



Environment Act 1995

1995 CHAPTER 25

PART I

THE ENVIRONMENT AGENCY AND THE SCOTTISH ENVIRONMENT PROTECTION AGENCY

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

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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
 - (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

- II** 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.

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- (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.
- (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 Crown Act 1975.

Modifications etc. (not altering text)

C1 S. 38 modified (30.6.1999) by S.I. 1999/1746, arts. 1(1), 5(1); S.I. 1998/3178, art. 3

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Marginal Citations

M1 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.

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—

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- (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)

- C2** S. 40 modified (30.6.1999) by S.I. 1999/1746, arts. 1(1), 5(2); S.I. 1998/3178, art. 3
- C3** 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))
- C4** S. 40: transfer of functions (10.7.2008) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2008 (S.I. 2008/1776), arts. 1(1), 2, Sch.

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; ^{F1}...
 - (c) [^{F2}as a means of recovering costs incurred by it in performing functions conferred by regulations made for the purpose of implementing Council Directive 91/689/EEC the Agency may require the payment to it of such charges as may from time to time be prescribed;]^{F3F4}...
 - (d) as a means of recovering costs incurred by it in performing functions conferred by Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste, as amended from time to time, each of the new Agencies may require the payment to it of such charges as may from time to time be prescribed;]^{F5F6}...
 - (e) as a means of recovering costs incurred by it in performing functions conferred by Regulation (EC) No. 850/2004 of the European Parliament and of the Council on persistent organic pollutants and amending Directive 79/117/EEC as amended from time to time, each of the new Agencies may require the payment to it of such charges as may from time to time be prescribed;]
 - [^{F7}(f) as a means of recovering costs incurred by it in performing functions conferred by regulations under section 79 of the Climate Change (Scotland) Act 2009

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(asp 12), SEPA may require the payment to it of such charges as may from time to time be prescribed;]

[^{F8}(f) as a means of recovering costs incurred by it in performing functions conferred by regulations made for the purposes of implementing Council Directive 2006/117/Euratom on the supervision and control of shipments of radioactive waste and spent fuel (as amended from time to time), each of the new Agencies may require the payment to it of such charges as may from time to time be prescribed;]

[^{F9}(g) as a means of recovering costs incurred by it in performing functions conferred by regulations made for the purpose of implementing Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators, as amended from time to time, 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.
- [^{F10}(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.]

[^{F11}(2A) But, in relation to a relevant environmental licence, charges may not be prescribed in respect of waste from premises used for agriculture within the meaning of the Agriculture Act 1947.]

- (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;
 - (c) the scale on which the authorised activity in question is carried on;

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- (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.
 - [^{F12}“relevant environmental licence” means any registration mentioned in paragraph (j) of the definition of “environmental licence” which applies in relation to the Agency]
- (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

- F1** Word in s. 41(1)(b) omitted (12.7.2007) by virtue of [The Transfrontier Shipment of Waste Regulations 2007 \(S.I. 2007/1711\)](#), regs. 1, **46(1)(a)** (with reg. 3)

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- F2** S. 41(1)(c) substituted (E.) (16.7.2005) by [The Hazardous Waste \(England and Wales\) Regulations 2005 \(S.I. 2005/894\)](#), regs. 1(1)(b), **59** (with regs. 59(3), 75) and s. 41(1)(c) substituted (W.) (16.7.2005) by [The Hazardous Waste \(Wales\) Regulations 2005 \(S.I. 2005/1806\)](#), regs. 1(2)(ii), **59(2)** (with regs. 12-17, 71)
- F3** S. 41(1)(d) and word inserted (12.7.2007) by [The Transfrontier Shipment of Waste Regulations 2007 \(S.I. 2007/1711\)](#), regs. 1, **46(1)(b)** (with reg. 3)
- F4** Word in s. 41(1)(c) omitted (3.12.2007) by virtue of [The Persistent Organic Pollutants Regulations 2007 \(S.I. 2007/3106\)](#), regs. 1, **9(1)(a)**
- F5** S. 41(1)(e) and word inserted (3.12.2007) by [The Persistent Organic Pollutants Regulations 2007 \(S.I. 2007/3106\)](#), regs. 1, **9(1)(b)**
- F6** Word in s. 41(1)(d) omitted (25.12.2008) by virtue of [The Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008 \(S.I. 2008/3087\)](#), regs. 1, **17(1)(a)** (with reg. 3)
- F7** S. 41(1)(f) inserted (S.) (31.10.2009) by [Climate Change \(Scotland\) Act 2009 \(asp 12\)](#), s. 100(2), **sch. 2 para. 2** (with s. 95); S.S.I. 2009/341, art. 2(2)(c)
- F8** S. 41(1)(f) inserted (25.12.2008) by [The Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008 \(S.I. 2008/3087\)](#), regs. 1, **17(1)(b)** (with reg. 3)
- F9** S. 41(1)(g) inserted (5.5.2009) by [The Waste Batteries and Accumulators Regulations 2009 \(S.I. 2009/890\)](#), reg. 1(2), **Sch. 8 para. 1(2)**
- F10** 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)
- F11** S. 41(2A) inserted (E.W.) (15.5.2006) by [The Waste Management \(England and Wales\) Regulations 2006 \(S.I. 2006/937\)](#), regs. 1(2), **3(2)**
- F12** Words in s. 41(10) inserted (E.W.) (15.5.2006) by [The Waste Management \(England and Wales\) Regulations 2006 \(S.I. 2006/937\)](#), regs. 1(2), **3(3)**

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)
- C7** S. 41 applied (with modifications) by [SI 2002/1559](#), Sch. 4 para. 5(15) (as inserted (E.W.) (15.5.2006) by [The Waste Management \(England and Wales\) Regulations 2006 \(S.I. 2006/937\)](#), regs. 1(2), **9(15)**)
- C8** S. 41(10): transfer of functions (10.7.2008) by [The Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2008 \(S.I. 2008/1776\)](#), arts. 1(1), 2, **Sch.**

Commencement Information

- I2** 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**

[^{F13}41A Charges in respect of greenhouse gas emissions permits

- (1) Without prejudice to subsections (1)(b) and (2) of section 41 above, the following charges may be prescribed under that section as respects permits (“greenhouse gas emissions permits”) granted under the Greenhouse Gas Emissions Trading Scheme Regulations 2005 (“the regulations”)—
- (a) charges in respect of, or in respect of an application for, the allocation of allowances to an operator;
 - (b) charges in respect of, or in respect of an application for, the retention of allowances by an operator ceasing to carry on an activity to which they relate;

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- (c) charges in respect of the revocation of a greenhouse gas emissions permit;
 - (d) charges in respect of the subsistence of an account required to be held in the trading scheme registry by an operator (“operator registry charges”).
- (2) If the Agency—
- (a) proposes to prescribe operator registry charges, or to amend any provision for such charges included in a charging scheme, and
 - (b) notifies SEPA of its proposals,
- the Agency and SEPA shall each include in a charging scheme (subject to approval by the Secretary of State under section 42(2) below) provision giving effect to the proposals.
- (3) If the Agency revises any proposals of which it has given notification under subsection (2) above, and notifies SEPA accordingly, the obligations imposed by that subsection apply in relation to the proposals as revised.
- (4) A notification under subsection (2) or (3) above shall include details of the amount of the proposed charges.
- (5) SEPA shall pass on to the Agency any operator registry charges that it receives.
- (6) A charging scheme made by the Agency may require the payment to the Agency of such charges as may from time to time be prescribed in respect of—
- (a) the creation of an account in the trading scheme registry, other than one that is required to be held by an operator;
 - (b) the subsistence of such an account;
 - (c) the updating of information provided to the Agency in relation to such an account.
- (7) In this section—
- “allowance” and “operator” have the same meaning as in the regulations;
 - “charging scheme” and “prescribed” have the same meaning as in section 41;
 - “trading scheme registry” means the registry established under the regulations.]

Textual Amendments

F13 S. 41A inserted (21.4.2005) by [The Greenhouse Gas Emissions Trading Scheme Regulations 2005 \(S.I. 2005/925\)](#), [Sch. 6 para. 1\(2\)](#) (with reg. 3)

Modifications etc. (not altering text)

C9 [Ss. 41A\(2\)-\(5\)](#) applied by [Pollution Prevention and Control Act 1999 \(c. 24\)](#), [Sch. 1 para. 9A\(2\)](#) (as inserted (21.4.2005) by [The Greenhouse Gas Emissions Trading Scheme Regulations 2005 \(S.I. 2005/925\)](#), [art. 1](#), [Sch. 6 para. 2\(2\)\(a\)](#) (with reg. 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—
- (a) setting out its proposals; and

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- (b) 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,—
- (a) consider any representations or objections duly made to him and not withdrawn; and
 - (b) 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)—
- (a) which it incurs in carrying out its functions,
 - (b) in the case of environmental licences which are authorisations under section 13(1) of the ^{M2}Radioactive Substances Act 1993—
 - (i) which the [^{F14}Food Standards Agency] incurs in carrying out [^{F14}its] functions under or in consequence of that Act, and
 - ^{F15}(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 [^{F16}Food Standard Agency’s] functions in 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, [^{F17}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.

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- (7) The consent of the Treasury shall be required for the giving of approval to a charging scheme [^{F18}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)—[^{F19}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 [^{F20}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 [^{F21}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

- F14** 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**
- F15** 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**
- F16** 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**
- F17** 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**
- F18** 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**
- F19** 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**
- F20** 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**
- F21** 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)

- C10** 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**
- C11** S. 42 applied (with modifications) by SI 2002/1559, Sch. 4 para. 5(15) (as inserted (E.W.) (15.5.2006) by **The Waste Management (England and Wales) Regulations 2006** (S.I. 2006/937), regs. 1(2), **9(15)**)
- C12** S. 42: transfer of functions (10.7.2008) by **The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2008** (S.I. 2008/1776), arts. 1(1), 2, **Sch.**

Marginal Citations

- M2** 1993 c. 12.

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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)

C13 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) [^{F22}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 ^{F23} . . . a new Agency, [^{F24}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 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 [^{F25}(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).

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Textual Amendments

- F22** 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**
- F23** 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**
- F24** 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**
- F25** 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)

- C14** 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 [^{F26}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—
- “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

- F26** 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**

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Modifications etc. (not altering text)

C15 S. 45(2): Treasury consent requirement continued (1.7.1999) by S.I. 1999/672, art. 2, Sch. 1

[^{F27}46 Audit.

(1) The accounts of each new Agency^[F28], 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 ^[F29]statutory auditor under Part 42 of the Companies Act 2006] ; and

^[F30](b) if the appointment were an appointment as a statutory auditor, he would not be prohibited from acting by virtue of section 1214 of that Act (independence requirement).]

(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.

^{F31}(3A) [The Agency shall send a copy of its accounts in respect of each financial year ending on 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—

(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 ^{M3}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

F27 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)

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- F28** 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)**
- F29** Words in s. 46(2)(a) substituted (6.4.2008) by virtue of The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 1(ss)** (with arts. 6, 11, 12)
- F30** S. 46(2)(b) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 19** (with arts. 6, 11, 12)
- F31** 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)

- C16** S. 46(3) modified (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**

Marginal Citations

- M3** 1983 c. 44.

[^{F32}**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

- F32** 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, [^{F33}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.

Textual Amendments

- F33** 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) [^{F34}in the case of the Agency only] with the approval of the Treasury,

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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

- F34** 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 ^{F53}subsections (5) and (5A)] below, each new Agency may—
 - (a) with the consent of the appropriate Minister, and
 - (b) ^{F54}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 ^{F53}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; ^{F55} . . .

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^{F55}(b)

[^{F56}(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.

^{F56}(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.

Extent Information

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

Textual Amendments

F53 Words in s. 48(2)(3) substituted (S.) (1.4.2000) by 2000 asp 1, s. 8, **Sch. 1 para. 7(2)(a)**; S.S.I. 2000/10, **art. 2(3)**

F54 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**

F55 S. 48(5)(b) and the preceding “or” repealed (S.) (1.4.2000) by 2000 asp 1, s. 8, **Sch. 1 para. 7(2)(b)**; S.S.I. 2000/10, **art. 2(3)**

F56 S. 48(5A)(5B) inserted (S.) (1.4.2000) by 2000 asp 1, s. 8, **Sch. 1**; S.S.I. 2000/10, **art. 2(3)**

49 Government loans to the new Agencies.

(1) The appropriate Minister may, [^{F35}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 at such rates and at such times, as that Minister may with the approval of the Treasury from time to time determine.

[^{F36}(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.

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(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

F35 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**

F36 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)

C17 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, [^{F37}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.
- (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 [^{F38}in the case of the Agency only].

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Textual Amendments

- F37** 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
- F38** 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.

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.

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- (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)

C18 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 ^{M4}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 ^{M5}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.

Marginal Citations

M4 1972 c. 70.
M5 1973 c. 65.

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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^{F39}

Textual Amendments

F39 Words in s. 54 repealed (1.1.2010) by Legal Services Act 2007 (c. 29), s. 211(2), Sch. 21 para. 117, Sch. 23 (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)(i)(ix)

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

I3 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—

^{F40}
...

“the 1990 Act” means the ^{M6}Environmental Protection Act 1990;

“the 1991 Act” means the ^{M7}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

(b) costs to the environment;

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“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 ^{M8}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;

[^{F41}“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 ^{M9}Control of Pollution (Amendment) Act 1989,
- (aa) [^{F42}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) ^{F43} ...
- (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 ^{M10}Radioactive Substances Act 1993,
- (g) an authorisation under that Act,
- (h) [^{F44}registration of a person as a broker of controlled waste under any provision which gives effect in England and Wales to Article 12 of Directive [2006/12/EC](#) of the European Parliament and of the Council on waste,]
- (j) [^{F45}registration under Schedule 2 to the Environmental Permitting (England and Wales) Regulations 2007 of an establishment or undertaking in relation to an operation which for the purposes of those Regulations is a notifiable exempt waste operation, or an exempt waste operation falling within paragraph 45(1) or 45(3) of Schedule 3 to those Regulations,]
- (k) [^{F46}a greenhouse gas emissions permit granted under the Greenhouse Gas Emissions Trading Scheme Regulations 2005],
- (l) [^{F47}approval of a scheme under regulation 41 of the Waste Electrical and Electronic Equipment Regulations 2006 (“the WEEE Regulations”);
- (m) compliance with the condition in regulation 43(e)(i) of the WEEE Regulations in relation to a scheme mentioned in paragraph (l);
- (n) approval of an authorised treatment facility or exporter under regulation 47 of the WEEE Regulations; and
 compliance with the condition in regulation 43(e)(i) of the WEEE Regulations in relation to a scheme mentioned in paragraph (l);
- (o) extension of approval of an exporter under regulation 48 of the WEEE 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) ^{F48} ...

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- (aa) [^{F49}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 ^{M11}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) ^{F48} ...
- (f) registration under the ^{M12}Radioactive Substances Act 1993,
- (g) an authorisation under that Act,
- (h) registration of a person as a broker of controlled waste under the ^{M13}Waste Management Licensing Regulations 1994,
- (j) [^{F50}registration in respect of an activity falling within paragraph 7, 8(2), 9, 10, 12, 19, 42, 45(1) or (2), 46 or 47 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,]
- (ja) [^{F51}registration in respect of an activity falling within paragraph 17, 18, 36 or 39 of Schedule 3 to those Regulations, where the waste which is the subject of the activity consists of or includes waste batteries or accumulators to which Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators applies, and those batteries or accumulators have been collected in accordance with Article 8 of that Directive,]
- (k) [^{F46}a greenhouse gas emissions permit granted under the Greenhouse Gas Emissions Trading Scheme Regulations 2005],
- (l) [^{F52}approval of a scheme under regulation 41 of the Waste Electrical and Electronic Equipment Regulations 2006 (“the WEEE Regulations”);
- (m) compliance with the condition in regulation 43(e)(i) of the WEEE Regulations in relation to a scheme mentioned in paragraph (l);
- (n) approval of an authorised treatment facility or exporter under regulation 47 of the WEEE Regulations; and
- (o) extension of approval of an exporter under regulation 48 of the WEEE Regulations.]

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 ^{M14}Local Government (Scotland) Act 1973;

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“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 ^{M15}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

- F40** Words in s. 56(1) omitted (S.) (1.4.2006) by virtue of [The Water Environment \(Consequential and Savings Provisions\) \(Scotland\) Order 2006](#) (S.S.I. 2006/181), **sch. Pt. 4 para. 8(3)(a)**
- F41** 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](#)
- F42** 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**
- F43** Words in s. 56(1) repealed (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007](#) (S.I. 2007/3538), reg. 1(1)(b), **Sch. 21 para. 23(2)(a)**, **Sch. 23** (with reg. 72, Sch. 4)
- F44** Words in s. 56(1) substituted (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007](#) (S.I. 2007/3538), reg. 1(1)(b), **Sch. 21 para. 23(2)(b)** (with reg. 72, Sch. 4)
- F45** Words in s. 56(1) substituted (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007](#) (S.I. 2007/3538), reg. 1(1)(b), **Sch. 21 para. 23(2)(c)** (with reg. 72, Sch. 4)
- F46** Words in s. 56(1) inserted (21.4.2005) by [The Greenhouse Gas Emissions Trading Scheme Regulations 2005](#) (S.I. 2005/925), **Sch. 6 para. 1(3)** (with reg. 3)
- F47** Words in s. 56(1) inserted (2.1.2007) by [The Waste Electrical and Electronic Equipment Regulations 2006](#) (S.I. 2006/3289), regs. 1(2), **4(2)(a)** (with regs. 7, 38, 39)
- F48** Words in s. 56(1) omitted (S.) (1.4.2006) by virtue of [The Water Environment \(Consequential and Savings Provisions\) \(Scotland\) Order 2006](#) (S.S.I. 2006/181), **sch. Pt. 4 para. 8(3)(b)**
- F49** 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)**

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- F50** Words in s. 56(1) substituted (S.) (1.12.2006) by [The Waste Management Licensing Amendment \(Scotland\) Regulations 2006 \(S.S.I. 2006/541\)](#), regs. 1(1), **10(2)** (with regs. 11, 12)
- F51** Words in s. 56(1) inserted (S.) (6.7.2009) by [The Waste Batteries \(Scotland\) Regulations 2009 \(S.S.I. 2009/247\)](#), regs. 1(1), **5** (with regs. 8-10)
- F52** Words in s. 56(1) inserted (2.1.2007) by [The Waste Electrical and Electronic Equipment Regulations 2006 \(S.I. 2006/3289\)](#), regs. 1(2), **4(2)(b)** (with regs. 7, 38, 39)

Marginal Citations

- M6** 1990 c. 43.
M7 1991 c. 57.
M8 1974 c. 40.
M9 1989 c. 14.
M10 1993 c. 12.
M11 1989 c. 14.
M12 1993 c. 12.
M13 S.I. 1994/1056.
M14 1973 c. 65.
M15 1994 c. 39.

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