



Environment Act 1995

1995 CHAPTER 25

PART I

THE ENVIRONMENT AGENCY AND THE SCOTTISH ENVIRONMENT PROTECTION AGENCY

CHAPTER II

THE SCOTTISH ENVIRONMENT PROTECTION AGENCY

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 [^{F1}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 ^{F2}. . .

Status: Point in time view as at 29/11/2004.

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- (6) If, within the period mentioned in subsection (5) above, [^{F1}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 [^{F1}the Scottish Parliament] is dissolved or prorogued or ^{F3}. . . 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

- F1** 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**
- F2** Words in s. 31(5) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt.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**
- F3** Words in s. 31(7) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt.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;
 - (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 ^{M1}Natural Heritage (Scotland) Act 1991.

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Marginal Citations

M1 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.
- (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 ^{M2}Alkali, &c. Works Regulation Act 1906;
 - (b) Part III of the 1951 Act, the ^{M3}Rivers (Prevention of Pollution) (Scotland) Act 1965 and Parts I, IA and II of the ^{M4}Control of Pollution Act 1974;
 - (c) Part I of the ^{M5}Health and Safety at Work etc. Act 1974;
 - (d) the ^{M6}Control of Pollution (Amendment) Act 1989;
 - (e) Parts I, II and IIA of the 1990 Act;
 - (f) section 19 of the ^{M7}Clean Air Act 1993;
 - (g) the ^{M8}Radioactive Substances Act 1993;
 - [^{F4}(ga) regulations under section 2 of the Pollution Prevention and Control Act 1999;] and
 - (h) regulations made by virtue of section 2(2) of the ^{M9}European Communities Act 1972, to the extent that the regulations relate to pollution.

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Textual Amendments

- F4** 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

- M2** 1906 c. 14.
M3 1965 c. 13.
M4 1974 c. 40.
M5 1974 c. 37.
M6 1989 c. 14.
M7 1993 c. 11.
M8 1993 c. 12.
M9 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.
- (3) Subsection (1) above is without prejudice to section 1 of the ^{M10}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

- M10** 1980 c. 45.

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

- [^{F5}(1) Where an area of land—
- (a) has been designated, under section 6(2) of the ^{M11}Natural Heritage (Scotland) Act 1991 (in this section referred to as “the 1991 Act”) as a Natural Heritage Area; or

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- (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.
- (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.]

Textual Amendments

F5 S. 35 repealed (S.) (29.11.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#), s. 59(2), [Sch. 7 para. 10\(1\)](#) (with s. 55(2)); S.S.I. 2004/495, art. 2

Marginal Citations

M11 1991 c. 28.

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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—
- (a) giving practical guidance to SEPA with respect to any of the matters for the purposes of which sections 32^[F6], 34(2) and 35^[F6] and 34(2)] above have effect; and
 - (b) 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^[F7], 34(2) or 35^[F7] or 34(2)] 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—
- (a) SEPA;
 - (b) Scottish Natural Heritage;
 - (c) Scottish Enterprise;
 - (d) Highlands and Islands Enterprise;
 - ^[F8](da) Scottish Water;]
 - (g) ^[F9]the North of Scotland Water Authority; and]
 - (h) 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

- F6** Words in s. 36(1)(a) substituted (S.) (29.11.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#), s. 59(2), [Sch. 7 para. 10\(2\)\(a\)](#) (with s. 55(2)); S.S.I. 2004/495, art. 2
- F7** Words in s. 36(2) substituted (S.) (29.11.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#), s. 59(2), [Sch. 7 para. 10\(2\)\(b\)](#) (with s. 55(2)); S.S.I. 2004/495, art. 2
- F8** 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\(3\)](#)
- F9** 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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