessing flood risk.

- (1) Without prejudice to section 92 of the <sup>M48</sup>Agriculture Act 1970 (provision of flood warning systems), SEPA shall have the function of assessing, as far as it considers it appropriate, the risk of flooding in any area of Scotland.
- (2) If requested by a planning authority to do so, SEPA shall, on the basis of such information as it holds with respect to the risk of flooding in any part of the authority's area, provide the authority with advice as to such risk.

#### Marginal Citations

M48 1970 c. 40.

#### 26 Power of SEPA to purchase land compulsorily.

- (1) The Secretary of State may authorise SEPA, for the purpose of any of its functions, to purchase land compulsorily.
- (2) The <sup>M49</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply in relation to the compulsory purchase of land under this section as if this section had been in force immediately before the commencement of that Act and, in relation to such purchase of land, SEPA shall be treated as if it were a local authority within the meaning of that Act.

#### Marginal Citations

M49 1947 c. 42.

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## **27 Power of SEPA to obtain information about land.**

- (1) Where, with a view to performing a function conferred on it by any enactment, SEPA considers that it ought to have information connected with any land, it may serve on one or more of the persons mentioned in subsection (2) below a notice—
- (a) specifying the land, the function and the enactment; and
  - (b) requiring the recipient of the notice to furnish to SEPA, within such period of not less than 14 days from the date of service of the notice as is specified in the notice—
    - (i) the nature of his interest in the land; and
    - (ii) the name and address of each person whom he believes is, as respects the land, a person mentioned in subsection (2) below.
- (2) The persons referred to in subsection (1) above are—
- (a) the occupier of the land;
  - (b) any person—
    - (i) who has an interest in the land as owner, creditor in a heritable security or lessee; or
    - (ii) who directly or indirectly receives rent for the land; and
  - (c) any person who, in pursuance of an agreement between himself and a person interested in the land, is authorised to manage the land or to arrange for the letting of it.
- (3) A person who—
- (a) fails to comply with the requirements of a notice served on him in pursuance of subsection (1) above; or
  - (b) in furnishing any information in compliance with such a notice makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **28 Power of SEPA to promote or oppose private legislation.**

- (1) SEPA may, where it is satisfied that it is expedient to do so—
- (a) with the consent of the Secretary of State, petition for the issue of a provisional order under the <sup>M50</sup>Private Legislation Procedure (Scotland) Act 1936; or
  - (b) oppose any private legislation in Parliament.
- (2) An application for the consent mentioned in paragraph (a) of subsection (1) above shall be accompanied by a concise summary of the purposes of the order petitioned for.
- (3) In paragraph (b) of subsection (1) above, “private legislation in Parliament” includes—
- (a) a provisional order and a Confirmation Bill relating to such an order; and
  - (b) any local or personal Bill.

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### **Marginal Citations**

**M50** 1936 c. 52.

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## 29 Procedure relating to making of byelaws.

The following provisions of the <sup>M51</sup>Local Government (Scotland) Act 1973—

- (a) section 202 (procedure etc. for byelaws);
- (b) section 202C (revocation of byelaws);
- (c) section 204 (evidence of byelaws),

shall apply in relation to SEPA as they apply in relation to a local authority, provided that in the application of the said section 202 to SEPA for subsection (13) there shall be substituted—

“(13) The Scottish Environment Protection Agency shall send a copy of any byelaws made by it to the proper officer of the local authority for any area to the whole or any part of which the byelaws will apply.”

### Marginal Citations

M51 1973 c. 65.

## 30 Records held by SEPA.

(1) Subject to subsection (3) below—

- (a) this section applies to all records (in whatever form or medium)—
  - (i) transferred to and vested in SEPA by or under section 22 above;
  - (ii) created or acquired by it in the exercise of any of its functions; or
  - (iii) otherwise in its keeping;
- (b) SEPA shall ensure that the records, other than such as are mentioned in paragraph (c) below, are preserved and managed in accordance with such arrangements as it, after consulting the Keeper of the Records of Scotland, shall put into effect;
- (c) records which in SEPA’s opinion are not worthy of preservation may be disposed of by it;
- (d) SEPA may from time to time revise the arrangements mentioned in paragraph (b) above but before making any material change to those arrangements shall consult the Keeper; and
- (e) SEPA—
  - (i) shall secure that the Keeper has, at all reasonable hours, unrestricted access to the records preserved by it;
  - (ii) may afford members of the public, free of charge or on payment of reasonable charges, facilities for inspecting and for obtaining copies or extracts from those records.

(2) Nothing in subsection (1)(e)(ii) above permits infringement of copyright or contravention of conditions subject to which records are in SEPA’s keeping.

(3) Insofar as any provision of any enactment, being a provision which relates to records of a specific kind, is (but for this subsection) inconsistent with subsection (1) above, that subsection is subject to the provision in question.

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### General powers and duties

#### 31 Guidance on sustainable development and other aims and objectives.

- (1) The Secretary of State shall from time to time give guidance to SEPA with respect to aims and objectives which he considers it appropriate for SEPA to pursue in the performance of its functions.
- (2) The guidance given under subsection (1) above must include guidance with respect to the contribution which, having regard to SEPA's responsibilities and resources, the Secretary of State considers it appropriate for SEPA to make, by the performance of its functions, towards attaining the objective of achieving sustainable development.
- (3) In performing its functions, SEPA shall have regard to guidance given under this section.
- (4) The power to give guidance to SEPA under this section shall be exercisable only after consultation with SEPA and such other bodies or persons as the Secretary of State considers it appropriate to consult in relation to the guidance in question.
- (5) A draft of any guidance proposed to be given under this section shall be laid before <sup>F14</sup>the Scottish Parliament] and the guidance shall not be given until after the period of 40 days beginning with the day on which the draft was so laid <sup>F15</sup>. . .
- (6) If, within the period mentioned in subsection (5) above, <sup>F14</sup>the Scottish Parliament] resolves that the guidance, the draft of which was laid before it, should not be given, the Secretary of State shall not give that guidance.
- (7) In reckoning any period of 40 days for the purposes of subsection (5) or (6) above, no account shall be taken of any time during which <sup>F14</sup>the Scottish Parliament] is dissolved or prorogued or <sup>F16</sup>. . . adjourned for more than four days.
- (8) The Secretary of State shall arrange for any guidance given under this section to be published in such manner as he considers appropriate.

#### Textual Amendments

- F14** Words in s. 31(5)(6)(7) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(2)(a)**; S.I. 1998/3178, **art. 3**
- F15** Words in s. 31(5) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(2)(b)**, Pt. IV; S.I. 1998/3178, **art. 3**
- F16** Words in s. 31(7) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(2)(c)**, Pt. IV; S.I. 1998/3178, **art. 3**

#### 32 General environmental and recreational duties.

- (1) It shall be the duty of the Secretary of State and of SEPA, in formulating or considering any proposals relating to any functions of SEPA—
  - (a) to have regard to the desirability of conserving and enhancing the natural heritage of Scotland;
  - (b) to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural, engineering or historic interest;



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- (c) to take into account any effect which the proposals would have on the natural heritage of Scotland or on any such buildings, sites or objects; and
  - (d) to have regard to the social and economic needs of any area or description of area of Scotland and, in particular, to such needs of rural areas.
- (2) Subject to subsection (1) above, it shall be the duty of the Secretary of State and of SEPA, in formulating or considering any proposals relating to any functions of SEPA—
- (a) to have regard to the desirability of preserving for the public any freedom of access (including access for recreational purposes) to areas of forest, woodland, mountains, moor, bog, cliff, foreshore, loch or reservoir and other places of natural beauty;
  - (b) to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural, engineering or historic interest; and
  - (c) to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility.
- (3) In this section—
- “building” includes structure; and
  - “the natural heritage of Scotland” has the same meaning as in section 1(3) of the <sup>M52</sup>Natural Heritage (Scotland) Act 1991.

#### **Marginal Citations**

**M52** 1991 c. 28.

### **33 General duties with respect to pollution control.**

- (1) SEPA’s pollution control powers shall be exercisable for the purpose of preventing or minimising, or remedying or mitigating the effects of, pollution of the environment.
- (2) SEPA shall, for the purpose—
- (a) of facilitating the carrying out of its pollution control functions; or
  - (b) of enabling it to form an opinion of the general state of pollution of the environment,
- compile information relating to such pollution (whether the information is acquired by SEPA carrying out observations or is obtained in any other way).
- (3) If required by the Secretary of State to do so, SEPA shall—
- (a) carry out assessments (whether generally or for such particular purpose as may be specified in the requirement) of the effect, or likely effect, on the environment of existing or potential levels of pollution of the environment and report its findings to the Secretary of State; or
  - (b) prepare and send to the Secretary of State a report identifying—
    - (i) the options which SEPA considers to be available for preventing or minimising, or remedying or mitigating the effects of, pollution of the environment, whether generally or in cases or circumstances specified in the requirement; and
    - (ii) the costs and benefits of such options as are identified by SEPA pursuant to sub-paragraph (i) above.



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- (4) SEPA shall follow developments in technology and techniques for preventing or minimising, or remedying or mitigating the effects of, pollution of the environment.
- (5) In this section, “pollution control powers” and “pollution control functions” in relation to SEPA, mean respectively its powers or its functions under or by virtue of—
- (a) the <sup>M53</sup>Alkali, &c. Works Regulation Act 1906;
  - (b) Part III of the 1951 Act, the <sup>M54</sup>Rivers (Prevention of Pollution) (Scotland) Act 1965 and Parts I, IA and II of the <sup>M55</sup>Control of Pollution Act 1974;
  - (c) Part I of the <sup>M56</sup>Health and Safety at Work etc. Act 1974;
  - (d) the <sup>M57</sup>Control of Pollution (Amendment) Act 1989;
  - (e) Parts I, II and IIA of the 1990 Act;
  - (f) section 19 of the <sup>M58</sup>Clean Air Act 1993;
  - (g) the <sup>M59</sup>Radioactive Substances Act 1993;
  - [<sup>F17</sup>(g) regulations under section 2 of the Pollution Prevention and Control Act 1999;] and
  - (h) regulations made by virtue of section 2(2) of the <sup>M60</sup>European Communities Act 1972, to the extent that the regulations relate to pollution.

#### Textual Amendments

**F17** S. 33(5)(ga) inserted (21.3.2000 (E.W.) and 29.9.2000 (S.)) by 1999 c. 24, s. 6(1), **Sch. 2 para. 16**; S.I. 2000/800, **art. 2**; S.S.I. 2000/322, **art. 2**

#### Marginal Citations

**M53** 1906 c. 14.  
**M54** 1965 c. 13.  
**M55** 1974 c. 40.  
**M56** 1974 c. 37.  
**M57** 1989 c. 14.  
**M58** 1993 c. 11.  
**M59** 1993 c. 12.  
**M60** 1972 c. 68.

### 34 General duties with respect to water.

- (1) It shall be the duty of SEPA—
- (a) to promote the cleanliness of—
    - (i) rivers, other inland waters and ground waters in Scotland; and
    - (ii) the tidal waters of Scotland; and
  - (b) to conserve so far as practicable the water resources of Scotland.
- (2) Without prejudice to section 32 above, it shall be the duty of SEPA, to such extent as it considers desirable, generally to promote—
- (a) the conservation and enhancement of the natural beauty and amenity of inland and coastal waters and of land associated with such waters; and
  - (b) the conservation of flora and fauna which are dependent on an aquatic environment.

*Status: Point in time view as at 12/07/2004. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Environment Act 1995 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)*

- (3) Subsection (1) above is without prejudice to section 1 of the <sup>M61</sup>Water (Scotland) Act 1980 (general duties of Secretary of State and water authorities as respects water resources and supplies).
- (4) In subsection (1) above, “tidal waters” means any part of the sea or the tidal part of any river, watercourse or inland water (whether natural or artificial) and includes the waters of any enclosed dock which adjoins tidal waters.

#### Marginal Citations

**M61** 1980 c. 45.

### 35 Environmental duties as respects Natural Heritage Areas and sites of special interest.

- (1) Where an area of land—
- (a) has been designated, under section 6(2) of the <sup>M62</sup>Natural Heritage (Scotland) Act 1991 (in this section referred to as “the 1991 Act”) as a Natural Heritage Area; or
  - (b) is, in the opinion of Scottish Natural Heritage (in this section referred to as “SNH”), of special interest by reason of its flora, fauna or geological or physiographical features,
- and SNH consider that it may at any time be affected by schemes, works, operations or activities of SEPA or by an authorisation given by SEPA, SNH shall give notice to SEPA in accordance with subsection (2) below.
- (2) A notice under subsection (1) above shall specify—
- (a) in the case of an area of land mentioned in paragraph (a) of that subsection, SNH’s reasons for considering that the area is of outstanding value to the natural heritage of Scotland; and
  - (b) in the case of an area of land mentioned in paragraph (b) of that subsection, SNH’s reasons for holding the opinion there mentioned.
- (3) Where SNH has given notice under subsection (1) above in respect of an area of land and—
- (a) in the case of an area of land mentioned in paragraph (a) of that subsection, the designation is cancelled or varied under section 6(7) of the 1991 Act; or
  - (b) in the case of an area of land mentioned in paragraph (b) of that subsection, SNH ceases to be of the opinion there mentioned,
- SNH shall forthwith notify SEPA of that fact.
- (4) Where SEPA has received notice under subsection (1) above with respect to any area of land, it shall (unless SNH has given notice under subsection (3) above with respect to the land) consult SNH before carrying out or authorising any schemes, works, operations or activities which appear to SEPA to be likely—
- (a) in the case of an area of land mentioned in subsection (1)(a), significantly to prejudice the value of the land, or any part of it, as a Natural Heritage Area; and
  - (b) in the case of an area of land mentioned in subsection (1)(b), to destroy or damage any of the flora or fauna or features by reason of which SNH formed the opinion there mentioned.

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- (5) Subsection (4) above shall not apply in relation to anything done in an emergency if particulars of what is done and of the emergency are notified by SEPA to SNH as soon as practicable after the thing is done.
- (6) In this section, “authorisation” includes any consent, licence or permission.
- (7) Any expression used in this section and in Part I of the 1991 Act and not defined in this Act shall be construed in accordance with that Part.

#### Marginal Citations

**M62** 1991 c. 28.

### 36 Codes of practice with respect to environmental and recreational duties.

- (1) The Secretary of State shall have power by order to approve any code of practice issued (whether by him or by another person) for the purpose of—
- giving practical guidance to SEPA with respect to any of the matters for the purposes of which sections 32, 34(2) and 35 above have effect; and
  - promoting what appear to him to be desirable practices by SEPA with respect to those matters,
- and may at any time by such an order approve a modification of such a code or withdraw his approval of such a code or modification.
- (2) In discharging its duties under section 32, 34(2) or 35 above, SEPA shall have regard to any code of practice, and any modifications of a code of practice, for the time being approved under this section.
- (3) The Secretary of State shall not make an order under this section unless he has first consulted—
- SEPA;
  - Scottish Natural Heritage;
  - Scottish Enterprise;
  - Highlands and Islands Enterprise;
  - <sup>F18</sup>(da) Scottish Water;]
  - <sup>F19</sup>the North of Scotland Water Authority; and]
  - such other persons as he considers it appropriate to consult.
- (4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument; and any statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

**F18** S. 36(3)(da) substituted (S.) (1.4.2002) by 2002 asp 3, s. 71(2), **Sch. 7 para. 24(2)** (with s. 67); S.S.I. 2002/118, **art. 2(3)**

**F19** S. 36(3)(g) repealed (S.) (25.6.2003) by Water Industry (Scotland) Act 2002 Consequential Provisions Order 2003 (S.S.I. 2003/331), **art. 1, Sch. para. 7**

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### CHAPTER III

#### MISCELLANEOUS, GENERAL AND SUPPLEMENTAL PROVISIONS RELATING TO THE NEW AGENCIES

##### *Additional general powers and duties*

#### 37 **Incidental general functions.**

- (1) Each new Agency (that is to say, in this Part, the Agency or SEPA)—
  - (a) may do anything which, in its opinion, is calculated to facilitate, or is conducive or incidental to, the carrying out of its functions; and
  - (b) without prejudice to the generality of that power, may, for the purposes of, or in connection with, the carrying out of those functions, acquire and dispose of land and other property and carry out such engineering or building operations as it considers appropriate;
 and the Agency may institute criminal proceedings in England and Wales.
- (2) It shall be the duty of each new Agency to provide the Secretary of State or the Minister with such advice and assistance as he may request.
- (3) Subject to subsection (4) below, each new Agency may provide for any person, whether in or outside the United Kingdom, advice or assistance, including training facilities, as respects any matter in which that new Agency has skill or experience.
- (4) Without prejudice to any power of either new Agency apart from subsection (3) above to provide advice or assistance of the kind mentioned in that subsection, the power conferred by that subsection shall not be exercised in a case where the person for whom the advice or assistance is provided is outside the United Kingdom, except with the consent in writing of the appropriate Minister which consent may be given subject to such conditions as the Minister giving it thinks fit.
- (5) Each new Agency—
  - (a) shall make arrangements for the carrying out of research and related activities (whether by itself or by others) in respect of matters to which its functions relate; and
  - (b) may make the results of any such research or related activities available to any person in return for payment of such fee as it considers appropriate.
- (6) Subsection (5) above shall not be taken as preventing a new Agency from making the results of any research available to the public free of charge whenever it considers it appropriate to do so.
- (7) Each new Agency may by agreement with any person charge that person a fee in respect of work done, or services or facilities provided, as a result of a request made by him for advice or assistance, whether of a general or specific character, in connection with any matter involving or relating to environmental licences.
- (8) Subsection (7) above—
  - (a) is without prejudice to the generality of the powers of either new Agency to make charges; but

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- (b) is subject to any such express provision with respect to charging by the new Agency in question as is contained in the other provisions of this Part or in any other enactment.
- (9) In this section “engineering or building operations”, without prejudice to the generality of that expression, includes—
- (a) the construction, alteration, improvement, maintenance or demolition of any building or structure or of any reservoir, watercourse, dam, weir, well, borehole or other works; and
  - (b) the installation, modification or removal of any machinery or apparatus.

#### Commencement Information

- I3** S. 37 wholly in force at 1.4.1996; s. 37 not in force at Royal Assent see s. 125(3); s. 37(1)(2)(9) in force at 28.7.1995 by S.I. 1995/1983, art. 2; s. 37(3)-(8) in force at 1.4.1996 by S.I. 1996/186, art 3

### 38 Delegation of functions by Ministers etc. to the new Agencies.

- (1) Agreements may be made between—
- (a) any Minister of the Crown, and
  - (b) a new Agency,
- authorising the new Agency (or any of its employees) to exercise on behalf of that Minister, with or without payment, any eligible function of his.
- (2) An agreement under subsection (1) above shall not authorise the new Agency (or any of its employees) to exercise on behalf of a Minister of the Crown any function which consists of a power to make regulations or other instruments of a legislative character or a power to fix fees or charges.
- (3) An agreement under this section may provide for any eligible function to which it relates to be exercisable by the new Agency in question (or any of its employees)—
- (a) either wholly or to such extent as may be specified in the agreement;
  - (b) either generally or in such cases or areas as may be so specified; or
  - (c) either unconditionally or subject to the fulfilment of such conditions as may be so specified.
- (4) Subsection (5) below applies where, by virtue of an agreement under this section, a new Agency (or any of its employees) is authorised to exercise any function of a Minister of the Crown.
- (5) Subject to subsection (6) below, anything done or omitted to be done by the new Agency (or an employee of the new Agency) in, or in connection with, the exercise or purported exercise of the function shall be treated for all purposes as done or omitted to be done by that Minister in his capacity as such.
- (6) Subsection (5) above shall not apply—
- (a) for the purposes of so much of any agreement made between that Minister and the new Agency as relates to the exercise of the function; or
  - (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that subsection.

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- (7) An agreement under this section shall not prevent a Minister of the Crown exercising any function to which the agreement relates.
- (8) Where a Minister of the Crown has power to include, in any arrangements which he makes in relation to the performance by him of an eligible function, provision for the making of payments to him—
- (a) by other parties to the arrangements, or
  - (b) by persons who use any facilities or services provided by him pursuant to the arrangements or in relation to whom the function is otherwise exercisable,
- he may include in any such arrangements provision for the making of such payments to him or a new Agency in cases where the new Agency (or any of its employees) acts on his behalf by virtue of an agreement under this section.
- (9) The power conferred on a Minister of the Crown by subsection (1) above is in addition to any other power by virtue of which functions of his may be exercised by other persons on his behalf.
- (10) In this section—
- “eligible function” means any function of a Minister of the Crown which the Secretary of State, having regard to the functions conferred or imposed upon the new Agency in question under or by virtue of this Act or any other enactment, considers can appropriately be exercised by that new Agency (or any of its employees) on behalf of that Minister;
- “Minister of the Crown” has the same meaning as in the Ministers of the <sup>M63</sup>Crown Act 1975.

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

**C2** S. 38 modified (30.6.1999) by S.I. 1999/1746, arts. 1(1), 5(1); S.I. 1998/3178, art. 3

**Marginal Citations**

**M63** 1975 c. 26.

**39 General duty of the new Agencies to have regard to costs and benefits in exercising powers.**

- (1) Each new Agency—
- (a) in considering whether or not to exercise any power conferred upon it by or under any enactment, or
  - (b) in deciding the manner in which to exercise any such power,
- shall, unless and to the extent that it is unreasonable for it to do so in view of the nature or purpose of the power or in the circumstances of the particular case, take into account the likely costs and benefits of the exercise or non-exercise of the power or its exercise in the manner in question.
- (2) The duty imposed upon a new Agency by subsection (1) above does not affect its obligation, nevertheless, to discharge any duties, comply with any requirements, or pursue any objectives, imposed upon or given to it otherwise than under this section.

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#### 40 Ministerial directions to the new Agencies.

- (1) The appropriate Minister may give a new Agency directions of a general or specific character with respect to the carrying out of any of its functions.
- (2) The appropriate Minister may give a new Agency such directions of a general or specific character as he considers appropriate for the implementation of—
  - (a) any obligations of the United Kingdom under the Community Treaties, or
  - (b) any international agreement to which the United Kingdom is for the time being a party.
- (3) Any direction under subsection (2) above shall be published in such manner as the Minister giving it considers appropriate for the purpose of bringing the matters to which it relates to the attention of persons likely to be affected by them; and—
  - (a) copies of the direction shall be made available to the public; and
  - (b) notice shall be given—
    - (i) in the case of a direction given to the Agency, in the London Gazette, or
    - (ii) in the case of a direction given to SEPA, in the Edinburgh Gazette,
 of the giving of the direction and of where a copy of the direction may be obtained.
- (4) The provisions of subsection (3) above shall have effect in relation to any direction given to a new Agency under an enactment other than subsection (2) above for the implementation of—
  - (a) any obligations of the United Kingdom under the Community Treaties, or
  - (b) any international agreement to which the United Kingdom is for the time being a party,
 as those provisions have effect in relation to a direction given under subsection (2) above.
- (5) In determining—
  - (a) any appeal against, or reference or review of, a decision of a new Agency, or
  - (b) any application transmitted from a new Agency,
 the body or person making the determination shall be bound by any direction given under this section or any other enactment by a Minister of the Crown to the new Agency to the same extent as the new Agency.
- (6) Any power to give a direction under this section shall be exercisable, except in an emergency, only after consultation with the new Agency concerned.
- (7) Any power of the appropriate Minister to give directions to a new Agency otherwise than by virtue of this section shall be without prejudice to any power to give directions conferred by this section.
- (8) It is the duty of a new Agency to comply with any direction which is given to that new Agency by a Minister of the Crown under this section or any other enactment.

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

C3 S. 40 modified (30.6.1999) by S.I. 1999/1746, arts. 1(1), 5(2); S.I. 1998/3178, art. 3



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- C4** S. 40 modified (E.W.) (2.1.2004) by [The Water Environment \(Water Framework Directive\) \(England and Wales\) Regulations 2003 \(S.I. 2003/3242\)](#), regs. 1(a), **20(1)** (with reg. 1(c))

### *Charging schemes*

#### **41 Power to make schemes imposing charges.**

- (1) Subject to the following provisions of this section and section 42 below—
- (a) in the case of any particular licence under Chapter II of Part II of the 1991 Act (abstraction and impounding), the Agency may require the payment to it of such charges as may from time to time be prescribed;
  - (b) in relation to other environmental licences, there shall be charged by and paid to a new Agency such charges as may from time to time be prescribed; and
  - (c) as a means of recovering costs incurred by it in performing functions conferred by regulations under section 62 of the 1990 Act (dangerous or intractable waste) each of the new Agencies may require the payment to it of such charges as may from time to time be prescribed;

and in this section “prescribed” means specified in, or determined under, a scheme (in this section referred to as a “charging scheme”) made under this section by the new Agency in question.

- (2) As respects environmental licences, charges may be prescribed in respect of—
- (a) the grant or variation of an environmental licence, or any application for, or for a variation of, such a licence;
  - (b) the subsistence of an environmental licence;
  - (c) the transfer (where permitted) of an environmental licence to another person, or any application for such a transfer;
  - (d) the renewal (where permitted) of an environmental licence, or any application for such a renewal;
  - (e) the surrender (where permitted) of an environmental licence, or any application for such a surrender; or
  - (f) any application for the revocation (where permitted) of an environmental licence.
- [<sup>F20</sup>(g) any other approval, consent, consideration or determination carried out by the Agency relating to any obligations of the United Kingdom under the Community Treaties or any application for such an approval of consent, consideration or determination.]

- (3) A charging scheme may, for the purposes of subsection (2)(b) above, impose—
- (a) a single charge in respect of the whole of any relevant licensed period;
  - (b) separate charges in respect of different parts of any such period; or
  - (c) both such a single charge and such separate charges;
- and in this subsection “relevant licensed period” means the period during which an environmental licence is in force or such part of that period as may be prescribed.
- (4) Without prejudice to subsection (7)(a) below, a charging scheme may, as respects environmental licences, provide for different charges to be payable according to—
- (a) the description of environmental licence in question;
  - (b) the description of authorised activity in question;



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- (c) the scale on which the authorised activity in question is carried on;
  - (d) the description or amount of the substance to which the authorised activity in question relates;
  - (e) the number of different authorised activities carried on by the same person.
- (5) A charging scheme—
- (a) shall specify, in relation to any charge prescribed by the scheme, the description of person who is liable to pay the charge; and
  - (b) may provide that it shall be a condition of an environmental licence of any particular description that any charge prescribed by a charging scheme in relation to an environmental licence of that description is paid in accordance with the scheme.
- (6) Without prejudice to subsection (5)(b) above, if it appears to a new Agency that any charges due and payable to it in respect of the subsistence of an environmental licence have not been paid, it may, in accordance with the appropriate procedure, suspend or revoke the environmental licence to the extent that it authorises the carrying on of an authorised activity.
- (7) A charging scheme may—
- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities;
  - (b) provide for the times at which, and the manner in which, the charges prescribed by the scheme are to be paid;
  - (c) revoke or amend any previous charging scheme;
  - (d) contain supplemental, incidental, consequential or transitional provision for the purposes of the scheme.
- (8) If and to the extent that a charging scheme relates to licences under Chapter II of Part II of the 1991 Act (abstraction and impounding), the scheme shall have effect subject to any provision made by or under sections 125 to 130 of that Act (exemption from charges, imposition of special charges for spray irrigation, and charges in respect of abstraction from waters of the British Waterways Board).
- (9) A new Agency shall not make a charging scheme unless the provisions of the scheme have been approved by the Secretary of State under section 42 below.
- (10) In this section—
- “the appropriate procedure” means such procedure as may be specified or described in regulations made for the purpose by the Secretary of State;
  - “authorised activity” means any activity to which an environmental licence relates.
- (11) Any power to make regulations under this section shall be exercisable by statutory instrument; and a statutory instrument containing any such regulations shall be subject to annulment pursuant to a resolution of either House of Parliament.

#### Textual Amendments

**F20** S. 41(2)(g) added (S.) (11.4.2003) by [The Landfill \(Scotland\) Regulations 2003 \(S.S.I. 2003/235\)](#), reg. 21, [Sch. 6 para. 1](#) (with regs. 4, 6)

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

- C5** S. 41 applied (with modifications) (2.12.1998) by [S.I. 1998/2746, reg. 16\(1\)](#)  
 S. 41: certain functions made exercisable only after consultation with the Assembly (W.) (1.7.1999) by [S.I. 1999/672, art. 5, Sch. 2](#)
- C6** S. 41 restricted (E.W.) (3.11.2003) by [End-of-Life Vehicles Regulations 2003 \(S.I. 2003/2635\)](#), regs. 1(2)(b), [49\(2\)](#) (with regs. 3, 4)

#### Commencement Information

- I4** S. 41 wholly in force at 1.4.1996; s. 41 not in force at Royal Assent see s. 125(3); s. 41 in force for specified purposes at 21.9.1995 by [S.I. 1995/1983, art. 3](#); s. 41 in force for further specified purposes at 1.2.1996 by [S.I. 1996/186, art 2](#); s. 41 in force at 1.4.1996 insofar as not already in force by [S.I. 1996/186, art 3](#)

## 42 Approval of charging schemes.

- (1) Before submitting a proposed charging scheme to the Secretary of State for his approval, a new Agency shall, in such manner as it considers appropriate for bringing it to the attention of persons likely to be affected by the scheme, publish a notice—
- setting out its proposals; and
  - specifying the period within which representations or objections with respect to the proposals may be made to the Secretary of State.
- (2) Where any proposed charging scheme has been submitted to the Secretary of State for his approval, he shall, in determining whether or not to approve the scheme or to approve it subject to modifications,—
- consider any representations or objections duly made to him and not withdrawn; and
  - have regard to the matter specified in subsection (3) below.
- (3) The matter mentioned in subsection (2)(b) above is the desirability of ensuring that, in the case of each of the descriptions of environmental licence specified in the paragraphs of the definition of that expression in section 56 below, the amounts recovered by the new Agency in question by way of charges prescribed by charging schemes are the amounts which, taking one year with another, need to be recovered by that new Agency to meet such of the costs and expenses (whether of a revenue or capital nature)—
- which it incurs in carrying out its functions,
  - in the case of environmental licences which are authorisations under section 13(1) of the <sup>M64</sup>Radioactive Substances Act 1993—
    - which the [<sup>F21</sup>Food Standards Agency] incurs in carrying out [<sup>F21</sup>its] functions under or in consequence of that Act, and
    - <sup>F22</sup>(ii) . . . . .
 as the Secretary of State may consider it appropriate to attribute to the carrying out of those functions in relation to activities to which environmental licences of the description in question relate.
- (4) Without prejudice to the generality of the expression “costs and expenses”, in determining for the purposes of subsection (3) above the amounts of the costs and expenses which the Secretary of State considers it appropriate to attribute to the carrying out of a new Agency’s or the [<sup>F23</sup>Food Standard Agency’s] functions in

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relation to the activities to which environmental licences of any particular description relate, the Secretary of State—

- (a) shall take into account any determination of the new Agency’s financial duties under section 44 below; and
  - (b) may include amounts in respect of the depreciation of, and the provision of a return on, such assets as are held by the new Agency, [<sup>F24</sup>or the Food Standards Agency], for purposes connected with the carrying out of the functions in question.
- (5) If and to the extent that a charging scheme relates to any licence under Chapter II of Part II of the 1991 Act (abstraction and impounding), the Secretary of State may consider it appropriate to attribute to the carrying out of the Agency’s functions in relation to activities to which such a licence relates any costs and expenses incurred by the Agency in carrying out any of its functions under Part II of that Act or under section 6(2) above.
- (6) Subsection (5) above is without prejudice to what costs and expenses the Secretary of State may consider it appropriate to attribute to the carrying out of any functions of a new Agency, the Minister or the Secretary of State in relation to activities to which environmental licences of any particular description relate.
- (7) The consent of the Treasury shall be required for the giving of approval to a charging scheme [<sup>F25</sup>submitted by the Agency]. . . .
- (8) It shall be the duty of a new Agency to take such steps as it considers appropriate for bringing the provisions of any charging scheme made by it which is for the time being in force to the attention of persons likely to be affected by them.
- (9) If and to the extent that any sums recovered by a new Agency by way of charges prescribed by charging schemes may fairly be regarded as so recovered for the purpose of recovering the amount required to meet (whether in whole or in part)—[<sup>F26</sup>such of the costs and expenses incurred by the Food Standards Agency as fall within subsection (3) above] those sums shall be paid by that new Agency [<sup>F27</sup>to the Food Standards Agency].
- (10) For the purposes of subsection (9) above, any question as to the extent to which any sums may fairly be regarded as recovered for the purpose of recovering the amount required to meet the costs and expenses falling within [<sup>F28</sup>that subsection shall be determined by the Secretary of State].
- (11) In this section “charging scheme” has the same meaning as in section 41 above.

#### Textual Amendments

- F21** Words in s. 42(3)(b)(i) substituted (1.4.2000) by 1999 c. 28, s. 40(1)(2), **Sch. 5 para. 44(1)(2)(a)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F22** S. 42(3)(b)(ii) repealed (1.4.2000) by 1999 c. 28, s. 40(1)(2)(4), **Sch. 5 para. 44(1)(2)(b)**, **Sch. 6** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F23** Words in s. 42(4) substituted (1.4.2000) by 1999 c. 28, s. 40(1)(2), **Sch. 5 para. 44(1)(3)(s)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F24** Words in s. 42(4)(b) substituted (1.4.2000) by 1999 c. 28, s. 40(1)(2), **Sch. 5 para. 44(1)(3)(b)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F25** Words in s. 42(7) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(3)**; S.I. 1998/3178, **art. 3**

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- F26** Words in s. 42(9) substituted for paras. (a) and (b) (1.4.2000) by 1999 c. 28, s. 40(1)(2), **Sch. 5 para. 44(1)(5)(a)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F27** Words in s. 42(9) substituted (1.4.2000) by 1999 c. 28, s. 40(1)(2), **Sch. 5 para. 44(1)(5)(b)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F28** Words in s. 42(10) substituted (1.4.2000) by 1999 c. 28, s. 40(1)(2), **Sch. 5 para. 44(1)(6)** (with s. 38, 40(2)); S.I. 2000/1066, **art. 2**

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

- C7** S. 42 applied (with modifications) (2.12.1998) by S.I. 1998/2746, **reg. 16(1)**  
 S. 42: certain functions made exercisable only after consultation with the Assembly (W.) (1.7.1999) by S.I. 1999/672, **art. 5, Sch. 2**  
 S. 42 modified (1.7.1999) by S.I. 1999/672, **art. 2, Sch. 1**

**Marginal Citations**

- M64** 1993 c. 12.

*Incidental power to impose charges*

**43 Incidental power of the new Agencies to impose charges.**

Without prejudice to the generality of its powers by virtue of section 37(1)(a) above and subject to any such express provision with respect to charging by a new Agency as is contained in the preceding provisions of this Chapter or any other enactment, each new Agency shall have power to fix and recover charges for services and facilities provided in the course of carrying out its functions.

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

- C8** S. 43 modified (15.8.2002) by S.I. 2002/1998, **art. 24(1)** (with **art. 33**)

*General financial provisions*

**44 General financial duties.**

- (1) The appropriate Ministers may—
- (a) after consultation with a new Agency, and
  - (b) [<sup>F29</sup>in the case of the Agency only] with the approval of the Treasury,
- determine the financial duties of that new Agency; and different determinations may be made for different functions and activities of the new Agency.
- (2) The appropriate Ministers shall give a new Agency notice of every determination of its financial duties under this section, and such a determination may—
- (a) relate to a period beginning before, on, or after, the date on which it is made;
  - (b) contain supplemental provisions; and
  - (c) be varied by a subsequent determination.
- (3) The appropriate Minister may, after consultation with <sup>F30</sup> . . . a new Agency, [<sup>F31</sup>and, in the case of the Agency only, after consultation with Treasury,] give a direction to that new Agency requiring it to pay to him an amount equal to the whole or such part as

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may be specified in the direction of any sum, or any sum of a description, so specified which is or has been received by that new Agency.

- (4) Where it appears to the appropriate Minister that a new Agency has a surplus, whether on capital or revenue account, he may, after consultation with the Treasury [<sup>F32</sup>(in the case of the Agency only)] and the new Agency, direct the new Agency to pay to him such amount not exceeding the amount of that surplus as may be specified in the direction.
- (5) In the case of the Agency—
- (a) subsection (1) above is subject to section 118 of the 1991 Act (special duties with respect to flood defence revenue);
  - (b) subsection (3) above is subject to sections 118(1)(a) and 119(1) of the 1991 Act (special duties with respect to flood defence revenue and funds raised for fishery purposes under local enactments); and
  - (c) subsection (4) above is subject to sections 118(1)(b) and 119(2) of the 1991 Act (which provide for flood defence revenue and certain funds raised under local enactments to be disregarded in determining whether there is a surplus).

#### Textual Amendments

**F29** Words in s. 44(1)(b) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(4)**; S.I. 1998/3178, **art. 3**

**F30** Words in s. 44(3) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(5)(a)(i)**, Pt. IV; S.I. 1998/3178, **art. 3**

**F31** Words in s. 44(3) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(5)(a)(ii)**; S.I. 1998/3178, **art. 3**

**F32** Words in s. 44(4) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(5)(b)**; S.I. 1998/3178, **art. 3**

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

**C9** S. 44(1): Treasury approval requirement continued (1.7.1999) by virtue of S.I. 1999/672, art. 2, **Sch. 1**

## 45 Accounts and records.

- (1) Each new Agency shall—
- (a) keep proper accounts and proper accounting records; and
  - (b) prepare in respect of each accounting year a statement of accounts giving a true and fair view of the state of affairs and the income and expenditure of the new Agency.
- (2) Every statement of accounts prepared by a new Agency in accordance with this section shall comply with any requirement which the appropriate Ministers have [<sup>F33</sup>in the case of the Agency only], with the consent of the Treasury, notified in writing to the new Agency and which relates to any of the following matters, namely—
- (a) the information to be contained in the statement;
  - (b) the manner in which that information is to be presented;
  - (c) the methods and principles according to which the statement is to be prepared.
- (3) In this section—

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“accounting records”, in the case of a new Agency, includes all books, papers and other records of the new Agency relating to, or to matters dealt with in, the accounts required to be kept by virtue of this section;

“accounting year”, subject to subsection (4) below, means, in relation to a new Agency, a financial year.

- (4) If the Secretary of State so directs in relation to any accounting year of either new Agency, that accounting year shall end with such date other than the next 31st March as may be specified in the direction; and, where the Secretary of State has given such a direction, the following accounting year shall begin with the day after the date so specified and, subject to any further direction under this subsection, shall end with the next 31st March.

#### Textual Amendments

**F33** Words in s. 45(2) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 120(4)(b); S.I. 1998/3178, art. 3

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

**C10** S. 45(2): Treasury consent requirement continued (1.7.1999) by S.I. 1999/672, art. 2, Sch. 1

### [<sup>F34</sup>46 Audit.

- (1) The accounts of each new Agency[<sup>F35</sup>, with the exception of those accounts of the Agency that relate to a financial year ending on or after 31st March 2004,] shall be audited by an auditor appointed for each accounting year by the Secretary of State.
- (2) A person shall not be qualified for appointment under subsection (1) above unless—
- (a) he is eligible for appointment as a company auditor under Part II of the <sup>M65</sup>Companies Act 1989; and
  - (b) he would not be ineligible for appointment as company auditor of the new Agency in question by virtue of section 27 of that Act (ineligibility on ground of lack of independence), if that new Agency were a body to which section 384 of the <sup>M66</sup>Companies Act 1985 (duty to appoint auditor) applies.
- (3) A copy of—
- (a) any accounts of a new Agency which are audited under subsection (1) above, and
  - (b) the report made on those accounts by the auditor,
- shall be sent to each of the appropriate Ministers as soon as reasonably practicable after the report is received by the new Agency; and the Secretary of State shall lay before each House of Parliament a copy of those accounts and that report.
- [ The Agency shall send a copy of its accounts in respect of each financial year ending on
- <sup>F36</sup>(3A) or after 31st March 2004 to the Comptroller and Auditor General as soon as reasonably practicable after the end of the financial year to which the accounts relate.
- (3B) The Comptroller and Auditor General shall examine, certify and report on any accounts sent to him by the Agency under subsection (3A) and shall lay before each House of Parliament a copy of those accounts and his report on them.]
- (4) The Comptroller and Auditor General—



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- (a) shall be entitled to inspect the contents of all accounts and accounting records of a new Agency; and
- (b) may report to the House of Commons the results of any inspection carried out by him under paragraph (a) above;

and section 6 of the <sup>M67</sup>National Audit Act 1983 (examinations of economy, efficiency and effectiveness) accordingly applies to each new Agency.

(5) In this section—

“ accounting records ” has the same meaning as in section 45 above;

“ accounting year ” has the same meaning as in section 45 above;

“ accounts ”, in relation to the Agency, includes any statement under section 45 above. ]

#### Textual Amendments

**F34** S. 46 ceases to have effect so far as relating to the Scottish Environment Protection Agency (S.) (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 13(2)**; S.S.I. 2000/10, **art. 2(3)**

**F35** Words in s. 46(1) inserted (23.5.2003) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2003 (S.I. 2003/1326), arts. 1, **19(2)**

**F36** S. 46(3A)(3B) inserted (23.5.2003) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2003 (S.I. 2003/1326), arts. 1, **19(3)**

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

**C11** S. 46(3) modified (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**

#### Marginal Citations

**M65** 1989 c. 40.

**M66** 1985 c. 6.

**M67** 1983 c. 44.

#### [<sup>F37</sup>46A Audit: SEPA

- (1) SEPA shall send the statement of accounts for each accounting year to the Scottish Ministers by such time as they may direct.
- (2) The Scottish Ministers shall send the statement of accounts to the Auditor General for Scotland for auditing.
- (3) In this section, “accounting year” has the same meaning as in section 45 above.]

#### Textual Amendments

**F37** S. 46A inserted (S.) (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 13(3)**; S.S.I. 2000/10, **art. 2(3)**

#### 47 Grants to the new Agencies.

The appropriate Minister may, [<sup>F38</sup>in the case of the Agency only] with the approval of the Treasury, make to a new Agency grants of such amounts, and on such terms, as he thinks fit.

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#### Textual Amendments

**F38** Words in s. 47 inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 120(4)(c); S.I. 1998/3178, art. 3

#### 48 Borrowing powers. **E+W**

- (1) Each new Agency shall be entitled to borrow in accordance with the following provisions of this section, but not otherwise.
- (2) Subject to subsection (5) below, each new Agency may—
  - (a) with the consent of the appropriate Minister, and
  - (b) [<sup>F39</sup>in the case of the Agency only] with the approval of the Treasury, borrow temporarily in sterling, by way of overdraft or otherwise, from persons other than the appropriate Ministers, such sums as it may require for meeting its obligations and carrying out its functions.
- (3) Subject to subsection (5) below, each new Agency may borrow from the appropriate Minister, by way of temporary loan or otherwise, such sums in sterling as it may require for meeting its obligations and carrying out its functions.
- (4) Any consent under subsection (2)(a) above may be granted subject to conditions.
- (5) The aggregate amount outstanding in respect of the principal of sums borrowed under this section by a new Agency shall not at any time exceed—
  - (a) in the case of the Agency, £100 million or such greater sum, not exceeding £160 million, as the Ministers may by order specify; or
  - (b) in the case of SEPA, £5 million or such greater sum, not exceeding £10 million, as the Secretary of State may by order specify.
- (6) The power to make an order under subsection (5) above shall be exercisable by statutory instrument; but no order shall be made under that subsection unless a draft of the order has been laid before, and approved by a resolution of, the House of Commons.

#### 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

**F39** Words in s. 48(2) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 120(4)(a); S.I. 1998/3178, art. 3

#### 48 Borrowing powers. **S**

- (1) Each new Agency shall be entitled to borrow in accordance with the following provisions of this section, but not otherwise.
- (2) Subject to [<sup>F88</sup>subsections (5) and (5A)] below, each new Agency may—
  - (a) with the consent of the appropriate Minister, and



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- (b) [<sup>F89</sup>in the case of the Agency only] with the approval of the Treasury, borrow temporarily in sterling, by way of overdraft or otherwise, from persons other than the appropriate Ministers, such sums as it may require for meeting its obligations and carrying out its functions.
- (3) Subject to [<sup>F88</sup>subsections (5) and (5A)] below, each new Agency may borrow from the appropriate Minister, by way of temporary loan or otherwise, such sums in sterling as it may require for meeting its obligations and carrying out its functions.
- (4) Any consent under subsection (2)(a) above may be granted subject to conditions.
- (5) The aggregate amount outstanding in respect of the principal of sums borrowed under this section by a new Agency shall not at any time exceed—
  - (a) in the case of the Agency, £100 million or such greater sum, not exceeding £160 million, as the Ministers may by order specify; <sup>F90</sup> . . .
  - <sup>F90</sup>(b) . . . . .
- <sup>F91</sup>(5A) In any financial year the net amount of sums borrowed by SEPA under this section shall not exceed the amount specified for that year for the purposes of this section in a Budget Act.
- <sup>F91</sup>(5B) In subsection (5A) above, “net amount” means the amount of sums borrowed in the financial year less any repayments made during that year (otherwise than by way of interest) in respect of sums borrowed in that or any other year.]
- (6) The power to make an order under subsection (5) above shall be exercisable by statutory instrument; but no order shall be made under that subsection unless a draft of the order has been laid before, and approved by a resolution of, the House of Commons.

<b>Extent Information</b>	
<b>E2</b>	This version of this provision extends to Scotland only; a separate version has been created for England and Wales only
<b>Textual Amendments</b>	
<b>F88</b>	Words in s. 48(2)(3) substituted (S.) (1.4.2000) by 2000 asp 1, s. 8, <b>Sch. 1 para. 7(2)(a)</b> ; S.S.I. 2000/10, <b>art. 2(3)</b>
<b>F89</b>	Words in s. 48(2) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, <b>Sch. 2 Pt. I para. 120(4)(a)</b> ; S.I. 1998/3178, <b>art. 3</b>
<b>F90</b>	S. 48(5)(b) and the preceding “or” repealed (S.) (1.4.2000) by 2000 asp 1, s. 8, <b>Sch. 1 para. 7(2)(b)</b> ; S.S.I. 2000/10, <b>art. 2(3)</b>
<b>F91</b>	S. 48(5A)(5B) inserted (S.) (1.4.2000) by 2000 asp 1, s. 8, <b>Sch. 1</b> ; S.S.I. 2000/10, <b>art. 2(3)</b>

**49 Government loans to the new Agencies.**

- (1) The appropriate Minister may, [<sup>F40</sup>in the case of the Agency only], with the approval of the Treasury, lend to a new Agency any sums which it has power to borrow under section 48(3) above.
- (2) Any loan made under this section by one of the appropriate Ministers shall be repaid to him at such times and by such methods, and interest on the loan shall be paid to him

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at such rates and at such times, as that Minister may with the approval of the Treasury from time to time determine.

[<sup>F41</sup>(3) If in any financial year any of the appropriate Ministers lends any sums to a new Agency under this section, he shall—

- (a) prepare in respect of that financial year an account of the sums so lent by him; and
- (b) send that account to the Comptroller and Auditor General before the end of September in the following financial year;

and the form of the account and the manner of preparing it shall be such as the Treasury may direct.

(4) The Comptroller and Auditor General shall examine, certify and report on each account sent to him under this section and shall lay copies of it and of his report before each House of Parliament.

(5) The Treasury may issue to any of the appropriate Ministers—

- (a) out of the National Loans Fund, or
- (b) out of money provided by Parliament,

such sums as are necessary to enable him to make loans to a new Agency under this section; and any sums received by a Minister of the Crown in pursuance of subsection (2) above shall be paid into the National Loans Fund or, as the case may be, the Consolidated Fund.]

#### Textual Amendments

**F40** Words in s. 49(1) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(4)(c)**; S.I. 1998/3178, **art. 3**

**F41** S. 49(3)-(5) cease to have effect so far as relating to the Scottish Environment Protection Agency (S.) (1.4.2000) by virtue of 2000 asp 1, s. 8, **Sch. 1 para. 7(3)**; S.S.I. 2000/10, **art. 2(3)**

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

**C12** S. 49(1)(2): Treasury approval requirement continued (1.7.1999) by virtue of S.I. 1999/672, art. 2, **Sch. 1**

## 50 Government guarantees of a new Agency's borrowing.

(1) The appropriate Minister may, [<sup>F42</sup>in the case of the Agency only] with the consent of the Treasury, guarantee, in such manner and on such conditions as he may think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sum which a new Agency borrows from any person.

(2) A Minister who gives a guarantee under this section shall forthwith lay a statement of the guarantee before each House of Parliament.

(3) Where any sum is paid out for fulfilling a guarantee under this section, the Minister who gave the guarantee shall, as soon as reasonably practicable after the end of each financial year (beginning with that in which the sum is paid out and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged), lay before each House of Parliament a statement relating to that sum.

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- (4) If any sums are paid out in fulfilment of a guarantee under this section, the new Agency which borrowed the sum by reference to which the guarantee was given shall make to the Minister who gave the guarantee, at such times and in such manner as he may from time to time direct,—
- (a) payments of such amounts as he may so direct in or towards repayment of the sums so paid out; and
  - (b) payments of interest, at such rate as he may so direct, on what is outstanding for the time being in respect of sums so paid out;
- and the consent of the Treasury shall be required for the giving of a direction under this subsection [<sup>F43</sup>in the case of the Agency only].

#### Textual Amendments

- F42** Words in s. 50(1) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 120(4); S.I. 1998/3178, art. 3
- F43** Words in s. 50(4) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 120(6); S.I. 1998/3178, art. 3

### Information

#### 51 Provision of information by the new Agencies.

- (1) A new Agency shall furnish the appropriate Minister with all such information as he may reasonably require relating to—
  - (a) the new Agency's property;
  - (b) the carrying out and proposed carrying out of its functions; and
  - (c) its responsibilities generally.
- (2) Information required under this section shall be furnished in such form and manner, and be accompanied or supplemented by such explanations, as the appropriate Minister may reasonably require.
- (3) The information which a new Agency may be required to furnish to the appropriate Minister under this section shall include information which, although it is not in the possession of the new Agency or would not otherwise come into the possession of the new Agency, is information which it is reasonable to require the new Agency to obtain.
- (4) A requirement for the purposes of this section shall be contained in a direction which—
  - (a) may describe the information to be furnished in such manner as the Minister giving the direction considers appropriate; and
  - (b) may require the information to be furnished on a particular occasion, in particular circumstances or from time to time.
- (5) For the purposes of this section a new Agency shall—
  - (a) permit any person authorised for the purpose by the appropriate Minister to inspect and make copies of the contents of any accounts or other records of the new Agency; and
  - (b) give such explanation of them as that person or the appropriate Minister may reasonably require.

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## 52 Annual report.

- (1) As soon as reasonably practicable after the end of each financial year, each new Agency shall prepare a report on its activities during that year and shall send a copy of that report to each of the appropriate Ministers.
- (2) Every such report shall set out any directions under section 40 above which have been given to the new Agency in question during the year to which the report relates, other than directions given under subsection (1) of that section which are identified to that new Agency in writing by the appropriate Minister as being directions the disclosure of which would, in his opinion, be contrary to the interests of national security.
- (3) The Secretary of State shall lay a copy of every such report before each House of Parliament and shall arrange for copies of every such report to be published in such manner as he considers appropriate.
- (4) A new Agency's annual report shall be in such form and contain such information as may be specified in any direction given to the new Agency by the appropriate Ministers.

### Modifications etc. (not altering text)

- C13** S. 52(1) modified (30.6.1999) by S.I. 1999/1746, arts. 1(1), 10(1); S.I. 1998/3178, art. 3  
 S. 52(1) modified (1.7.1999) by S.I. 1999/672, art. 2, Sch. 1

### *Supplemental provisions*

## 53 Inquiries and other hearings.

- (1) Without prejudice to any other provision of this Act or any other enactment by virtue of which an inquiry or other hearing is authorised or required to be held, the appropriate Minister may cause an inquiry or other hearing to be held if it appears to him expedient to do so—
  - (a) in connection with any of the functions of a new Agency; or
  - (b) in connection with any of his functions in relation to a new Agency.
- (2) Subsections (2) to (5) of section 250 of the <sup>M68</sup>Local Government Act 1972 (which contain supplementary provisions with respect to local inquiries held in pursuance of that section) shall apply to inquiries or other hearings under this section or any other enactment—
  - (a) in connection with any of the functions of the Agency, or
  - (b) in connection with any functions of the Secretary of State or the Minister in relation to the Agency,
 as they apply to inquiries under that section, but taking the reference in subsection (4) of that section to a local authority as including a reference to the Agency.
- (3) The provisions of subsections (2) to (8) of section 210 of the <sup>M69</sup>Local Government (Scotland) Act 1973 (which relate to the holding of local inquiries) shall apply to inquiries or other hearings held under this section or any other enactment—
  - (a) in connection with any of the functions of SEPA, or
  - (b) in connection with any functions of the Secretary of State in relation to SEPA, as they apply to inquiries held under that section.

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### Marginal Citations

**M68** 1972 c. 70.

**M69** 1973 c. 65.

## 54 Appearance in legal proceedings.

In England and Wales, a person who is authorised by the Agency to prosecute on its behalf in proceedings before a magistrates' court shall be entitled to prosecute in any such proceedings although not of counsel or a solicitor.

## 55 Continuity of exercise of functions: the new Agencies.

(1) The abolition of—

- (a) the National Rivers Authority,
- (b) the London Waste Regulation Authority, or
- (c) a river purification board,

shall not affect the validity of anything done by that Authority or board before the transfer date.

(2) Anything which, at the transfer date, is in the process of being done by or in relation to a transferor in the exercise of, or in connection with, any of the transferred functions may be continued by or in relation to the transferee.

(3) Anything done by or in relation to a transferor before the transfer date in the exercise of, or otherwise in connection with, any of the transferred functions, shall, so far as is required for continuing its effect on and after that date, have effect as if done by or in relation to the transferee.

(4) Subsection (3) above applies in particular to—

- (a) any decision, determination, declaration, designation, agreement or instrument made by a transferor;
- (b) any regulations or byelaws made by a transferor;
- (c) any licence, permission, consent, approval, authorisation, exemption, dispensation or relaxation granted by or to a transferor;
- (d) any notice, direction or certificate given by or to a transferor;
- (e) any application, request, proposal or objection made by or to a transferor;
- (f) any condition or requirement imposed by or on a transferor;
- (g) any fee or charge paid by or to a transferor;
- (h) any appeal allowed by or in favour of or against a transferor;
- (j) any proceedings instituted by or against a transferor.

(5) Any reference in the foregoing provisions of this section to anything done by or in relation to a transferor includes a reference to anything which, by virtue of any enactment, is treated as having been done by or in relation to that transferor.

(6) Any reference to a transferor in any document constituting or relating to anything to which the foregoing provisions of this section apply shall, so far as is required for giving effect to those provisions, be construed as a reference to the transferee.

(7) The foregoing provisions of this section—

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- (a) are without prejudice to any provision made by this Act in relation to any particular functions; and
- (b) shall not be construed as continuing in force any contract of employment made by a transferor;

and the Secretary of State may, in relation to any particular functions, by order exclude, modify or supplement any of the foregoing provisions of this section or make such other transitional provisions as he thinks necessary or expedient.

- (8) Where, by virtue of any provision of Schedule 15 to this Act, the Minister is the transferor in the case of any functions, he shall have the same powers under subsection (7) above in relation to those functions as the Secretary of State.
- (9) The power to make an order under subsection (7) above shall be exercisable by statutory instrument; and any statutory instrument containing such an order shall be subject to annulment pursuant to a resolution of either House of Parliament.

(10) In this section—

“the transferee”, in the case of any transferred functions, means the new Agency whose functions they become by virtue of any provision made by or under this Act;

“transferred functions” means any functions which, by virtue of any provision made by or under this Act, become functions of a new Agency; and

“transferor” means any body or person any or all of whose functions become, by virtue of any provision made by or under this Act, functions of a new Agency.

#### Commencement Information

**I5** S. 55 wholly in force at 1.4.1996; s. 55 not in force at Royal Assent see s. 125(3); s. 55(7)-(10) in force at 1.2.1996 by S.I. 1996/186, art 2; s. 55(1)-(6) in force at 1.4.1996 by S.I. 1996/186, art 3

## 56 Interpretation of Part I.

(1) In this Part of this Act, except where the context otherwise requires—

“the 1951 Act” means the <sup>M70</sup>Rivers (Prevention of Pollution) (Scotland) Act 1951;

“the 1990 Act” means the <sup>M71</sup>Environmental Protection Act 1990;

“the 1991 Act” means the <sup>M72</sup>Water Resources Act 1991;

“the appropriate Minister”—

(a) in the case of the Agency, means the Secretary of State or the Minister; and

(b) in the case of SEPA, means the Secretary of State;

“the appropriate Ministers”—

(a) in the case of the Agency, means the Secretary of State and the Minister; and

(b) in the case of SEPA, means the Secretary of State;

“conservancy authority” has the meaning given by section 221(1) of the 1991 Act;

“costs” includes—

(a) costs to any person; and

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(b) costs to the environment;

“disposal authority”—

(a) in the application of this Part in relation to the Agency, has the same meaning as it has in Part I of the <sup>M73</sup>Control of Pollution Act 1974 by virtue of section 30(1) of that Act; and

(b) in the application of this Part in relation to SEPA, has the meaning assigned to it by section 30(2) of that Act;

[<sup>F44</sup>“the environment” means all, or any, of the following media, namely, the air, water and land (and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground); ]

“environmental licence”, in the application of this Part in relation to the Agency, means any of the following—

(a) registration of a person as a carrier of controlled waste under section 2 of the <sup>M74</sup>Control of Pollution (Amendment) Act 1989,

(aa) [<sup>F45</sup>a permit granted by the Agency under regulations under section 2 of the Pollution Prevention and Control Act 1999;]

(b) an authorisation under Part I of the 1990 Act, other than any such authorisation granted by a local enforcing authority,

(c) a waste management licence under Part II of that Act,

(d) a licence under Chapter II of Part II of the 1991 Act,

(e) a consent for the purposes of section 88(1)(a), 89(4)(a) or 90 of that Act,

(f) registration under the <sup>M75</sup>Radioactive Substances Act 1993,

(g) an authorisation under that Act,

(h) registration of a person as a broker of controlled waste under the <sup>M76</sup>Waste Management Licensing Regulations 1994,

(j) registration in respect of an activity falling within paragraph 45(1) or (2) of Schedule 3 to those Regulations,

so far as having effect in relation to England and Wales;

“environmental licence”, in the application of this Part in relation to SEPA, means any of the following—

(a) a consent under Part II of the <sup>M77</sup>Control of Pollution Act 1974,

(aa) [<sup>F46</sup>a permit granted by SEPA under regulations under section 2 of the Pollution Prevention and Control Act 1999]

(b) registration of a person as a carrier of controlled waste under section 2 of the <sup>M78</sup>Control of Pollution (Amendment) Act 1989,

(c) an authorisation under Part I of the 1990 Act,

(d) a waste management licence under Part II of that Act,

(e) a licence under section 17 of the <sup>M79</sup>Natural Heritage (Scotland) Act 1991,

(f) registration under the <sup>M80</sup>Radioactive Substances Act 1993,

(g) an authorisation under that Act,

(h) registration of a person as a broker of controlled waste under the <sup>M81</sup>Waste Management Licensing Regulations 1994,

(j) [<sup>F47</sup>registration in respect of an activity falling within paragraphs 7, 8(2), 9, 10, 12, 12A, 19, 45(1) or (2) or 46 of Schedule 3 to those Regulations, except where the waste which is the subject of the activity consists of agricultural waste within the meaning of those Regulations,]



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so far as having effect in relation to Scotland;

“flood defence functions”, in relation to the Agency, has the same meaning as in the 1991 Act;

“harbour authority” has the meaning given by section 221(1) of the 1991 Act;

“local authority”, in the application of this Part in relation to SEPA, means a district or islands council in Scotland;

“the Minister” means the Minister of Agriculture, Fisheries and Food;

“the Ministers” means the Secretary of State and the Minister;

“navigation authority” has the meaning given by section 221(1) of the 1991 Act;

“new Agency” means the Agency or SEPA;

“river purification authority” means a river purification authority within the meaning of the 1951 Act;

“river purification board” means a river purification board established by virtue of section 135 of the <sup>M82</sup>Local Government (Scotland) Act 1973;

“the transfer date” means such date as the Secretary of State may by order made by statutory instrument appoint as the transfer date for the purposes of this Part; and different dates may be appointed for the purposes of this Part—

- (i) as it applies for or in connection with transfers under or by virtue of Chapter I above, and
- (ii) as it applies for or in connection with transfers under or by virtue of Chapter II above;

“waste regulation authority”—

- (a) in the application of this Part in relation to the Agency, means any authority in England or Wales which, by virtue of section 30(1) of the 1990 Act, is a waste regulation authority for the purposes of Part II of that Act; and
- (b) in the application of this Part in relation to SEPA, means any council which, by virtue of section 30(1)(g) of the 1990 Act, is a waste regulation authority for the purposes of Part II of that Act.

(2) In relation to any time on or after 1st April 1996—

- (a) subsection (1) above shall have effect as if, in the definition of “local authority”, for the words “district or islands council in Scotland” there were substituted the words “council constituted under section 2 of the <sup>M83</sup>Local Government etc. (Scotland) Act 1994”; and
- (b) in section 22(3)(a)(iv) above the reference to an islands council shall be construed as a reference to a council mentioned in section 3(1) of the Local Government etc. (Scotland) Act 1994.

(3) Where by virtue of any provision of this Part any function of a Minister of the Crown is exercisable concurrently by different Ministers, that function shall also be exercisable jointly by any two or more of those Ministers.

#### Textual Amendments

**F44** Definition of “the environment” in s. 56(1) substituted (21.3.2000 (E.W.) and 29.9.2000 (S.)) by [1999 c. 24, s. 6\(1\)](#), [Sch. 2 para. 17](#); [S.I. 2000/800, art. 2](#); [S.S.I. 2000/322, art. 2](#)



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- F45** S. 56(1): para. (aa) in the definition of “environmental licence” in relation to the Environment Agency inserted (E.W.) (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 para. 15**
- F46** S. 56(1): para. (aa) in the definition of “environmental licence” in relation to SEPA inserted (S.) (28.9.2000) by S.S.I. 2000/323, regs. 1(1), 36, **Sch. 10 para. 5(2)**
- F47** Words in s. 56(1) substituted (S.) (12.7.2004) by Waste Management Licensing Amendment (Scotland) Regulations 2004 (S.S.I. 2004/275), **reg. 2(2)** (with reg. 23)

#### Marginal Citations

- M70** 1951 c. 66.  
**M71** 1990 c. 43.  
**M72** 1991 c. 57.  
**M73** 1974 c. 40.  
**M74** 1989 c. 14.  
**M75** 1993 c. 12.  
**M76** S.I. 1994/1056.  
**M77** 1974 c. 40.  
**M78** 1989 c. 14.  
**M79** 1991 c. 28.  
**M80** 1993 c. 12.  
**M81** S.I. 1994/1056.  
**M82** 1973 c. 65.  
**M83** 1994 c. 39.

## PART II

### CONTAMINATED LAND AND ABANDONED MINES

#### 57 Contaminated land.

After section 78 of the <sup>M84</sup>Environmental Protection Act 1990 there shall be inserted—

#### “PART IIA

#### CONTAMINATED LAND

##### 78A Preliminary.

- (1) The following provisions have effect for the interpretation of this Part.
- (2) “Contaminated land” is any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that—
  - (a) significant harm is being caused or there is a significant possibility of such harm being caused; or
  - (b) pollution of controlled waters is being, or is likely to be, caused;
 and, in determining whether any land appears to be such land, a local authority shall, subject to subsection (5) below, act in accordance with guidance issued by the Secretary of State in accordance with section 78YA below with respect to the manner in which that determination is to be made.

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- (3) A “special site” is any contaminated land—
- (a) which has been designated as such a site by virtue of section 78C(7) or 78D(6) below; and
  - (b) whose designation as such has not been terminated by the appropriate Agency under section 78Q(4) below.
- (4) “Harm” means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property.
- (5) The questions—
- (a) what harm is to be regarded as “significant”,
  - (b) whether the possibility of significant harm being caused is “significant”,
  - (c) whether pollution of controlled waters is being, or is likely to be caused,
- shall be determined in accordance with guidance issued for the purpose by the Secretary of State in accordance with section 78YA below.
- (6) Without prejudice to the guidance that may be issued under subsection (5) above, guidance under paragraph (a) of that subsection may make provision for different degrees of importance to be assigned to, or for the disregard of,—
- (a) different descriptions of living organisms or ecological systems;
  - (b) different descriptions of places; or
  - (c) different descriptions of harm to health or property, or other interference;
- and guidance under paragraph (b) of that subsection may make provision for different degrees of possibility to be regarded as “significant” (or as not being “significant”) in relation to different descriptions of significant harm.
- (7) “Remediation” means—
- (a) the doing of anything for the purpose of assessing the condition of—
    - (i) the contaminated land in question;
    - (ii) any controlled waters affected by that land; or
    - (iii) any land adjoining or adjacent to that land;
  - (b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose—
    - (i) of preventing or minimising, or remedying or mitigating the effects of, any significant harm, or any pollution of controlled waters, by reason of which the contaminated land is such land; or
    - (ii) of restoring the land or waters to their former state; or
  - (c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters;
- and cognate expressions shall be construed accordingly.
- (8) Controlled waters are “affected by” contaminated land if (and only if) it appears to the enforcing authority that the contaminated land in question is, for the purposes of subsection (2) above, in such a condition, by reason of substances in, on or under the land, that pollution of those waters is being, or is likely to be caused.

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(9) The following expressions have the meaning respectively assigned to them—

“the appropriate Agency” means—

- (a) in relation to England and Wales, the Environment Agency;
- (b) in relation to Scotland, the Scottish Environment Protection Agency;

“appropriate person” means any person who is an appropriate person, determined in accordance with section 78F below, to bear responsibility for any thing which is to be done by way of remediation in any particular case;

“charging notice” has the meaning given by section 78P(3)(b) below;

“controlled waters”—

- (a) in relation to England and Wales, has the same meaning as in Part III of the <sup>M85</sup>Water Resources Act 1991; and
- (b) in relation to Scotland, has the same meaning as in section 30A of the <sup>M86</sup>Control of Pollution Act 1974;

“creditor” has the same meaning as in the <sup>M87</sup>Conveyancing and Feudal Reform (Scotland) Act 1970;

“enforcing authority” means—

- (a) in relation to a special site, the appropriate Agency;
- (b) in relation to contaminated land other than a special site, the local authority in whose area the land is situated;

“heritable security” has the same meaning as in the <sup>M88</sup>Conveyancing and Feudal Reform (Scotland) Act 1970;

“local authority” in relation to England and Wales means—

- (a) any unitary authority;
- (b) any district council, so far as it is not a unitary authority;
- (c) the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;

and in relation to Scotland means a council for an area constituted under section 2 of the <sup>M89</sup>Local Government etc. (Scotland) Act 1994;

“notice” means notice in writing;

“notification” means notification in writing;

“owner”, in relation to any land in England and Wales, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or, where the land is not let at a rack rent, would be so entitled if it were so let;

“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 public or municipal land includes the persons to whom the management of the land is entrusted;

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“pollution of controlled waters” means the entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Secretary of State;

“remediation declaration” has the meaning given by section 78H(6) below;

“remediation notice” has the meaning given by section 78E(1) below;

“remediation statement” has the meaning given by section 78H(7) below;

“required to be designated as a special site” shall be construed in accordance with section 78C(8) below;

“substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

“unitary authority” means—

- (a) the council of a county, so far as it is the council of an area for which there are no district councils;
- (b) the council of any district comprised in an area for which there is no county council;
- (c) the council of a London borough;
- (d) the council of a county borough in Wales.

### **78B Identification of contaminated land.**

- (1) Every local authority shall cause its area to be inspected from time to time for the purpose—
  - (a) of identifying contaminated land; and
  - (b) of enabling the authority to decide whether any such land is land which is required to be designated as a special site.
- (2) In performing its functions under subsection (1) above a local authority shall act in accordance with any guidance issued for the purpose by the Secretary of State in accordance with section 78YA below.
- (3) If a local authority identifies any contaminated land in its area, it shall give notice of that fact to—
  - (a) the appropriate Agency;
  - (b) the owner of the land;
  - (c) any person who appears to the authority to be in occupation of the whole or any part of the land; and
  - (d) each person who appears to the authority to be an appropriate person;
 and any notice given under this subsection shall state by virtue of which of paragraphs (a) to (d) above it is given.
- (4) If, at any time after a local authority has given any person a notice pursuant to subsection (3)(d) above in respect of any land, it appears to the enforcing authority that another person is an appropriate person, the enforcing authority shall give notice to that other person—

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- (a) of the fact that the local authority has identified the land in question as contaminated land; and
- (b) that he appears to the enforcing authority to be an appropriate person.

### **78C Identification and designation of special sites.**

- (1) If at any time it appears to a local authority that any contaminated land in its area might be land which is required to be designated as a special site, the authority—
  - (a) shall decide whether or not the land is land which is required to be so designated; and
  - (b) if the authority decides that the land is land which is required to be so designated, shall give notice of that decision to the relevant persons.
- (2) For the purposes of this section, “the relevant persons” at any time in the case of any land are the persons who at that time fall within paragraphs (a) to (d) below, that is to say—
  - (a) the appropriate Agency;
  - (b) the owner of the land;
  - (c) any person who appears to the local authority concerned to be in occupation of the whole or any part of the land; and
  - (d) each person who appears to that authority to be an appropriate person.
- (3) Before making a decision under paragraph (a) of subsection (1) above in any particular case, a local authority shall request the advice of the appropriate Agency, and in making its decision shall have regard to any advice given by that Agency in response to the request.
- (4) If at any time the appropriate Agency considers that any contaminated land is land which is required to be designated as a special site, that Agency may give notice of that fact to the local authority in whose area the land is situated.
- (5) Where notice under subsection (4) above is given to a local authority, the authority shall decide whether the land in question—
  - (a) is land which is required to be designated as a special site, or
  - (b) is not land which is required to be so designated,and shall give notice of that decision to the relevant persons.
- (6) Where a local authority makes a decision falling within subsection (1)(b) or (5)(a) above, the decision shall, subject to section 78D below, take effect on the day after whichever of the following events first occurs, that is to say—
  - (a) the expiration of the period of twenty-one days beginning with the day on which the notice required by virtue of subsection (1)(b) or, as the case may be, (5)(a) above is given to the appropriate Agency; or
  - (b) if the appropriate Agency gives notification to the local authority in question that it agrees with the decision, the giving of that notification;and where a decision takes effect by virtue of this subsection, the local authority shall give notice of that fact to the relevant persons.
- (7) Where a decision that any land is land which is required to be designated as a special site takes effect in accordance with subsection (6) above, the notice given under subsection (1)(b) or, as the case may be, (5)(a) above shall have

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effect, as from the time when the decision takes effect, as the designation of that land as such a site.

- (8) For the purposes of this Part, land is required to be designated as a special site if, and only if, it is land of a description prescribed for the purposes of this subsection.
- (9) Regulations under subsection (8) above may make different provision for different cases or circumstances or different areas or localities and may, in particular, describe land by reference to the area or locality in which it is situated.
- (10) Without prejudice to the generality of his power to prescribe any description of land for the purposes of subsection (8) above, the Secretary of State, in deciding whether to prescribe a particular description of contaminated land for those purposes, may, in particular, have regard to—
  - (a) whether land of the description in question appears to him to be land which is likely to be in such a condition, by reason of substances in, on or under the land that—
    - (i) serious harm would or might be caused, or
    - (ii) serious pollution of controlled waters would be, or would be likely to be, caused; or
  - (b) whether the appropriate Agency is likely to have expertise in dealing with the kind of significant harm, or pollution of controlled waters, by reason of which land of the description in question is contaminated land.

#### **78D Referral of special site decisions to the Secretary of State.**

- (1) In any case where—
  - (a) a local authority gives notice of a decision to the appropriate Agency pursuant to subsection (1)(b) or (5)(b) of section 78C above, but
  - (b) before the expiration of the period of twenty-one days beginning with the day on which that notice is so given, that Agency gives the local authority notice that it disagrees with the decision, together with a statement of its reasons for disagreeing,
 the authority shall refer the decision to the Secretary of State and shall send to him a statement of its reasons for reaching the decision.
- (2) Where the appropriate Agency gives notice to a local authority under paragraph (b) of subsection (1) above, it shall also send to the Secretary of State a copy of the notice and of the statement given under that paragraph.
- (3) Where a local authority refers a decision to the Secretary of State under subsection (1) above, it shall give notice of that fact to the relevant persons.
- (4) Where a decision of a local authority is referred to the Secretary of State under subsection (1) above, he—
  - (a) may confirm or reverse the decision with respect to the whole or any part of the land to which it relates; and
  - (b) shall give notice of his decision on the referral—
    - (i) to the relevant persons; and
    - (ii) to the local authority.

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- (5) Where a decision of a local authority is referred to the Secretary of State under subsection (1) above, the decision shall not take effect until the day after that on which the Secretary of State gives the notice required by subsection (4) above to the persons there mentioned and shall then take effect as confirmed or reversed by him.
- (6) Where a decision which takes effect in accordance with subsection (5) above is to the effect that at least some land is land which is required to be designated as a special site, the notice given under subsection (4)(b) above shall have effect, as from the time when the decision takes effect, as the designation of that land as such a site.
- (7) In this section “the relevant persons” has the same meaning as in section 78C above.

#### **78E Duty of enforcing authority to require remediation of contaminated land etc.**

- (1) In any case where—
  - (a) any land has been designated as a special site by virtue of section 78C(7) or 78D(6) above, or
  - (b) a local authority has identified any contaminated land (other than a special site) in its area,the enforcing authority shall, in accordance with such procedure as may be prescribed and subject to the following provisions of this Part, serve on each person who is an appropriate person a notice (in this Part referred to as a “remediation notice”) specifying what that person is to do by way of remediation and the periods within which he is required to do each of the things so specified.
- (2) Different remediation notices requiring the doing of different things by way of remediation may be served on different persons in consequence of the presence of different substances in, on or under any land or waters.
- (3) Where two or more persons are appropriate persons in relation to any particular thing which is to be done by way of remediation, the remediation notice served on each of them shall state the proportion, determined under section 78F(7) below, of the cost of doing that thing which each of them respectively is liable to bear.
- (4) The only things by way of remediation which the enforcing authority may do, or require to be done, under or by virtue of this Part are things which it considers reasonable, having regard to—
  - (a) the cost which is likely to be involved; and
  - (b) the seriousness of the harm, or pollution of controlled waters, in question.
- (5) In determining for any purpose of this Part—
  - (a) what is to be done (whether by an appropriate person, the enforcing authority or any other person) by way of remediation in any particular case,
  - (b) the standard to which any land is, or waters are, to be remediated pursuant to the notice, or



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- (c) what is, or is not, to be regarded as reasonable for the purposes of subsection (4) above,

the enforcing authority shall have regard to any guidance issued for the purpose by the Secretary of State.

- (6) Regulations may make provision for or in connection with—
- (a) the form or content of remediation notices; or
  - (b) any steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of a remediation notice.

**78F Determination of the appropriate person to bear responsibility for remediation.**

- (1) This section has effect for the purpose of determining who is the appropriate person to bear responsibility for any particular thing which the enforcing authority determines is to be done by way of remediation in any particular case.
- (2) Subject to the following provisions of this section, any person, or any of the persons, who caused or knowingly permitted the substances, or any of the substances, by reason of which the contaminated land in question is such land to be in, on or under that land is an appropriate person.
- (3) A person shall only be an appropriate person by virtue of subsection (2) above in relation to things which are to be done by way of remediation which are to any extent referable to substances which he caused or knowingly permitted to be present in, on or under the contaminated land in question.
- (4) If no person has, after reasonable inquiry, been found who is by virtue of subsection (2) above an appropriate person to bear responsibility for the things which are to be done by way of remediation, the owner or occupier for the time being of the contaminated land in question is an appropriate person.
- (5) If, in consequence of subsection (3) above, there are things which are to be done by way of remediation in relation to which no person has, after reasonable inquiry, been found who is an appropriate person by virtue of subsection (2) above, the owner or occupier for the time being of the contaminated land in question is an appropriate person in relation to those things.
- (6) Where two or more persons would, apart from this subsection, be appropriate persons in relation to any particular thing which is to be done by way of remediation, the enforcing authority shall determine in accordance with guidance issued for the purpose by the Secretary of State whether any, and if so which, of them is to be treated as not being an appropriate person in relation to that thing.
- (7) Where two or more persons are appropriate persons in relation to any particular thing which is to be done by way of remediation, they shall be liable to bear the cost of doing that thing in proportions determined by the enforcing authority in accordance with guidance issued for the purpose by the Secretary of State.
- (8) Any guidance issued for the purposes of subsection (6) or (7) above shall be issued in accordance with section 78YA below.
- (9) A person who has caused or knowingly permitted any substance (“substance A”) to be in, on or under any land shall also be taken for the purposes of this

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section to have caused or knowingly permitted there to be in, on or under that land any substance which is there as a result of a chemical reaction or biological process affecting substance A.

- (10) A thing which is to be done by way of remediation may be regarded for the purposes of this Part as referable to the presence of any substance notwithstanding that the thing in question would not have to be done—
- (a) in consequence only of the presence of that substance in any quantity; or
  - (b) in consequence only of the quantity of that substance which any particular person caused or knowingly permitted to be present.

### **78G Grant of, and compensation for, rights of entry etc.**

- (1) A remediation notice may require an appropriate person to do things by way of remediation, notwithstanding that he is not entitled to do those things.
- (2) Any person whose consent is required before any thing required by a remediation notice may be done shall grant, or join in granting, such rights in relation to any of the relevant land or waters as will enable the appropriate person to comply with any requirements imposed by the remediation notice.
- (3) Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult every person who appears to the authority—
  - (a) to be the owner or occupier of any of the relevant land or waters, and
  - (b) to be a person who might be required by subsection (2) above to grant, or join in granting, any rights,concerning the rights which that person may be so required to grant.
- (4) Subsection (3) above shall not preclude the service of a remediation notice in any case where it appears to the enforcing authority that the contaminated land in question is in such a condition, by reason of substances in, on or under the land, that there is imminent danger of serious harm, or serious pollution of controlled waters, being caused.
- (5) A person who grants, or joins in granting, any rights pursuant to subsection (2) above shall be entitled, on making an application within such period as may be prescribed and in such manner as may be prescribed to such person as may be prescribed, to be paid by the appropriate person compensation of such amount as may be determined in such manner as may be prescribed.
- (6) Without prejudice to the generality of the regulations that may be made by virtue of subsection (5) above, regulations by virtue of that subsection may make such provision in relation to compensation under this section as may be made by regulations by virtue of subsection (4) of section 35A above in relation to compensation under that section.
- (7) In this section, “relevant land or waters” means—
  - (a) the contaminated land in question;
  - (b) any controlled waters affected by that land; or
  - (c) any land adjoining or adjacent to that land or those waters.

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### **78H Restrictions and prohibitions on serving remediation notices.**

- (1) Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult—
  - (a) the person on whom the notice is to be served,
  - (b) the owner of any land to which the notice relates,
  - (c) any person who appears to that authority to be in occupation of the whole or any part of the land, and
  - (d) any person of such other description as may be prescribed, concerning what is to be done by way of remediation.
- (2) Regulations may make provision for, or in connection with, steps to be taken for the purposes of subsection (1) above.
- (3) No remediation notice shall be served on any person by reference to any contaminated land during any of the following periods, that is to say—
  - (a) the period—
    - (i) beginning with the identification of the contaminated land in question pursuant to section 78B(1) above, and
    - (ii) ending with the expiration of the period of three months beginning with the day on which the notice required by subsection (3)(d) or, as the case may be, (4) of section 78B above is given to that person in respect of that land;
  - (b) if a decision falling within paragraph (b) of section 78C(1) above is made in relation to the contaminated land in question, the period beginning with the making of the decision and ending with the expiration of the period of three months beginning with—
    - (i) in a case where the decision is not referred to the Secretary of State under section 78D above, the day on which the notice required by section 78C(6) above is given, or
    - (ii) in a case where the decision is referred to the Secretary of State under section 78D above, the day on which he gives the notice required by subsection (4)(b) of that section;
  - (c) if the appropriate Agency gives a notice under subsection (4) of section 78C above to a local authority in relation to the contaminated land in question, the period beginning with the day on which that notice is given and ending with the expiration of the period of three months beginning with—
    - (i) in a case where notice is given under subsection (6) of that section, the day on which that notice is given;
    - (ii) in a case where the authority makes a decision falling within subsection (5)(b) of that section and the appropriate Agency fails to give notice under paragraph (b) of section 78D(1) above, the day following the expiration of the period of twenty-one days mentioned in that paragraph; or
    - (iii) in a case where the authority makes a decision falling within section 78C(5)(b) above which is referred to the Secretary of State under section 78D above, the day on which the Secretary of State gives the notice required by subsection (4)(b) of that section.

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- (4) Neither subsection (1) nor subsection (3) above shall preclude the service of a remediation notice in any case where it appears to the enforcing authority that the land in question is in such a condition, by reason of substances in, on or under the land, that there is imminent danger of serious harm, or serious pollution of controlled waters, being caused.
- (5) The enforcing authority shall not serve a remediation notice on a person if and so long as any one or more of the following conditions is for the time being satisfied in the particular case, that is to say—
- (a) the authority is satisfied, in consequence of section 78E(4) and (5) above, that there is nothing by way of remediation which could be specified in a remediation notice served on that person;
  - (b) the authority is satisfied that appropriate things are being, or will be, done by way of remediation without the service of a remediation notice on that person;
  - (c) it appears to the authority that the person on whom the notice would be served is the authority itself; or
  - (d) the authority is satisfied that the powers conferred on it by section 78N below to do what is appropriate by way of remediation are exercisable.
- (6) Where the enforcing authority is precluded by virtue of section 78E(4) or (5) above from specifying in a remediation notice any particular thing by way of remediation which it would otherwise have specified in such a notice, the authority shall prepare and publish a document (in this Part referred to as a “remediation declaration”) which shall record—
- (a) the reasons why the authority would have specified that thing; and
  - (b) the grounds on which the authority is satisfied that it is precluded from specifying that thing in such a notice.
- (7) In any case where the enforcing authority is precluded, by virtue of paragraph (b), (c) or (d) of subsection (5) above, from serving a remediation notice, the responsible person shall prepare and publish a document (in this Part referred to as a “remediation statement”) which shall record—
- (a) the things which are being, have been, or are expected to be, done by way of remediation in the particular case;
  - (b) the name and address of the person who is doing, has done, or is expected to do, each of those things; and
  - (c) the periods within which each of those things is being, or is expected to be, done.
- (8) For the purposes of subsection (7) above, the “responsible person” is—
- (a) in a case where the condition in paragraph (b) of subsection (5) above is satisfied, the person who is doing or has done, or who the enforcing authority is satisfied will do, the things there mentioned; or
  - (b) in a case where the condition in paragraph (c) or (d) of that subsection is satisfied, the enforcing authority.
- (9) If a person who is required by virtue of subsection (8)(a) above to prepare and publish a remediation statement fails to do so within a reasonable time after the date on which a remediation notice specifying the things there mentioned could, apart from subsection (5) above, have been served, the enforcing authority may

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itself prepare and publish the statement and may recover its reasonable costs of doing so from that person.

- (10) Where the enforcing authority has been precluded by virtue only of subsection (5) above from serving a remediation notice on an appropriate person but—

- (a) none of the conditions in that subsection is for the time being satisfied in the particular case, and
- (b) the authority is not precluded by any other provision of this Part from serving a remediation notice on that appropriate person,

the authority shall serve a remediation notice on that person; and any such notice may be so served without any further endeavours by the authority to consult persons pursuant to subsection (1) above, if and to the extent that that person has been consulted pursuant to that subsection concerning the things which will be specified in the notice.

#### **78J Restrictions on liability relating to the pollution of controlled waters.**

- (1) This section applies where any land is contaminated land by virtue of paragraph (b) of subsection (2) of section 78A above (whether or not the land is also contaminated land by virtue of paragraph (a) of that subsection).

- (2) Where this section applies, no remediation notice given in consequence of the land in question being contaminated land shall require a person who is an appropriate person by virtue of section 78F(4) or (5) above to do anything by way of remediation to that or any other land, or any waters, which he could not have been required to do by such a notice had paragraph (b) of section 78A(2) above (and all other references to pollution of controlled waters) been omitted from this Part.

- (3) If, in a case where this section applies, a person permits, has permitted, or might permit, water from an abandoned mine or part of a mine—

- (a) to enter any controlled waters, or
- (b) to reach a place from which it is or, as the case may be, was likely, in the opinion of the enforcing authority, to enter such waters,

no remediation notice shall require him in consequence to do anything by way of remediation (whether to the contaminated land in question or to any other land or waters) which he could not have been required to do by such a notice had paragraph (b) of section 78A(2) above (and all other references to pollution of controlled waters) been omitted from this Part.

- (4) Subsection (3) above shall not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.

- (5) In determining for the purposes of subsection (4) above whether a mine or part of a mine became abandoned before, on or after 31st December 1999 in a case where the mine or part has become abandoned on two or more occasions, of which—

- (a) at least one falls on or before that date, and
- (b) at least one falls after that date,

the mine or part shall be regarded as becoming abandoned after that date (but without prejudice to the operation of subsection (3) above in relation to that

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mine or part at, or in relation to, any time before the first of those occasions which falls after that date).

- (6) Where, immediately before a part of a mine becomes abandoned, that part is the only part of the mine not falling to be regarded as abandoned for the time being, the abandonment of that part shall not be regarded for the purposes of subsection (4) or (5) above as constituting the abandonment of the mine, but only of that part of it.
- (7) Nothing in subsection (2) or (3) above prevents the enforcing authority from doing anything by way of remediation under section 78N below which it could have done apart from that subsection, but the authority shall not be entitled under section 78P below to recover from any person any part of the cost incurred by the authority in doing by way of remediation anything which it is precluded by subsection (2) or (3) above from requiring that person to do.
- (8) In this section “mine” has the same meaning as in the <sup>M90</sup>Mines and Quarries Act 1954.

#### **78K Liability in respect of contaminating substances which escape to other land.**

- (1) A person who has caused or knowingly permitted any substances to be in, on or under any land shall also be taken for the purposes of this Part to have caused or, as the case may be, knowingly permitted those substances to be in, on or under any other land to which they appear to have escaped.
- (2) Subsections (3) and (4) below apply in any case where it appears that any substances are or have been in, on or under any land (in this section referred to as “land A”) as a result of their escape, whether directly or indirectly, from other land in, on or under which a person caused or knowingly permitted them to be.
- (3) Where this subsection applies, no remediation notice shall require a person—
  - (a) who is the owner or occupier of land A, and
  - (b) who has not caused or knowingly permitted the substances in question to be in, on or under that land,
 to do anything by way of remediation to any land or waters (other than land or waters of which he is the owner or occupier) in consequence of land A appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of controlled waters is being, or is likely to be caused.
- (4) Where this subsection applies, no remediation notice shall require a person—
  - (a) who is the owner or occupier of land A, and
  - (b) who has not caused or knowingly permitted the substances in question to be in, on or under that land,
 to do anything by way of remediation in consequence of any further land in, on or under which those substances or any of them appear to be or to have been present as a result of their escape from land A (“land B”) appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that significant harm is being caused, or there is a significant possibility of

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such harm being caused, or that pollution of controlled waters is being, or is likely to be caused, unless he is also the owner or occupier of land B.

(5) In any case where—

- (a) a person (“person A”) has caused or knowingly permitted any substances to be in, on, or under any land,
- (b) another person (“person B”) who has not caused or knowingly permitted those substances to be in, on or under that land becomes the owner or occupier of that land, and
- (c) the substances, or any of the substances, mentioned in paragraph (a) above appear to have escaped to other land,

no remediation notice shall require person B to do anything by way of remediation to that other land in consequence of the apparent acts or omissions of person A, except to the extent that person B caused or knowingly permitted the escape.

(6) Nothing in subsection (3), (4) or (5) above prevents the enforcing authority from doing anything by way of remediation under section 78N below which it could have done apart from that subsection, but the authority shall not be entitled under section 78P below to recover from any person any part of the cost incurred by the authority in doing by way of remediation anything which it is precluded by subsection (3), (4) or (5) above from requiring that person to do.

(7) In this section, “appear” means appear to the enforcing authority, and cognate expressions shall be construed accordingly.

#### **78L Appeals against remediation notices.**

(1) A person on whom a remediation notice is served may, within the period of twenty-one days beginning with the day on which the notice is served, appeal against the notice—

- (a) if it was served by a local authority, to a magistrates’ court or, in Scotland, to the sheriff by way of summary application; or
  - (b) if it was served by the appropriate Agency, to the Secretary of State;
- and in the following provisions of this section “the appellate authority” means the magistrates’ court, the sheriff or the Secretary of State, as the case may be.

(2) On any appeal under subsection (1) above the appellate authority—

- (a) shall quash the notice, if it is satisfied that there is a material defect in the notice; but
- (b) subject to that, may confirm the remediation notice, with or without modification, or quash it.

(3) Where an appellate authority confirms a remediation notice, with or without modification, it may extend the period specified in the notice for doing what the notice requires to be done.

(4) Regulations may make provision with respect to—

- (a) the grounds on which appeals under subsection (1) above may be made;
- (b) the cases in which, grounds on which, court or tribunal to which, or person at whose instance, an appeal against a decision of a magistrates’ court or sheriff court in pursuance of an appeal under subsection (1) above shall lie; or



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- (c) the procedure on an appeal under subsection (1) above or on an appeal by virtue of paragraph (b) above.
- (5) Regulations under subsection (4) above may (among other things)—
  - (a) include provisions comparable to those in section 290 of the <sup>M91</sup>Public Health Act 1936 (appeals against notices requiring the execution of works);
  - (b) prescribe the cases in which a remediation notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;
  - (c) prescribe the cases in which the decision on an appeal may in some respects be less favourable to the appellant than the remediation notice against which he is appealing;
  - (d) prescribe the cases in which the appellant may claim that a remediation notice should have been served on some other person and prescribe the procedure to be followed in those cases;
  - (e) make provision as respects—
    - (i) the particulars to be included in the notice of appeal;
    - (ii) the persons on whom notice of appeal is to be served and the particulars, if any, which are to accompany the notice; and
    - (iii) the abandonment of an appeal;
  - (f) make different provision for different cases or classes of case.
- (6) This section, so far as relating to appeals to the Secretary of State, is subject to section 114 of the <sup>M92</sup>Environment Act 1995 (delegation or reference of appeals etc).

#### **78M Offences of not complying with a remediation notice.**

- (1) If a person on whom an enforcing authority serves a remediation notice fails, without reasonable excuse, to comply with any of the requirements of the notice, he shall be guilty of an offence.
- (2) Where the remediation notice in question is one which was required by section 78E(3) above to state, in relation to the requirement which has not been complied with, the proportion of the cost involved which the person charged with the offence is liable to bear, it shall be a defence for that person to prove that the only reason why he has not complied with the requirement is that one or more of the other persons who are liable to bear a proportion of that cost refused, or was not able, to comply with the requirement.
- (3) Except in a case falling within subsection (4) below, a person who commits an offence under subsection (1) above shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale and to a further fine of an amount equal to one-tenth of level 5 on the standard scale for each day on which the failure continues after conviction of the offence and before the enforcing authority has begun to exercise its powers by virtue of section 78N(3)(c) below.
- (4) A person who commits an offence under subsection (1) above in a case where the contaminated land to which the remediation notice relates is industrial, trade or business premises shall be liable on summary conviction to a fine not exceeding £20,000 or such greater sum as the Secretary of State may from time to time by order substitute and to a further fine of an amount equal to one-tenth

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of that sum for each day on which the failure continues after conviction of the offence and before the enforcing authority has begun to exercise its powers by virtue of section 78N(3)(c) below.

- (5) If the enforcing authority is of the opinion that proceedings for an offence under this section would afford an ineffectual remedy against a person who has failed to comply with any of the requirements of a remediation notice which that authority has served on him, that 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 remediation notice.
- (6) In this section, “industrial, trade or business premises” means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purpose of manufacturing.
- (7) No order shall be made under subsection (4) above unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

#### **78N Powers of the enforcing authority to carry out remediation.**

- (1) Where this section applies, the enforcing authority shall itself have power, in a case falling within paragraph (a) or (b) of section 78E(1) above, to do what is appropriate by way of remediation to the relevant land or waters.
- (2) Subsection (1) above shall not confer power on the enforcing authority to do anything by way of remediation if the authority would, in the particular case, be precluded by section 78YB below from serving a remediation notice requiring that thing to be done.
- (3) This section applies in each of the following cases, that is to say—
  - (a) where the enforcing authority considers it necessary to do anything itself by way of remediation for the purpose of preventing the occurrence of any serious harm, or serious pollution of controlled waters, of which there is imminent danger;
  - (b) where an appropriate person has entered into a written agreement with the enforcing authority for that authority to do, at the cost of that person, that which he would otherwise be required to do under this Part by way of remediation;
  - (c) where a person on whom the enforcing authority serves a remediation notice fails to comply with any of the requirements of the notice;
  - (d) where the enforcing authority is precluded by section 78J or 78K above from including something by way of remediation in a remediation notice;
  - (e) where the enforcing authority considers that, were it to do some particular thing by way of remediation, it would decide, by virtue of subsection (2) of section 78P below or any guidance issued under that subsection,—
    - (i) not to seek to recover under subsection (1) of that section any of the reasonable cost incurred by it in doing that thing; or
    - (ii) to seek so to recover only a portion of that cost;

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- (f) where no person has, after reasonable inquiry, been found who is an appropriate person in relation to any particular thing.
- (4) Subject to section 78E(4) and (5) above, for the purposes of this section, the things which it is appropriate for the enforcing authority to do by way of remediation are—
- (a) in a case falling within paragraph (a) of subsection (3) above, anything by way of remediation which the enforcing authority considers necessary for the purpose mentioned in that paragraph;
  - (b) in a case falling within paragraph (b) of that subsection, anything specified in, or determined under, the agreement mentioned in that paragraph;
  - (c) in a case falling within paragraph (c) of that subsection, anything which the person mentioned in that paragraph was required to do by virtue of the remediation notice;
  - (d) in a case falling within paragraph (d) of that subsection, anything by way of remediation which the enforcing authority is precluded by section 78J or 78K above from including in a remediation notice;
  - (e) in a case falling within paragraph (e) or (f) of that subsection, the particular thing mentioned in the paragraph in question.
- (5) In this section “the relevant land or waters” means—
- (a) the contaminated land in question;
  - (b) any controlled waters affected by that land; or
  - (c) any land adjoining or adjacent to that land or those waters.

**78P Recovery of, and security for, the cost of remediation by the enforcing authority.**

- (1) Where, by virtue of section 78N(3)(a), (c), (e) or (f) above, the enforcing authority does any particular thing by way of remediation, it shall be entitled, subject to sections 78J(7) and 78K(6) above, to recover the reasonable cost incurred in doing it from the appropriate person or, if there are two or more appropriate persons in relation to the thing in question, from those persons in proportions determined pursuant to section 78F(7) above.
- (2) In deciding whether to recover the cost, and, if so, how much of the cost, which it is entitled to recover under subsection (1) above, the enforcing authority shall have regard—
- (a) to any hardship which the recovery may cause to the person from whom the cost is recoverable; and
  - (b) to any guidance issued by the Secretary of State for the purposes of this subsection.
- (3) Subsection (4) below shall apply in any case where—
- (a) any cost is recoverable under subsection (1) above from a person—
    - (i) who is the owner of any premises which consist of or include the contaminated land in question; and
    - (ii) who caused or knowingly permitted the substances, or any of the substances, by reason of which the land is contaminated land to be in, on or under the land; and

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- (b) the enforcing authority serves a notice under this subsection (in this Part referred to as a “charging notice”) on that person.
- (4) Where this subsection applies—
  - (a) the cost shall carry interest, at such reasonable rate as the enforcing authority may determine, from the date of service of the notice until the whole amount is paid; and
  - (b) subject to the following provisions of this section, the cost and accrued interest shall be a charge on the premises mentioned in subsection (3) (a)(i) above.
- (5) A charging notice shall—
  - (a) specify the amount of the cost which the enforcing authority claims is recoverable;
  - (b) state the effect of subsection (4) above and the rate of interest determined by the authority under that subsection; and
  - (c) state the effect of subsections (7) and (8) below.
- (6) On the date on which an enforcing authority serves a charging notice on a person, the authority shall also serve a copy of the notice on every other person who, to the knowledge of the authority, has an interest in the premises capable of being affected by the charge.
- (7) Subject to any order under subsection (9)(b) or (c) below, the amount of any cost specified in a charging notice and the accrued interest shall be a charge on the premises—
  - (a) as from the end of the period of twenty-one days beginning with the service of the charging notice, or
  - (b) where an appeal is brought under subsection (8) below, as from the final determination or (as the case may be) the withdrawal, of the appeal, until the cost and interest are recovered.
- (8) A person served with a charging notice or a copy of a charging notice may appeal against the notice to a county court within the period of twenty-one days beginning with the date of service.
- (9) On an appeal under subsection (8) above, the court may—
  - (a) confirm the notice without modification;
  - (b) order that the notice is to have effect with the substitution of a different amount for the amount originally specified in it; or
  - (c) order that the notice is to be of no effect.
- (10) Regulations may make provision with respect to—
  - (a) the grounds on which appeals under this section may be made; or
  - (b) the procedure on any such appeal.
- (11) An enforcing authority shall, for the purpose of enforcing a charge under this section, have all the same powers and remedies under the <sup>M93</sup>Law of Property Act 1925, and otherwise, as if it were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

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- (12) Where any cost is a charge on premises under this section, the enforcing authority may by order declare the cost to be payable with interest by instalments within the specified period until the whole amount is paid.
- (13) In subsection (12) above—  
“interest” means interest at the rate determined by the enforcing authority under subsection (4) above; and  
“the specified period” means such period of thirty years or less from the date of service of the charging notice as is specified in the order.
- (14) Subsections (3) to (13) above do not extend to Scotland.

### **78Q Special sites.**

- (1) If, in a case where a local authority has served a remediation notice, the contaminated land in question becomes a special site, the appropriate Agency may adopt the remediation notice and, if it does so,—
- it shall give notice of its decision to adopt the remediation notice to the appropriate person and to the local authority;
  - the remediation notice shall have effect, as from the time at which the appropriate Agency decides to adopt it, as a remediation notice given by that Agency; and
  - the validity of the remediation notice shall not be affected by—
    - the contaminated land having become a special site;
    - the adoption of the remediation notice by the appropriate Agency; or
    - anything in paragraph (b) above.
- (2) Where a local authority has, by virtue of section 78N above, begun to do any thing, or any series of things, by way of remediation—
- the authority may continue doing that thing, or that series of things, by virtue of that section, notwithstanding that the contaminated land in question becomes a special site; and
  - section 78P above shall apply in relation to the reasonable cost incurred by the authority in doing that thing or those things as if that authority were the enforcing authority.
- (3) If and so long as any land is a special site, the appropriate Agency may from time to time inspect that land for the purpose of keeping its condition under review.
- (4) If it appears to the appropriate Agency that a special site is no longer land which is required to be designated as such a site, the appropriate Agency may give notice—
- to the Secretary of State, and
  - to the local authority in whose area the site is situated,
- terminating the designation of the land in question as a special site as from such date as may be specified in the notice.
- (5) A notice under subsection (4) above shall not prevent the land, or any of the land, to which the notice relates being designated as a special site on a subsequent occasion.

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- (6) In exercising its functions under subsection (3) or (4) above, the appropriate Agency shall act in accordance with any guidance given for the purpose by the Secretary of State.

### **78R Registers.**

- (1) Every enforcing authority shall maintain a register containing prescribed particulars of or relating to—
- (a) remediation notices served by that authority;
  - (b) appeals against any such remediation notices;
  - (c) remediation statements or remediation declarations prepared and published under section 78H above;
  - (d) in relation to an enforcing authority in England and Wales, appeals against charging notices served by that authority;
  - (e) notices under subsection (1)(b) or (5)(a) of section 78C above which have effect by virtue of subsection (7) of that section as the designation of any land as a special site;
  - (f) notices under subsection (4)(b) of section 78D above which have effect by virtue of subsection (6) of that section as the designation of any land as a special site;
  - (g) notices given by or to the enforcing authority under section 78Q(4) above terminating the designation of any land as a special site;
  - (h) notifications given to that authority by persons—
    - (i) on whom a remediation notice has been served, or
    - (ii) who are or were required by virtue of section 78H(8)(a) above to prepare and publish a remediation statement,
 

of what they claim has been done by them by way of remediation;
  - (j) notifications given to that authority by owners or occupiers of land—
    - (i) in respect of which a remediation notice has been served, or
    - (ii) in respect of which a remediation statement has been prepared and published,
 

of what they claim has been done on the land in question by way of remediation;
  - (k) convictions for such offences under section 78M above as may be prescribed;
  - (l) such other matters relating to contaminated land as may be prescribed;
- but that duty is subject to sections 78S and 78T below.
- (2) The form of, and the descriptions of information to be contained in, notifications for the purposes of subsection (1)(h) or (j) above may be prescribed by the Secretary of State.
- (3) No entry made in a register by virtue of subsection (1)(h) or (j) above constitutes a representation by the body maintaining the register or, in a case where the entry is made by virtue of subsection (6) below, the authority which sent the copy of the particulars in question pursuant to subsection (4) or (5) below—
- (a) that what is stated in the entry to have been done has in fact been done; or
  - (b) as to the manner in which it has been done.

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- (4) Where any particulars are entered on a register maintained under this section by the appropriate Agency, the appropriate Agency shall send a copy of those particulars to the local authority in whose area is situated the land to which the particulars relate.
- (5) In any case where—
  - (a) any land is treated by virtue of section 78X(2) below as situated in the area of a local authority other than the local authority in whose area it is in fact situated, and
  - (b) any particulars relating to that land are entered on the register maintained under this section by the local authority in whose area the land is so treated as situated,that authority shall send a copy of those particulars to the local authority in whose area the land is in fact situated.
- (6) Where a local authority receives a copy of any particulars sent to it pursuant to subsection (4) or (5) above, it shall enter those particulars on the register maintained by it under this section.
- (7) Where information of any description is excluded by virtue of section 78T below from any register maintained under this section, a statement shall be entered in the register indicating the existence of information of that description.
- (8) It shall be the duty of each enforcing authority—
  - (a) to secure that the registers maintained by it under this section are available, at all reasonable times, for inspection by the public free of charge; and
  - (b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges;and, for the purposes of this subsection, places may be prescribed by the Secretary of State at which any such registers or facilities as are mentioned in paragraph (a) or (b) above are to be available or afforded to the public in pursuance of the paragraph in question.
- (9) Registers under this section may be kept in any form.

### **78S Exclusion from registers of information affecting national security.**

- (1) No information shall be included in a register maintained under section 78R above if and so long as, in the opinion of the Secretary of State, the inclusion in the register of that information, or information of that description, would be contrary to the interests of national security.
- (2) The Secretary of State may, for the purpose of securing the exclusion from registers of information to which subsection (1) above applies, give to enforcing authorities directions—
  - (a) specifying information, or descriptions of information, to be excluded from their registers; or
  - (b) specifying descriptions of information to be referred to the Secretary of State for his determination;



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and no information referred to the Secretary of State in pursuance of paragraph (b) above shall be included in any such register until the Secretary of State determines that it should be so included.

- (3) The enforcing authority shall notify the Secretary of State of any information which it excludes from the register in pursuance of directions under subsection (2) above.
- (4) A person may, as respects any information which appears to him to be information to which subsection (1) above may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and, if he does so—
  - (a) he shall notify the enforcing authority that he has done so; and
  - (b) no information so notified to the Secretary of State shall be included in any such register until the Secretary of State has determined that it should be so included.

**78T Exclusion from registers of certain confidential information.**

- (1) No information relating to the affairs of any individual or business shall be included in a register maintained under section 78R above, without the consent of that individual or the person for the time being carrying on that business, if and so long as the information—
  - (a) is, in relation to him, commercially confidential; and
  - (b) is not required to be included in the register in pursuance of directions under subsection (7) below;

but information is not commercially confidential for the purposes of this section unless it is determined under this section to be so by the enforcing authority or, on appeal, by the Secretary of State.

- (2) Where it appears to an enforcing authority that any information which has been obtained by the authority under or by virtue of any provision of this Part might be commercially confidential, the authority shall—
  - (a) give to the person to whom or whose business it relates notice that that information is required to be included in the register unless excluded under this section; and
  - (b) give him a reasonable opportunity—
    - (i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and
    - (ii) of making representations to the authority for the purpose of justifying any such objection;

and, if any representations are made, the enforcing authority shall, having taken the representations into account, determine whether the information is or is not commercially confidential.

- (3) Where, under subsection (2) above, an authority determines that information is not commercially confidential—
  - (a) the information shall not be entered in the register until the end of the period of twenty-one days beginning with the date on which the determination is notified to the person concerned;
  - (b) that person may appeal to the Secretary of State against the decision;

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and, where an appeal is brought in respect of any information, the information shall not be entered in the register until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn.

- (4) An appeal under subsection (3) above shall, if either party to the appeal so requests or the Secretary of State so decides, take or continue in the form of a hearing (which must be held in private).
- (5) Subsection (10) of section 15 above shall apply in relation to an appeal under subsection (3) above as it applies in relation to an appeal under that section.
- (6) Subsection (3) above is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).
- (7) The Secretary of State may give to the enforcing authorities directions as to specified information, or descriptions of information, which the public interest requires to be included in registers maintained under section 78R above notwithstanding that the information may be commercially confidential.
- (8) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this section at the expiry of the period of four years beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the authority for the information to remain excluded from the register on the ground that it is still commercially confidential and the authority shall determine whether or not that is the case.
- (9) Subsections (3) to (6) above shall apply in relation to a determination under subsection (8) above as they apply in relation to a determination under subsection (2) above.
- (10) Information is, for the purposes of any determination under this section, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that individual or person.
- (11) For the purposes of subsection (10) above, there shall be disregarded any prejudice to the commercial interests of any individual or person so far as relating only to the value of the contaminated land in question or otherwise to the ownership or occupation of that land.

#### **78U Reports by the appropriate Agency on the state of contaminated land.**

- (1) The appropriate Agency shall—
  - (a) from time to time, or
  - (b) if the Secretary of State at any time so requests,prepare and publish a report on the state of contaminated land in England and Wales or in Scotland, as the case may be.
- (2) A local authority shall, at the written request of the appropriate Agency, furnish the appropriate Agency with such information to which this subsection applies as the appropriate Agency may require for the purpose of enabling it to perform its functions under subsection (1) above.

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- (3) The information to which subsection (2) above applies is such information as the local authority may have, or may reasonably be expected to obtain, with respect to the condition of contaminated land in its area, being information which the authority has acquired or may acquire in the exercise of its functions under this Part.

**78V Site-specific guidance by the appropriate Agency concerning contaminated land.**

- (1) The appropriate Agency may issue guidance to any local authority with respect to the exercise or performance of the authority's powers or duties under this Part in relation to any particular contaminated land; and in exercising or performing those powers or duties in relation to that land the authority shall have regard to any such guidance so issued.
- (2) If and to the extent that any guidance issued under subsection (1) above to a local authority is inconsistent with any guidance issued under this Part by the Secretary of State, the local authority shall disregard the guidance under that subsection.
- (3) A local authority shall, at the written request of the appropriate Agency, furnish the appropriate Agency with such information to which this subsection applies as the appropriate Agency may require for the purpose of enabling it to issue guidance for the purposes of subsection (1) above.
- (4) The information to which subsection (3) above applies is such information as the local authority may have, or may reasonably be expected to obtain, with respect to any contaminated land in its area, being information which the authority has acquired, or may acquire, in the exercise of its functions under this Part.

**78W The appropriate Agency to have regard to guidance given by the Secretary of State.**

- (1) The Secretary of State may issue guidance to the appropriate Agency with respect to the exercise or performance of that Agency's powers or duties under this Part; and in exercising or performing those powers or duties the appropriate Agency shall have regard to any such guidance so issued.
- (2) The duty imposed on the appropriate Agency by subsection (1) above is without prejudice to any duty imposed by any other provision of this Part on that Agency to act in accordance with guidance issued by the Secretary of State.

**78X Supplementary provisions.**

- (1) Where it appears to a local authority that two or more different sites, when considered together, are in such a condition, by reason of substances in, on or under the land, that—
- (a) significant harm is being caused or there is a significant possibility of such harm being caused, or
  - (b) pollution of controlled waters is being, or is likely to be, caused,

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this Part shall apply in relation to each of those sites, whether or not the condition of the land at any of them, when considered alone, appears to the authority to be such that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of controlled waters is being or is likely to be caused.

(2) Where it appears to a local authority that any land outside, but adjoining or adjacent to, its area is in such a condition, by reason of substances in, on or under the land, that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of controlled waters is being, or is likely to be, caused within its area—

(a) the authority may, in exercising its functions under this Part, treat that land as if it were land situated within its area; and

(b) except in this subsection, any reference—

(i) to land within the area of a local authority, or

(ii) to the local authority in whose area any land is situated,

shall be construed accordingly;

but this subsection is without prejudice to the functions of the local authority in whose area the land is in fact situated.

(3) A person acting in a relevant capacity—

(a) shall not thereby be personally liable, under this Part, to bear the whole or any part of the cost of doing any thing by way of remediation, unless that thing is to any extent referable to substances whose presence in, on or under the contaminated land in question is a result of any act done or omission made by him which it was unreasonable for a person acting in that capacity to do or make; and

(b) shall not thereby be guilty of an offence under or by virtue of section 78M above unless the requirement which has not been complied with is a requirement to do some particular thing for which he is personally liable to bear the whole or any part of the cost.

(4) In subsection (3) above, “person acting in a relevant capacity” means—

(a) a person acting as an insolvency practitioner, within the meaning of section 388 of the <sup>M94</sup>Insolvency Act 1986 (including that section as it applies in relation to an insolvent partnership by virtue of any order made under section 421 of that Act);

(b) the official receiver acting in a capacity in which he would be regarded as acting as an insolvency practitioner within the meaning of section 388 of the <sup>M95</sup>Insolvency Act 1986 if subsection (5) of that section were disregarded;

(c) the official receiver acting as receiver or manager;

(d) a person acting as a special manager under section 177 or 370 of the <sup>M96</sup>Insolvency Act 1986;

(e) the Accountant in Bankruptcy acting as permanent or interim trustee in a sequestration (within the meaning of the <sup>M97</sup>Bankruptcy (Scotland) Act 1985);

(f) a person acting as a receiver or receiver and manager—

(i) under or by virtue of any enactment; or

(ii) by virtue of his appointment as such by an order of a court or by any other instrument.

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- (5) Regulations may make different provision for different cases or circumstances.

**78Y Application to the Isles of Scilly.**

- (1) Subject to the provisions of any order under this section, this Part shall not apply in relation to the Isles of Scilly.
- (2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application of any provisions of this Part to the Isles of Scilly; and any such order may provide for the application of those provisions to those Isles with such modifications as may be specified in the order.
- (3) An order under this section may—
- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate, including provision saving provision repealed by or under any enactment.

**78YA Supplementary provisions with respect to guidance by the Secretary of State.**

- (1) Any power of the Secretary of State to issue guidance under this Part shall only be exercisable after consultation with the appropriate Agency and such other bodies or persons as he may consider it appropriate to consult in relation to the guidance in question.
- (2) A draft of any guidance proposed to be issued under section 78A(2) or (5), 78B(2) or 78F(6) or (7) above shall be laid before each House of Parliament and the guidance shall not be issued until after the period of 40 days beginning with the day on which the draft was so laid or, if the draft is laid on different days, the later of the two days.
- (3) If, within the period mentioned in subsection (2) above, either House resolves that the guidance, the draft of which was laid before it, should not be issued, the Secretary of State shall not issue that guidance.
- (4) In reckoning any period of 40 days for the purposes of subsection (2) or (3) above, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (5) The Secretary of State shall arrange for any guidance issued by him under this Part to be published in such manner as he considers appropriate.

**78YB Interaction of this Part with other enactments.**

- (1) A remediation notice shall not be served if and to the extent that it appears to the enforcing authority that the powers of the appropriate Agency under section 27 above may be exercised in relation to—
- (a) the significant harm (if any), and

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- (b) the pollution of controlled waters (if any),  
by reason of which the contaminated land in question is such land.
- (2) Nothing in this Part shall apply in relation to any land in respect of which there is for the time being in force a site licence under Part II above, except to the extent that any significant harm, or pollution of controlled waters, by reason of which that land would otherwise fall to be regarded as contaminated land is attributable to causes other than—
- (a) breach of the conditions of the licence; or  
(b) the carrying on, in accordance with the conditions of the licence, of any activity authorised by the licence.
- (3) If, in a case falling within subsection (1) or (7) of section 59 above, the land in question is contaminated land, or becomes such land by reason of the deposit of the controlled waste in question, a remediation notice shall not be served in respect of that land by reason of that waste or any consequences of its deposit, if and to the extent that it appears to the enforcing authority that the powers of a waste regulation authority or waste collection authority under that section may be exercised in relation to that waste or the consequences of its deposit.
- (4) No remediation notice shall require a person to do anything the effect of which would be to impede or prevent the making of a discharge in pursuance of a consent given under Chapter II of Part III of the <sup>M98</sup>Water Resources Act 1991 (pollution offences) or, in relation to Scotland, in pursuance of a consent given under Part II of the <sup>M99</sup>Control of Pollution Act 1974.

#### **78YC This Part and radioactivity.**

Except as provided by regulations, nothing in this Part applies in relation to harm, or pollution of controlled waters, so far as attributable to any radioactivity possessed by any substance; 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 purpose of dealing with harm, or pollution of controlled waters, so far as attributable to any radioactivity possessed by any substances; or  
(b) make such modifications of the <sup>M100</sup>Radioactive Substances Act 1993 or any other Act as the Secretary of State considers appropriate.”

#### **Commencement Information**

- I6** S. 57 wholly in force; s. 57 not in force at Royal Assent see s. 125(3); s. 57 in force for specified purposes at 21.9.1995 by S.I. 1995/1983, art. 3; s. 57 in force for E. at 1.4.2000 insofar as not already in force by S.I. 2000/340, art. 2; s. 57 in force for S. at 14.7.2000 insofar as not already in force by S.S.I. 2000/180, art. 2(1)(a) (except so far as it inserts section s. 78S into the 1990 Act); s. 57 in force for S. at 14.7.2000 insofar as not already in force by S.I. 2000/1986, art. 2; s. 57 in force for W. at 15.9.2001 by S.I. 2001/3211, art. 2(a) (with art. 3)

#### **Marginal Citations**

- M84** 1990 c. 43.  
**M85** 1991 c. 57.  
**M86** 1974 c. 40.  
**M87** 1970 c. 35.

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<b>M88</b>	1970 c. 35.
<b>M89</b>	1994 c. 39.
<b>M90</b>	1954 c. 70.
<b>M91</b>	1936 c. 49.
<b>M92</b>	1995 c. 25.
<b>M93</b>	1925 c. 20.
<b>M94</b>	1986 c. 63.
<b>M95</b>	1986 c. 45.
<b>M96</b>	1986 c. 45.
<b>M97</b>	1985 c. 51.
<b>M98</b>	1991 c. 57.
<b>M99</b>	1974 c. 40.
<b>M100</b>	1993 c. 12.

## 58 Abandoned mines: England and Wales.

After Chapter II of Part III of the Water Resources Act 1991 (pollution offences) there shall be inserted—

### “CHAPTER IIA

#### ABANDONED MINES

##### 91A Introductory.

- (1) For the purposes of this Chapter, “abandonment”, in relation to a mine,—
- (a) subject to paragraph (b) below, includes—
    - (i) the discontinuance of any or all of the operations for the removal of water from the mine;
    - (ii) the cessation of working of any relevant seam, vein or vein-system;
    - (iii) the cessation of use of any shaft or outlet of the mine;
    - (iv) in the case of a mine in which activities other than mining activities are carried on (whether or not mining activities are also carried on in the mine)—
      - (A) the discontinuance of some or all of those other activities in the mine; and
      - (B) any substantial change in the operations for the removal of water from the mine; but
  - (b) does not include—
    - (i) any disclaimer under section 178 or 315 of the <sup>M101</sup>Insolvency Act 1986 (power of liquidator, or trustee of a bankrupt’s estate, to disclaim onerous property) by the official receiver acting in a compulsory capacity; or
    - (ii) the abandonment of any rights, interests or liabilities by the Accountant in Bankruptcy acting as permanent or interim trustee in a sequestration (within the meaning of the <sup>M102</sup>Bankruptcy (Scotland) Act 1985);
- and cognate expressions shall be construed accordingly.



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- (2) In this Chapter, except where the context otherwise requires—
- “the 1954 Act” means the <sup>M103</sup>Mines and Quarries Act 1954;
  - “acting in a compulsory capacity”, in the case of the official receiver, means acting as—
    - (a) liquidator of a company;
    - (b) receiver or manager of a bankrupt’s estate, pursuant to section 287 of the <sup>M104</sup>Insolvency Act 1986;
    - (c) trustee of a bankrupt’s estate;
    - (d) liquidator of an insolvent partnership;
    - (e) trustee of an insolvent partnership;
    - (f) trustee, or receiver or manager, of the insolvent estate of a deceased person;
  - “mine” has the same meaning as in the 1954 Act;
  - “the official receiver” has the same meaning as it has in the <sup>M105</sup>Insolvency Act 1986 by virtue of section 399(1) of that Act;
  - “prescribed” means prescribed in regulations;
  - “regulations” means regulations made by the Secretary of State;
  - “relevant seam, vein or vein-system”, in the case of any mine, means any seam, vein or vein-system for the purpose of, or in connection with, whose working any excavation constituting or comprised in the mine was made.

**91B Mine operators to give the Agency six months’ notice of any proposed abandonment.**

- (1) If, in the case of any mine, there is to be an abandonment at any time after the expiration of the initial period, it shall be the duty of the operator of the mine to give notice of the proposed abandonment to the Agency at least six months before the abandonment takes effect.
- (2) A notice under subsection (1) above shall contain such information (if any) as is prescribed for the purpose, which may include information about the operator’s opinion as to any consequences of the abandonment.
- (3) A person who fails to give the notice required by subsection (1) above shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (4) A person shall not be guilty of an offence under subsection (3) above if—
  - (a) the abandonment happens in an emergency in order to avoid danger to life or health; and
  - (b) notice of the abandonment, containing such information as may be prescribed, is given as soon as reasonably practicable after the abandonment has happened.
- (5) Where the operator of a mine is—
  - (a) the official receiver acting in a compulsory capacity, or

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*Status: Point in time view as at 12/07/2004. This version of this Act contains provisions that are prospective.*

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- (b) the Accountant in Bankruptcy acting as permanent or interim trustee in a sequestration (within the meaning of the <sup>M106</sup>Bankruptcy (Scotland) Act 1985),

he shall not be guilty of an offence under subsection (3) above by reason of any failure to give the notice required by subsection (1) above if, as soon as reasonably practicable (whether before or after the abandonment), he gives to the Agency notice of the abandonment or proposed abandonment, containing such information as may be prescribed.

- (6) Where a person gives notice under subsection (1), (4)(b) or (5) above, he shall publish prescribed particulars of, or relating to, the notice in one or more local newspapers circulating in the locality where the mine is situated.

- (7) Where the Agency—

- (a) receives notice under this section or otherwise learns of an abandonment or proposed abandonment in the case of any mine, and  
 (b) considers that, in consequence of the abandonment or proposed abandonment taking effect, any land has or is likely to become contaminated land, within the meaning of Part IIA of the <sup>M107</sup>Environmental Protection Act 1990,

it shall be the duty of the Agency to inform the local authority in whose area that land is situated of the abandonment or proposed abandonment.

- (8) In this section—

“the initial period” means the period of six months beginning with the day on which subsection (1) above comes into force;

“local authority” means—

- (a) any unitary authority;  
 (b) any district council, so far as it is not a unitary authority;  
 (c) the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;

“unitary authority” means—

- (a) the council of a county, so far as it is the council of an area for which there are no district councils;  
 (b) the council of any district comprised in an area for which there is no county council;  
 (c) the council of a London borough;  
 (d) the council of a county borough in Wales.”

#### Commencement Information

- I7** [S. 58](#) wholly in force at 1.7.1998; [s. 58](#) not in force at Royal Assent see [s. 125\(3\)](#); [s. 58](#) in force for specified purposes at 21.9.1995 by [S.I. 1995/1983](#), [art. 3](#); [s. 58](#) in force on 1.7.1998 insofar as not already in force by [S.I. 1998/604](#), [art. 2](#)

#### Marginal Citations

- M101** 1986 c. 45.  
**M102** 1985 c. 66.  
**M103** 1954 c. 70.  
**M104** 1986 c. 45.

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**M105** 1986 c. 45.  
**M106** 1985 c. 66.  
**M107** 1990 c. 43.

## 59 Abandoned mines: Scotland.

After Part I of the <sup>M108</sup>Control of Pollution Act 1974 (waste on land) there shall be inserted—

### “PART IA

#### ABANDONED MINES

##### 30Y Introductory.

- (1) For the purposes of this Part, “abandonment”, in relation to a mine,—
- (a) subject to paragraph (b) below, includes—
    - (i) the discontinuance of any or all of the operations for the removal of water from the mine;
    - (ii) the cessation of working of any relevant seam, vein or vein-system;
    - (iii) the cessation of use of any shaft or outlet of the mine;
    - (iv) in the case of a mine in which activities other than mining activities are carried on (whether or not mining activities are also carried on in the mine)—
      - (A) the discontinuance of some or all of those other activities in the mine; and
      - (B) any substantial change in the operations for the removal of water from the mine; but
  - (b) does not include—
    - (i) the abandonment of any rights, interests or liabilities by the Accountant in Bankruptcy acting as permanent or interim trustee in a sequestration (within the meaning of the <sup>M109</sup>Bankruptcy (Scotland) Act 1985); or
    - (ii) any disclaimer under section 178 or 315 of the <sup>M110</sup>Insolvency Act 1986 (power of liquidator, or trustee of bankrupt’s estate, to disclaim onerous property) by the official receiver acting in a compulsory capacity;

and cognate expressions shall be construed accordingly.

- (2) In this Part, except where the context otherwise requires—
- “acting in a compulsory capacity”, in the case of the official receiver, means acting as—
- (a) liquidator of a company;
  - (b) receiver or manager of a bankrupt’s estate, pursuant to section 287 of the <sup>M111</sup>Insolvency Act 1986;
  - (c) trustee of a bankrupt’s estate;
  - (d) liquidator of an insolvent partnership;

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- (e) trustee of an insolvent partnership;
  - (f) trustee, or receiver or manager, of the insolvent estate of a deceased person;
- “the official receiver” has the same meaning as it has in the <sup>M112</sup>Insolvency Act 1986 by virtue of section 399(1) of that Act;
- “relevant seam, vein or vein-system”, in the case of any mine, means any seam, vein or vein-system for the purpose of, or in connection with, whose working any excavation constituting or comprised in the mine was made.

- (3) This Part extends only to Scotland.

### **30Z Mine operators to give SEPA six months’ notice of any proposed abandonment.**

- (1) If, in the case of any mine, there is to be an abandonment at any time after the expiration of the initial period, it shall be the duty of the operator of the mine to give notice of the proposed abandonment to SEPA at least six months before the abandonment takes effect.
- (2) A notice under subsection (1) above shall contain such information (if any) as is prescribed for the purpose, which may include information about the operator’s opinion as to any consequences of the abandonment.
- (3) A person who fails to give the notice required by subsection (1) above shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (4) A person shall not be guilty of an offence under subsection (3) above if—
  - (a) the abandonment happens in an emergency in order to avoid danger to life or health; and
  - (b) notice of the abandonment, containing such information as may be prescribed, is given as soon as reasonably practicable after the abandonment has happened.
- (5) Where the operator of a mine is—
  - (a) the Accountant in Bankruptcy acting as permanent or interim trustee in a sequestration (within the meaning of the <sup>M113</sup>Bankruptcy (Scotland) Act 1985); or
  - (b) the official receiver acting in a compulsory capacity,
 he shall not be guilty of an offence under subsection (3) above by reason of any failure to give the notice required by subsection (1) above if, as soon as is reasonably practicable (whether before or after the abandonment), he gives to SEPA notice of the abandonment or proposed abandonment, containing such information as may be prescribed.
- (6) Where a person gives notice under subsection (1), (4)(b) or (5) above, he shall publish prescribed particulars of, or relating to, the notice in one or more local newspapers circulating in the locality where the mine is situated.
- (7) Where SEPA—

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- (a) receives notice under this section or otherwise learns of an abandonment or proposed abandonment in the case of any mine, and
- (b) considers that, in consequence of the abandonment or proposed abandonment taking effect, any land has or is likely to become contaminated land, within the meaning of Part IIA of the <sup>M114</sup>Environmental Protection Act 1990,

it shall be the duty of SEPA to inform the local authority in whose area that land is situated of the abandonment or proposed abandonment.

(8) In this section—

“the initial period” means the period of six months beginning with the day on which subsection (1) above comes into force;

“local authority” means a council constituted under section 2 of the <sup>M115</sup>Local Government etc. (Scotland) Act 1994.”

#### Commencement Information

**I8** S. 59 wholly in force at 1.1.1999; s. 59 not in force at Royal Assent see s. 125(3); s. 59 in force for specified purposes at 12.10.1995 by S.I. 1995/2649, art. 2(i); s. 59 in force at 1.1.1999 insofar as not already in force by S.I. 1998/3272, art. 2

#### Marginal Citations

**M108** 1974 c. 40.

**M109** 1985 c. 66.

**M110** 1986 c. 45.

**M111** 1986 c. 45.

**M112** 1986 c. 45.

**M113** 1985 c. 66.

**M114** 1990 c.43.

**M115** 1994 c. 39.

## 60 Amendments to sections 89 and 161 of the Water Resources Act 1991.

(1) In section 89 of the <sup>M116</sup>Water Resources Act 1991 (defences) in subsection (3) (person not to be guilty of an offence under section 85 by reason only of permitting water from an abandoned mine to enter controlled waters) after the words “an abandoned mine” there shall be inserted the words “ or an abandoned part of a mine ”.

(2) After that subsection there shall be inserted—

“(3A) Subsection (3) above shall not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.

(3B) In determining for the purposes of subsection (3A) above whether a mine or part of a mine became abandoned before, on or after 31st December 1999 in a case where the mine or part has become abandoned on two or more occasions, of which—

- (a) at least one falls on or before that date, and
- (b) at least one falls after that date,

the mine or part shall be regarded as becoming abandoned after that date (but without prejudice to the operation of subsection (3) above in relation to that

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mine or part at, or in relation to, any time before the first of those occasions which falls after that date).

(3C) Where, immediately before a part of a mine becomes abandoned, that part is the only part of the mine not falling to be regarded as abandoned for the time being, the abandonment of that part shall not be regarded for the purposes of subsection (3A) or (3B) above as constituting the abandonment of the mine, but only of that part of it.”

(3) In section 161 of that Act (anti-pollution works and operations) in subsection (1), after paragraph (b) there shall be inserted the words— “ and, in either case, the Agency shall be entitled to carry out investigations for the purpose of establishing the source of the matter and the identity of the person who has caused or knowingly permitted it to be present in controlled waters or at a place from which it was likely, in the opinion of the Agency, to enter controlled waters. ”

(4) In subsection (3) of that section (Agency entitled to recover expenses of works or operations from the person responsible for the pollution) for the words “or operations” there shall be substituted the words “ operations or investigations ”.

(5) In subsection (4) of that section (exception for expenses of works or operations in respect of water from an abandoned mine)—

(a) for the words “or operations” there shall be substituted the words “ operations or investigations ”; and

(b) after the words “an abandoned mine” there shall be inserted the words “ or an abandoned part of a mine ”.

(6) After that subsection there shall be inserted—

“(4A) Subsection (4) above shall not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.

(4B) Subsections (3B) and (3C) of section 89 above shall apply in relation to subsections (4) and (4A) above as they apply in relation to subsections (3) and (3A) of that section.”

(7) In subsection (6) of that section (definitions), after the definition of “controlled waters” there shall be inserted—

““expenses” includes costs;”.

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#### Commencement Information

**19** S. 60 wholly in force at 1.7.1998; s. 60 not in force at Royal Assent see s. 125(3); s. 60(3)(4)(5)(a)(7) in force at 1.7.1997 by S.I. 1997/1626, art. 2(a) (with transitional provisions in art. 3); s. 60 in force at 1.7.1998 in so far as not already in force by S.I. 1998/604, art. 3

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#### Marginal Citations

M116 1991 c. 57.

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**Status:** Point in time view as at 12/07/2004. This version of this Act contains provisions that are prospective.  
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## PART III

### NATIONAL PARKS

#### *Purposes of National Parks*

#### **61 Purposes of National Parks.**

- (1) In section 5 of the National Parks and Access to the <sup>M117</sup>Countryside Act 1949 (National Parks) for subsection (1) (which provides that Part II of that Act has effect for the purpose of preserving and enhancing the natural beauty of the areas specified in subsection (2) of that section and for the purpose of promoting their enjoyment by the public) there shall be substituted—
  - “(1) The provisions of this Part of this Act shall have effect for the purpose—
    - (a) of conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified in the next following subsection; and
    - (b) of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.”
- (2) The amendment made by subsection (1) above is without prejudice to the continuing validity of any designation of an area as a National Park under subsection (3) of that section.
- (3) The following enactments (which refer to the purposes specified in section 5(1) of the National Parks and Access to the <sup>M118</sup>Countryside Act 1949), that is to say—
  - (a) sections 6(3) and (4)(g), 11 and 101(3) of that Act, and
  - (b) sections 2(5)(b) and 13(4) of the <sup>M119</sup>Countryside Act 1968,shall have effect in accordance with subsection (4) below.
- (4) In the application of any provision specified in subsection (3) above, any reference to the purposes specified in subsection (1) of section 5 of the National Parks and Access to the <sup>M120</sup>Countryside Act 1949—
  - (a) in relation to any particular National Park, shall be construed as a reference to the substituted purposes as from the time when a National Park authority becomes the local planning authority for that Park; and
  - (b) in relation to National Parks generally, shall be construed as a reference—
    - (i) to the original purposes, so far as relating to National Parks in the case of which the National Park authority has not become the local planning authority since the coming into force of this section, and
    - (ii) to the substituted purposes, so far as relating to National Parks in the case of which the National Park authority has become the local planning authority since the coming into force of this section.
- (5) In subsection (4) above—

“original purposes” means the purposes specified in subsection (1) of section 5 of that Act, as originally enacted;

“substituted purposes” means the purposes specified in that subsection as substituted by subsection (1) above.

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### Marginal Citations

- M117 1949 c. 97.
- M118 1949 c. 97.
- M119 1968 c. 41.
- M120 1949 c. 97.

## 62 Duty of certain bodies and persons to have regard to the purposes for which National Parks are designated.

- (1) After section 11 of the National Parks and Access to the <sup>M121</sup>Countryside Act 1949 (general powers of local planning authorities in relation to National Parks) there shall be inserted—

### “11A Duty of certain bodies and persons to have regard to the purposes for which National Parks are designated.

- (1) A National Park authority, in pursuing in relation to the National Park the purposes specified in subsection (1) of section five of this Act, shall seek to foster the economic and social well-being of local communities within the National Park, but without incurring significant expenditure in doing so, and shall for that purpose co-operate with local authorities and public bodies whose functions include the promotion of economic or social development within the area of the National Park.
- (2) In exercising or performing any functions in relation to, or so as to affect, land in a National Park, any relevant authority shall have regard to the purposes specified in subsection (1) of section five of this Act and, if it appears that there is a conflict between those purposes, shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park.
- (3) For the purposes of this section “relevant authority” means—
- (a) any Minister of the Crown,
  - (b) any public body,
  - (c) any statutory undertaker, or
  - (d) any person holding public office.
- (4) In subsection (3) of this section—
- “public body” includes—
    - (a) any local authority, joint board or joint committee;
    - (b) any National Park authority;  - “public office” means—
    - (a) an office under Her Majesty;
    - (b) an office created or continued in existence by a public general Act of Parliament; or
    - (c) an office the remuneration in respect of which is paid out of money provided by Parliament.
- (5) In subsection (4) of this section, “joint board” and “joint committee” mean—



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- (a) a joint or special planning board for a National Park reconstituted by order under paragraph 1 or 3 of Schedule 17 to the <sup>M122</sup>Local Government Act 1972, or a joint planning board within the meaning of section 2 of the <sup>M123</sup>Town and Country Planning Act 1990;
  - (b) a joint committee appointed under section 102(1)(b) of the <sup>M124</sup>Local Government Act 1972.
- (6) In this section, “local authority”—
- (a) in relation to England, means a county council, district council or parish council;
  - (b) in relation to Wales, means a county council, county borough council, district council or community council.”
- (2) The duty imposed by subsection (1) of the section 11A inserted by subsection (1) above shall take effect, in the case of any particular National Park, as from the time when a National Park authority becomes the local planning authority for that Park.

#### Marginal Citations

M121 1949 c. 97.

M122 1972 c. 70.

M123 1990 c. 8.

M124 1972 c. 70.

### *Establishment of National Park authorities*

#### **63 Establishment of National Park authorities.**

- (1) The Secretary of State may—
- (a) in the case of any National Park for which there is an existing authority, or
  - (b) in connection with the designation of any area as a new such Park,
- by order establish an authority (to be known as “a National Park authority”) to carry out in relation to that Park the functions conferred on such an authority by or under this Part.
- (2) An order under this section may provide, in relation to any National Park for which there is an existing authority—
- (a) for the existing authority to cease to have any functions in relation to that Park as from the time when a National Park authority becomes the local planning authority for that Park;
  - (b) for such (if any) of the functions of the existing authority as, by virtue of this Part, are not as from that time to be functions of the National Park authority for that Park to become functions of the person on whom they would be conferred if the area in question were not in a National Park; and
  - (c) for the winding up of the existing authority and for that authority to cease to exist, or to be dissolved, as from such time as may be specified in the order.
- (3) Subject to any order under subsection (4) below, where there is a variation of the area of a National Park for which there is or is to be a National Park authority, the Park for which that authority is or is to be the authority shall be deemed, as from the time when the variation takes effect, to be that area as varied.

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- (4) Where provision is made for the variation of the area of a National Park for which there is or is to be a National Park authority, the Secretary of State may by order make such transitional provision as he thinks fit with respect to—
- (a) any functions which, in relation to any area that becomes part of the National Park, are by virtue of the variation to become functions of that authority; and
  - (b) any functions which, in relation to any area that ceases to be part of the National Park, are by virtue of the variation to become functions of a person other than that authority.
- (5) Schedule 7 to this Act shall have effect with respect to National Park authorities.

#### **64 National Park authorities in Wales.**

- (1) Where a National Park planning board has been constituted for the area of any particular existing National Park in Wales, the Secretary of State may exercise his power under section 63 above to establish a National Park authority in relation to that National Park by making an order under that section designating for the body corporate constituted as that board a date earlier than 31st March 1997 on which that body—
- (a) shall cease to be a National Park planning board, and
  - (b) shall be constituted the National Park authority in relation to that National Park,
- without affecting its corporate status (and an order made under or by virtue of that section may make provision re-naming that body accordingly).
- (2) Any order under—
- (a) paragraph 3A of Schedule 17 to the 1972 Act (special planning boards), or
  - (b) section 2(1B) of the <sup>M125</sup>Town and Country Planning Act 1990 (joint planning boards),
- relating to the body corporate constituted as the National Park planning board in question shall have effect on and after the designated date for that body as an order under section 63 above relating to that body in its capacity as the National Park authority in relation to the National Park in question.
- (3) For the purposes of any order establishing a National Park authority under section 63 above by virtue of subsection (1) above, or any order which, by virtue of subsection (2) above, has effect as an order under that section—
- (a) the requirements of paragraph 2(3) of Schedule 7 to this Act with respect to consultation with councils for principal areas shall, by virtue of the establishment of the National Park planning board, be deemed to have been complied with as respects any provision of the order;
  - (b) in the case of any member of the National Park planning board immediately before the designated date who was holding that office by virtue of his appointment as such by the Secretary of State under and in accordance with paragraph 11 of Schedule 17 to the 1972 Act (which requires prior consultation), the appointment shall, on and after the designated date, have effect for the remainder of the period for which it was made as an appointment as a member of the National Park authority made by the Secretary of State in accordance with paragraph 4(1) of Schedule 7 to this Act;
  - (c) in the case of any other member of the National Park planning board immediately before the designated date who is on that date a member of a principal council for an area which includes the whole or any part of the

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National Park in question, his appointment as a member of that board shall, on and after the designated date, have effect for the remainder of the period for which it was made as an appointment as a local authority member of the National Park authority made in accordance with paragraph 2 of that Schedule; and

- (d) any other requirement, whether statutory or otherwise, which must be complied with in connection with the establishment of a National Park authority shall be deemed to have been complied with by virtue of the establishment of the National Park planning board;

and, except as provided by paragraphs (b) and (c) above, no person who is a member of the National Park planning board immediately before the designated date shall, by virtue of the order, become a member of the National Park authority.

- (4) The functions of a National Park planning board shall include the duty to take such steps as it considers necessary to enable it (that is to say, the body corporate constituted as that board) on being constituted the National Park authority in relation to the National Park in question by an order made by virtue of subsection (1) above, to perform its functions as a National Park authority on and after the designated date; and the functions conferred on such a board by this subsection—

- (a) shall be exercisable before (as well as on or after) 1st April 1996; and  
(b) are in addition to any other functions which are exercisable by such a board before that date by virtue of paragraph 13 of Schedule 17 to the <sup>M126</sup>Local Government (Wales) Act 1994.

- (5) The functions of a principal council for an area which includes the whole or any part of the area of a National Park planning board shall include the duty to take such steps as it considers necessary to enable the body corporate constituted as that board, on being constituted the National Park authority in relation to the National Park in question by an order made by virtue of subsection (1) above, to perform those functions which would, apart from the order, be exercisable by a principal council but which will become functions of that body, as the National Park authority, on the designated date.

- (6) Where the Secretary of State—

- (a) has taken any steps with a view to, or otherwise in connection with, the establishment of a National Park planning board for the area of an existing National Park in Wales (“the proposed board”), but  
(b) decides not to proceed with the establishment of the proposed board and to establish instead a National Park authority in relation to that National Park (“the proposed authority”), and  
(c) the proposed authority is, or is to be, established before 31st March 1997,

the doing of anything by or in relation to the Secretary of State (other than the making by the Secretary of State of an instrument of a legislative character) with a view to, or otherwise in connection with, establishing the proposed board shall be treated, as respects the proposed authority, as the doing of any corresponding or reasonably similar thing falling to be done for the purposes of, or otherwise in connection with, the establishment of that authority.

- (7) Without prejudice to the generality of subsection (6) above, in any case falling within paragraphs (a) to (c) of that subsection—

- (a) any consultation with a principal council after 15th December 1994 by the Secretary of State as respects the proposed board (whether or not required by or under any enactment) shall be deemed, as respects the proposed authority,

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to have been carried out for the purposes of the consultation with councils for principal areas required by paragraph 2(3) of Schedule 7 to this Act;

- (b) anything done by or in relation to the Secretary of State for the purposes of the consultation required by paragraph 11 of Schedule 17 to the 1972 Act (appointment of members by Secretary of State) preparatory to the appointment of a person as a member of the proposed board shall be deemed, as respects the proposed authority, to have been done for the purposes of the consultation required by paragraph 4(1) of Schedule 7 to this Act preparatory to the appointment of that person as a member of that authority;
- (c) anything done by or in relation to the Secretary of State (other than the making by the Secretary of State of an instrument of a legislative character) for the purposes of, or otherwise in connection with, any other requirement, whether statutory or otherwise, of a consultative or procedural nature—
  - (i) which relates to a National Park planning board, and
  - (ii) for which there is a corresponding or reasonably similar requirement which relates to a National Park authority,

shall be treated, as respects the proposed authority, as done for the purposes of, or otherwise in connection with, that other corresponding or reasonably similar requirement.

- (8) Section 54 of the <sup>M127</sup>Local Government (Wales) Act 1994 (powers to make incidental, consequential, transitional or supplemental provision) shall have effect as if this Part were contained in that Act, except that subsection (2)(e) of that section shall have effect as if this Part were contained in an Act passed in the same Session as that Act.

- (9) In this section—

“the designated date”, in the case of any body corporate constituted as a National Park planning board which becomes, or is to become, a National Park authority by virtue of this section, means the date designated by virtue of subsection (1) above in the order relating to that body;

“existing National Park” means a National Park in respect of which there was in force on 15th December 1994 an order under section 5 of the National Parks and Access to the <sup>M128</sup>Countryside Act 1949 (designation of areas as National Parks);

“National Park planning board” means—

- (a) a special planning board constituted by order under paragraph 3A of Schedule 17 to the 1972 Act to discharge, as respects the area of a National Park in Wales, the functions to which Part I of that Schedule applies, or
- (b) a joint planning board constituted by order under subsection (1B) of section 2 of the <sup>M129</sup>Town and Country Planning Act 1990 for a united district comprising the area of a National Park in Wales.

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**Marginal Citations**

**M125** 1990 c. 8.

**M126** 1994 c. 19.

**M127** 1994 c. 19.

**M128** 1949 c. 97.

**M129** 1990 c. 8.

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**Status:** Point in time view as at 12/07/2004. This version of this Act contains provisions that are prospective.  
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### *Functions of National Park authorities*

#### **65 General purposes and powers.**

- (1) This Part so far as it relates to the establishment and functions of National Park authorities shall have effect for the purposes specified in section 5(1) of the National Parks and Access to the Countryside Act 1949 (purposes of conserving and enhancing the natural beauty, wildlife and cultural heritage of National Parks and of promoting opportunities for the understanding and enjoyment of the special qualities of those Parks by the public).
- (2) Sections 37 and 38 of the Countryside Act 1968 (general duties as to the protection of interests of the countryside and the avoidance of pollution) shall apply to National Park authorities as they apply to local authorities.
- (3) The functions of a National Park authority in the period (if any) between the time when it is established and the time when it becomes the local planning authority for the relevant Park shall be confined to the taking of such steps as the authority, after consultation with the Secretary of State and any existing authority for that Park, considers appropriate for securing that it is able properly to carry out its functions after that time.
- (4) In the application of subsection (3) above in the case of a National Park authority established in relation to a National Park in Wales, the reference to any existing authority for that Park shall have effect as respects consultation carried out during so much of that period as falls before 1st April 1996 as including a reference to any principal council whose area is wholly or partly comprised in that Park.
- (5) The powers of a National Park authority shall include power to do anything which, in the opinion of that authority, is calculated to facilitate, or is conducive or incidental to—
  - (a) the accomplishment of the purposes mentioned in subsection (1) above; or
  - (b) the carrying out of any functions conferred on it by virtue of any other enactment.
- (6) The powers conferred on a National Park authority by subsection (5) above shall not include either—
  - (a) power to do anything in contravention of any restriction imposed by virtue of this Part in relation to any express power of the authority; or
  - (b) a power to raise money (whether by borrowing or otherwise) in a manner which is not authorised apart from that subsection;but the things that may be done in exercise of those powers shall not be treated as excluding anything by reason only that it involves the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights.
- (7) Schedule 8 to this Act shall have effect with respect to the supplemental and incidental powers of a National Park authority.

#### **Marginal Citations**

**M130** 1949 c. 97.

**M131** 1968 c. 41.

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## 66 National Park Management Plans.

- (1) Subject to subsection (2) below, every National Park authority shall, within three years after its operational date, prepare and publish a plan, to be known as a National Park Management Plan, which formulates its policy for the management of the relevant Park and for the carrying out of its functions in relation to that Park.
- (2) A National Park authority for a Park wholly or mainly comprising any area which, immediately before the authority's operational date, was or was included in an area for which there was a National Park Plan prepared and published under paragraph 18 of Schedule 17 to the 1972 Act (National Park plans) shall not be required to prepare a Management Plan under subsection (1) above if, within six months of that date, it adopts the existing National Park Plan as its Management Plan and publishes notice that it has done so.
- (3) Where a National Park authority is proposing to adopt a plan under subsection (2) above, it may review the plan before adopting it and shall do so if the plan would have fallen to be reviewed under paragraph 18 of Schedule 17 to the 1972 Act in the period of twelve months beginning with the authority's operational date.
- (4) A National Park authority shall review its National Park Management Plan within the period of five years of its operational date and, after the first review, at intervals of not more than five years.
- (5) Where a National Park authority has adopted a plan under subsection (2) above as its National Park Management Plan and has not reviewed that Plan before adopting it, the first review of that Plan under subsection (4) above shall take place no later than the time when the adopted plan would otherwise have fallen to be reviewed under paragraph 18 of Schedule 17 to the 1972 Act.
- (6) Where a National Park authority reviews any plan under this section, it shall—
  - (a) determine on that review whether it would be expedient to amend the plan and what (if any) amendments would be appropriate;
  - (b) make any amendments that it considers appropriate; and
  - (c) publish a report on the review specifying any amendments made.
- (7) A National Park authority which is proposing to publish, adopt or review any plan under this section shall—
  - (a) give notice of the proposal to every principal council whose area is wholly or partly comprised in the relevant Park and, according to whether that Park is in England or in Wales, to the [<sup>F48</sup>Countryside Agency] and [<sup>F49</sup>English Nature] or to the Countryside Council for Wales;
  - (b) send a copy of the plan, together (where appropriate) with any proposed amendments of the plan, to every body to which notice of the proposal is required to be given by paragraph (a) above; and
  - (c) take into consideration any observations made by any such body.
- (8) A National Park authority shall send to the Secretary of State a copy of every plan, notice or report which it is required to publish under this section.
- (9) In this section “operational date”, in relation to a National Park authority, means the date on which the authority becomes the local planning authority for the relevant Park.

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#### Textual Amendments

- F48** Words in s. 66(7) substituted (20.2.1999) by S.I. 1999/416, art. 3, Sch. 1 para. 17(3)  
**F49** Words in s. 66(7)(a) substituted (30.1.2001) by 2000 c. 37, ss. 73(4), 103(2), Sch. 8 para. 1(t)(iii)

### 67 National Park authority to be local planning authority.

- (1) After section 4 of the <sup>M132</sup>Town and Country Planning Act 1990 (National Parks) there shall be inserted—

#### “4A National Parks with National Park authorities.

- (1) Where a National Park authority has been established for any area, this section, instead of section 4(1) to (4), shall apply, as from such time as may be specified for the purposes of this section in the order establishing that authority, in relation to the Park for which it is the authority.
- (2) Subject to subsections (4) and (5) below, the National Park authority for the Park shall be the sole local planning authority for the area of the Park and, accordingly—
- (a) functions conferred by or under the planning Acts on a planning authority of any description (including the functions of a mineral planning authority under those Acts and under the <sup>M133</sup>Planning and Compensation Act 1991) shall, in relation to the Park, be functions of the National Park authority, and not of any other authority; and
- (b) so much of the area of any other authority as is included in the Park shall be treated as excluded from any area for which that other authority is a planning authority of any description.
- (3) For the purposes of subsection (2) above functions under the planning Acts which (apart from this section) are conferred—
- (a) in relation to some areas on the county or district planning authorities for those areas, and
- (b) in relation to other areas on the councils for those areas,
- shall be treated, in relation to those other areas, as conferred on each of those councils as the local planning authority for their area.
- (4) The functions of a local planning authority by virtue of sections 198 to 201, 206 to 209 and 211 to 215, so far as they are functions of a National Park authority by virtue of this section, shall be exercisable as respects any area which is or is included in an area for which there is a district council, concurrently with the National Park authority, by that council.
- (5) For the purposes of any enactment relating to the functions of a district planning authority, the functions of a district council by virtue of subsection (4) above shall be deemed to be conferred on them as a district planning authority and as if the district were the area for which they are such an authority.”
- (2) The Secretary of State may by order make provision—

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- (a) for applying Chapter I of Part II of that Act of 1990 (unitary development plans), instead of provisions of Chapter II of that Part (structure and local plans), in relation to the area of any National Park; or
  - (b) for applying Chapter II of that Part in relation to the area of such a Park—
    - (i) as if functions under that Chapter of a planning authority of any description were functions of such public authority as may be specified in the order (and not of the National Park authority); and
    - (ii) as if that Part had effect with such other modifications as may be so specified in relation to the carrying out of those functions by an authority so specified.
- (3) Without prejudice to any power conferred by virtue of section 75 below, the Secretary of State shall have power by order, for the purposes of any provision made by virtue of this section, to modify the provisions of Part II of that Act of 1990 (development plans) in relation to any such area of a local planning authority as, but for any exclusion by virtue of section 4A of that Act, would include the whole or any part of a National Park.
- (4) References in this section to provisions of Part II of that Act of 1990 include references to any provisions for modifying those provisions which are contained in any enactment passed after this Act.
- (5) Before section 148 of that Act of 1990 (interpretation of provisions relating to purchase notices) there shall be inserted—

**“147A Application of Chapter I to National Parks.**

This Chapter shall have effect as if—

- (a) the bodies on whom a purchase notice may be served under section 137 included any National Park authority which is the local planning authority for the area in which the land is situated; and
- (b) a National Park authority were a local authority for the purposes of this Act and the National Park for which it is the local planning authority were its area;

and the references in this Chapter and in section 288(10)(a) to a council and to a local authority shall be construed accordingly.”

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**Marginal Citations**

**M132** 1990 c. 8.

**M133** 1991 c. 34.

**68 Planning authority functions under National Parks legislation etc.**

- (1) Where a National Park authority is the local planning authority for any National Park, section 184 of the 1972 Act and paragraph 37 of Schedule 17 to that Act (functions under certain legislation relating to the National Parks and the countryside) shall not apply as respects that Park in relation to any of the functions conferred by or under—
- (a) the <sup>M134</sup>National Parks and Access to the Countryside Act 1949 (“the 1949 Act”), or
  - (b) the <sup>M135</sup>Countryside Act 1968 (“the 1968 Act”),
- on a planning authority of any description.



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- (2) In consequence of subsection (1) above, but subject to subsections (3) to (7) below—
- (a) functions which are conferred on a local planning authority by or under the 1949 Act or the 1968 Act, and the functions conferred on a county planning authority (or, in relation to Wales, a local planning authority) by section 69 of the 1949 Act (suspension of access to avoid risk of fire), shall, as respects the whole or any part of a National Park for which a National Park authority is the local planning authority, be functions of that authority and not of any other authority;
  - (b) references in those Acts to a local planning authority whose area consists of or includes the whole or any part of a National Park shall be construed, in relation to any National Park for which a National Park authority is the local planning authority, as references to the National Park authority; and
  - (c) other references in those Acts to a local planning authority and the references to a local authority in section 103 of the 1949 Act and sections 10 and 43 to 45 of the 1968 Act (which contain provision applying in relation to local authorities in their capacity as local planning authorities) shall have effect accordingly.
- (3) Section 11 of the 1949 Act (which makes provision in relation to a local planning authority that corresponds to provision made by section 65 above in relation to a National Park authority) shall not apply in relation to any National Park authority.
- (4) The functions conferred by or under section 12 of the 1949 Act or section 12 of the 1968 Act (facilities for National Parks) which are exercisable by virtue of this section by a National Park authority in a National Park—
- (a) shall be exercisable by that authority outside the relevant Park on any land in the neighbourhood of that Park; but
  - (b) shall be so exercisable only under arrangements made with the local planning authority for the area where they are exercised.
- (5) Sections 61 to 63 of the 1949 Act (survey of access requirements and action in response to the survey) shall have effect in accordance with subsection (2) above as respects the area of any National Park for which a National Park authority has become the local planning authority—
- (a) in the case of a Park designated after the commencement of this section, as if section 61(1) applied with the substitution for the reference to the commencement of that Act of a reference to the time when that authority became the local planning authority for that Park;
  - (b) as if no area were required by virtue of subsection (3) of section 61 of that Act, or of any previous review under that section, to be excluded from any area to be reviewed by virtue of paragraph (a) above; and
  - (c) in the case of a Park designated before the commencement of this section, as if—
    - (i) the power (if any) to make a resolution for the purposes of the proviso to that subsection (3) as respects any part of the area of the Park which has not previously been reviewed under that section, and
    - (ii) the functions which, where such a resolution has been so made, are conferred on the authority which made it or on any authority which has conducted a review in pursuance of the resolution,were a power or, as the case may be, functions of the National Park authority, and not of any other authority.

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- (6) The following functions, so far as exercisable by a National Park authority in relation to land or countryside in a National Park in England for which that authority is the local planning authority, that is to say—
- (a) those conferred by or under section 89 of the 1949 Act (planting of trees and treatment of derelict land), and
  - (b) those conferred by section 10 of the 1968 Act (camping and picnic sites),
- shall be exercisable in relation to so much of that Park as is comprised in a district for which there is a district council, concurrently with the National Park authority, by that district council.
- (7) For the purposes of any enactment relating to the functions of a district planning authority, the functions of a district council by virtue of subsection (6) above shall be deemed to be conferred on them as a district planning authority and as if the district were the area for which they are such an authority.
- (8) The following powers, that is to say—
- (a) those conferred on a local authority by or under section 92 of the 1949 Act (wardens), and
  - (b) those conferred on a local authority by or under section 41 of the 1968 Act (byelaws),
- so far as they are conferred in relation to any of the functions which by virtue of this section are functions of a National Park authority as respects the relevant Park, shall be exercisable by that authority and also, in the case of those conferred by or under section 41 of the 1968 Act, by a district council in relation to that council's functions by virtue of subsection (6)(b) above, but not by any other authority.
- (9) Section 104 of the 1949 Act (general provisions as to appropriation and disposal of land), except subsection (11), shall have effect as if references in that section to a local authority included references to a National Park authority.
- (10) For the purposes of any functions conferred on a National Park authority by virtue of this section references in any enactment to the area of the authority shall be construed as references to the relevant Park.

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**Marginal Citations**

**M134** 1949 c. 97.

**M135** 1968 c. 41.

**69 Planning authority functions under the Wildlife and Countryside Act 1981.**

- (1) A National Park authority which is the local planning authority for any National Park, and not any other authority, shall have all the functions under the <sup>M136</sup>Wildlife and Countryside Act 1981 which are conferred as respects that Park on a planning authority of any description.
- (2) Accordingly—
- (a) a National Park authority shall be the relevant authority for the purposes of sections 39, 41 and 50 of that Act (management agreements and duties of agriculture Ministers in relation to the countryside) as respects any land in any National Park for which that authority is the local planning authority; and

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- (b) section 52(2) of that Act (construction of references to a local planning authority) shall not apply as respects any National Park for which a National Park authority is the local planning authority.
- (3) Section 43 of that Act (maps of National Parks) shall have effect in accordance with the preceding provisions of this section—
- (a) in the case of a National Park designated after the commencement of this section, as if the relevant date for the purposes of that section were the date on which a National Park authority becomes the local planning authority for the Park; and
  - (b) in any other case, as if the function of reviewing and revising any map of a part of the Park in question included a power, in pursuance of the review and revisions, to consolidate that map with other maps prepared under that section as respects other parts of that Park.
- (4) In section 44 of that Act (grants and loans for purposes of National Parks), after subsection (1) there shall be inserted the following subsection—
- “(1A) Subsection (1) above shall not apply in relation to any National Park for which a National Park authority is the local planning authority; but the National Park authority for such a Park may give financial assistance by way of grant or loan, or partly in one way and partly in the other, to any person in respect of expenditure incurred by him in doing anything which, in the opinion of the authority, is conducive to the attainment in the Park in question of any of the purposes mentioned in section 5(1) of the 1949 Act (purposes of conserving and enhancing the natural beauty, wildlife and cultural heritage of National Parks and of promoting opportunities for the understanding and enjoyment of the special qualities of those Parks by the public).”

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**Marginal Citations**

M136 1981 c. 69.

**70 Other statutory functions.**

In addition to its functions under the enactments mentioned in sections 67 to 69 above and to such of its functions under any other enactment as are conferred by virtue of its being a local planning authority within the meaning of the <sup>M137</sup>Town and Country Planning Act 1990, a National Park authority shall have the further miscellaneous functions conferred on it by virtue of Schedule 9 to this Act.

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**Marginal Citations**

M137 1990 c. 8.

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### *Finances of National Park authorities*

#### **71 National Park authorities to be levying bodies.**

- (1) A National Park authority shall have power in respect of every financial year beginning after the establishment of that authority to issue levies to the councils by whom the local authority members of that authority fall to be appointed.
- (2) Subject to the following provisions of this section, a levy issued by virtue of this section shall be issued in accordance with regulations under section 74 of the <sup>M138</sup>Local Government Finance Act 1988 (power to make regulations authorising a levying body to issue a levy); and, accordingly, a National Park authority shall be deemed to be a levying body within the meaning of that section.
- (3) Subject to any maximum specified in or determined in accordance with any regulations under that section 74, the amount of the levies issued by a National Park authority in respect of any financial year shall be equal to the sum by which the aggregate of the amounts specified in subsection (4) below is exceeded by the aggregate of the sums which it estimates it will require in respect of that year for the following purposes, that is to say—
  - (a) meeting the expenditure of the authority which will fall to be charged for that year to any revenue account;
  - (b) making such provision as may be appropriate for meeting contingencies the expenditure on which would fall to be so charged;
  - (c) securing the availability to the authority of adequate working balances on its revenue accounts; and
  - (d) providing the authority with the funds required for covering any deficit carried forward from a previous financial year in any revenue account.
- (4) The amounts mentioned in subsection (3) above in relation to any financial year are—
  - (a) any amounts to be received by the authority in respect of that year by way of grant under section 72 below;
  - (b) the authority's estimate of the amounts which are likely for that year to be credited to any revenue account in respect of sums payable to the authority for things done in the course of, or in connection with, the carrying out of its functions; and
  - (c) the authority's estimate of the amounts not falling within paragraph (a) or (b) above which apart from this section are, or are likely to be, available to it for that year for the purposes mentioned in subsection (3) above.
- (5) Where agreement as to the apportionment of the amount to be raised by a National Park authority in respect of any financial year by way of levies is entered into, before 1st December in the immediately preceding financial year, by all the authorities to whom the levies in respect of that year may be issued by that authority, that amount shall be apportioned between those authorities in accordance with the agreement, instead of in accordance with any provision made by virtue of that section 74.
- (6) Regulations under that section 74 may include provision for requiring an authority to anticipate a levy by virtue of this section when making any calculations which fall, for the financial year following that in which any National Park authority is established, to be made (whether originally or by way of substitute) under section 32 or 43 of the <sup>M139</sup>Local Government Finance Act 1992 (calculation of budget requirement).

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(7) A National Park authority shall not by virtue of this section be a local authority within the meaning of the <sup>M140</sup>Town and Country Planning Act 1990.

**Marginal Citations**

- M138 1988 c. 41.
- M139 1992 c. 14.
- M140 1990 c. 8.

**72 National Park grant.**

- (1) The Secretary of State may make grants to a National Park authority for such purposes, of such amounts and on such terms and conditions as he thinks fit.
- (2) Before determining the amount of any grant which he proposes to make to a National Park authority under this section, or the purpose for which it is to be made, the Secretary of State shall consult, according to whether the relevant Park is in England or in Wales, either the [<sup>F50</sup>Countryside Agency] or the Countryside Council for Wales.
- (3) The consent of the Treasury shall be required for the making of a grant under this section.

**Textual Amendments**

- F50 Words in s. 72(2) substituted (20.2.1999) by S.I. 1999/416, art. 3, Sch. 1 para. 17(4)

<sup>F51</sup>**73 Capital finances and borrowing.**

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**Textual Amendments**

- F51 S. 73 repealed (27.11.2003 for W. for the purpose of and in relation to financial years beginning on or after 1st April 2004, 1.4.2004 for E.) by Local Government Act 2003 (c. 26), s. 128(6), Sch. 8 Pt. 1; S.I. 2003/2938, art. 7(e)(vi) (with art. 8Sch.); S.I. 2003/3034, art. 2, Sch. 1 Pt. I

**74 Validation of certain grants paid to local authorities in respect of expenditure relating to National Parks.**

- (1) No payment made for any year beginning on or after 1st April 1990 and ending on or before 31st March 1996 by the Secretary of State by way of grant to the council of a county or a metropolitan district in respect of the council's expenditure or estimated expenditure in connection with National Parks shall be regarded as made otherwise than under and in accordance with the relevant enactments by reason only of—
  - (a) the aggregate amount of such grants for the year to such councils not having been duly prescribed;
  - (b) the method of determining the proportion of such aggregate amount payable to that council not having been duly prescribed; or
  - (c) payment of the grant being, or having been, made—

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- (i) otherwise than in accordance with an approved Rate Support Grant Report or such a Report as varied by an approved supplementary report for the year; or
  - (ii) without there being an approved Rate Support Grant Report for the year.
- (2) Any reference in this section to a payment by way of grant made under and in accordance with the relevant enactments is a reference to a payment of grant made under section 7 of the <sup>M141</sup>Local Government Act 1974 (supplementary grants towards expenditure with respect to National Parks) in accordance with the provisions of that section and those of section 60 or 61 of the <sup>M142</sup>Local Government, Planning and Land Act 1980 (rate support grant reports and supplementary reports) as they apply in relation to grants under the said section 7.

(3) In this section—

“approved Rate Support Grant Report” means a Rate Support Grant Report which has been laid before and approved by a resolution of the House of Commons;

“approved supplementary report” means a supplementary report which has been laid before and approved by a resolution of the House of Commons;

“duly prescribed” means prescribed by a Rate Support Grant Report or a supplementary report;

“Rate Support Grant Report” means a Rate Support Grant Report made under section 60 of the Local Government, Planning and Land Act 1980;

“supplementary report” means a supplementary report made under section 61 of that Act; and

“year” means a period of 12 months beginning with 1st April.

#### **Marginal Citations**

**M141** 1974 c. 7.

**M142** 1980 c. 65.

### *Supplemental provisions*

#### **75 Powers to make orders.**

- (1) This section applies to every power of the Secretary of State under the preceding provisions of this Part to make an order.
- (2) The powers to which this section applies shall, in each case, be exercisable by statutory instrument; and, except in the case of a statutory instrument made by virtue of section 64 above which only—
  - (a) designates a date,
  - (b) specifies a time for the purposes of section 4A of the <sup>M143</sup>Town and Country Planning Act 1990,
  - (c) renames a body,
  - (d) makes provision under paragraph 2 of Schedule 7 to this Act—
    - (i) for excluding a council from the councils by whom the local authority members of a National Park authority are to be appointed, or

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- (ii) for so increasing the number of local authority members of a National Park authority to be appointed by any council as to secure that the number of local authority members of that authority remains unchanged notwithstanding any such exclusion of a council, or
  - (e) makes provision under section 63(2) above,

any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) The powers to which this section applies shall, in each case, include power to make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks necessary or expedient.
- (4) A power of the Secretary of State by an order under this Part to make incidental, supplemental, consequential or transitional provision shall include power for any incidental, supplemental, consequential or, as the case may be, transitional purpose—
  - (a) to apply with or without modifications,
  - (b) to extend, exclude or modify, or
  - (c) to repeal or revoke with or without savings,

any enactment or any instrument made under any enactment.
- (5) The provision that may be made for incidental, supplemental, consequential or transitional purposes in the case of any order under this Part which—
  - (a) establishes a National Park authority or winds up the existing authority for any National Park, or
  - (b) otherwise has the effect of transferring functions from one person to another or of providing for functions to become exercisable concurrently by two or more persons or to cease to be so exercisable,

shall include provision for the transfer of property, rights and liabilities from one person to another.
- (6) A power of the Secretary of State under this Part to provide by order for the transfer of any property, rights or liabilities, or to make transitional provision in connection with any such transfer or with any order by which functions become or cease to be exercisable by any authority, shall include power to provide, in particular—
  - (a) for the management and custody of any transferred property (whether real or personal);
  - (b) for any liabilities transferred to include liabilities under any enactment;
  - (c) for legal proceedings commenced by or against any person to be continued by or against a person to whom property, rights or liabilities are transferred or, as the case may be, any authority by whom any functions are to become exercisable;
  - (d) for the transfer of staff, compensation for loss of office, pensions and other staffing matters; and
  - (e) for treating any person to whom a transfer of property, rights or liabilities is made or, as the case may be, by whom any functions are to become exercisable as, for some or all purposes, the same person in law as the person from whom the transfer is made or the authority by whom the functions have previously been exercisable.
- (7) The powers to which this section applies shall, in each case, include power to make different provision for different cases, including different provision for different areas or localities and for different authorities.

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- (8) The powers to which this section applies shall be without prejudice to any powers conferred by Part II of the <sup>M144</sup>Local Government Act 1992 or any other enactment.
- (9) In this section “enactment” includes an enactment contained in an Act passed after this Act.

**Marginal Citations**

**M143** 1990 c. 8.

**M144** 1992 c. 19.

**76 Agreements as to incidental matters.**

- (1) Any public authorities affected by an order under this Part may from time to time make agreements with respect to—
- (a) any property, income, rights, liabilities or expenses (so far as affected by the order) of the parties to the agreement; or
  - (b) any financial relations between those parties.
- (2) Such an agreement may provide—
- (a) for the transfer or retention of any property, rights and liabilities, with or without conditions, and for the joint use of any property;
  - (b) for the making of payments by any party to the agreement in respect of—
    - (i) property, rights and liabilities transferred or retained,
    - (ii) the joint use of any property, or
    - (iii) remuneration or compensation payable to any person;
 and
  - (c) for the making of any such payment either by way of a capital sum or of a terminable annuity.
- (3) In default of agreement as to any disputed matter, the matter shall be referred to the arbitration of a single arbitrator agreed on by the parties or, in default of agreement, appointed by the Secretary of State; and the award of the arbitrator may make any provision that might be contained in an agreement under this section.
- (4) In subsection (3) above “disputed matter” means any matter which—
- (a) might be the subject of provision contained in an agreement under this section; and
  - (b) is the subject of such a dispute between two or more public authorities as is not resolved by or under provision contained in any order under this Part.

**77 Isles of Scilly.**

- (1) This Part shall have effect in relation to the Isles of Scilly subject to any such modifications as may be provided for by the Secretary of State by order made by statutory instrument.
- (2) Before making an order under this section the Secretary of State shall consult with the Council of the Isles of Scilly.



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- (3) The power to make an order under this section shall include power to make such incidental, supplemental, consequential or transitional provision as the Secretary of State thinks necessary or expedient.

## 78 Minor and consequential amendments relating to National Parks.

The enactments mentioned in Schedule 10 to this Act shall have effect subject to the amendments contained in that Schedule (being minor amendments and consequential amendments in connection with the provisions of this Part).

### Commencement Information

- I10** S. 78 partly in force; s. 78 not in force at Royal Assent see s. 125(3); s. 78 in force for specified purposes at 23.11.1995 by S.I. 1995/2950, art. 2(1) (subject to art/ 2(2)); s. 78 in force for further specified purposes at 1.4.1996 by S.I. 1995/2950, art. 3(1) (subject to art. 3(2) which art. 3(2) was revoked (1.4.1997) by S.I. 1996/2560, art. 3); s. 78 in force for further specified purposes at 1.4.1997 by S.I. 1996/2560, art. 2

## 79 Interpretation of Part III.

- (1) In this Part, except in so far as the context otherwise requires—
- “the 1972 Act” means the <sup>M145</sup>Local Government Act 1972;
  - “existing authority”, in relation to a National Park, means—
    - (a) any such joint or special planning board for that Park or for any area wholly or partly comprised in that Park as was reconstituted by an order under paragraph 1 or 3 of Schedule 17 to the 1972 Act or constituted by an order under paragraph 3A of that Schedule or section 2(1B) of the <sup>M146</sup>Town and Country Planning Act 1990; or
    - (b) any National Park Committee for that Park or for any such area;
  - “liability”, in relation to the transfer of liabilities from one person to another, does not include any criminal liability;
  - “principal council” and “principal area” have the same meanings as in the 1972 Act;
  - “public authority” means any local authority within the meaning of the 1972 Act (including any such authority in their capacity as a local planning authority), any National Park authority, any existing authority for a National Park, any joint authority or residuary body established under Part II of the <sup>M147</sup>Local Government Act 1992, any joint authority established under section 34 of the <sup>M148</sup>Local Government (Wales) Act 1994 or the Residuary Body for Wales established by section 39 of that Act;
  - “the relevant Park”, in relation to a National Park authority, means the area for which that authority is or is to be the National Park authority.
- (2) Where—
- (a) any enactment that is applied by virtue of this Part in relation to National Park authorities refers, or falls to be construed as referring, to any other enactment, and
  - (b) that other enactment is also one which is so applied,

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the reference shall be construed (so far as it would not be so construed apart from this subsection) as including a reference to the other enactment as it is applied in relation to National Park authorities.

**Marginal Citations**

**M145** 1972 c. 70.

**M146** 1990 c. 8.

**M147** 1992 c. 19.

**M148** 1994 c. 19.

**PART IV**

AIR QUALITY

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

**C14** Pt. IV (ss. 80-91) amended (3.7.2000) by 1999 c. 29, s. 364 (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch. Pt. 3**

**80 National air quality strategy.**

- (1) The Secretary of State shall as soon as possible prepare and publish a statement (in this Part referred to as “the strategy”) containing policies with respect to the assessment or management of the quality of air.
- (2) The strategy may also contain policies for implementing—
  - (a) obligations of the United Kingdom under the Community Treaties, or
  - (b) international agreements to which the United Kingdom is for the time being a party,
 so far as relating to the quality of air.
- (3) The strategy shall consist of or include—
  - (a) a statement which relates to the whole of Great Britain; or
  - (b) two or more statements which between them relate to every part of Great Britain.
- (4) The Secretary of State—
  - (a) shall keep under review his policies with respect to the quality of air; and
  - (b) may from time to time modify the strategy.
- (5) Without prejudice to the generality of what may be included in the strategy, the strategy must include statements with respect to—
  - (a) standards relating to the quality of air;
  - (b) objectives for the restriction of the levels at which particular substances are present in the air; and
  - (c) measures which are to be taken by local authorities and other persons for the purpose of achieving those objectives.

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- (6) In preparing the strategy or any modification of it, the Secretary of State shall consult—
- (a) the appropriate new Agency;
  - (b) such bodies or persons appearing to him to be representative of the interests of local government as he may consider appropriate;
  - (c) such bodies or persons appearing to him to be representative of the interests of industry as he may consider appropriate; and
  - (d) such other bodies or persons as he may consider appropriate.
- (7) Before publishing the strategy or any modification of it, the Secretary of State—
- (a) shall publish a draft of the proposed strategy or modification, together with notice of a date before which, and an address at which, representations may be made to him concerning the draft so published; and
  - (b) shall take into account any such representations which are duly made and not withdrawn.

## **81 Functions of the new Agencies.**

- (1) In discharging its pollution control functions, each new Agency shall have regard to the strategy.
- (2) In this section “pollution control functions”, in relation to a new Agency, means—
- (a) in the case of the Agency, the functions conferred on it by or under the enactments specified in section 5(5) above; or
  - (b) in the case of SEPA, the functions conferred on it by or under the enactments specified in section 33(5) above.

## **82 Local authority reviews.**

- (1) Every local authority shall from time to time cause a review to be conducted of the quality for the time being, and the likely future quality within the relevant period, of air within the authority’s area.
- (2) Where a local authority causes a review under subsection (1) above to be conducted, it shall also cause an assessment to be made of whether air quality standards and objectives are being achieved, or are likely to be achieved within the relevant period, within the authority’s area.
- (3) If, on an assessment under subsection (2) above, it appears that any air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the local authority’s area, the local authority shall identify any parts of its area in which it appears that those standards or objectives are not likely to be achieved within the relevant period.

## **83 Designation of air quality management areas.**

- (1) Where, as a result of an air quality review, it appears that any air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the area of a local authority, the local authority shall by order designate as an air quality management area (in this Part referred to as a “designated area”) any part of its area in which it appears that those standards or objectives are not being achieved, or are not likely to be achieved within the relevant period.

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- (2) An order under this section may, as a result of a subsequent air quality review,—
- (a) be varied by a subsequent order; or
  - (b) be revoked by such an order, if it appears on that subsequent air quality review that the air quality standards and objectives are being achieved, and are likely throughout the relevant period to be achieved, within the designated area.

#### **84 Duties of local authorities in relation to designated areas.**

- (1) Where an order under section 83 above comes into operation, the local authority which made the order shall, for the purpose of supplementing such information as it has in relation to the designated area in question, cause an assessment to be made of—
- (a) the quality for the time being, and the likely future quality within the relevant period, of air within the designated area to which the order relates; and
  - (b) the respects (if any) in which it appears that air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within that designated area.
- (2) A local authority which is required by subsection (1) above to cause an assessment to be made shall also be under a duty—
- (a) to prepare, before the expiration of the period of twelve months beginning with the coming into operation of the order mentioned in that subsection, a report of the results of that assessment; and
  - (b) to prepare, in accordance with the following provisions of this Part, a written plan (in this Part referred to as an “action plan”) for the exercise by the authority, in pursuit of the achievement of air quality standards and objectives in the designated area, of any powers exercisable by the authority.
- (3) An action plan shall include a statement of the time or times by or within which the local authority in question proposes to implement each of the proposed measures comprised in the plan.
- (4) A local authority may from time to time revise an action plan.
- (5) This subsection applies in any case where the local authority preparing an action plan or a revision of an action plan is the council of a district in England which is comprised in an area for which there is a county council; and if, in a case where this subsection applies, the county council disagrees with the authority about the contents of the proposed action plan or revision of the action plan—
- (a) either of them may refer the matter to the Secretary of State;
  - (b) on any such reference the Secretary of State may confirm the authority’s proposed action plan or revision of the action plan, with or without modifications (whether or not proposed by the county council) or reject it and, if he rejects it, he may also exercise any powers of his under section 85 below; and
  - (c) the authority shall not finally determine the content of the action plan, or the revision of the action plan, except in accordance with his decision on the reference or in pursuance of directions under section 85 below.

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

**C15** S. 84(2)(b): power to amend repeal revoke or disapply conferred (E.W.) (18.10.2000 (E.) and 1.11.2000 (W.)) by 2000 c. 22, s. 7(2)(c); S.I. 2000/2836, art. 2(a); S.I. 2000/2948, art. 2

**85 Reserve powers of the Secretary of State or SEPA.**

- (1) In this section, “the appropriate authority” means—
- (a) in relation to [<sup>F52</sup>local authorities in England and Wales other than local authorities in Greater London, the Secretary of State;]
  - [<sup>F53</sup>(aa) in relation to local authorities in Greater London, the Mayor of London; and]
  - (b) in relation to Scotland, SEPA acting with the approval of the Secretary of State.
- (2) The appropriate authority may conduct or make, or cause to be conducted or made,—
- (a) a review of the quality for the time being, and the likely future quality within the relevant period, of air within the area of any local authority;
  - (b) an assessment of whether air quality standards and objectives are being achieved, or are likely to be achieved within the relevant period, within the area of a local authority;
  - (c) an identification of any parts of the area of a local authority in which it appears that those standards or objectives are not likely to be achieved within the relevant period; or
  - (d) an assessment of the respects (if any) in which it appears that air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the area of a local authority or within a designated area.
- (3) If it appears to the appropriate authority—
- (a) that air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the area of a local authority,
  - (b) that a local authority has failed to discharge any duty imposed on it under or by virtue of this Part,
  - (c) that the actions, or proposed actions, of a local authority in purported compliance with the provisions of this Part are inappropriate in all the circumstances of the case, or
  - (d) that developments in science or technology, or material changes in circumstances, have rendered inappropriate the actions or proposed actions of a local authority in pursuance of this Part,
- the appropriate authority may give directions to the local authority requiring it to take such steps as may be specified in the directions.
- (4) Without prejudice to the generality of subsection (3) above, directions under that subsection may, in particular, require a local authority—
- (a) to cause an air quality review to be conducted under section 82 above in accordance with the directions;
  - (b) to cause an air quality review under section 82 above to be conducted afresh, whether in whole or in part, or to be so conducted with such differences as may be specified or described in the directions;

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- (c) to make an order under section 83 above designating as an air quality management area an area specified in, or determined in accordance with, the directions;
  - (d) to revoke, or modify in accordance with the directions, any order under that section;
  - (e) to prepare in accordance with the directions an action plan for a designated area;
  - (f) to modify, in accordance with the directions, any action plan prepared by the authority; or
  - (g) to implement, in accordance with the directions, any measures in an action plan.
- <sup>F54</sup>(4A) The powers of the Mayor of London to give directions under this section to a local authority in Greater London may only be exercised after consultation with the local authority concerned.
- <sup>F54</sup>(4B) In exercising any function under subsection (2), (3) or (4) above [<sup>F55</sup>or (5A) below] the Mayor of London shall have regard to any guidance issued by the Secretary of State to local authorities under section 88(1) below.]
- (5) The Secretary of State shall also have power to give directions to local authorities [<sup>F56</sup>, other than local authorities in Greater London,] requiring them to take such steps specified in the directions as he considers appropriate for the implementation of—
- (a) any obligations of the United Kingdom under the Community Treaties, or
  - (b) any international agreement to which the United Kingdom is for the time being a party,
- so far as relating to the quality of air.
- <sup>F57</sup>[(5A) The Mayor of London shall also have the same power to give directions to local authorities in Greater London as the Secretary of State has under subsection (5) above in relation to other local authorities.]
- (6) Any direction given under this section shall be published in such manner as the body or person giving it considers appropriate for the purpose of bringing the matters to which it relates to the attention of persons likely to be affected by them; and—
- (a) copies of the direction shall be made available to the public; and
  - (b) notice shall be given—
    - (i) in the case of a direction given to a local authority in England and Wales, in the London Gazette, or
    - (ii) in the case of a direction given to a local authority in Scotland, in the Edinburgh Gazette,
 of the giving of the direction and of where a copy of the direction may be obtained.
- <sup>F58</sup>(6A) The Mayor of London shall send a copy of any direction he gives under this section to the Secretary of State.]
- (7) It is the duty of a local authority to comply with any direction given to it under or by virtue of this Part.

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#### Textual Amendments

- F52** Words in s. 85(1)(a) substituted (3.7.2000) by 1999 c. 29, s. 367(1)(2)(a) (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch. Pt. 3**
- F53** S. 85(1)(aa) inserted (3.7.2000) by 1999 c. 29, s. 367(1)(2)(b) (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch. Pt. 3**
- F54** S. 85(4A)(4B) inserted (3.7.2000) by 1999 c. 29, s. 367(1)(3) (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch. Pt. 3**
- F55** Words in s. 85(4B) inserted (20.11.2001) by S.I. 2001/3719, art. 2, **Sch. para. 6(1)(2)**
- F56** Words in s. 85(5) inserted (3.7.2000) by 1999 c. 29, s. 367(1)(4) (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch. Pt. 3**
- F57** S. 85(5A) inserted (20.11.2001) by S.I. 2001/3719, art. 2, **Sch. para. 6(1)(3)**
- F58** S. 85(6A) inserted (3.7.2000) by 1999 c. 29, s. 367(1)(5) (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch. Pt. 3**

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

- C16** S. 85(5) applied (9.9.2003) by [The Air Quality Limit Values Regulations 2003](#) (S.I. 2003/2121), **regs. 1(1), 14(1)**
- C17** S. 85(6)(6A)(7) applied (19.7.2001) by S.I. 2001/2315, **reg. 11(2)**
- C18** S. 85(6)(6A)(7) applied (9.9.2003) by [The Air Quality Limit Values Regulations 2003](#) (S.I. 2003/2121), **regs. 1(1), 14(2)**

## 86 Functions of county councils for areas for which there are district councils.

- (1) This section applies in any case where a district in England for which there is a district council is comprised in an area for which there is a county council; and in this paragraph—
- any reference to the county council is a reference to the council of that area; and
  - any reference to a district council is a reference to the council of a district comprised in that area.
- (2) The county council may make recommendations to a district council with respect to the carrying out of—
- any particular air quality review,
  - any particular assessment under section 82 or 84 above, or
  - the preparation of any particular action plan or revision of an action plan,
- and the district council shall take into account any such recommendations.
- (3) Where a district council is preparing an action plan, the county council shall, within the relevant period, submit to the district council proposals for the exercise (so far as relating to the designated area) by the county council, in pursuit of the achievement of air quality standards and objectives, of any powers exercisable by the county council.
- (4) Where the county council submits proposals to a district council in pursuance of subsection (3) above, it shall also submit a statement of the time or times by or within which it proposes to implement each of the proposals.
- (5) An action plan shall include a statement of—
- any proposals submitted pursuant to subsection (3) above; and

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- (b) any time or times set out in the statement submitted pursuant to subsection (4) above.
- (6) If it appears to the Secretary of State—
- (a) that air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the area of a district council,
  - (b) that the county council has failed to discharge any duty imposed on it under or by virtue of this Part,
  - (c) that the actions, or proposed actions, of the county council in purported compliance with the provisions of this Part are inappropriate in all the circumstances of the case, or
  - (d) that developments in science or technology, or material changes in circumstances, have rendered inappropriate the actions or proposed actions of the county council in pursuance of this Part,
- the Secretary of State may give directions to the county council requiring it to take such steps as may be specified in the directions.
- (7) Without prejudice to the generality of subsection (6) above, directions under that subsection may, in particular, require the county council—
- (a) to submit, in accordance with the directions, proposals pursuant to subsection (3) above or a statement pursuant to subsection (4) above;
  - (b) to modify, in accordance with the directions, any proposals or statement submitted by the county council pursuant to subsection (3) or (4) above;
  - (c) to submit any proposals or statement so modified to the district council in question pursuant to subsection (3) or (4) above; or
  - (d) to implement, in accordance with the directions, any measures included in an action plan.
- (8) The Secretary of State shall also have power to give directions to county councils for areas for which there are district councils requiring them to take such steps specified in the directions as he considers appropriate for the implementation of—
- (a) any obligations of the United Kingdom under the Community Treaties, or
  - (b) any international agreement to which the United Kingdom is for the time being a party,
- so far as relating to the quality of air.
- (9) Any direction given under this section shall be published in such manner as the Secretary of State considers appropriate for the purpose of bringing the matters to which it relates to the attention of persons likely to be affected by them; and—
- (a) copies of the direction shall be made available to the public; and
  - (b) notice of the giving of the direction, and of where a copy of the direction may be obtained, shall be given in the London Gazette.
- (10) It is the duty of a county council for an area for which there are district councils to comply with any direction given to it under or by virtue of this Part.

**[<sup>F59</sup>86A Functions exercisable by the Mayor of London.**

- (1) Where a local authority in Greater London is preparing an action plan, the Mayor of London (referred to in this section as “the Mayor”) shall, within the relevant period, submit to the authority proposals for the exercise (so far as relating to the



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designated area) by the Mayor, in pursuit of the achievement of air quality standards and objectives, of any powers exercisable by the Mayor.

- (2) Where the Mayor submits proposals to a local authority in pursuance of subsection (1) above, he shall also submit a statement of the time or times by or within which he proposes to implement each of the proposals.
- (3) An action plan shall include a statement of—
  - (a) any proposals submitted pursuant to subsection (1) above; and
  - (b) any time or times set out in the statement submitted pursuant to subsection (2) above.]

#### Textual Amendments

**F59** S. 86A inserted (3.7.2000) by 1999 c. 29, s. 368 (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), Sch. Pt. 3

## 87 Regulations for the purposes of Part IV.

- (1) Regulations may make provision—
  - (a) for, or in connection with, implementing the strategy;
  - (b) for, or in connection with, implementing—
    - (i) obligations of the United Kingdom under the Community Treaties, or
    - (ii) international agreements to which the United Kingdom is for the time being a party,so far as relating to the quality of air; or
  - (c) otherwise with respect to the assessment or management of the quality of air.
- (2) Without prejudice to the generality of subsection (1) above, regulations under that subsection may make provision—
  - (a) prescribing standards relating to the quality of air;
  - (b) prescribing objectives for the restriction of the levels at which particular substances are present in the air;
  - (c) conferring powers or imposing duties on local authorities;
  - (d) for or in connection with—
    - (i) authorising local authorities (whether by agreements or otherwise) to exercise any functions of a Minister of the Crown on his behalf;
    - (ii) directing that functions of a Minister of the Crown shall be exercisable concurrently with local authorities; or
    - (iii) transferring functions of a Minister of the Crown to local authorities;
  - (e) prohibiting or restricting, or for or in connection with prohibiting or restricting,—
    - (i) the carrying on of prescribed activities, or
    - (ii) the access of prescribed vehicles or mobile equipment to prescribed areas,whether generally or in prescribed circumstances;
  - (f) for or in connection with the designation of air quality management areas by orders made by local authorities in such cases or circumstances not falling within section 83 above as may be prescribed;

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- (g) for the application, with or without modifications, of any provisions of this Part in relation to areas designated by virtue of paragraph (f) above or in relation to orders made by virtue of that paragraph;
  - (h) with respect to—
    - (i) air quality reviews;
    - (ii) assessments under this Part;
    - (iii) orders designating air quality management areas; or
    - (iv) action plans;
  - (j) prescribing measures which are to be adopted by local authorities (whether in action plans or otherwise) or other persons in pursuance of the achievement of air quality standards or objectives;
  - (k) for or in connection with the communication to the public of information relating to quality for the time being, or likely future quality, of the air;
  - (l) for or in connection with the obtaining by local authorities from any person of information which is reasonably necessary for the discharge of functions conferred or imposed on them under or by virtue of this Part;
  - (m) for or in connection with the recovery by a local authority from prescribed persons in prescribed circumstances, and in such manner as may be prescribed, of costs incurred by the authority in discharging functions conferred or imposed on the authority under or by virtue of this Part;
  - (n) for a person who contravenes, or fails to comply with, any prescribed provision of the regulations to be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or such lower level on that scale as may be prescribed in relation to the offence;
  - (o) for or in connection with arrangements under which a person may discharge any liability to conviction for a prescribed offence by payment of a penalty of a prescribed amount;
  - (p) for or in connection with appeals against determinations or decisions made, notices given or served, or other things done under or by virtue of the regulations.
- (3) Without prejudice to the generality of paragraph (h) of subsection (2) above, the provision that may be made by virtue of that paragraph includes provision for or in connection with any of the following, that is to say—
- (a) the scope or form of a review or assessment;
  - (b) the scope, content or form of an action plan;
  - (c) the time at which, period within which, or manner in which a review or assessment is to be carried out or an action plan is to be prepared;
  - (d) the methods to be employed—
    - (i) in carrying out reviews or assessments; or
    - (ii) in monitoring the effectiveness of action plans;
  - (e) the factors to be taken into account in preparing action plans;
  - (f) the actions which must be taken by local authorities or other persons in consequence of reviews, assessments or action plans;
  - (g) requirements for consultation;
  - (h) the treatment of representations or objections duly made;
  - (j) the publication of, or the making available to the public of, or of copies of,—
    - (i) the results, or reports of the results, of reviews or assessments; or
    - (ii) orders or action plans;

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- (k) requirements for—
  - (i) copies of any such reports, orders or action plans, or
  - (ii) prescribed information, in such form as may be prescribed, relating to reviews or assessments,to be sent to the Secretary of State or to the appropriate new Agency.
- (4) In determining—
  - (a) any appeal against, or reference or review of, a decision of a local authority under or by virtue of regulations under this Part, or
  - (b) any application transmitted from a local authority under or by virtue of any such regulations,the body or person making the determination shall be bound by any direction given by a Minister of the Crown or SEPA to the local authority to the same extent as the local authority.
- (5) The provisions of any regulations under this Part may include—
  - (a) provision for anything that may be prescribed by the regulations to be determined under the regulations and for anything falling to be so determined to be determined by such persons, in accordance with such procedure and by reference to such matters, and to the opinion of such persons, as may be prescribed;
  - (b) different provision for different cases, including different provision in relation to different persons, circumstances, areas or localities; and
  - (c) such supplemental, consequential, incidental or transitional provision (including provision amending any enactment or any instrument made under any enactment) as the Secretary of State considers appropriate.
- (6) Nothing in regulations under this Part shall authorise any person other than a constable in uniform to stop a vehicle on any road.
- (7) Before making any regulations under this Part, the Secretary of State shall consult—
  - (a) the appropriate new Agency;
  - (b) such bodies or persons appearing to him to be representative of the interests of local government as he may consider appropriate;
  - (c) such bodies or persons appearing to him to be representative of the interests of industry as he may consider appropriate; and
  - (d) such other bodies or persons as he may consider appropriate.
- (8) Any power conferred by this Part to make regulations shall be exercisable by statutory instrument; and no statutory instrument containing regulations under this Part shall be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (9) If, apart from this subsection, the draft of an instrument containing regulations under this Part would be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.

- (1) The Secretary of State may issue guidance to local authorities with respect to, or in connection with, the exercise of any of the powers conferred, or the discharge of any of the duties imposed, on those authorities by or under this Part.

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- (2) A local authority, in carrying out any of its functions under or by virtue of this Part, shall have regard to any guidance issued by the Secretary of State under this Part.
- (3) This section shall apply in relation to county councils for areas for which there are district councils as it applies in relation to local authorities.

## 89

- (1) Subject to the provisions of any order under this section, this Part, other than section 80, shall not apply in relation to the Isles of Scilly.
- (2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application of any provisions of this Part (other than section 80) to the Isles of Scilly; and any such order may provide for the application of those provisions to those Isles with such modifications as may be specified in the order.
- (3) An order under this section may—
  - (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate, including provision saving provision repealed by or under any enactment.
- (4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument; and a statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## 90 Supplemental provisions.

Schedule 11 to this Act shall have effect.

### Commencement Information

**III** S. 90 wholly in force at 23.12.1997; s. 90 not in force at Royal Assent see s. 125(3); s. 90 in force for specified purposes at 1.2.1996 by [S.I. 1996/186](#), [art 2](#); s. 90 in force at 23.12.1997 in so far as it is not already in force by [S.I. 1997/3044](#), [art. 2](#)

## 91 Interpretation of Part IV.

- (1) In this Part—
  - “action plan” shall be construed in accordance with section 84(2)(b) above;
  - “air quality objectives” means objectives prescribed by virtue of section 87(2)(b) above;
  - “air quality review” means a review under section 82 or 85 above;
  - “air quality standards” means standards prescribed by virtue of section 87(2)(a) above;
  - “the appropriate new Agency” means—
    - (a) in relation to England and Wales, the Agency;
    - (b) in relation to Scotland, SEPA;
  - “designated area” has the meaning given by section 83(1) above;

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“local authority”, in relation to England and Wales, means—

- (a) any unitary authority,
- (b) any district council, so far as it is not a unitary authority,
- (c) the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively,

and, in relation to Scotland, means a council for an area constituted under section 2 of the <sup>M149</sup>Local Government etc. (Scotland) Act 1994;

“new Agency” means the Agency or SEPA;

“prescribed” means prescribed, or of a description prescribed, by or under regulations;

“regulations” means regulations made by the Secretary of State;

“the relevant period”, in the case of any provision of this Part, means such period as may be prescribed for the purposes of that provision;

“the strategy” has the meaning given by section 80(1) above;

“unitary authority” means—

- (a) the council of a county, so far as it is the council of an area for which there are no district councils;
- (b) the council of any district comprised in an area for which there is no county council;
- (c) the council of a London borough;
- (d) the council of a county borough in Wales.

- (2) Any reference in this Part to it appearing that any air quality standards or objectives are not likely within the relevant period to be achieved includes a reference to it appearing that those standards or objectives are likely within that period not to be achieved.

**Marginal Citations**

**M149** 1994 c. 39.

**PART V**

MISCELLANEOUS, GENERAL AND SUPPLEMENTAL PROVISIONS

*Waste*

**92 National waste strategy.**

- (1) Before section 45 of the <sup>M150</sup>Environmental Protection Act 1990 there shall be inserted—

**“44A National waste strategy: England and Wales.**

- (1) The Secretary of State shall as soon as possible prepare a statement (“the strategy”) containing his policies in relation to the recovery and disposal of waste in England and Wales.

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- (2) The strategy shall consist of or include—
  - (a) a statement which relates to the whole of England and Wales; or
  - (b) two or more statements which between them relate to the whole of England and Wales.
- (3) The Secretary of State may from time to time modify the strategy.
- (4) Without prejudice to the generality of what may be included in the strategy, the strategy must include—
  - (a) a statement of the Secretary of State’s policies for attaining the objectives specified in Schedule 2A to this Act;
  - (b) provisions relating to each of the following, that is to say—
    - (i) the type, quantity and origin of waste to be recovered or disposed of;
    - (ii) general technical requirements; and
    - (iii) any special requirements for particular wastes.
- (5) In preparing the strategy or any modification of it, the Secretary of State—
  - (a) shall consult the Environment Agency,
  - (b) shall consult—
    - (i) such bodies or persons appearing to him to be representative of the interests of local government, and
    - (ii) such bodies or persons appearing to him to be representative of the interests of industry,as he may consider appropriate, and
  - (c) may consult such other bodies or persons as he considers appropriate.
- (6) Without prejudice to any power to give directions conferred by section 40 of the Environment Act 1995, the Secretary of State may give directions to the Environment Agency requiring it—
  - (a) to advise him on the policies which are to be included in the strategy;
  - (b) to carry out a survey of or investigation into—
    - (i) the kinds or quantities of waste which it appears to that Agency is likely to be situated in England and Wales,
    - (ii) the facilities which are or appear to that Agency likely to be available or needed in England and Wales for recovering or disposing of any such waste,
    - (iii) any other matter upon which the Secretary of State wishes to be informed in connection with his preparation of the strategy or any modification of it,and to report its findings to him.
- (7) A direction under subsection (6)(b) above—
  - (a) shall specify or describe the matters or the areas which are to be the subject of the survey or investigation; and
  - (b) may make provision in relation to the manner in which—
    - (i) the survey or investigation is to be carried out, or
    - (ii) the findings are to be reported or made available to other persons.

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- (8) Where a direction is given under subsection (6)(b) above, the Environment Agency shall, in accordance with any requirement of the direction,—
- (a) before carrying out the survey or investigation, consult—
    - (i) such bodies or persons appearing to it to be representative of local planning authorities, and
    - (ii) such bodies or persons appearing to it to be representative of the interests of industry,as it may consider appropriate; and
  - (b) make its findings available to those authorities.
- (9) In this section—
- “local planning authority” has the same meaning as in the <sup>M151</sup>Town and Country Planning Act 1990;
- “strategy” includes the strategy as modified from time to time and
- “statement” shall be construed accordingly.
- (10) This section makes provision for the purpose of implementing Article 7 of the <sup>M152</sup>directive of the Council of the European Communities, dated 15th July 1975, on waste, as amended by—
- (a) the <sup>M153</sup>directive of that Council, dated 18th March 1991, amending directive [75/442/EEC](#) on waste; and
  - (b) the <sup>M154</sup>directive of that Council, dated 23rd December 1991, standardising and rationalising reports on the implementation of certain Directives relating to the environment.

#### 44B National waste strategy: Scotland.

- (1) SEPA shall as soon as possible prepare a statement (“the strategy”) containing its policies in relation to the recovery and disposal of waste in Scotland.
- (2) SEPA may from time to time modify the strategy.
- (3) Without prejudice to the generality of what may be included in the strategy, the strategy must include—
  - (a) a statement of SEPA’s policies for attaining the objectives specified in Schedule 2A to this Act;
  - (b) provisions relating to each of the following, that is to say—
    - (i) the type, quantity and origin of waste to be recovered or disposed of;
    - (ii) general technical requirements; and
    - (iii) any special requirements for particular wastes.
- (4) In preparing the strategy or any modification of it SEPA shall consult—
  - (a) such bodies or persons appearing to it to be representative of the interests of industry as it may consider appropriate;
  - (b) such local authorities as appear to it to be likely to be affected by the strategy or modification,and may consult such other bodies or persons as it considers appropriate.

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- (5) Without prejudice to any power to give directions conferred by section 40 of the Environment Act 1995, the Secretary of State may give directions to SEPA—
- (a) as to the policies which are to be included in the strategy;
  - (b) requiring it to carry out a survey or investigation into—
    - (i) the kinds or quantities of waste which it appears to it is likely to be situated in Scotland,
    - (ii) the facilities which are or appear to it likely to be available or needed in Scotland for recovering or disposing of any such waste,
    - (iii) any other matter which the Secretary of State considers appropriate in connection with its preparation of the strategy or any modifications of it.
- (6) A direction under subsection (5)(b) above—
- (a) shall specify or describe the matters or the areas which are to be the subject of the survey or investigation; and
  - (b) may make provision in relation to the manner in which—
    - (i) the survey or investigation is to be carried out, or
    - (ii) the findings are to be reported or made available to other persons.
- (7) Where a direction is given under subsection (5)(b) above SEPA shall, in accordance with any requirement of the direction—
- (a) before carrying out the survey or investigation, consult—
    - (i) such bodies or persons appearing to it to be representative of planning authorities, and
    - (ii) such bodies or persons appearing to it to be representative of the interests of industry,
 as it may consider appropriate; and
  - (b) make its findings available to those authorities.
- (8) In this section—
- “planning authority” means an authority within the meaning of section 172 of the <sup>M155</sup>Local Government (Scotland) Act 1973;
- “strategy” includes the strategy as modified from time to time and “statement” shall be construed accordingly.
- (9) This section makes provision for the purpose of implementing Article 7 of the <sup>M156</sup>directive of the Council of the European Communities dated 15th July 1975 on waste, as amended by—
- (a) the <sup>M157</sup>directive of that Council dated 18th March 1991 amending directive [75/442/EEC](#) on waste; and
  - (b) the <sup>M158</sup>directive of that Council dated 23rd December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment.”
- (2) After Schedule 2 to that Act there shall be inserted the Schedule set out in Schedule 12 to this Act.



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#### Marginal Citations

**M150** 1990 c. 43.

**M151** 1990 c. 8.

**M152** 91/692/EEC.

**M153** 91/156/EEC.

**M154** 75/442/EEC.

**M155** 1973 c. 65.

**M156** 91/692/EEC.

**M157** 91/156/EEC.

**M158** 75/442/EEC.

### 93 **Producer responsibility: general.**

- (1) For the purpose of promoting or securing an increase in the re-use, recovery or recycling of products or materials, the Secretary of State may by regulations make provision for imposing producer responsibility obligations on such persons, and in respect of such products or materials, as may be prescribed.
- (2) The power of the Secretary of State to make regulations shall be exercisable only after consultation with bodies or persons appearing to him to be representative of bodies or persons whose interests are, or are likely to be, substantially affected by the regulations which he proposes to make.
- (3) Except in the case of regulations for the implementation of—
  - (a) any obligations of the United Kingdom under the Community Treaties, or
  - (b) any international agreement to which the United Kingdom is for the time being a party,the power to make regulations shall be exercisable only where the Secretary of State, after such consultation as is required by subsection (2) above, is satisfied as to the matters specified in subsection (6) below.
- (4) The powers conferred by subsection (1) above shall also be exercisable, in a case falling within paragraph (a) or (b) of subsection (3) above, for the purpose of sustaining at least a minimum level of (rather than promoting or securing an increase in) re-use, recovery or recycling of products or materials.
- (5) In making regulations by virtue of paragraph (a) or (b) of subsection (3) above, the Secretary of State shall have regard to the matters specified in subsection (6) below; and in its application in relation to the power conferred by virtue of subsection (4) above, subsection (6) below shall have effect as if—
  - (a) any reference to an increase in the re-use, recovery or recycling of products or materials were a reference to the sustaining of at least a minimum level of re-use, recovery or recycling of the products or materials in question, and
  - (b) any reference to the production of environmental or economic benefits included a reference to the sustaining of at least a minimum level of any such existing benefits,and any reference in this section or section 94 below to securing or achieving any such benefits shall accordingly include a reference to sustaining at least a minimum level of any such existing benefits.
- (6) The matters mentioned in subsections (3) and (5) above are—

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- (a) that the proposed exercise of the power would be likely to result in an increase in the re-use, recovery or recycling of the products or materials in question;
- (b) that any such increase would produce environmental or economic benefits;
- (c) that those benefits are significant as against the likely costs resulting from the imposition of the proposed producer responsibility obligation;
- (d) that the burdens imposed on businesses by the regulations are the minimum necessary to secure those benefits; and
- (e) that those burdens are imposed on persons most able to make a contribution to the achievement of the relevant targets—
  - (i) having regard to the desirability of acting fairly between persons who manufacture, process, distribute or supply products or materials; and
  - (ii) taking account of the need to ensure that the proposed producer responsibility obligation is so framed as to be effective in achieving the purposes for which it is to be imposed;

but nothing in sub-paragraph (i) of paragraph (e) above shall be taken to prevent regulations imposing a producer responsibility obligation on any class or description of person to the exclusion of any others.

- (7) The Secretary of State shall have a duty to exercise the power to make regulations in the manner which he considers best calculated to secure that the exercise does not have the effect of restricting, distorting or preventing competition or, if it is likely to have any such effect, that the effect is no greater than is necessary for achieving the environmental or economic benefits mentioned in subsection (6) above.

- (8) In this section—

“prescribed” means prescribed in regulations;

“product” and “material” include a reference to any product or material (as the case may be) at a time when it becomes, or has become, waste;

“producer responsibility obligation” means the steps which are required to be taken by relevant persons of the classes or descriptions to which the regulations in question apply in order to secure attainment of the targets specified or described in the regulations;

“recovery”, in relation to products or materials, includes—

- (a) composting, or any other form of transformation by biological processes, of products or materials; or
- (b) the obtaining, by any means, of energy from products or materials;

“regulations” means regulations under this section;

“relevant persons”, in the case of any regulations or any producer responsibility obligation, means persons of the class or description to which the producer responsibility obligation imposed by the regulations applies;

“relevant targets” means the targets specified or described in the regulations imposing the producer responsibility obligation in question;

and regulations may prescribe, in relation to prescribed products or materials, activities, or the activities, which are to be regarded for the purposes of this section and sections 94 and 95 below or any regulations as re-use, recovery or recycling of those products or materials.

- (9) The power to make regulations shall be exercisable by statutory instrument.

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- (10) Subject to the following provisions of this section, a statutory instrument containing regulations shall not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (11) Subsection (10) above shall not apply to a statutory instrument by reason only that it contains regulations varying any relevant targets.
- (12) A statutory instrument which, by virtue of subsection (11) above, is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**94 Producer responsibility: supplementary provisions.**

- (1) Without prejudice to the generality of section 93 above, regulations may, in particular, make provision for or with respect to—
  - (a) the classes or descriptions of person to whom the producer responsibility obligation imposed by the regulations applies;
  - (b) the classes or descriptions of products or materials in respect of which the obligation applies;
  - (c) the targets which are to be achieved with respect to the proportion (whether by weight, volume or otherwise) of the products or materials in question which are to be re-used, recovered or recycled, whether generally or in any prescribed way;
  - (d) particulars of the obligation imposed by the regulations;
  - (e) the registration of persons who are subject to a producer responsibility obligation and who are not members of registered exemption schemes, the imposition of requirements in connection with such registration, the variation of such requirements, the making of applications for such registration, the period for which any such registration is to remain in force and the cancellation of any such registration;
  - (f) the approval, or withdrawal of approval, of exemption schemes by the Secretary of State;
  - (g) the imposition of requirements on persons who are not members of registered exemption schemes to furnish certificates of compliance to the appropriate Agency;
  - (h) the approval of persons by the appropriate Agency for the purpose of issuing certificates of compliance;
  - (j) the registration of exemption schemes, the imposition of conditions in connection with such registration, the variation of such conditions, the making of applications for such registration and the period for which any such registration is to remain in force;
  - (k) the requirements which must be fulfilled, and the criteria which must be met, before an exemption scheme may be registered;
  - (l) the powers of the appropriate Agency in relation to applications received by it for registration of exemption schemes;
  - (m) the cancellation of the registration of an exemption scheme;
  - F60(n) .....
  - F61(o) .....
  - F62(oa) .....

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- (p) the fees, or the method of determining the fees, which are to be paid to the appropriate Agency—
  - (i) in respect of the approval of persons for the purpose of issuing certificates of compliance;
  - (ii) on the making of an application for registration of an exemption scheme;
  - (iii) in respect of the subsistence of the registration of that scheme;
  - (iv) on submission to the appropriate Agency of a certificate of compliance;
  - (v) on the making of an application for, or for the renewal of, registration of a person required to register under the regulations;
  - (vi) in respect of the renewal of the registration of that person;
- (q) appeals against the refusal of registration, the imposition of conditions in connection with registration, or the cancellation of the registration, of any exemption scheme;
- (r) the procedure on any such appeal;
- (s) cases, or classes of case,—
  - (i) in which an exemption scheme is, or is not, to be treated as registered, or
  - (ii) in which a person is, or is not, to be treated as a member of a registered exemption scheme,
 pending the determination or withdrawal of an appeal, and otherwise with respect to the position of persons and exemption schemes pending such determination or withdrawal;
- (t) the imposition on the appropriate Agency of a duty to monitor compliance with any of the obligations imposed by the regulations;
- (u) the imposition on prescribed persons of duties to maintain records, and furnish to the Secretary of State or to the appropriate Agency returns, in such form as may be prescribed of such information as may be prescribed for any purposes of, or for any purposes connected with, or related to, sections 93 to 95 of this Act or any regulations;
- (w) the imposition on the appropriate Agency of a duty to maintain, and make available for inspection by the public, a register containing prescribed information relating to registered exemption schemes or persons required to register under the regulations;
- (y) the powers of entry and inspection which are exercisable by a new Agency for the purposes of its functions under the regulations;
- <sup>F63</sup>(ya) .....

(2) If it appears to the Secretary of State—

- (a) that any action proposed to be taken by the operator of a registered exemption scheme would be incompatible with—
  - (i) any obligations of the United Kingdom under the Community Treaties, or
  - (ii) any international agreement to which the United Kingdom is for the time being a party, or
- (b) that any action which the operator of such a scheme has power to take is required for the purpose of implementing any such obligations or agreement,

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he may direct that operator not to take or, as the case may be, to take the action in question.

- (3) Regulations may make provision as to which of the new Agencies is the appropriate Agency for the purposes of any function conferred or imposed by or under this section or section 93 above, or for the purposes of the exercise of that function in relation to the whole or a prescribed part of Great Britain, and may make provision for things done or omitted to be done by either new Agency in relation to any part of Great Britain to be treated for prescribed purposes as done or omitted to be done by the other of them in relation to some other part of Great Britain.
- (4) Persons issuing certificates of compliance shall act in accordance with guidance issued for the purpose by the appropriate Agency, which may include guidance as to matters which are, or are not, to be treated as evidence of compliance or as evidence of non-compliance.
- (5) In making any provision in relation to fees, regard shall be had to the desirability of securing that the fees received by each new Agency under the regulations are sufficient to meet the costs and expenses incurred by that Agency in the performance of its functions under the regulations.

(6) In this section—

“the appropriate Agency”, subject to regulations made by virtue of subsection (3) above, means—

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

“certificate of compliance” means a certificate issued by a person approved for the purpose by the appropriate Agency to the effect that that person is satisfied that the person in respect of whom the certificate is issued is complying with any producer responsibility obligation to which he is subject;

<sup>F64</sup> .....

“exemption scheme” means a scheme which is (or, if it were to be registered in accordance with the regulations, would be) a scheme whose members for the time being are, by virtue of the regulations and their membership of that scheme, exempt from the requirement to comply with the producer responsibility obligation imposed by the regulations;

“new Agency” means the Agency or SEPA;

“operator”, in relation to an exemption scheme, includes any person responsible for establishing, maintaining or managing the scheme;

“registered exemption scheme” means an exemption scheme which is registered pursuant to regulations;

and expressions used in this section and in section 93 above have the same meaning in this section as they have in that section.

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

(7) Regulations—

- (a) may make different provision for different cases;
- (b) without prejudice to the generality of paragraph (a) above, may impose different producer responsibility obligations in respect of different classes or descriptions of products or materials and for different classes or descriptions of person or exemption scheme;

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- (c) may include incidental, consequential, supplemental or transitional provision.
- (8) Any direction under this section—
- (a) may include such incidental, consequential, supplemental or transitional provision as the Secretary of State considers necessary or expedient; and
- (b) shall, on the application of the Secretary of State, be enforceable by injunction or, in Scotland, by interdict or by an order for specific performance under section 45 of the <sup>M159</sup> Court of Session Act 1988.

#### Textual Amendments

- F60** S. 94(1)(n) ceases to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 2 para. 7(2)(a)** (with reg. 6(2))
- F61** S. 94(1)(o) repealed (1.3.2000) by [S.I. 2000/311](#), **art. 28(1)(2)**
- F62** S. 94(1)(oa) ceases to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 2 para. 7(2)(a)** (with reg. 6(2))
- F63** S. 94(1)(ya) ceases to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 2 para. 7(2)(a)** (with reg. 6(2))
- F64** Words in s. 94(6) cease to have effect (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 2 para. 7(2)(b)** (with reg. 6(2))
- F65** S. 94(6A) ceases to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 2 para. 7(2)(c)** (with reg. 6(2))

#### Marginal Citations

**M159** 1988 c. 36.

#### <sup>F66</sup> 94A **Producer responsibility: competition matters.**

#### Textual Amendments

- F66** S. 94A ceases to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 2 para. 7(3)** (with reg. 6(2))

#### 95 **Producer responsibility: offences.**

- (1) Regulations may make provision for a person who contravenes a prescribed requirement of the regulations to be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.
- (2) Where an offence under any provision of the regulations committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in

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any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

- (3) Where the affairs of a body corporate are managed by its members, subsection (2) above shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (4) Where the commission by any person of an offence under the regulations is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this section whether or not proceedings for the offence are taken against the first-mentioned person.
- (5) Expressions used in this section and in section 93 or 94 above have the same meaning in this section as they have in that section.

### [<sup>F67</sup>96 Mineral planning permissions

- (1) Schedules 13 and 14 to this Act shall have effect.
- (2) This section, those Schedules [<sup>F68</sup>as they apply to England and Wales], and the 1990 Act shall have effect as if this section and those Schedules [<sup>F68</sup>(as so applying)] were included in Part III of that Act.  
[ This section, those Schedules as they apply to Scotland, and the 1972 Act shall have <sup>F69</sup>(3) effect as if this section and those Schedules (as so applying) were included in Part III of that Act.]
- (4) Section 105 of the 1990 Act [<sup>F70</sup>and section 251A of the 1972 Act] shall cease to have effect.
- (5) Without prejudice to the generality of sections 59 to 61 of the 1990 Act [<sup>F70</sup>or, as the case may be, section 21 of the 1972 Act], a development order may make, in relation to any planning permission which is granted by a development order for minerals development, provision similar to any provision made by Schedule 13 or 14 to this Act.
- (6) In this section and those Schedules—
  - [<sup>F71</sup>“the 1972 Act” means the <sup>M160</sup>Town and Country Planning (Scotland) Act 1972;]
  - “the 1990 Act” means the <sup>M161</sup>Town and Country Planning Act 1990;
  - “the 1991 Act” means the <sup>M162</sup>Planning and Compensation Act 1991; and
  - “minerals development” means development consisting of the winning and working of minerals, or involving the depositing of mineral waste.]

#### Textual Amendments

- F67** S. 96 repealed (S.) (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt. II** (with s. 5, Sch. 3)
- F68** Words in s. 96(2) repealed (E.W.) (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt. III** (with s. 5, Sch. 3)
- F69** S. 96(3) repealed (E.W.) (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt. III** (with s. 5, Sch. 3)
- F70** Words in s. 96(4)(5) repealed (E.W.) (27.5.1997) by 1995 c. 25, ss. 3, 6(2), **Sch. 1 Pt. III** (with s. 5, Sch. 3)
- F71** Definition of “the 1972 Act” in s. 96(6) repealed (E.W.) (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt. III** (with s. 5, Sch. 3)

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#### Commencement Information

**I12** S. 96 wholly in force at 1.1.1997; s. 96 not in force at Royal Assent see s. 125(3); s. 96(2) wholly in force and s. 96(1)(5)(6) in force for E.W. and s. 96(4) in force for specified purposes at 1.11.1995 by S.I. 1995/2765, art. 2; s. 96(1)(5)(6) in force for S. and s. 96(3) wholly in force and s. 96(4) in force for further specified purposes at 1.1.1997 by S.I. 1996/2857, art. 2

#### Marginal Citations

**M160** 1972 c. 52.

**M161** 1990 c. 8.

**M162** 1991 c. 34.

### *Hedgerows etc.*

## 97 Hedgerows.

- (1) The appropriate Ministers may by regulations make provision for, or in connection with, the protection of important hedgerows in England or Wales.
- (2) The question whether a hedgerow is or is not “important” for the purposes of this section shall be determined in accordance with prescribed criteria.
- (3) For the purpose of facilitating the protection of important hedgerows, regulations under subsection (1) above may also make provision in relation to other hedgerows in England or Wales.
- (4) Without prejudice to the generality of subsections (1) to (3) above, regulations under subsection (1) above may provide for the application (with or without modifications) of, or include provision comparable to, any provision contained in the planning Acts and may, in particular, make provision—
  - (a) prohibiting, or for prohibiting, the removal of, or the carrying out of prescribed acts in relation to, a hedgerow except in prescribed cases;
  - (b) for or with respect to appeals against determinations or decisions made, or notices given or served, under or by virtue of the regulations, including provision authorising or requiring any body or person to whom an appeal lies to consult prescribed persons with respect to the appeal in prescribed cases;
  - (c) for a person who contravenes, or fails to comply with, any prescribed provision of the regulations to be guilty of an offence;
  - (d) for a person guilty of an offence by virtue of paragraph (c) above which consists of the removal, in contravention of the regulations, of a hedgerow of a description prescribed for the purposes of this paragraph to be liable—
    - (i) on summary conviction, to a fine not exceeding the statutory maximum, or
    - (ii) on conviction on indictment, to a fine;
  - (e) for a person guilty of any other offence by virtue of paragraph (c) above to be liable on summary conviction to a fine not exceeding such level on the standard scale as may be prescribed.
- (5) Regulations under this section may make different provision for different cases, including different provision in relation to different descriptions of hedgerow, different descriptions of person, different areas or localities or different circumstances.



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- (6) Before making any regulations under this section the appropriate Ministers shall consult—
- (a) such bodies appearing to them to be representative of persons whose business interests are likely to be affected by the proposed regulations,
  - (b) such bodies appearing to them to be representative of the interests of owners or occupiers of land,
  - (c) such bodies appearing to them to be representative of the interests of local authorities,
  - (d) such bodies whose statutory functions include the provision to Ministers of the Crown of advice concerning matters relating to environmental conservation, and
  - (e) such bodies not falling within paragraphs (a) to (d) above,
- as the appropriate Ministers may consider appropriate.
- (7) No statutory instrument containing regulations under this section shall be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (8) In this section—
- “the appropriate Ministers” means—
- (a) as respects England, the Secretary of State and the Minister of Agriculture, Fisheries and Food;
  - (b) as respects Wales, the Secretary of State;
- “environmental conservation” means conservation—
- (a) of the natural beauty or amenity, or flora or fauna, of England or Wales;  
or
  - (b) of features of archaeological or historic interest in England or Wales;
- “hedgerow” includes any stretch of hedgerow;
- “local authority” means—
- (a) the council of a county, county borough, district, London borough, parish or community;
  - (b) the Common Council of the City of London;
  - (c) the Council of the Isles of Scilly;
- “the planning Acts” has the same meaning as it has in the <sup>M163</sup>Town and Country Planning Act 1990 by virtue of section 336(1) of that Act;
- “prescribed” means specified, or of a description specified, in regulations;
- “regulations” means regulations made by statutory instrument;
- “remove”, in relation to a hedgerow, means uproot or otherwise destroy, and cognate expressions shall be construed accordingly;
- “statutory functions” means functions conferred or imposed by or under any enactment.
- (9) Any reference in this section to removing, or carrying out an act in relation to, a hedgerow includes a reference to causing or permitting another to remove, or (as the case may be) carry out an act in relation to, a hedgerow.

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

**C19** S. 97 explained (1.6.1997) by [S.I. 1997/1160](#), [reg. 4](#)

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### Marginal Citations

M163 1990 c. 8.

## 98 Grants for purposes conducive to conservation.

- (1) The appropriate Minister, with the consent of the Treasury [<sup>F72</sup>as respects England and Wales], may by regulations make provision for and in connection with the making of grants to persons who do, or who undertake to that Minister that they will do, anything which in the opinion of that Minister is conducive to—
- (a) the conservation or enhancement of the natural beauty or amenity of the countryside (including its flora and fauna and geological and physiographical features) or of any features of archaeological interest there; or
  - (b) the promotion of the enjoyment of the countryside by the public.
- (2) Regulations under this section may—
- (a) make different provision for different cases or classes of case or for different areas;
  - (b) provide for grants to be made subject to conditions;
  - (c) confer power on the appropriate Minister to modify, in any particular case, the conditions to which a grant would otherwise be subject, if he is satisfied that the making of that grant, subject to the conditions as so modified, is consistent with the purposes for which the regulations are made;
  - (d) make provision for or in connection with the recovery of any sums paid by way of grant, or the withholding of any further payments of grant, in cases where the applicant for the grant—
    - (i) in making the application, or in furnishing any information in connection with the application, has made a statement which was false or misleading in a material respect;
    - (ii) has failed to do something which he undertook to do if the grant was made; or
    - (iii) is in breach of any condition subject to which the grant was made.
- (3) The power to make regulations under this section shall be exercisable by statutory instrument; and a statutory instrument containing any such regulations shall be subject to annulment pursuant to a resolution of either House of Parliament.
- (4) The powers conferred by this section are in addition to any other powers of the Secretary of State or the Minister of Agriculture, Fisheries and Food.
- (5) In this section “the appropriate Minister” means—
- (a) as respects England, the Minister of Agriculture, Fisheries and Food;
  - (b) as respects Wales, the Secretary of State;
  - (c) as respects Scotland, the Secretary of State.

### Textual Amendments

**F72** Words in s. 98(1) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(7)**; S.I. 1998/3178, **art. 3**

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

**C20** S. 98 extended (to Isles of Scilly) (1.5.1996) by S.I. 1996/1030, art. 3

**99 Consultation before making or modifying certain subordinate legislation for England.**

- (1) The Minister shall consult the bodies and persons specified in subsection (2) below before—
- (a) making any legislation to which this section applies (other than a modification of any such legislation);
  - (b) modifying any such legislation in a way which changes the <sup>M164</sup>purpose of the <sup>M165</sup>legislation in question; or
  - (c) modifying any such legislation in a way which modifies, in a respect which he considers material, any conditions subject to which grants or other payments are payable under that legislation.
- (2) The bodies and persons mentioned in subsection (1) above are—
- (a) the Secretary of State;
  - (b) the [<sup>F73</sup>Countryside Agency];
  - (c) [<sup>F74</sup>English Nature];
  - (d) the Historic Buildings and Monuments Commission for England.
- (3) The legislation to which this section applies is—
- (a) any order under section 18 of the <sup>M166</sup>Agriculture Act 1986 (orders establishing environmentally sensitive areas);
  - (b) any regulations under section 98 above;
  - (c) any statutory instrument specified in subsection (4) below;
  - (d) any other statutory instrument which concerns the <sup>M167</sup>management of land and whose primary purpose is the <sup>M168</sup>promotion of—
    - (i) the conservation or enhancement of the <sup>M169</sup>natural beauty or amenity of the <sup>M170</sup>countryside (including its flora and fauna and geological and physiographical features) or of any features of archaeological interest there; or
    - (ii) the enjoyment of the <sup>M171</sup>countryside by the <sup>M172</sup>public.
- (4) The statutory instruments mentioned in subsection (3)(c) above are—
- (a) the Farm Woodlands Premium Scheme 1992;
  - (b) the Habitat (Water Fringe) Regulations 1994;
  - (c) the Habitat (Former Set-Aside Land) Regulations 1994;
  - (d) the Habitat (Salt Marsh) Regulations 1994;
  - (e) the Organic Farming (Aid) Regulations 1994;
  - (f) the Nitrate Sensitive Areas Regulations 1994;
  - (g) the Countryside Access Regulations 1994;
  - (h) the Moorland (Livestock Extensification) Regulations 1995.
- (5) In this section, “the Minister” means the Minister of Agriculture, Fisheries and Food.
- (6) This section applies in relation to any legislation only so far as relating to land in England.

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#### **Textual Amendments**

**F73** Words in s. 99(2) substituted (20.2.1999) by S.I. 1999/416, art. 3, **Sch. 1 para. 17(5)**

**F74** Words in s. 99(2)(c) substituted (30.1.2001) by 2000 c. 37, ss. 73(4), 103(2), **Sch. 8 para. 1(t)(iv)**

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

**C21** S. 99 extended (to Isles of Scilly) (1.5.1996) by S.I. 1996/1030, **art. 3**

#### **Marginal Citations**

**M164** S.I. 1995/904.

**M165** S.I. 1994/2349.

**M166** 1986 c. 49.

**M167** S.I. 1994/1729.

**M168** S.I. 1994/1721.

**M169** S.I. 1994/1293.

**M170** S.I. 1994/1292.

**M171** S.I. 1994/1291.

**M172** S.I. 1992/905.

### *Drainage*

#### **100 Meaning of “drainage” in certain enactments.**

(1) In the definition of “drainage” in section 113(1) of the <sup>M173</sup>Water Resources Act 1991, after paragraph (c) there shall be added the words “and

(d) the carrying on, for any purpose, of any other practice which involves management of the level of water in a watercourse;”.

(2) For the definition of “drainage” in section 72(1) of the <sup>M174</sup>Land Drainage Act 1991 there shall be substituted—

““drainage” includes—

(a) defence against water (including sea water);

(b) irrigation, other than spray irrigation;

(c) warping; and

(d) the carrying on, for any purpose, of any other practice which involves management of the level of water in a watercourse;”.

#### **Marginal Citations**

**M173** 1991 c. 57.

**M174** 1991 c. 59.

#### **101 Grants in connection with drainage works.**

<sup>F75</sup>(1) .....

(2) In section 59 of the <sup>M175</sup>Land Drainage Act 1991 (grants to drainage bodies) in subsection (4), after the words “expenditure properly incurred by them with a view to” there shall be inserted “ (a) ” and at the end of that subsection there shall be added—

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- “(b) enabling them to determine in any particular case whether drainage works, or drainage works of any particular description, should or should not be carried out;
  - (c) obtaining or organising information, including information about natural processes affecting the coastline, to enable them to formulate or develop their plans with respect to the defence against sea water of any part of the coastline; or
  - (d) obtaining, at any time after the carrying out of drainage works, information with respect to—
    - (i) the quality or effectiveness, or the effect on the environment, of those works; or
    - (ii) any matter of a financial nature relating to those works.
- (4A) Paragraphs (b) to (d) of subsection (4) above are without prejudice to any power—
- (a) to make any grant under subsection (1) or (4)(a) above, or
  - (b) to impose any condition under subsection (2) above,
- which could be made or imposed apart from those paragraphs.”

#### Textual Amendments

**F75** S. 101(1) repealed (17.3.2004 for E., 1.4.2004 for W.) by [Water Act 2003 \(c. 37\)](#), s. 105(3), Sch. 7 para. 42, [Sch. 9 Pt. 3](#); S.I. 2004/641, art. 2(c)(d); S.I. 2004/910, art. 2(1)(c)(d)

#### Marginal Citations

**M175** 1991 c. 59.

### Fisheries

#### 102 Sea fisheries.

- (1) The <sup>M176</sup>Sea Fisheries Regulation Act 1966 shall be amended in accordance with the following provisions of this section.
- (2) In section 2 (constitution of local fisheries committees) in subsection (2) (which includes provision for the members appointed by the Minister to be persons acquainted with the needs and opinions of the fishing interests of that district) after the words “of that district” there shall be added the words “ or as being persons having knowledge of, or expertise in, marine environmental matters ”.
- (3) After that subsection there shall be inserted—

“(2A) In addition to the members appointed as mentioned in subsection (1) above, a local fisheries committee may appoint such number of persons with knowledge of or expertise in marine environmental matters as it thinks fit as further members of the committee for those occasions on which it is considering any proposed byelaw under section 5 below by virtue of section 5A below, or any proposed amendment or revocation of such a byelaw.”
- (4) At the end of that section there shall be added—

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“(7) In this section “marine environmental matters” means—

- (a) the conservation or enhancement of the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas; or
- (b) the conservation of flora or fauna which are dependent on, or associated with, a marine or coastal environment.”

(5) After section 5 (byelaws for regulation etc of sea fisheries) there shall be inserted—

**“5A Byelaws under section 5 for marine environmental purposes.**

- (1) Any power to make byelaws conferred by section 5 above may be exercised for marine environmental purposes.
- (2) The power to make byelaws under section 5 above by virtue of this section is in addition to, and not in derogation from, the power to make byelaws under that section otherwise than by virtue of this section.
- (3) Byelaws under section 5 above by virtue of this section shall be submitted for confirmation under section 7 below—
  - (a) in the case of a byelaw which is to have effect in England, only after consultation with the Nature Conservancy Council for England;
  - (b) in the case of a byelaw which is to have effect in Wales, only after consultation with the Countryside Council for Wales.
- (4) In this section “marine environmental purposes” means the purposes—
  - (a) of conserving or enhancing the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas; or
  - (b) of conserving flora or fauna which are dependent on, or associated with, a marine or coastal environment.”
- (6) In section 8 (power of Minister to revoke byelaws if it appears necessary or desirable for the maintenance or improvement of fisheries) after the words “maintenance or improvement of fisheries” there shall be inserted the words “ or for marine environmental purposes, within the meaning of section 5A above, ”.

**Marginal Citations**

M176 1966 c. 38.

**103 Other marine or aquatic environmental conservation powers.**

- (1) After section 5 of the <sup>M177</sup>Sea Fish (Conservation) Act 1967 (power to restrict fishing for sea fish) there shall be inserted—

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**“5A Powers to restrict fishing for marine environmental purposes.**

- (1) Any power to make an order under section 5 above may be exercised for marine environmental purposes.
  - (2) The power to make an order under section 5 above by virtue of this section is in addition to, and not in derogation from, the power to make an order under that section otherwise than by virtue of this section.
  - (3) In this section “marine environmental purposes” means the purposes—
    - (a) of conserving or enhancing the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas; or
    - (b) of conserving flora or fauna which are dependent on, or associated with, a marine or coastal environment.”
- (2) After section 2 of the <sup>M178</sup>Inshore Fishing (Scotland) Act 1984 there shall be inserted—

**“2A Powers to restrict fishing, or to prohibit the carriage of specified types of net, for marine environmental purposes.**

- (1) Any power to make an order under section 1 or 2 above may be exercised for marine environmental purposes.
  - (2) The power to make an order under section 1 or 2 above by virtue of this section is in addition to, and not in derogation from, the power to make an order under that section otherwise than by virtue of this section.
  - (3) In this section “marine environmental purposes” means the purposes—
    - (a) of conserving or enhancing the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas; or
    - (b) of conserving flora or fauna which are dependent on, or associated with, a marine or coastal environment.”
- (3) In Schedule 25 to the <sup>M179</sup>Water Resources Act 1991 (byelaw making powers) after paragraph 6 (byelaws for purposes of fisheries functions) there shall be inserted—

**Fisheries byelaws for marine or aquatic environmental purposes**

- “6A
- (1) Any power to make byelaws conferred by paragraph 6 above may be exercised for marine or aquatic environmental purposes.
  - (2) The power to make byelaws under paragraph 6 above by virtue of this paragraph is in addition to, and not in derogation from, the power to make byelaws under that paragraph otherwise than by virtue of this paragraph.
  - (3) In this paragraph “marine or aquatic environmental purposes” means—
    - (a) the conservation or enhancement of the natural beauty or amenity of marine or coastal, or aquatic or waterside, areas (including



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- their geological or physiographical features) or of any features of archaeological or historic interest in such areas; or
- (b) the conservation of flora or fauna which are dependent on, or associated with, a marine or coastal, or aquatic or waterside, environment.”

#### **Marginal Citations**

**M177** 1967 c. 84.

**M178** 1984 c. 26.

**M179** 1991 c. 57.

#### **104 Fixed penalty system for certain fisheries offences.**

- (1) After section 37 of the <sup>M180</sup>Salmon and Freshwater Fisheries Act 1975 there shall be inserted—

##### **“37A Fixed penalty notices for certain offences.**

- (1) Where on any occasion a water bailiff or other officer of the Agency finds a person who he has reason to believe is committing, or has on that occasion committed, a fixed penalty offence, he may give to that person a notice (in this section referred to as a “fixed penalty notice”) offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.
- (2) Where a person is given a fixed penalty notice in respect of a fixed penalty offence—
  - (a) no proceedings shall be instituted for that offence before the expiration of the period for paying the fixed penalty; and
  - (b) he shall not be convicted of that offence if the fixed penalty is paid before the expiration of that period.
- (3) The Agency may extend the period for paying the fixed penalty in any particular case if it considers it appropriate to do so in all the circumstances of the case.
- (4) If, in any particular case, the Agency considers that a fixed penalty notice which has been given ought not to have been given, it may give to the person to whom the fixed penalty notice was given a notice withdrawing the fixed penalty notice; and where notice under this subsection is given—
  - (a) the Agency shall repay any amount which has been paid by way of fixed penalty in pursuance of the fixed penalty notice; and
  - (b) no proceedings shall be instituted or continued against that person for the offence in question.
- (5) The amount by which the sums received by the Agency by way of fixed penalties exceed the sums repaid by it under subsection (4)(a) above shall be paid into the Consolidated Fund.
- (6) In any proceedings, a certificate purporting to be signed by or on behalf of the Chief Executive of the Agency and stating either—



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- (a) that payment of a fixed penalty was, or (as the case may be) was not, received by the Agency on or before a date specified in the certificate, or
- (b) that an envelope containing an amount sent by post in payment of a fixed penalty was marked as posted on a date specified in the certificate,

shall be received as evidence of the matters so stated and shall be treated, without further proof, as being so signed unless the contrary is shown.

(7) A fixed penalty notice shall give such reasonable particulars of the circumstances alleged to constitute the fixed penalty offence to which the notice relates as are necessary for giving reasonable information of the offence and shall state—

- (a) the monetary amount of the fixed penalty which may be paid;
- (b) the person to whom and the address at which—
  - (i) the fixed penalty may be paid, and
  - (ii) any correspondence relating to the fixed penalty notice may be sent;
- (c) the method or methods by which payment of the fixed penalty may be made;
- (d) the period for paying the fixed penalty;
- (e) the consequences of the fixed penalty not being paid before the expiration of that period.

(8) A fixed penalty notice may also contain such other information relating to, or for the purpose of facilitating, the administration of the fixed penalty system as the Agency considers necessary or desirable.

(9) Regulations may—

- (a) make provision with respect to the giving of fixed penalty notices, including, in particular, provision with respect to—
  - (i) the methods by which,
  - (ii) the officers, servants or agents by, to or on whom, and
  - (iii) the places at which,fixed penalty notices may be given by, or served on behalf of, a water bailiff or other officer of the Agency;
- (b) prescribe the method or methods by which fixed penalties may be paid;
- (c) make provision for or with respect to the issue of prescribed documents to persons to whom fixed penalty notices are or have been given.

(10) In this section—

“fixed penalty” means a penalty of such amount as may be prescribed (whether by being specified in, or made calculable under, regulations);

“fixed penalty offence” means, subject to subsection (11) below, any offence—

- (a) under this Act,
- (b) under the <sup>M181</sup>Salmon Act 1986,

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- (c) under or by virtue of regulations or orders made under section 115, 116 or 142 of the <sup>M182</sup>Water Resources Act 1991, or
- (d) under section 211(3) of that Act, so far as relating to byelaws made by virtue of paragraph 6 of Schedule 25 to that Act,

which is for the time being prescribed for the purpose;

“the fixed penalty system” means the system implementing this section and regulations made under it;

“the Ministers” means the Secretary of State and the Minister;

“notice” means notice in writing;

“the period for paying”, in relation to any fixed penalty, means such period as may be prescribed for the purpose;

“prescribed” means prescribed by regulations;

“regulations” means regulations made under this section by the Ministers.

- (11) The provision that may be made by regulations prescribing fixed penalty offences includes provision for an offence to be a fixed penalty offence—
  - (a) only if it is committed in such circumstances or manner as may be prescribed; or
  - (b) except if it is committed in such circumstances or manner as may be prescribed.
- (12) Regulations may provide for any offence which is a fixed penalty offence to cease to be such an offence.
- (13) An offence which, in consequence of regulations made by virtue of subsection (12) above, has ceased to be a fixed penalty offence shall be eligible to be prescribed as such an offence again.
- (14) Regulations may—
  - (a) make different provision in relation to different cases or classes of case; or
  - (b) provide for such exceptions, limitations and conditions, or make such incidental, supplemental, consequential or transitional provision, as the Ministers consider necessary or expedient.
- (15) Any power to make regulations under this section shall be exercisable by statutory instrument made by the Ministers; and a statutory instrument containing any such regulations shall be subject to annulment pursuant to a resolution of either House of Parliament.”
- (2) In section 35 of that Act (which, among other things, creates an offence of failing to state one’s name and address when required to do so under that section) in subsection (1) (water bailiffs and constables), for the words from “A water bailiff” to “any constable” there shall be substituted the words “ A water bailiff or other officer of the Agency, or any constable, ”.
- (3) After that subsection there shall be inserted—
  - “(1A) Without prejudice to subsection (1) above, a water bailiff or other officer of the Agency who on any occasion finds a person who he has reason to believe is committing, or has on that occasion committed, a fixed penalty offence,

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within the meaning of section 37A below, may require that person to state his name and address.”

- (4) In section 41(1) of that Act (definitions), before the definition of “authorised officer” there shall be inserted—

““the Agency” means the Environment Agency;”.

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**Marginal Citations**

M180 1975 c. 51.

M181 1986 c. 62.

M182 1991 c. 57.

**105 Minor and consequential amendments relating to fisheries.**

Schedule 15 to this Act (which makes minor and consequential amendments relating to fisheries) shall have effect.

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**Commencement Information**

**I13** S. 105 partly in force; s. 105 not in force at Royal Assent see s. 125(3); s. 105 in force for specified purposes at 21.9.1995 by S.I. 1995/1983, art. 3; s. 105 in force for further specified purposes at 1.2.1996 by S.I. 1996/186, art 2; s. 105 in force for further specified purposes at 1.4.1996 by S.I. 1996/186, art 3; s. 105 in force for further specified purposes at 1.1.1999 by S.I. 1995/1983, art. 4

*New provisions for Scotland*

**106 Control of pollution of water in Scotland.**

Schedule 16 to this Act (which amends the Control of Pollution Act 1974 as respects the control of pollution of rivers and coastal waters in Scotland) shall have effect.

**107 Statutory nuisances: Scotland.**

Schedule 17 to this Act (which makes provision with respect to statutory nuisances in Scotland) shall have effect.

*Powers of entry*

**108 Powers of enforcing authorities and persons authorised by them.**

- (1) A person who appears suitable to an enforcing authority may be authorised in writing by that authority to exercise, in accordance with the terms of the authorisation, any of the powers specified in subsection (4) below for the purpose—
- (a) of determining whether any provision of the pollution control enactments in the case of that authority is being, or has been, complied with;
  - (b) of exercising or performing one or more of the pollution control functions of that authority; or

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- (c) of determining whether and, if so, how such a function should be exercised or performed.
- (2) A person who appears suitable to the Agency or SEPA may be authorised in writing by the Agency or, as the case may be, SEPA to exercise, in accordance with the terms of the authorisation, any of the powers specified in subsection (4) below for the purpose of enabling the Agency or, as the case may be, SEPA to carry out any assessment or prepare any report which the Agency or, as the case may be, SEPA is required to carry out or prepare under section 5(3) or 33(3) above.
- (3) Subsection (2) above only applies where the Minister who required the assessment to be carried out, or the report to be prepared, has, whether at the time of making the requirement or at any later time, notified the Agency or, as the case may be, SEPA that the assessment or report appears to him to relate to an incident or possible incident involving or having the potential to involve—
- (a) serious pollution of the environment,
  - (b) serious harm to human health, or
  - (c) danger to life or health.
- (4) The powers which a person may be authorised to exercise under subsection (1) or (2) above are—
- (a) to enter at any reasonable time (or, in an emergency, at any time and, if need be, by force) any premises which he has reason to believe it is necessary for him to enter;
  - (b) on entering any premises by virtue of paragraph (a) above, to take with him—
    - (i) any other person duly authorised by the enforcing authority and, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and
    - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
  - (c) to make such examination and investigation as may in any circumstances be necessary;
  - (d) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (c) above;
  - (e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c) above;
  - (f) to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;
  - (g) in the case of any article or substance found in or on any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause pollution of the environment or harm to human health, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);
  - (h) in the case of any such article or substance as is mentioned in paragraph (g) above, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—

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- (i) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which he has power to do under that paragraph;
    - (ii) to ensure that it is not tampered with before examination of it is completed;
    - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under the pollution control enactments in the case of the enforcing authority under whose authorisation he acts or in any other proceedings relating to a variation notice, enforcement notice or prohibition notice under those enactments;
  - (j) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (c) above to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers;
  - (k) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records—
    - (i) which are required to be kept under the pollution control enactments for the enforcing authority under whose authorisation he acts, or
    - (ii) which it is necessary for him to see for the purposes of an examination or investigation under paragraph (c) above,and to inspect and take copies of, or of any entry in, the records;
  - (l) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by this section;
  - (m) any other power for—
    - (i) a purpose falling within any paragraph of subsection (1) above, or
    - (ii) any such purpose as is mentioned in subsection (2) above,which is conferred by regulations made by the Secretary of State.
- (5) The powers which by virtue of subsections (1) and (4) above are conferred in relation to any premises for the purpose of enabling an enforcing authority to determine whether any provision of the pollution control enactments in the case of that authority is being, or has been, complied with shall include power, in order to obtain the information on which that determination may be made,—
- (a) to carry out experimental borings or other works on those premises; and
  - (b) to install, keep or maintain monitoring and other apparatus there.
- (6) Except in an emergency, in any case where it is proposed to enter any premises used for residential purposes, or to take heavy equipment on to any premises which are to be entered, any entry by virtue of this section shall only be effected—
- (a) after the expiration of at least seven days' notice of the proposed entry given to a person who appears to the authorised person in question to be in occupation of the premises in question, and
  - (b) either—
    - (i) with the consent of a person who is in occupation of those premises; or
    - (ii) under the authority of a warrant by virtue of Schedule 18 to this Act.

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- (7) Except in an emergency, where an authorised person proposes to enter any premises and—
- (a) entry has been refused and he apprehends on reasonable grounds that the use of force may be necessary to effect entry, or
  - (b) he apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry,
- any entry on to those premises by virtue of this section shall only be effected under the authority of a warrant by virtue of Schedule 18 to this Act.
- (8) In relation to any premises belonging to or used for the purposes of the United Kingdom Atomic Energy Authority, subsections (1) to (4) above shall have effect subject to section 6(3) of the Atomic Energy Authority Act 1954 (which restricts entry to such premises where they have been declared to be prohibited places for the <sup>M183</sup>purposes of the <sup>M184</sup>Official Secrets Act 1911).
- (9) The Secretary of State may by regulations make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under subsection (4)(f) above.
- (10) Where an authorised person proposes to exercise the power conferred by subsection (4)(g) above in the case of an article or substance found on any premises, he shall, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.
- (11) Before exercising the power conferred by subsection (4)(g) above in the case of any article or substance, an authorised person shall consult—
- (a) such persons having duties on the premises where the article or substance is to be dismantled or subjected to the process or test, and
  - (b) such other persons,
- as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do or cause to be done under the power.
- (12) No answer given by a person in pursuance of a requirement imposed under subsection (4)(j) above shall be admissible in evidence in England and Wales against that person in any proceedings, or in Scotland against that person in any criminal proceedings.
- (13) Nothing in this section shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court or, in relation to Scotland, on an order for the production of documents in an action in the Court of Session.
- (14) Schedule 18 to this Act shall have effect with respect to the powers of entry and related powers which are conferred by this section.
- (15) In this section—
- “authorised person” means a person authorised under subsection (1) or (2) above;
  - “emergency” means a case in which it appears to the authorised person in question—

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- (a) that there is an immediate risk of serious pollution of the environment or serious harm to human health, or
- (b) that circumstances exist which are likely to endanger life or health,

and that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy;

“enforcing authority” means—

- (a) the Secretary of State;
- (b) the Agency;
- (ba) [<sup>F76</sup>a waste collection authority;]
- (c) SEPA; or
- (d) a local enforcing authority;

“local enforcing authority” means—

- (a) a local enforcing authority, within the meaning of Part I of the <sup>M185</sup>Environmental Protection Act 1990;
- (b) a local authority, within the meaning of Part IIA of that Act, in its capacity as an enforcing authority for the purposes of that Part;
- (c) a local authority for the purposes of Part IV of this Act or regulations under that Part;
- (d) [<sup>F77</sup>a local authority for the purposes of regulations under section 2 of the Pollution Prevention and Control Act 1999 extending to England and Wales;]

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

“pollution control enactments”, in relation to an enforcing authority, means the enactments and instruments relating to the pollution control functions of that authority;

“pollution control functions”, in relation to the Agency or SEPA, means the functions conferred or imposed on it by or under—

- (a) the Alkali, &c, Works Regulation Act 1906;
- (b) Part III of the <sup>M186</sup>Rivers (Prevention of Pollution) (Scotland) Act 1951;
- (c) the Rivers (Prevention of Pollution) (Scotland) Act 1965;
- (d) Part I of the <sup>M187</sup>Health and Safety at Work etc. Act 1974;
- (e) Parts I, IA and II of the <sup>M188</sup>Control of Pollution Act 1974;
- (f) the Control of Pollution (Amendment) Act 1989;
- (g) Parts I, II and IIA of the <sup>M189</sup>Environmental Protection Act 1990 (integrated pollution control, waste on land and contaminated land);
- (h) Chapter III of Part IV of the <sup>M190</sup>Water Industry Act 1991 (special category effluent);
- (j) Part III and sections 161 to 161D of the <sup>M191</sup>Water Resources Act 1991;
- (k) section 19 of the <sup>M192</sup>Clean Air Act 1993;
- (l) the Radioactive Substances Act 1993;
- (m) regulations made by virtue of section 2(2) of the <sup>M193</sup>European Communities Act 1972, to the extent that the regulations relate to pollution;
- (n) [<sup>F78</sup>in relation to SEPA, regulations under section 2 of the Pollution Prevention and Control Act 1999; ]

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[<sup>F79</sup>and, in relation to the Agency, includes the functions conferred or imposed on, or transferred to, it under section 2 of the Pollution Prevention and Control Act 1999;]

[<sup>F80</sup>“pollution control functions”, in relation to a waste collection authority, means the functions conferred on it by section 59 of the Environmental Protection Act 1990;]

“pollution control functions”, in relation to a local enforcing authority, means the functions conferred or imposed on, or transferred to, that authority—

- (a) by or under Part I or IIA of the <sup>M194</sup>Environmental Protection Act 1990;
- (b) by or under regulations made by virtue of Part IV of this Act; or
- (c) by or under regulations made by virtue of section 2(2) of the <sup>M195</sup>European Communities Act 1972, to the extent that the regulations relate to pollution;

[<sup>F81</sup>and, in relation to an authority in England or Wales, includes the functions conferred or imposed on, or transferred to, that authority under section 2 of the Pollution Prevention and Control Act 1999;]

“pollution control functions”, in relation to the Secretary of State, means any functions which are conferred or imposed upon him by or under any enactment or instrument and which relate to the control of pollution;

“premises” includes any land, vehicle, vessel or mobile plant.

[<sup>F82</sup>“waste collection authority” shall be construed in accordance with section 30(3)(a), (b) and (bb) of the Environmental Protection Act 1990. ]

- (16) Any power to make regulations under this section shall be exercisable by statutory instrument; and a statutory instrument containing any such regulations shall be subject to annulment pursuant to a resolution of either House of Parliament.

#### Textual Amendments

- F76** Words in s. 108(15) inserted (E.W.) (31.3.2004 for W., 31.3.2004 for E.) by [Anti-social Behaviour Act 2003 \(c. 38\)](#), [ss. 55\(7\)](#), 93; [S.I. 2004/690](#), art. 3(h); [S.I. 2004/999](#), art. 2(m)
- F77** S. 108(15): para. (d) in definition of “local enforcing authority” inserted (E.W.) inserted (1.8.2000) by [S.I. 2000/1973](#), reg. 39, [Sch. 10 para. 16\(a\)](#)
- F78** S. 108(15): para. (n) in the definition of “pollution control functions” inserted (S.) (28.9.2000) by [S.S.I. 2000/323](#), regs. 1(1), 36, [Sch. 10 para. 5\(3\)](#)
- F79** S. 108(15): words in definition of “pollution control functions” in relation to the Environment Agency inserted (E.W.) (1.8.2000) by [S.I. 2000/1973](#), reg. 39, [Sch. 10 para. 16\(b\)](#)
- F80** Words in s. 108(15) inserted (31.3.2004 for W., 31.3.2004 for E.) by [Anti-social Behaviour Act 2003 \(c. 38\)](#), [ss. 55\(8\)](#), 93; [S.I. 2004/690](#), art. 3(h); [S.I. 2004/999](#), art. 2(m)
- F81** S. 108(15): words in definition of “pollution control functions” in relation to a local enforcing authority inserted (E.W.) (1.8.2000) by [S.I. 2000/1973](#), reg. 39, [Sch. 10 para. 16\(c\)](#)
- F82** Words in s. 108(15) inserted (31.3.2004 for W., 31.3.2004 for E.) by [Anti-social Behaviour Act 2003 \(c. 38\)](#), [ss. 55\(9\)](#), 93; [S.I. 2004/690](#), art. 3(h); [S.I. 2004/999](#), art. 2(m)

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

- C22** S. 108 applied (with modifications) (1.4.1999) by [S.I. 1999/743](#), [art. 20\(4\)](#)
- C23** S. 108 excluded by [1991 c. 57, s. 172\(3A\)](#) (as added (1.4.1996) by [1995 c. 25, Sch. 22 para. 166](#); [S.I. 1996/186](#), [art. 3](#))
- C24** S. 108(4): power to appoint person to exercise powers conferred (27.7.1999) by [1999 c. 24, ss. 1, 2, Sch. 1 Pt. I para. 14\(2\)](#)
- C25** S. 108(4)(a)-(l) applied (with modifications) (6.3.1997) by [S.I. 1997/648](#), [reg. 28\(2\)](#)



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- C26** S. 108(6)(7) applied (with modifications) (6.3.1997) by S.I. 1997/648, **reg. 28(3)**  
**C27** S. 108(12)(13) applied (6.3.1997) by S.I. 1997/648, **reg. 28(4)**  
**C28** S. 108(15) applied (E.W.) (27.6.2000) by S.I. 2000/1460, **reg. 3, Sch. 1 para. 9**

#### Marginal Citations

- M183** 1911 c. 28.  
**M184** 1954 c. 32.  
**M185** 1990 c. 43.  
**M186** 1951 c. 66.  
**M187** 1974 c. 37.  
**M188** 1974 c. 40.  
**M189** 1990 c. 43.  
**M190** 1991 c. 56.  
**M191** 1991 c. 57.  
**M192** 1993 c. 11.  
**M193** 1972 c. 68.  
**M194** 1990 c. 43.  
**M195** 1972 c. 68.

### 109 Power to deal with cause of imminent danger of serious pollution etc.

- (1) Where, in the case of any article or substance found by him on any premises which he has power to enter, an authorised person has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious pollution of the environment or serious harm to human health, he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).
- (2) As soon as may be after any article or substance has been seized and rendered harmless under this section, the authorised person shall prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and so dealt with by him, and shall—
  - (a) give a signed copy of the report to a responsible person at the premises where the article or substance was found by him; and
  - (b) unless that person is the owner of the article or substance, also serve a signed copy of the report on the owner;and if, where paragraph (b) above applies, the authorised person cannot after reasonable inquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under paragraph (a) above.
- (3) In this section, “authorised person” has the same meaning as in section 108 above.

### 110 Offences.

- (1) It is an offence for a person intentionally to obstruct an authorised person in the exercise or performance of his powers or duties.
- (2) It is an offence for a person, without reasonable excuse,—
  - (a) to fail to comply with any requirement imposed under section 108 above;
  - (b) to fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by an authorised person in the execution of his powers or duties under or by virtue of that section; or

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- (c) to prevent any other person from appearing before an authorised person, or answering any question to which an authorised person may require an answer, pursuant to subsection (4) of that section.
- (3) It is an offence for a person falsely to pretend to be an authorised person.
- (4) A person guilty of an offence under subsection (1) above shall be liable—
  - (a) in the case of an offence of obstructing an authorised person in the execution of his powers under section 109 above—
    - (i) on summary conviction, to a fine not exceeding the statutory maximum;
    - (ii) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both;
  - (b) in any other case, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (5) A person guilty of an offence under subsection (2) or (3) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) In this section—
  - “authorised person” means a person authorised under section 108 above and includes a person designated under paragraph 2 of Schedule 18 to this Act;
  - “powers and duties” includes powers or duties exercisable by virtue of a warrant under Schedule 18 to this Act.

### *Evidence*

#### **111 Evidence in connection with certain pollution offences.**

- (1) The following provisions (which restrict the admissibility in evidence of information obtained from samples) shall cease to have effect—
  - (a) section 19(2) to (2B) of the <sup>M196</sup>Rivers (Prevention of Pollution) (Scotland) 1951;
  - (b) section 49 of the <sup>M197</sup>Sewerage (Scotland) Act 1968;
  - (c) section 171(4) and (5) of the <sup>M198</sup>Water Industry Act 1991; and
  - (d) section 209(1), (2) and (4) of the <sup>M199</sup>Water Resources Act 1991.
- (2) Information provided or obtained pursuant to or by virtue of a condition of a relevant licence (including information so provided or obtained, or recorded, by means of any apparatus) shall be admissible in evidence in any proceedings, whether against the person subject to the condition or any other person.
- (3) For the purposes of subsection (2) above, apparatus shall be presumed in any proceedings to register or record accurately, unless the contrary is shown or the relevant licence otherwise provides.
- (4) Where—
  - (a) by virtue of a condition of a relevant licence, an entry is required to be made in any record as to the observance of any condition of the relevant licence, and
  - (b) the entry has not been made,
 that fact shall be admissible in any proceedings as evidence that that condition has not been observed.

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(5) In this section—

“apparatus” includes any meter or other device for measuring, assessing, determining, recording or enabling to be recorded, the volume, temperature, radioactivity, rate, nature, origin, composition or effect of any substance, flow, discharge, emission, deposit or abstraction;

“condition of a relevant licence” includes any requirement to which a person is subject under, by virtue of or in consequence of a relevant licence;

“environmental licence” has the same meaning as it has in Part I above as it applies in relation to the Agency or SEPA, as the case may be;

“relevant licence” means—

- (a) any environmental licence;
- (b) any consent under Part II of the <sup>M200</sup>Sewerage (Scotland) Act 1968 to make discharges of trade effluent;
- (c) any agreement under section 37 of that Act with respect to, or to any matter connected with, the reception, treatment or disposal of such effluent;
- (d) any consent under Chapter III of Part IV of the <sup>M201</sup>Water Industry Act 1991 to make discharges of special category effluent; or
- (e) any agreement under section 129 of that Act with respect to, or to any matter connected with, the reception or disposal of such effluent.

(6) In section 25 of the Environmental Protection Act, after subsection (2) (which makes similar provision to subsection (4) above) there shall be inserted—

“(3) Subsection (2) above shall not have effect in relation to any entry required to be made in any record by virtue of a condition of a relevant licence, within the meaning of section 111 of the Environment Act 1995 (which makes corresponding provision in relation to such licences).”

**Marginal Citations**

- M196 1951 c. 66.
- M197 1968 c. 47.
- M198 1991 c. 56.
- M199 1991 c. 57.
- M200 1968 c. 47.
- M201 1991 c. 56.

*Offences*

**112 Amendment of certain offences relating to false or misleading statements or false entries.**

Schedule 19 to this Act shall have effect.

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## *Information*

### **113 Disclosure of information.**

(1) Notwithstanding any prohibition or restriction imposed by or under any enactment or rule of law, information of any description may be disclosed—

- (a) by a new Agency to a Minister of the Crown, the other new Agency or a local enforcing authority,
- (b) by a Minister of the Crown to a new Agency, another Minister of the Crown or a local enforcing authority, or
- (c) by a local enforcing authority to a Minister of the Crown, a new Agency or another local enforcing authority,

for the purpose of facilitating the carrying out by either of the new Agencies of any of its functions, by any such Minister of any of his environmental functions or by any local enforcing authority of any of its relevant functions; and no person shall be subject to any civil or criminal liability in consequence of any disclosure made by virtue of this subsection.

(2) Nothing in this section shall authorise the disclosure to a local enforcing authority by a new Agency or another local enforcing authority of information—

- (a) disclosure of which would, in the opinion of a Minister of the Crown, be contrary to the interests of national security; or
- (b) which was obtained under or by virtue of the <sup>M202</sup>Statistics of Trade Act 1947 and which was disclosed to a new Agency or any of its officers by the Secretary of State.

(3) No information disclosed to any person under or by virtue of this section shall be disclosed by that person to any other person otherwise than in accordance with the provisions of this section, or any provision of any other enactment which authorises or requires the disclosure, if that information is information—

- (a) which relates to a trade secret of any person or which otherwise is or might be commercially confidential in relation to any person; or
- (b) whose disclosure otherwise than under or by virtue of this section would, in the opinion of a Minister of the Crown, be contrary to the interests of national security.

(4) Any authorisation by or under this section of the disclosure of information by or to any person shall also be taken to authorise the disclosure of that information by or, as the case may be, to any officer of his who is authorised by him to make the disclosure or, as the case may be, to receive the information.

(5) In this section—

“new Agency” means the Agency or SEPA;

[<sup>F83</sup>“the environment” means all, or any, of the following media, namely, the air, water and land (and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground);]

“environmental functions”, in relation to a Minister of the Crown, means any function of that Minister, whether conferred or imposed under or by virtue of any enactment or otherwise, relating to the environment; and

“local enforcing authority” means—

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- (a) any local authority within the meaning of Part IIA of the Environmental Protection Act 1990, and the “relevant functions” of such an authority are its functions under or by virtue of that Part;
- [<sup>F84</sup>(aa) in relation to England and Wales, any local authority within the meaning of regulations under section 2 of the Pollution Prevention and Control Act 1999;]
- (b) any local authority within the meaning of Part IV of this Act, and the “relevant functions” of such an authority are its functions under or by virtue of that Part; [<sup>F85</sup>or]
- (c) in relation to England, any county council for an area for which there are district councils, and the “relevant functions” of such a county council are its functions under or by virtue of Part IV of this Act; or
- (d) in relation to England and Wales, any local enforcing authority within the meaning of section 1(7) of the Environmental Protection Act 1990, and the “relevant functions” of such an authority are its functions under or by virtue of Part I of that Act.

#### Textual Amendments

- F83** S. 113(5): definition of “the environment” substituted (21.3.2000 (E.W.) and 29.9.2000 (S.)) by 1999 c. 24, s. 6(1), **Sch. 2 para. 18(2)**; S.I. 2000/800, **art. 2**; S.S.I. 2000/322, **art. 2**
- F84** S. 113(5): para. (aa) in the definition of “local enforcing authority” inserted (E.W.) (1.8.2000) by S.I. 2000/1973, **reg. 39**, **Sch. 10 para. 17**
- F85** S. 113(5): word at end of para. (b) in definition of “local enforcing authority” inserted (21.3.2000 (E.W.) and 29.9.2000 (S.)) by 1999 c. 24, s. 6(1), **Sch. 2 para. 18(3)**; S.I. 2000/800, **art. 2**; S.S.I. 2000/322, **art. 2**

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

- C29** S. 113(2)(3): certain functions made exercisable by the Scottish Ministers concurrently with the Minister concerned (1.7.1999) by S.I. 1999/1750, **arts. 1, 3**, **Sch. 2** (with **art. 7**); S.I. 1998/3178, **art. 3**

#### Marginal Citations

- M202** 1947 c. 39.

### Appeals

#### 114 Power of Secretary of State to delegate his functions of determining, or to refer matters involved in, appeals.

- (1) The Secretary of State may—
  - (a) appoint any person to exercise on his behalf, with or without payment, any function to which this paragraph applies; or
  - (b) refer any item to which this paragraph applies to such person as the Secretary of State may appoint for the purpose, with or without payment.
- (2) The functions to which paragraph (a) of subsection (1) above applies are any of the Secretary of State’s functions of determining—
  - (a) an appeal under—
    - (i) section 31A(2)(b), 42B(5), 46C or 49B of the <sup>M203</sup>Control of Pollution Act 1974,
    - (ii) section 4 of the <sup>M204</sup>Control of Pollution (Amendment) Act 1989,

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- (iii) section 15, 22(5), 43, 62(3)(c), 66(5), 78L or 78T of the <sup>M205</sup>Environmental Protection Act 1990,
  - (iv) paragraph 2 or paragraph 3(3) of Schedule 6 to the <sup>M206</sup>Natural Heritage (Scotland) Act 1991,
  - (v) section 43, 91, 92, 96, 161C or 191B(5) of the <sup>M207</sup>Water Resources Act 1991,
  - (vi) section 26 of the <sup>M208</sup>Radioactive Substances Act 1993 against any decision of, or notice served by, SEPA,
  - (vii) paragraph 6 of Schedule 5 to the <sup>M209</sup>Waste Management Licensing Regulations 1994,
  - [<sup>F86</sup>(viii) regulations under section 2 of the Pollution Prevention and Control Act 1999 extending to Scot;land,]
  - [<sup>F87</sup>(viii) regulations under section 2 of the Pollution Prevention and Control Act 1999 extending to England and Wales,]
- or any matter involved in such an appeal;
- (b) the questions, or any of the questions, which fall to be determined by the Secretary of State under section 39(1) or section 49(4) of the <sup>M210</sup>Control of Pollution Act 1974.
- (3) The items to which paragraph (b) of subsection (1) above applies are—
- (a) any matter involved in an appeal falling within subsection (2)(a) above;
  - (b) any of the questions which fall to be determined by the Secretary of State under section 39(1) or section 49(4) of the Control of Pollution Act 1974.
- (4) Schedule 20 to this Act shall have effect with respect to appointments under subsection (1)(a) above.

#### Textual Amendments

- F86** S. 114(2)(a)(viii) inserted (S.) (28.9.2000) by [S.S.I. 2000/323](#), [regs. 1\(1\), 36](#), [Sch. 10 para. 5\(4\)](#)
- F87** S. 114(2)(a)(viii) inserted (E.W.) (1.8.2000) by [S.I. 2000/1973](#), [reg. 39](#), [Sch. 10 para. 18](#)

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

- C30** S. 114(1)(3)(a)(4) applied (with modifications) (E.W.) (4.5.2000) by [S.I. 2000/1043](#), [reg. 8](#)
- S. 114(1)(3)(a)(4) applied (S.) (8.5.2000) by [S.S.I. 2000/95](#), [reg. 8](#)

#### Marginal Citations

- M203** 1974 c. 40.
- M204** 1989 c. 14.
- M205** 1990 c. 43.
- M206** 1991 c. 28.
- M207** 1991 c. 57.
- M208** 1993 c. 12.
- M209** [S.I. 1994/1056](#).
- M210** 1974 c. 40.

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### *Crown application*

#### **115 Application of this Act to the Crown.**

- (1) Subject to the provisions of this section, this Act shall bind the Crown.
- (2) Part III of this Act and any amendments, repeals and revocations made by other provisions of this Act (other than those made by Schedule 21, which shall bind the Crown) bind the Crown to the extent that the enactments to which they relate bind the Crown.
- (3) No contravention by the Crown of any provision made by or under this Act shall make the Crown criminally liable; but the High Court or, in Scotland, the Court of Session may, on the application of the Agency or, in Scotland, SEPA, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (4) Notwithstanding anything in subsection (3) above, any provision made by or under this Act shall apply to persons in the public service of the Crown as it applies to other persons.
- (5) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any powers of entry exercisable in relation to them specified in the certificate, that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to those premises, those powers shall not be exercisable in relation to those premises; and in this subsection “Crown premises” means premises held or used by or on behalf of the Crown.
- (6) Nothing in this section shall be taken as in any way affecting Her Majesty in her private capacity; and this subsection shall be construed as if section 38(3) of the <sup>M211</sup>Crown Proceedings Act 1947 (interpretation of references to Her Majesty in her private capacity) were contained in this Act.

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

- C31** S. 115(5): certain functions made exercisable by the Scottish Ministers concurrently with the Minister (1.7.1999) by S.I. 1999/1750, arts. 1, 3, Sch. 2 (with art. 7); S.I. 1998/3178, art. 3

#### **Commencement Information**

- I14** S. 115 partly in force; s. 115 not in force at Royal Assent see s. 125(3); s. 115 in force for specified purposes at 1.4.1996 by S.I. 1995/2950, art. 3(1) (subject to art. 3(2)) (which art. 3(2) was revoked (1.4.1997) by S.I. 1996/2560, art. 3); s. 115 in force at 1.4.1996 insofar as not already in force by S.I. 1996/186, art 3

#### **Marginal Citations**

- M211** 1947 c. 44.

#### **116 Application of certain other enactments to the Crown.**

Schedule 21 to this Act shall have effect.

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### **Commencement Information**

- I15** S. 116 partly in force; s. 116 not in force at Royal Assent see s. 125(3); s. 116 in force for specified purposes at 21.9.1995 by S.I. 1995/1983, **art. 3**; s. 116 in force for further specified purposes at 1.7.1997 by S.I. 1997/1626, **art. 2(b)** (with transitional provisions in **art. 3**); s. 116 in force for further specified purposes at 8.4.1998 by S.I. 1998/781, **art. 2** (with transitional provisions in **art. 3**); s. 116 in force for further specified purposes at 1.12.2000 by S.I. 2000/3033, **art. 2**

### *Isles of Scilly*

#### **117 Application of this Act to the Isles of Scilly.**

- (1) Subject to sections 77, 80 and 89 above and the provisions of any order under this section or section 89 above, nothing in this Act shall require or authorise any function, duty or power to be carried out, performed or exercised in relation to the Isles of Scilly by the Agency; and references in the other provisions of this Act (apart from Part III) to England and Wales shall not include references to those Isles.
- (2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order make provision with respect to the carrying out in those Isles of functions (other than functions under or by virtue of Part III or IV of this Act) falling to be carried out in relation to other parts of England and Wales by the Agency.
- (3) Without prejudice to the generality of the power conferred by subsection (2) above, an order under this section may apply any provision of this Act (other than a provision contained in Part III or IV) in relation to the Isles of Scilly with or without modifications.
- (4) An order under this section may—
  - (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate, including provision saving provision repealed by or under any enactment.
- (5) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument; and a statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **118 Application of certain other enactments to the Isles of Scilly.**

- (1) After section 10 of the <sup>M212</sup>Control of Pollution (Amendment) Act 1989 there shall be inserted—

##### **“10A Application to the Isles of Scilly.**

- (1) Subject to the provisions of any order under this section, this Act shall not apply in relation to the Isles of Scilly.
- (2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application of any provisions of this Act



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to the Isles of Scilly; and any such order may provide for the application of those provisions to those Isles with such modifications as may be specified in the order.

- (3) An order under this section may—
  - (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate, including provision saving provision repealed by or under any enactment.
- (4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument; and a statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (2) In section 11 of that Act, subsection (3) (which provides for section 107 of the <sup>M213</sup>Control of Pollution Act 1974 to have effect in relation to the application and modification of that Act to the Isles of Scilly) shall cease to have effect.
- (3) For section 76 of the <sup>M214</sup>Environmental Protection Act 1990 (which provides for Part II of that Act to have effect in its application to the Isles of Scilly with modifications specified by order) there shall be substituted—

**“76 Application to the Isles of Scilly.**

- (1) Subject to the provisions of any order under this section, this Part shall not apply in relation to the Isles of Scilly.
- (2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application of any provisions of this Part to the Isles of Scilly; and any such order may provide for the application of those provisions to those Isles with such modifications as may be specified in the order.
- (3) An order under this section may—
  - (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate, including provision saving provision repealed by or under any enactment.”
- (4) For section 222 of the <sup>M215</sup>Water Industry Act 1991 (application to Isles of Scilly) there shall be substituted—

**“222 Application to the Isles of Scilly.**

- (1) Subject to the provisions of any order under this section, this Act shall not apply in relation to the Isles of Scilly.
- (2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application of any provisions of this Act

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to the Isles of Scilly; and any such order may provide for the application of those provisions to those Isles with such modifications as may be specified in the order.

- (3) An order under this section may—
- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate, including provision saving provision repealed by or under any enactment.
- (4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

- (5) For section 224 of the <sup>M216</sup>Water Resources Act 1991 (application to Isles of Scilly) there shall be substituted—

**“224 Application to the Isles of Scilly.**

- (1) Subject to the provisions of any order under this section, this Act shall not apply in relation to the Isles of Scilly.
- (2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application of any provisions of this Act to the Isles of Scilly; and any such order may provide for the application of those provisions to those Isles with such modifications as may be specified in the order.
- (3) An order under this section may—
  - (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate, including provision saving provision repealed by or under any enactment.
- (4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

- (6) For section 75 of the <sup>M217</sup>Land Drainage Act 1991 (application to the Isles of Scilly) there shall be substituted—

**“75 Application to the Isles of Scilly.**

- (1) Subject to the provisions of any order under this section, this Act shall not apply in relation to the Isles of Scilly.
- (2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application of any provisions of this Act to the Isles of Scilly; and any such order may provide for the application of

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those provisions to those Isles with such modifications as may be specified in the order.

- (3) An order under this section may—
  - (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate, including provision saving provision repealed by or under any enactment.
- (4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

#### Commencement Information

**I16** S. 118 partly in force; s. 118 not in force at Royal Assent see s. 125(3); s. 118(1)-(3)(6) wholly in force and s. 118(4)(5) in force for specified purposes at 1.2.1996 by S.I. 1996/186, art. 2

#### Marginal Citations

**M212** 1989 c. 14.  
**M213** 1974 c. 40.  
**M214** 1990 c. 43.  
**M215** 1991 c. 56.  
**M216** 1991 c. 57.  
**M217** 1991 c. 59.

### *Miscellaneous and supplemental*

#### **119 Stamp duty.**

- (1) No transfer effected by Part I of this Act shall give rise to any liability to stamp duty.
- (2) Stamp duty shall not be chargeable—
  - (a) on any transfer scheme; or
  - (b) on any instrument or agreement which is certified to the Commissioners of Inland Revenue by the Secretary of State as made in pursuance of a transfer scheme.
- (3) No transfer scheme, and no instrument which is certified as mentioned in subsection (2)(b) above, shall be taken to be duly stamped unless—
  - (a) it has, in accordance with section 12 of the <sup>M218</sup>Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with that duty or that it is duly stamped; or
  - (b) it is stamped with the duty to which it would be liable, apart from this section.
- (4) In this section “transfer scheme” means a scheme made or approved by the Secretary of State under section 3 or 22 above for the transfer of property, rights or liabilities to the Agency or to SEPA.

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### Marginal Citations

M218 1891 c. 39.

## 120 Minor and consequential amendments, transitional and transitory provisions, savings and repeals.

- (1) The enactments mentioned in Schedule 22 to this Act shall have effect with the amendments there specified (being minor amendments and amendments consequential on provisions of this Act); and, without prejudice to any power conferred by any other provision of this Act, the Secretary of State and the Minister shall each have power by regulations to make such additional consequential amendments—
  - (a) of public general enactments passed before, or in the same Session as, this Act, and
  - (b) of subordinate legislation made before the passing of this Act,
 as he considers necessary or expedient by reason of the coming into force of any provision of this Act.
- (2) The transitional provisions, transitory provisions and savings contained in Schedule 23 to this Act shall have effect; but those provisions are without prejudice to sections 16 and 17 of the <sup>M219</sup>Interpretation Act 1978 (effect of repeals).
- (3) The enactments mentioned in Schedule 24 to this Act (which include some that are spent or no longer of practical utility) are hereby repealed to the extent specified in the third column of that Schedule.
- (4) The power to make regulations under subsection (1) above shall be exercisable by statutory instrument; and a statutory instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) The power to make regulations under subsection (1) above includes power to make such incidental, supplemental, consequential and transitional provision as the Secretary of State or the Minister thinks necessary or expedient.
- (6) In this section—
 

“the Minister” means the Minister of Agriculture, Fisheries and Food;

“subordinate legislation” has the same meaning as in the <sup>M220</sup>Interpretation Act 1978.

### Commencement Information

**I17** S. 120 partly in force; S. 120(1) in force for specified purposes at Royal Assent see s. 125(3); s. 120(4)-(6) and s. 120(1) for further specified purposes in force at 28.7.1995 by S.I. 1995/1983, art. 2; s. 120(1)(3) in force for further specified purposes at 21.9.1995 by S.I. 1995/1983, art. 3; s. 120(2)(3) in force for further specified purposes at 1.1.1999 by S.I. 1995/1983, art. 4; s. 120(1) in force for further specified purposes at 12.10.1995 by S.I. 1995/2649, art. 2(j); s. 120(3) in force for further specified purposes at 1.11.1995 by S.I. 1995/2765, art. 2; s. 120(1)(3) in force for further specified purposes at 1.2.1996 by S.I. 1996/186, art. 2; s. 120(1)-(3) in force for further specified purposes at 1.4.1996 by S.I. 1996/186, art. 3 (with art. 4); s. 120(3) in force for further specified purposes at 1.4.1997 by S.I. 1996/2560, art. 2; s. 120(3) in force for further specified purposes at 1.1.1997 by S.I. 1996/2857, art. 2; s. 120(1) in force for further specified purposes at 21.11.1996 by S.I.

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1996/2909, **art. 2** (with **art. 4**); s. 120(1)(3) in force for further specified purposes at 31.12.1996 by S.I. 1996/2909, **art. 3** (subject to **art. 4**); s. 120(1) in force for further specified purposes at 23.12.1997 by S.I. 1997/3044, **art. 2**; s. 120(1) in force for further specified purposes at 1.4.1998 by S.I. 1998/604, **art. 2**; s. 120(1) in force for further specified purposes at 16.3.1999 by S.I. 1999/803, **art. 2**; s. 120(1) in force for further specified purposes at 1.4.1999 by S.I. 1999/803, **art. 3**; s. 120(1) in force for further specified purposes at 29.4.1999 by S.I. 1999/1301, **art. 2**; s. 120(1)(3) in force for E. for further specified purposes at 1.4.2000 by S.I. 2000/340, **art. 2(b)(c)** (with **art. 3**); s. 120(1)(3) in force for S. for further specified purposes at 14.7.2000 by S.S.I. 2000/180, **art. 2(1)(b)(c)** (with **art. 3**); s. 120(1) in force for S. for further specified purposes at 1.1.2001 by S.S.I. 2000/433, **art. 2**; s. 120(1)(3) in force for W. for further specified purposes at 15.9.2001 by S.I. 2001/3211, **art. 2(b)** (with **art. 3**)

**118** S. 120(1) in force at 1.4.2003 for specified purposes for S. by S.S.I. 2003/206, **art. 2**

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#### Marginal Citations

**M219** 1978 c. 30.

**M220** 1978 c.30.

## 121 Local statutory provisions: consequential amendments etc.

- (1) If it appears to the Secretary of State or the Minister to be appropriate to do so—
  - (a) for the purposes of, or in consequence of, the coming into force of any enactment contained in this Act; or
  - (b) in consequence of the effect or operation at any time after the transfer date of any such enactment or of anything done under any such enactment,he may by order repeal, amend or re-enact (with or without modifications) any local statutory provision, including, in the case of an order by virtue of paragraph (b) above, a provision amended by virtue of paragraph (a) above.
- (2) An order made by the Secretary of State or the Minister under subsection (1) above may—
  - (a) make provision applying generally in relation to local statutory provisions of a description specified in the order;
  - (b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities;
  - (c) contain such supplemental, consequential and transitional provision as the Secretary of State or, as the case may be, the Minister considers appropriate; and
  - (d) in the case of an order made after the transfer date, require provision contained in the order to be treated as if it came into force on that date.
- (3) The power under this section to repeal or amend a local statutory provision shall include power to modify the effect in relation to any local statutory provision of any provision of Schedule 23 to this Act.
- (4) Nothing in any order under this section may abrogate or curtail the effect of so much of any local statutory provision as confers any right of way or confers on or preserves for the public—
  - (a) any right of enjoyment of air, exercise or recreation on land; or
  - (b) any right of access to land for the purposes of exercise or recreation.
- (5) The power to make an order under subsection (1) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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- (6) The power to make an order under subsection (1) above shall be without prejudice to any power conferred by any other provision of this Act.
- (7) In this section—
- “local statutory provision” means—
- (a) a provision of a local Act (including an Act confirming a provisional order);
  - (b) a provision of so much of any public general Act as has effect with respect to a particular area, with respect to particular persons or works or with respect to particular provisions falling within any paragraph of this definition;
  - (c) a provision of an instrument made under any provision falling within paragraph (a) or (b) above; or
  - (d) a provision of any other instrument which is in the nature of a local enactment;
- “the Minister” means the Minister of Agriculture, Fisheries and Food;
- “the transfer date” has the same meaning as in Part I of this Act.

## **122 Directions.**

- (1) Any direction given under this Act shall be in writing.
- (2) Any power conferred by this Act to give a direction shall include power to vary or revoke the direction.
- (3) Subsections (4) and (5) below apply to any direction given—
  - (a) to the Agency or SEPA under any provision of this Act or any other enactment, or
  - (b) to any other body or person under any provision of this Act,
 being a direction to any extent so given for the purpose of implementing any obligations of the United Kingdom under the Community Treaties.
- (4) A direction to which this subsection applies shall not be varied or revoked unless, notwithstanding the variation or revocation, the obligations mentioned in subsection (3) above, as they have effect for the time being, continue to be implemented, whether by directions or any other instrument or by any enactment.
- (5) Any variation or revocation of a direction to which this subsection applies shall be published in such manner as the Minister giving it considers appropriate for the purpose of bringing the matters to which it relates to the attention of persons likely to be affected by them; and—
  - (a) copies of the variation or revocation shall be made available to the public; and
  - (b) notice of the variation or revocation, and of where a copy of the variation or revocation may be obtained, shall be given—
    - (i) if the direction has effect in England and Wales, in the London Gazette;
    - (ii) if the direction has effect in Scotland, in the Edinburgh Gazette.

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

**C32** S. 122 applied (E.W.) (2.1.2004) by [The Water Environment \(Water Framework Directive\) \(England and Wales\) Regulations 2003 \(S.I. 2003/3242\)](#), regs. 1(a), **20(2)** (with reg. 1(c))

**123 Service of documents.**

- (1) Without prejudice to paragraph 17(2)(d) of Schedule 7 to this Act, any notice required or authorised by or under this Act to be served (whether the expression “serve” or the expression “give” or “send” or any other expression is used) on any person may be served by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.
- (2) Any such notice may—
  - (a) in the case of a body corporate, be served on the secretary or clerk of that body;
  - (b) in the case of a partnership, be served on a partner or a person having the control or management of the partnership business.
- (3) For the purposes of this section and of section 7 of the <sup>M221</sup>Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person on whom any such notice is to be served shall be his last known address, except that—
  - (a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body;
  - (b) in the case of a partnership or person having the control or the management of the partnership business, it shall be the principal office of the partnership;and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be their principal office within the United Kingdom.
- (4) If the person to be served with any such notice has specified an address in the United Kingdom other than his proper address within the meaning of subsection (3) above as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address shall also be treated for the purposes of this section and section 7 of the <sup>M222</sup>Interpretation Act 1978 as his proper address.
- (5) Where under any provision of this Act any notice is required to be served on a person who is, or appears to be, in occupation of any premises then—
  - (a) if the name or address of such a person cannot after reasonable inquiry be ascertained, or
  - (b) if the premises appear to be or are unoccupied,that notice may be served either by leaving it in the hands of a person who is or appears to be resident or employed on the premises or by leaving it conspicuously affixed to some building or object on the premises.
- (6) This section shall not apply to any notice in relation to the service of which provision is made by rules of court.
- (7) The preceding provisions of this section shall apply to the service of a document as they apply to the service of a notice.
- (8) In this section—

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“premises” includes any land, vehicle, vessel or mobile plant;  
 “serve” shall be construed in accordance with subsection (1) above.

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

- C33** S. 123 applied (with modifications) (1.4.1999) by S.I. 1998/2746, **reg. 16(2)**  
 S. 123 applied (E.W.) (4.5.2000) by S.I. 2000/1043, **reg. 2(3)**
- C34** S. 123 applied by [The Rural Stewardship Scheme \(Scotland\) Regulations 2001 \(S.S.I. 2001/300\)](#), **reg. 14(6)** (as substituted (S.) (1.4.2003) by S.S.I. 2003/177, **regs. 1, 2(4)**)
- C35** S. 123 applied (S.) (1.5.2004) by [Organic Aid \(Scotland\) Regulations 2004 \(S.S.I. 2004/143\)](#), **regs. 1(1), 24** (with **reg. 3**)

**Marginal Citations**

- M221** 1978 c.30.  
**M222** 1978 c. 30.

**124 General interpretation.**

- (1) In this Act, except in so far as the context otherwise requires—  
 “the Agency” means the Environment Agency;  
 “financial year” means a period of twelve months ending with 31st March;  
 “functions” includes powers and duties;  
 “modifications” includes additions, alterations and omissions and cognate expressions shall be construed accordingly;  
 “notice” means notice in writing;  
 “records”, without prejudice to the generality of the expression, includes computer records and any other records kept otherwise than in a document;  
 “SEPA” means the Scottish Environment Protection Agency.
- (2) The amendment by this Act of any provision contained in subordinate legislation shall not be taken to have prejudiced any power to make further subordinate legislation amending or revoking that provision.
- (3) In subsection (2) above, “subordinate legislation” has the same meaning as in the <sup>M223</sup>Interpretation Act 1978.

**Marginal Citations**

- M223** 1978 c. 30.

**125 Short title, commencement, extent, etc.**

- (1) This Act may be cited as the Environment Act 1995.
- (2) Part III of this Act, except for section 78, paragraph 7(2) of Schedule 7 and Schedule 10, shall come into force at the end of the period of two months beginning with the day on which this Act is passed.
- (3) Except as provided in subsection (2) above and except for this section, section 74 above and paragraphs 76(8)(a) and 135 of Schedule 22 to this Act (which come into force on the passing of this Act) and the repeal of sub-paragraph (1) of paragraph 22 of



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- Schedule 10 to this Act (which comes into force in accordance with sub-paragraph (7) of that paragraph) this Act shall come into force on such day as the Secretary of State may specify by order made by statutory instrument; and different days may be so specified for different provisions or for different purposes of the same provision.
- (4) Without prejudice to the <sup>M224</sup>provisions of Schedule 23 to this Act, an order under subsection (3) above may make such transitional provisions and savings as appear to the <sup>M225</sup>Secretary of State necessary or expedient in connection with any provision brought into force by the <sup>M226</sup>order.
- (5) The power conferred by subsection (4) above includes power to modify any enactment contained in this or any other Act.
- (6) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the <sup>M227</sup>Northern Ireland Act 1974 (legislation for Northern Ireland in the <sup>M228</sup>interim period) which states that it is made only for purposes corresponding to those of section 98 of this Act—
- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Except for this section and any amendment or repeal by this Act of any provision contained in—
- (a) the Parliamentary Commissioner Act 1967,
- (b) the Sea Fish (Conservation) Act 1967,
- (c) the House of Commons Disqualification Act 1975, or
- (d) the Northern Ireland Assembly Disqualification Act 1975,
- this Act shall not extend to Northern Ireland.
- (8) Part III of this Act, and Schedule 24 to this Act so far as relating to that Part, extends to England and Wales only.
- (9) Section 106 of, and Schedule 16 to, this Act extend to Scotland only.
- (10) Subject to the foregoing provisions of this section and to any express provision made by this Act to the contrary, any amendment, repeal or revocation made by this Act shall have the same extent as the enactment or instrument to which it relates.

#### Subordinate Legislation Made

- P1** S. 125(3)(4) power partly exercised: 15.9.2001 appointed for W. for specified provisions by S.I. 2001/3211, **art. 2**
- P2** S. 125(3) power partly exercised (21.7.1995): different dates appointed for specified provisions by S.I. 1995/1983, **arts. 2-4**
- S. 125(3) power partly exercised (5.10.1995): 12.10.1995 appointed for specified provisions by S.I. 1995/2649, **art. 2(j)**
- S. 125(3) power partly exercised (24.10.1995): 1.11.1995 appointed for specified provisions by S.I. 1995/2765, **art. 2**
- S. 125(3) power partly exercised (16.11.1995): different dates appointed for specified provisions by S.I. 1995/2950, **arts. 2(1), 3(1)** (subject to **arts. 2(2), 3(2)**) (which art. 3(2) was revoked (1.4.1997) by S.I. 1996/2560, **art. 3**)
- S. 125(3) power partly exercised (31.1.1996): different dates appointed for specified provisions by S.I. 1996/186, **arts. 2, 3** (with **art. 4**)

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- S. 125(3) power partly exercised (7.10.1996): 1.4.1997 appointed for specified provisions by S.I. 1996/2560, **art. 2**
- S. 125(3) power partly exercised (8.11.1996): 1.1.1997 appointed for specified provisions by S.I. 1996/2857, **art. 2**
- S. 125(3) power partly exercised (20.11.1996): different dates appointed for specified provisions by S.I. 1996/2909, **arts. 2, 3** (subject to **art. 4**)
- S. 125(3) power partly exercised (27.6.1997): 1.7.1997 appointed for specified provisions by S.I. 1997/1626, **art. 2** (with transitional provisions in **art. 3**)
- S. 125(3) power partly exercised (16.12.1997): 23.12.1997 appointed for specified provisions by S.I. 1997/3044, **art. 2**
- S. 125(3) power partly exercised (4.3.1998): different dates appointed for specified provisions by S.I. 1998/604, **arts. 2, 3**
- S. 125(3) power partly exercised (11.3.1998): 8.4.1998 appointed for specified provisions by S.I. 1998/781, **art. 2** (with transitional provisions in **art. 3**)
- S. 125(3) power partly exercised (22.12.1998): 1.1.1999 appointed for specified provisions by S.I. 1998/3272, **art. 2**
- S. 125(3) power partly exercised (15.3.1999): different dates appointed for specified provisions by S.I. 1999/803, **arts. 2, 3**
- S. 125(3) power partly exercised (27.4.1999): 29.4.1999 appointed for specified provisions by S.I. 1999/1301, **art. 2**
- S. 125(3) power partly exercised (2.2.2000): 1.4.2000 appointed for E. for specified provisions by S.I. 2000/340, **art. 2** (with **art. 3**)
- S. 125(3) power partly exercised (12.6.2000): 14.7.2000 appointed for S. for specified provisions by S.S.I. 2000/180, **art. 2(1)** (subject to **art. 2(2)**, with **art. 3**)
- S. 125(3) power partly exercised (12.7.2000): 14.7.2000 appointed for S. for specified provisions by S.I. 2000/1986, **art. 2**
- S. 125(3) power partly exercised (29.11.2000): 1.1.2001 appointed for S. for specified provisions by S.S.I. 2000/433, **art. 2**

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### Marginal Citations

- M224** 1975 c. 35.  
**M225** 1975 c. 24.  
**M226** 1967 c. 84.  
**M227** 1974 c. 28.  
**M228** 1967 c. 13.

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