



# 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

#### *General financial provisions*

#### **44 General financial duties.**

- (1) The appropriate Ministers may—
  - (a) after consultation with a new Agency, and
  - (b) [<sup>F1</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>F2</sup>. . . a new Agency, [<sup>F3</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 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.

*Status: Point in time view as at 12/01/2010.*

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- (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>F4</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

- F1** 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**
- F2** 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**
- F3** 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**
- F4** 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)

- C1** 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>F5</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—
- “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;

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“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

**F5** Words in s. 45(2) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. 1 para. 120(4)(b); S.I. 1998/3178, art. 3

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

**C2** S. 45(2): Treasury consent requirement continued (1.7.1999) by S.I. 1999/672, art. 2, Sch. 1

#### [<sup>F6</sup>46] **Audit.**

- (1) The accounts of each new Agency<sup>[F7]</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 <sup>[F8]</sup>statutory auditor under Part 42 of the Companies Act 2006]; and
  - <sup>[F9]</sup>(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.
- [ The Agency shall send a copy of its accounts in respect of each financial year ending on <sup>F10</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—
- (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;

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and section 6 of the <sup>M1</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

- F6** 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)**
- F7** 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)**
- F8** 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)
- F9** 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)
- F10** 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)

- C3** S. 46(3) modified (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**

#### Marginal Citations

- M1** 1983 c. 44.

#### [<sup>F11</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

- F11** 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>F12</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

**F12** 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>F13</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

**F13** 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>F18</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>F19</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>F18</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>F20</sup> . . .
- <sup>F20</sup>(b) . . . . .
- [<sup>F21</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>F21</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.

#### 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

- F18** 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)**
- F19** 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**
- F20** 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)**
- F21** 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, [<sup>F14</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>F15</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

**F14** 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**

**F15** 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)

**C4** 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>F16</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>F17</sup>in the case of the Agency only].

#### Textual Amendments

- F16** 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
- F17** 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



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