

*Status:* Point in time view as at 21/09/1995. This version of this cross heading contains provisions that are not valid for this point in time.

*Changes to legislation:* Environment Act 1995, Cross Heading: The Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 15 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## SCHEDULES

### SCHEDULE 22 U.K.

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *The Environmental Protection Act 1990*

VALID FROM 01/04/1996

- 45 (1) Section 1 of the <sup>M1</sup>Environmental Protection Act 1990 (interpretation of Part I) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (7) (definition of “enforcing authority” in relation to England and Wales), for the words “the chief inspector or the local authority by whom” there shall be substituted the words “ the Environment Agency or the local authority by which ”.
- (3) For subsection (8) (definition of “enforcing authority” in relation to Scotland) there shall be substituted—
- “(8) In relation to Scotland, references to the “enforcing authority” and a “local enforcing authority” are references to the Scottish Environment Protection Agency (in this Part referred to as “SEPA”).”
- (4) After subsection (13) there shall be added—
- “(14) In this Part “the appropriate Agency” means—
- (a) in relation to England and Wales, the Environment Agency; and
- (b) in relation to Scotland, SEPA.”

#### Marginal Citations

M1 1990 c. 43.

VALID FROM 01/04/1996

- 46 (1) Section 4 of that Act (determination of authority by whom functions are exercisable) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (2) (functions of the chief inspector etc in relation to prescribed processes designated for central control) for the words “the chief inspector appointed for England and Wales by the Secretary of State under section 16 below and, in relation to Scotland, of the chief inspector so appointed for Scotland or

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of the river purification authority, as determined under regulations made under section 5(1) below” there shall be substituted the words “ the appropriate Agency ”.

(3) In subsection (3) (discharge of functions designated for local control) for paragraphs (a) and (b) there shall be substituted—

“(a) in the case of a prescribed process carried on (or to be carried on) by means of a mobile plant, where the person carrying on the process has his principal place of business—

(i) in England and Wales, the local authority in whose area that place of business is;

(ii) in Scotland, SEPA;

(b) in any other cases, where the prescribed processes are (or are to be) carried on—

(i) in England and Wales, the local authority in whose area they are (or are to be) carried on;

(ii) in Scotland, SEPA;”.

(4) In subsection (4) (directions transferring functions to the chief inspector) for the words “the chief inspector” there shall be substituted the words “ the Environment Agency ”.

(5) After that subsection there shall be inserted—

“(4A) In England and Wales, a local authority, in exercising the functions conferred or imposed on it under this Part by virtue of subsection (3) above, shall have regard to the strategy for the time being published pursuant to section 80 of the Environment Act 1995.”

(6) In subsection (5) (effect of such a transfer)—

(a) for the words “the chief inspector” there shall be substituted the words “ the Environment Agency ”; and

(b) for the word “him” there shall be substituted the words “ that Agency ”.

(7) In subsection (8) (giving or withdrawal of directions)—

(a) for the words “the chief inspector” in each place where they occur there shall be substituted the words “ the Environment Agency ”; and

(b) the words “or, as the case may be, in the Edinburgh Gazette”, in each place where they occur, shall be omitted.

(8) After subsection (8) there shall be inserted—

“(8A) The requirements of sub-paragraph (ii) of paragraph (a) or, as the case may be, of paragraph (b) of subsection (8) above shall not apply in any case where, in the opinion of the Secretary of State, the publication of notice in accordance with that sub-paragraph would be contrary to the interests of national security.

(8B) Subsections (4) to (8A) above shall not apply to Scotland.”

(9) For subsection (9) (which, among other things, imposed a duty on the chief inspector etc to follow developments in technology etc and which is partly superseded by this Act) there shall be substituted—

“(9) It shall be the duty of local authorities to follow such developments in technology and techniques for preventing or reducing pollution of the

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environment due to releases of substances from prescribed processes as concern releases into the air of substances from prescribed processes designated for local control.”

(10) In subsection (10) (duty of chief inspector etc to give effect to directions) for the words “the chief inspector, river purification authorities” there shall be substituted the words “ the Environment Agency, SEPA ”.

(11) In subsection (11) (meaning of “local authority”)—

- (a) at the beginning of paragraph (b) there shall be inserted the words “ in England and Wales, ” and
- (b) paragraph (c) and the word “and” immediately preceding it shall cease to have effect.

#### Commencement Information

- II** Sch. 22 para. 46 wholly in force at 23.12.1997; Sch. 22 para. 46 not in force at Royal Assent see s. 125(3); Sch. 22 para. 46(1)-(4)(6)-(11) in force at 1.4.1996 by S.I. 1996/186, art. 3; Sch. 22 para. 46(5) in force at 23.12.1997 by S.I. 1997/3044, art. 2

VALID FROM 01/04/1996

47 Section 5 of that Act (further provision for Scotland as to discharge and scope of functions) shall cease to have effect.

VALID FROM 01/04/1996

48 In section 6 of that Act, in subsection (2) (fee payable on application for authorisation) after the words “shall be accompanied by” there shall be inserted—

- “(a) in a case where, by virtue of section 41 of the Environment Act 1995, a charge prescribed by a charging scheme under that section is required to be paid to the appropriate Agency in respect of the application, the charge so prescribed; or
- (b) in any other case.”.

VALID FROM 01/04/1996

49 (1) In section 7 of that Act (conditions of authorisations) in subsection (9) the words from “and, in relation to Scotland,” to the end of the subsection shall be omitted.

(2) At the end of subsection (12) of that section (definition of “relevant enactments” for the purposes of subsection (2)) there shall be added “; and

- (g) section 87 of the Environment Act 1995.”.

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VALID FROM 01/04/1996

- 50 (1) Section 8 of that Act (fees and charges for authorisations) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (payments to be charged by, or paid to, the enforcing authority in accordance with schemes), for the words “enforcing authority” there shall be substituted the words “ local enforcing authority ”.
- (3) Subsection (4) (separate schemes for different descriptions of enforcing authority) shall cease to have effect.
- (4) In subsection (7) (meaning of “relevant expenditure attributable to authorisations”) —
- (a) for the words “enforcing authorities” there shall be substituted the words “ local enforcing authorities ”; and
  - (b) the words from “together with the expenditure incurred by the National Rivers Authority” onwards shall be omitted.
- (5) In subsection (8) (power to revoke authorisation for non-payment of charge), for the words “enforcing authority” there shall be substituted the words “ local enforcing authority ”.
- (6) Subsection (9) (payments by the Secretary of State to the National Rivers Authority) shall cease to have effect.
- (7) For subsections (10) and (11) (special provision as respects Scotland) there shall be substituted—
- “(10) The foregoing provisions of this section shall not apply to Scotland.”

VALID FROM 12/10/1995

- 51 (1) Section 10 of that Act (variation of authorisations by enforcing authority) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (3) (which provides for the variation specified in a variation notice to take effect on the date so specified unless the notice is withdrawn) after the words “unless the notice is withdrawn” there shall be inserted the words “ or is varied under subsection (3A) below ”.
- (3) After that subsection there shall be inserted—
- “(3A) An enforcing authority which has served a variation notice may vary that notice by serving on the holder of the authorisation in question a further notice—
- (a) specifying the variations which the enforcing authority has decided to make to the variation notice; and
  - (b) specifying the date or dates on which the variations specified in the variation notice, as varied by the further notice, are to take effect;
- and any reference in this Part to a variation notice, or to a variation notice served under subsection (2) above, includes a reference to such a notice as varied by a further notice served under this subsection.”

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(4) In subsection (4) of that section, for paragraph (b) (requirement to pay the fee prescribed under section 8 of that Act) there shall be substituted—

“(b) require the holder to pay, within such period as may be specified in the notice,—

(i) in a case where the enforcing authority is the Environment Agency or SEPA, the charge (if any) prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995; or

(ii) in any other case, the fee (if any) prescribed by a scheme under section 8 above.”

(5) In subsection (8) of that section, in the definition of “vary”, after the word ““vary”” there shall be inserted “(a)” and after the words “any of them;” there shall be added the words “and

(b) in relation to a variation notice, means adding to, or varying or rescinding the notice or any of its contents;”.

#### Commencement Information

**12** Sch. 22 para. 51 partly in force; Sch. 22 para. 51 not in force at Royal Assent see s. 125(3); Sch. 22 para. 51(1)-(3)(5) in force at 12.10.1995 by S.I. 1995/2649, art. 2(j)(iii); Sch. 22 para. 51(4) in force at 1.4.1996 by S.I. 1996/186, art. 3

VALID FROM 01/04/1996

52 In section 11 of that Act (application by holders of authorisations for variation of conditions etc) for subsection (9) (fees) there shall be substituted—

“(9) Any application to the enforcing authority under this section shall be accompanied—

(a) in a case where the enforcing authority is the Environment Agency or SEPA, by the charge (if any) prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995; or

(b) in any other case, by the fee (if any) prescribed by a scheme under section 8 above.”

VALID FROM 12/10/1995

53 At the end of section 13 of that Act (enforcement notices) there shall be added—

“(4) The enforcing authority may, as respects any enforcement notice it has issued to any person, by notice in writing served on that person, withdraw the notice.”

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VALID FROM 01/04/1996

- 54 (1) Section 15 of that Act (appeals against certain authorisations and notices) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (2) (appeals against variation notices, enforcement notices or prohibition notices to the Secretary of State) after the words “to the Secretary of State” there shall be added the words “ (except where the notice implements a direction of his). ”
- (3) For subsection (3) (reference of matters involved in appeals under that section to, and determination of such appeals by, persons appointed by the Secretary of State) there shall be substituted—
- “(3) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).”
- (4) For subsection (5) (hearings) there shall be substituted—
- “(5) Before determining an appeal under this section, the Secretary of State may, if he thinks fit—
- (a) cause the appeal to take or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held, or held to any extent, in private); or
- (b) cause a local inquiry to be held;
- and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by either party to the appeal to be heard with respect to the appeal.”
- (5) In subsection (10) (regulations about appeals) after paragraph (b) there shall be added—“ and any such regulations may make different provision for different cases or different circumstances. ”

VALID FROM 01/04/1996

- 55 Sections 16 to 18 of that Act (appointment of inspectors, powers of inspectors and others and power to deal with cause of imminent danger of serious harm) shall cease to have effect.

VALID FROM 01/04/1996

- 56 In section 19 of that Act (obtaining of information from persons and authorities) in subsection (2) (power of specified authorities by notice in writing to require provision of information)—
- (a) for paragraphs (c) and (d) (the chief inspector and river purification authorities) there shall be substituted—
- “(c) the Environment Agency, and
- (d) SEPA,”; and
- (b) after the words “service of the notice” there shall be inserted the words “ , or at such time, ”.

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VALID FROM 01/04/1996

- 57 (1) Section 20 of that Act (public registers of information) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (2) (local registers also to contain prescribed particulars of relevance to the area which are contained in central registers) after the word “authority”, where it first occurs, there shall be inserted the words “ in England and Wales ” and for the words “the chief inspector or river purification authority”, in each place where they occur, there shall be substituted the words “ the Environment Agency ”.
- (3) Subsection (3) (registers in Scotland) shall cease to have effect.
- (4) In subsection (4) (port health authorities) after the word “authority” where it first occurs there shall be inserted the words “ in England and Wales ” and for the words “the chief inspector” there shall be substituted the words “ the Environment Agency ”.
- (5) In subsection (7) (registers to be available for inspection by, and facilities for obtaining copies of entries to be afforded to, the public) after paragraph (b) there shall be added the words— “ and, for the purposes of this subsection, places may be prescribed by the Secretary of State at which any such registers or facilities as are mentioned in paragraph (a) or (b) above are to be available or afforded to the public in pursuance of the paragraph in question. ”
- (6) Subsection (9) (duty to furnish the National Rivers Authority with information for purposes of its register) shall cease to have effect.

VALID FROM 01/04/1996

- 58 (1) Section 22 of that Act (exclusion from registers of certain confidential information) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (5) (information not to be entered on the register until expiration of certain time limits)—
- (a) in paragraph (a), for the words “on the register” there shall be substituted the words “ in the register ”; and
- (b) in the words following paragraph (b), for the words from “on the register” onwards there shall be substituted the words “ in the register until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn ”.
- (3) For subsection (6) (which applies subsections (3), (5) and (10) of section 15 in relation to appeals to the Secretary of State against decisions that information is not commercially confidential) there shall be substituted—
- “(6) Subsections (5) and (10) of section 15 above shall apply in relation to an appeal under subsection (5) above as they apply in relation to an appeal under that section, but—
- (a) subsection (5) of that section shall have effect for the purposes of this subsection with the substitution for the words from “(which may” onwards of the words “(which must be held in private)”; and



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(b) subsection (5) above is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).”

VALID FROM 01/04/1996

- 59 (1) Section 23 of that Act (offences) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (offences) paragraphs (d) to (f) and (k) shall cease to have effect.
- (3) In subsection (2)(a) (which provides for a fine not exceeding £20,000 on summary conviction of any offence under section 23(1)(a), (c) or (l)) after the words “£20,000” there shall be inserted the words “ or to imprisonment for a term not exceeding three months, or to both ”.
- (4) Subsection (4) (punishment for offences under paragraph (d), (e), (f) or (k) of subsection (1)) shall cease to have effect.
- (5) Subsection (5) (right of inspector to prosecute before a magistrates’ court if authorised to do so by the Secretary of State) shall cease to have effect.

VALID FROM 01/04/1996

- 60 (1) In section 27 of that Act (power of chief inspector etc to remedy harm) in subsection (1), for the words “the chief inspector or, in Scotland, a river purification authority” there shall be substituted the words “ the appropriate Agency ”.
- (2) In subsection (2) of that section (powers not to be exercised without the Secretary of State’s written approval) for the words from “The chief inspector” to “their” there shall be substituted the words “ The Environment Agency or SEPA, as the case may be, shall not exercise its ”.

VALID FROM 01/04/1996

- 61 (1) In section 28 of that Act, in subsection (1) (which includes provision that the enforcing authority shall notify the waste regulation authority if a process involves final disposal of controlled waste by deposit in or on land) the words from “but the enforcing authority shall notify” onwards shall cease to have effect.
- (2) Subsections (3) and (4) of that section (which involve liaison between the enforcing authority and the National Rivers Authority) shall cease to have effect.

VALID FROM 01/04/1996

- 62 (1) Section 30 of that Act (authorities for purposes of Part II) shall be amended in accordance with the following provisions of this paragraph.
- (2) For subsection (1) (waste regulation authorities) there shall be substituted—
- “(1) Any reference in this Part to a waste regulation authority—



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

and any reference in this Part to the area of a waste regulation authority shall accordingly be taken as a reference to the area over which the Environment Agency or the Scottish Environment Protection Agency, as the case may be, exercises its functions or, in the case of any particular function, the function in question.”

- (3) In subsection (4) of that section (construction of references to authorities constituted as particular descriptions of authority and provision for the section to be subject to orders under section 10 of the <sup>M2</sup>Local Government Act 1985 establishing authorities for certain purposes)—
  - (a) the words “or regulation”, and
  - (b) the words from “establishing authorities” onwards,shall cease to have effect.
- (4) Subsections (6) (definition of “river purification authority”), (7) and (8) (which relate to authorities which are both waste disposal and waste regulation authorities) shall cease to have effect.

#### Marginal Citations

M2 1985 c. 51.

VALID FROM 01/04/1996

63 Section 31 of that Act (power to create regional authorities for purposes of waste regulation) shall cease to have effect.

VALID FROM 01/04/1996

64 In section 33 of that Act (prohibition on unauthorised or harmful deposit, treatment or disposal etc of waste) in subsection (7) (defences) for paragraph (c) there shall be substituted—

- “(c) that the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to human health in a case where—
  - (i) he took all such steps as were reasonably practicable in the circumstances for minimising pollution of the environment and harm to human health; and
  - (ii) particulars of the acts were furnished to the waste regulation authority as soon as reasonably practicable after they were done.”

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VALID FROM 01/04/1996

- 65 In section 34 of that Act (duty of care etc as respects waste), after subsection (3) (which specifies the persons who are authorised persons for the purposes of subsection (1)(c)) there shall be inserted—
- “(3A) The Secretary of State may by regulations amend subsection (3) above so as to add, whether generally or in such circumstances as may be prescribed in the regulations, any person specified in the regulations, or any description of person so specified, to the persons who are authorised persons for the purposes of subsection (1)(c) above.”

VALID FROM 01/04/1996

- 66 (1) Section 35 of that Act (waste management licences: general) shall be amended in accordance with the following provisions of this paragraph.
- (2) After subsection (7) there shall be inserted—
- “(7A) In any case where—
- (a) an entry is required under this section to be made in any record as to the observance of any condition of a licence, and
- (b) the entry has not been made,
- that fact shall be admissible as evidence that that condition has not been observed.
- (7B) Any person who—
- (a) intentionally makes a false entry in any record required to be kept under any condition of a licence, or
- (b) with intent to deceive, forges or uses a licence or makes or has in his possession a document so closely resembling a licence as to be likely to deceive,
- shall be guilty of an offence.
- (7C) A person guilty of an offence under subsection (7B) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.”

VALID FROM 01/02/1996

- 67 After section 35 of that Act there shall be inserted—
- “**35A Compensation where rights granted pursuant to section 35(4) or 38(9A).**
- (1) This section applies in any case where—
- (a) the holder of a licence is required—
- (i) by the conditions of the licence; or

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- (ii) by a requirement imposed under section 38(9) below, to carry out any works or do any other thing which he is not entitled to carry out or do;
  - (b) a person whose consent would be required has, pursuant to the requirements of section 35(4) above or 38(9A) below, granted, or joined in granting, to the holder of the licence any rights in relation to any land; and
  - (c) those rights, or those rights together with other rights, are such as will enable the holder of the licence to comply with any requirements imposed on him by the licence or, as the case may be, under section 38(9) below.
- (2) In a case where this section applies, any person who has granted, or joined in granting, the rights in question shall be entitled to be paid compensation under this section by the holder of the licence.
- (3) The Secretary of State shall by regulations provide for the descriptions of loss and damage for which compensation is payable under this section.
- (4) The Secretary of State may by regulations—
- (a) provide for the basis on which any amount to be paid by way of compensation under this section is to be assessed;
  - (b) without prejudice to the generality of subsection (3) and paragraph (a) above, provide for compensation under this section to be payable in respect of—
    - (i) any effect of any rights being granted, or
    - (ii) any consequence of the exercise of any rights which have been granted;
  - (c) provide for the times at which any entitlement to compensation under this section is to arise or at which any such compensation is to become payable;
  - (d) provide for the persons or bodies by whom, and the manner in which, any dispute—
    - (i) as to whether any, and (if so) how much and when, compensation under this section is payable; or
    - (ii) as to the person to or by whom it shall be paid,is to be determined;
  - (e) provide for when or how applications may be made for compensation under this section;
  - (f) without prejudice to the generality of paragraph (d) above, provide for when or how applications may be made for the determination of any such disputes as are mentioned in that paragraph;
  - (g) without prejudice to the generality of paragraphs (e) and (f) above, prescribe the form in which any such applications as are mentioned in those paragraphs are to be made;
  - (h) make provision similar to any provision made by paragraph 8 of Schedule 19 to the <sup>M3</sup>Water Resources Act 1991;
  - (j) make different provision for different cases, including different provision in relation to different persons or circumstances;

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- (k) include such incidental, supplemental, consequential or transitional provision as the Secretary of State considers appropriate.”.

### Commencement Information

- I3** Sch. 22 para. 67 wholly in force at 1.4.1999; Sch. 22 para. 67 not in force at Royal Assent see s. 125(3); Sch. 22 para. 67 in force for specified purposes at 1.2.1996 by S.I. 1996/186, art 2; Sch. 22 para. 67 in force for further specified purposes at 1.4.1998 by S.I. 1998/604, art. 2; Sch. 22 para. 67 in force at 1.4.1999 insofar as not already in force by S.I. 1999/803, art. 3

### Marginal Citations

- M3** 1991 c. 28.

VALID FROM 01/04/1996

- 68 (1) Section 36 of that Act (grant of licences) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (making of applications) for the words following paragraph (b) there shall be substituted—
- “and shall be made on a form provided for the purpose by the waste regulation authority and accompanied by such information as that authority reasonably requires and the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995.
- (1A) Where an applicant for a licence fails to provide the waste regulation authority with any information required under subsection (1) above, the authority may refuse to proceed with the application, or refuse to proceed with it until the information is provided.”
- (3) In subsection (4) (reference of proposals to, and consideration of representations made by, other bodies)—
- (a) in paragraph (a), for the words “the National Rivers Authority” there shall be substituted the words “ the appropriate planning authority ”, and
- (b) in paragraph (b), for the word “Authority” there shall be substituted the word “ authority ”.
- (4) Subsections (5) (reference by National Rivers Authority to the Secretary of State) and (6) (which makes provision for Scotland in place of subsection (4)) shall cease to have effect.
- (5) After subsection (9) (application deemed to be rejected if not granted or refused within four months from being received) there shall be inserted—
- “(9A) Subsection (9) above—
- (a) shall not have effect in any case where, by virtue of subsection (1A) above, the waste regulation authority refuses to proceed with the application in question, and
- (b) shall have effect in any case where, by virtue of subsection (1A) above, the waste regulation authority refuses to proceed with it

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until the required information is provided, with the substitution for the period of four months there mentioned of the period of four months beginning with the date on which the authority received the information.”

(6) For subsection (10) (period of 21 days allowed for bodies to make representations) there shall be substituted—

“(10) The period allowed to the appropriate planning authority, the Health and Safety Executive or the appropriate nature conservancy body for the making of representations under subsection (4) or (7) above about a proposal is the period of twenty-eight days beginning with the day on which the proposal is received by the waste regulation authority or such longer period as the waste regulation authority, the appropriate planning authority, the Executive or the body, as the case may be, agree in writing.

(11) In this section—

“the appropriate planning authority” means—

- (a) where the relevant land is situated in the area of a London borough council, that London borough council;
- (b) where the relevant land is situated in the City of London, the Common Council of the City of London;
- (c) where the relevant land is situated in a non-metropolitan county in England, the council of that county;
- (d) where the relevant land is situated in a National Park or the Broads, the National Park authority for that National Park or, as the case may be, the Broads Authority;
- (e) where the relevant land is situated elsewhere in England or Wales, the council of the district or, in Wales, the county or county borough, in which the land is situated;
- (f) where the relevant land is situated in Scotland, the council constituted under section 2 of the <sup>M4</sup>Local Government etc. (Scotland) Act 1994 for the area in which the land is situated;

“the Broads” has the same meaning as in the <sup>M5</sup>Norfolk and Suffolk Broads Act 1988;

“National Park authority”, subject to subsection (12) below, means a National Park authority established under section 63 of the Environment Act 1995 which has become the local planning authority for the National Park in question;

“the relevant land” means—

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

(12) As respects any period before a National Park authority established under section 63 of the Environment Act 1995 in relation to a National Park becomes the local planning authority for that National Park, any reference in this section to a National Park authority shall be taken as a reference to the National Park Committee or joint or special planning board for that National Park.

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

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

#### Commencement Information

**I4** Sch. 22 para. 68 partly in force; Sch. 22 para. 68 not in force at Royal Assent see s. 125(3); Sch. 22 para. 68(1)(3)(4)(6) wholly in force and Sch. 22 para. 68(2) in force for specified purposes at 1.4.1996 by S.I. 1996/186, art. 3 (with art. 4); Sch. 22 para. 68(2) in force at 1.4.1998 insofar as not already in force and Sch. 22 para. 68(5) in force at 1.4.1998 by S.I. 1998/604, art. 2

#### Marginal Citations

**M4** 1994 c. 39.  
**M5** 1988 c. 4.

VALID FROM 01/04/1998

69 After section 36 of that Act there shall be inserted—

**“36A Consultation before the grant of certain licences.**

- (1) This section applies where an application for a licence has been duly made to a waste regulation authority, and the authority proposes to issue a licence subject (by virtue of section 35(4) above) to any condition which might require the holder of the licence to—
  - (a) carry out any works, or
  - (b) do any other thing,
 which he might not be entitled to carry out or do.
- (2) Before issuing the licence, the waste regulation authority shall serve on every person appearing to the authority to be a person falling within subsection (3) below a notice which complies with the requirements set out in subsection (4) below.
- (3) A person falls within this subsection if—
  - (a) he is the owner, lessee or occupier of any land; and
  - (b) that land is land in relation to which it is likely that, as a consequence of the licence being issued subject to the condition in question, rights will have to be granted by virtue of section 35(4) above to the holder of the licence.
- (4) A notice served under subsection (2) above shall—
  - (a) set out the condition in question;
  - (b) indicate the nature of the works or other things which that condition might require the holder of the licence to carry out or do; and
  - (c) specify the date by which, and the manner in which, any representations relating to the condition or its possible effects are



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to be made to the waste regulation authority by the person on whom the notice is served.

(5) The date which, pursuant to subsection (4)(c) above, is specified in a notice shall be a date not earlier than the date on which expires the period—

- (a) beginning with the date on which the notice is served, and
- (b) of such length as may be prescribed in regulations made by the Secretary of State.

(6) Before the waste regulation authority issues the licence it must, subject to subsection (7) below, consider any representations made in relation to the condition in question, or its possible effects, by any person on whom a notice has been served under subsection (2) above.

(7) Subsection (6) above does not require the waste regulation authority to consider any representations made by a person after the date specified in the notice served on him under subsection (2) above as the date by which his representations in relation to the condition or its possible effects are to be made.

(8) In subsection (3) above—

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

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

but does not include a mortgagee not in possession; and

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

#### Commencement Information

- I5** Sch. 22 para. 69 wholly in force at 1.4.1999; Sch. 22 para. 69 not in force at Royal Assent see s. 125(3); Sch. 22 para. 69 in force for specified purposes at 1.4.1998 by S.I. 1998/604, art. 2; Sch. 22 para. 69 in force at 1.4.1999 insofar as not already in force by S.I. 1999/803, art. 3

VALID FROM 01/04/1996

- 70 (1) In section 37 of that Act (variation of licences) in subsection (1)(b) (which requires an application to be accompanied by the prescribed fee) for the words “the prescribed fee payable under section 41 below,” there shall be substituted the words



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“ the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995, ”.

(2) In subsection (5) of that section (which applies certain provisions of section 36) the words “(5), (6),” and “(8)” shall be omitted.

(3) After subsection (6) of that section (cases where an application for modification is deemed to have been rejected) there shall be added—

“(7) This section shall have effect subject to section 37A below.”

#### Commencement Information

**I6** Sch. 22 para. 70 wholly in force at 1.4.1999; Sch. 22 para. 70 not in force at Royal Assent see s. 125(3); Sch. 22 para. 70(1)(2) in force at 1.4.1996 by S.I. 1996/186, art. 3; Sch. 22 para. 70 in force at 1.4.1999 insofar as not already in force by S.I. 1999/803, art. 3

VALID FROM 01/04/1998

71 After section 37 of that Act there shall be inserted—

#### “37A Consultation before certain variations.

(1) This section applies where—

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

(2) For the purposes of this section, a “relevant new condition” is any condition by virtue of which the holder of the licence might be required to carry out any works or do any other thing—

- (a) which he might not be entitled to carry out or do, and
- (b) which he could not be required to carry out or do by virtue of the conditions to which, prior to the modification, the licence is subject.

(3) Before modifying the licence, the waste regulation authority shall serve on every person appearing to the authority to be a person falling within subsection (4) below a notice which complies with the requirements set out in subsection (5) below.

(4) A person falls within this subsection if—

- (a) he is the owner, lessee or occupier of any land; and
- (b) that land is land in relation to which it is likely that, as a consequence of the licence being modified so as to be subject to the relevant new condition in question, rights will have to be granted by virtue of section 35(4) above to the holder of the licence.

(5) A notice served under subsection (3) above shall—

- (a) set out the relevant new condition in question;

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

#### Commencement Information

- I7** Sch. 22 para. 71 wholly in force at 1.4.1999; Sch. 22 para. 71 not in force at Royal Assent see s. 125(3); Sch. 22 para. 71 in force for specified purposes at 1.4.1998 by S.I. 1998/604, art. 2; Sch. 22 para. 71 in force at 1.4.1999 insofar as not already in force by S.I. 1999/803, art. 3

VALID FROM 01/04/1996

- 72 (1) In section 38 of that Act (revocation and suspension of licences) after subsection (9) (power to require certain measures to be taken where licence suspended) there shall be inserted—
- “(9A) A requirement imposed under subsection (9) above may require the holder of a licence to carry out works or do other things notwithstanding that he is not entitled to carry out the works or do the thing and any person whose

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consent would be required shall grant, or join in granting, the holder of the licence such rights in relation to the land as will enable the holder of the licence to comply with any requirements imposed on him under that subsection.

(9B) Subsections (2) to (8) of section 36A above shall, with the necessary modifications, apply where the authority proposes to impose a requirement under subsection (9) above which may require the holder of a licence to carry out any such works or do any such thing as is mentioned in subsection (9A) above as they apply where the authority proposes to issue a licence subject to any such condition as is mentioned in subsection (1) of that section, but as if—

- (a) the reference in subsection (3) of that section to section 35(4) above were a reference to subsection (9A) above; and
- (b) any reference in those subsections—
  - (i) to the condition, or the condition in question, were a reference to the requirement; and
  - (ii) to issuing a licence were a reference to serving a notice, under subsection (12) below, effecting the requirement.

(9C) The authority may postpone the service of any notice or the consideration of any representations required under section 36A above, as applied by subsection (9B) above, so far as the authority considers that by reason of an emergency it is appropriate to do so.”

(2) After subsection (12) of that section (revocations and suspensions etc. to be effected by service of notice) there shall be added—

“(13) If a waste regulation authority is of the opinion that proceedings for an offence under subsection (10) or (11) above would afford an ineffectual remedy against a person who has failed to comply with any requirement imposed under subsection (9) above, the authority may take proceedings in the High Court or, in Scotland, in any court of competent jurisdiction for the purpose of securing compliance with the requirement.”

### Commencement Information

**18** Sch. 22 para. 72 wholly in force at 1.4.1999; Sch. 22 para. 72 not in force at Royal Assent see s. 125(3); Sch. 22 para. 72(2) in force at 1.4.1996 by S.I. 1996/186, art. 3; Sch. 22 para. 72(1) in force for specified purposes at 1.4.1998 by S.I. 1998/604, art. 2; Sch. 22 para. 72 in force at 1.4.1999 insofar as not already in force by S.I. 1999/803, art. 3

VALID FROM 01/04/1996

- 73 (1) Section 39 of that Act (surrender of licences) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (3) (application for surrender of a site licence) for the words from “in such form” onwards there shall be substituted the words “ on a form provided by the authority for the purpose, giving such information and accompanied by such evidence as the authority reasonably requires and accompanied by the

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charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995.”

(3) In subsection (7) (consideration of representations before accepting surrender of a licence)—

- (a) for the words “the National Rivers Authority” and “the Authority” there shall be substituted the words “the appropriate planning authority”; and
- (b) the words following paragraph (b) shall cease to have effect.

(4) Subsection (8) (which makes provision for Scotland in place of subsection (7)) shall cease to have effect.

(5) In subsection (11) (meaning of “the allowed period”) for the words “subsections (7) and (8) above” there shall be substituted the words “subsection (7) above”.

(6) After subsection (11) there shall be added—

“(12) In this section—

“the appropriate planning authority” means—

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

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

“National Park authority”, subject to subsection (13) below, means a National Park authority established under section 63 of the Environment Act 1995 which has become the local planning authority for the National Park in question;

“the relevant land”, in the case of any site licence, means the land to which the licence relates.

(13) As respects any period before a National Park authority established under section 63 of the Environment Act 1995 in relation to a National Park becomes the local planning authority for that National Park, any reference in this section to a National Park authority shall be taken as a reference to the National Park Committee or joint or special planning board for that National Park.

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(14) The Secretary of State may by regulations amend the definition of “appropriate planning authority” in subsection (12) above.”

#### Commencement Information

**I9** Sch. 22 para. 73 partly in force; Sch. 22 para. 73 not in force at Royal Assent see s. 125(3); Sch. 22 para. 73(1)(3)-(6) wholly in force and Sch. 22 para. 73(2) in force for specified purposes at 1.4.1996 by S.I. 1996/186, art. 3; Sch. 22 para. 73(2) in force at 1.4.1998 insofar as not already in force by S.I. 1998/604, art. 2

#### Marginal Citations

**M6** 1994 c. 39.

**M7** 1988 c. 4.

VALID FROM 01/04/1996

74 In section 40 of that Act (transfer of licences) in subsection (3) (mode of making application for transfer of licence) for the words from “in such form” to “section 41 below” there shall be substituted the words “ on a form provided by the authority for the purpose, accompanied by such information as the authority may reasonably require, the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995 ”.

#### Commencement Information

**I10** Sch. 22 para. 74 partly in force; Sch. 22 para. 74 not in force at Royal Assent see s. 125(3); Sch. 22 para. 74 in force for specified purposes at 1.4.1996 by S.I. 1996/186, art. 3; Sch. 22 para. 74 in force at 1.4.1998 insofar as not already in force by S.I. 1998/604, art. 2

VALID FROM 01/04/1996

75 Section 41 of that Act (fees and charges for licences) shall cease to have effect.

- 76 (1) Section 42 of that Act (supervision of licensed activities) shall be amended in accordance with the following provisions of this paragraph.
- (2) Subsection (2) (consultation with the National Rivers Authority etc) shall cease to have effect.
- (3) In subsection (4) (recovery of expenditure from the holder or, if it has been surrendered, the former holder of a licence) for the words “the holder of the licence or, if the licence has been surrendered, from the former holder of it” there shall be substituted the words “ the holder, or (as the case may be) the former holder, of the licence ”.
- (4) In subsection (5) (powers where it appears that a condition of a licence is not being complied with) after the words “is not being complied with” there shall be inserted the words “ or is likely not to be complied with, ”.

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- (5) For paragraph (a) of that subsection there shall be substituted—
- “(a) serve on the holder of the licence a notice—
    - (i) stating that the authority is of the opinion that a condition of the licence is not being complied with or, as the case may be, is likely not to be complied with;
    - (ii) specifying the matters which constitute the non-compliance or, as the case may be, which make the anticipated non-compliance likely;
    - (iii) specifying the steps which must be taken to remedy the non-compliance or, as the case may be, to prevent the anticipated non-compliance from occurring; and
    - (iv) specifying the period within which those steps must be taken; and”.
- (6) In paragraph (b) of that subsection (powers which become exercisable on non-compliance) for the words “has not complied with the condition within that time,” there shall be substituted the words “has not taken the steps specified in the notice within the period so specified, ”.
- (7) After subsection (6) (power to revoke or suspend a licence) there shall be inserted—
- “(6A) If a waste regulation authority is of the opinion that revocation or suspension of the licence, whether entirely or to any extent, under subsection (6) above would afford an ineffectual remedy against a person who has failed to comply with any requirement imposed under subsection (5)(a) above, the authority may take proceedings in the High Court or, in Scotland, in any court of competent jurisdiction for the purpose of securing compliance with the requirement.”
- (8) In subsection (7) (application of certain provisions of section 38 to revocation or suspension of a licence)—
- (a) for the words from “subsections (5)” to “38” there shall be substituted the words “ subsections (5) and (12) or, as the case may be, subsections (8) to (12) of section 38 ”; and
  - (b) the words from “and the power” onwards shall cease to have effect.

#### Commencement Information

**III** Sch. 22 para. 76 partly in force; Sch. 22 para. 76(8)(a) in force at Royal Assent, see s. 125(3); Sch. 22 para. 76(1)(3) in force at 21.9.1995 by S.I. 1995/1983, art. 3; Sch. 22 para. 76(2)(4)-(7)(8)(b) in force at 1.4.1996 by S.I. 1996/186, art. 3; Sch. 22 para. 76 in force at 1.4.1998 insofar as not already in force by S.I. 1998/604, art. 2

VALID FROM 01/04/1996

77

In section 43 of that Act, in subsection (2), paragraphs (a) and (b) (reference of matters involved in appeals under that section to, and determination of such appeals by, persons appointed by the Secretary of State) shall cease to have effect and after that section there shall be inserted—



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“(2A) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).”

VALID FROM 01/04/1996

78 Section 50 of that Act (waste disposal plans of waste regulation authorities) shall cease to have effect.

VALID FROM 01/04/2000

79 Section 61 of that Act (duty of waste regulation authorities as respects closed landfills) shall cease to have effect.

#### Commencement Information

**I12** Sch. 22 para. 79 wholly in force; Sch. 22 para. 79 not in force at Royal Assent see s. 125(3); Sch. 22 para. 79 in force for E. at 1.4.2000 by S.I. 2000/340, art. 2 (with art. 3); s. 79 in force for S. at 14.7.2000 by S.S.I. 2000/180, art. 2(1)(b) (subject to art. 2(2) and with art. 3); Sch. 22 para. 79 in force for W. at 15.9.2001 by S.I. 2001/3211, art. 2(b) (with art. 3)

- 80 (1) Section 62 of that Act (special provision with respect to certain dangerous and intractable waste) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (3), for paragraph (a) (regulations providing for the supervision of certain activities and the recovery of the costs from persons carrying on the activities) there shall be substituted—
- “(a) for the supervision by waste regulation authorities—
- (i) of activities authorised by virtue of the regulations or of activities by virtue of carrying on which persons are subject to provisions of the regulations, or
- (ii) of persons who carry on activities authorised by virtue of the regulations or who are subject to provisions of the regulations,
- and for the recovery from persons falling within sub-paragraph (ii) above of the costs incurred by waste regulation authorities in performing functions conferred upon those authorities by the regulations;”.
- (3) After that subsection (which also includes provision for regulations to provide for appeals to the Secretary of State) there shall be added—
- “(3A) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).”



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### Commencement Information

**II3** Sch. 22 para. 80 wholly in force at 1.4.1996; Sch. 22 para. 80 not in force at Royal Assent see s. 125(3); Sch. 22 para. 80(1)(2) in force at 21.9.1995 by S.I. 1995/1983, art. 3; Sch. 22 para. 80(3) in force at 1.4.1996 by S.I. 1996/186, art. 3

VALID FROM 01/04/2015

- 81 In section 63 of that Act (waste other than controlled waste) for subsection (2) (offences relating to the deposit of waste which is not controlled waste but which, if it were such waste, would be special waste) there shall be substituted—
- “(2) A person who deposits, or knowingly causes or knowingly permits the deposit of, any waste—
- (a) which is not controlled waste, but
  - (b) which, if it were controlled waste, would be special waste,
- in a case where he would be guilty of an offence under section 33 above if the waste were special waste and any waste management licence were not in force, shall, subject to subsection (3) below, be guilty of that offence and punishable as if the waste were special waste.”
- 82 (1) Section 64 of that Act (public registers) shall be amended in accordance with the following provisions of this paragraph.
- (2) After subsection (2) there shall be inserted—
- “(2A) The Secretary of State may give to a waste regulation authority directions requiring the removal from any register of its of any specified information not prescribed for inclusion under subsection (1) above or which, by virtue of section 65 or 66 below, ought to be excluded from the register.”
- (3) In subsection (4) (duty of waste collection authorities in England to maintain registers)—
- (a) after the word “England” there shall be inserted the words “ or Wales ”; and
  - (b) the words “which is not a waste regulation authority” shall be omitted.
- (4) For subsection (5) (waste regulation authorities in England to furnish information to waste collection authorities) there shall be substituted—
- “(5) The waste regulation authority in relation to England and Wales shall furnish any waste collection authorities in its area with the particulars necessary to enable them to discharge their duty under subsection (4) above.”
- (5) In subsection (6) (registers to be available for inspection by, and facilities for obtaining copies of entries to be afforded to, the public)—
- (a) after the words “waste collection authority” there shall be inserted “ (a) ”;
  - (b) after the words “hours and” there shall be inserted “ (b) ”; and
  - (c) after the paragraph (b) so formed, there shall be added the words— “ and, for the purposes of this subsection, places may be prescribed by the Secretary of State at which any such registers or facilities as are mentioned in paragraph (a) or (b) above are to be available or afforded to the public in pursuance of the paragraph in question. ”

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### Commencement Information

**I14** Sch. 22 para. 82 partly in force; Sch. 22 para. 82 not in force at Royal Assent see s. 125(3); Sch. 22 para. 82(1)(5) in force for specified purposes at 21.9.1995 by S.I. 1995/1983, art. 3; Sch. 22 para. 82 in force at 1.4.1996 insofar as not already in force by S.I. 1996/186, art. 3

VALID FROM 01/04/1996

- 83 (1) In section 66 of that Act (exclusion from registers of certain confidential information) in subsection (5) (information not to be entered on the register until expiration of certain time limits) in the words following paragraph (b), for the words from “pending” onwards there shall be substituted the words “ until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn ”.
- (2) For subsection (6) (which applies section 43(2) and (8) to appeals to the Secretary of State against decisions that information is not commercially confidential) there shall be substituted—
- “(6) Subsections (2) and (8) of section 43 above shall apply in relation to appeals under subsection (5) above as they apply in relation to appeals under that section; but
- (a) subsection (2)(c) of that section shall have effect for the purposes of this subsection with the substitution for the words from “(which may” onwards of the words “(which must be held in private)”; and
- (b) subsection (5) above is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).”

VALID FROM 01/04/1996

- 84 Section 67 of that Act (annual reports of waste regulation authorities) shall cease to have effect.

VALID FROM 01/04/1996

- 85 Sections 68 to 70 of that Act (functions of the Secretary of State and appointment etc of inspectors, powers of entry and power to deal with cause of imminent danger of serious pollution) shall cease to have effect.

VALID FROM 01/04/1996

- 86 (1) In section 71 of that Act (obtaining of information from persons and authorities) subsection (1) (which is superseded by this Act) shall cease to have effect.
- (2) In subsection (2) of that section (power by notice to require a person to furnish information within such period as may be specified in the notice) after the words “service of the notice” there shall be inserted the words “ , or at such time, ”.

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VALID FROM 01/04/1996

87 Section 72 of that Act (default powers of the Secretary of State) shall cease to have effect.

VALID FROM 01/04/2003

88 (1) Section 75 of that Act (meaning of “waste” etc.) shall be amended in accordance with the following provisions of this paragraph.

(2) For subsection (2) (definition of “waste”) there shall be substituted—

“(2) “Waste” means any substance or object in the categories set out in Schedule 2B to this Act which the holder discards or intends or is required to discard; and for the purposes of this definition—

“holder” means the producer of the waste or the person who is in possession of it; and

“producer” means any person whose activities produce waste or any person who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste.”

(3) Subsection (3) (presumption that anything discarded is waste unless the contrary is proved) shall cease to have effect.

(4) After subsection (9) there shall be added—

“(10) Schedule 2B to this Act (which reproduces Annex I to the Waste Directive) shall have effect.

(11) Subsection (2) above is substituted, and Schedule 2B to this Act is inserted, for the purpose of assigning to “waste” in this Part the meaning which it has in the Waste Directive by virtue of paragraphs (a) to (c) of Article 1 of, and Annex I to, that Directive, and those provisions shall be construed accordingly.

(12) In this section “the Waste Directive” means the <sup>M8</sup>directive of the Council of the European Communities, dated 15th July 1975, on waste, as amended by—

(a) the <sup>M9</sup>directive of that Council, dated 18th March 1991, amending directive [75/442/EEC](#) on waste; and

(b) the <sup>M10</sup>directive of that Council, dated 23rd December 1991, standardising and rationalising reports on the implementation of certain Directives relating to the environment.”

#### Marginal Citations

**M8** 75/442/EEC.

**M9** 91/156/EEC.

**M10** 91/692/EEC.

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VALID FROM 01/04/2000

- 89 (1) Section 79 of that Act (statutory nuisances) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (the paragraphs of which specify, subject to subsections (2) to (6A), the matters which constitute statutory nuisances) for the words “Subject to subsections (2) to (6A) below” there shall be substituted the words “ Subject to subsections (1A) to (6A) below ”.
- (3) After that subsection there shall be inserted—
- “(1A) No matter shall constitute a statutory nuisance to the extent that it consists of, or is caused by, any land being in a contaminated state.
- (1B) Land is in a “contaminated state” for the purposes of subsection (1A) above if, and only if, it is in such a condition, by reason of substances in, on or under the land, that—
- (a) harm is being caused or there is a possibility of harm being caused; or
- (b) pollution of controlled waters is being, or is likely to be, caused; and in this subsection “harm”, “pollution of controlled waters” and “substance” have the same meaning as in Part IIA of this Act.”.

#### Commencement Information

**I15** S. 89 wholly in force; s. 89 not in force at Royal Assent see s. 125(3); s. 89 in force for E. at 1.4.2000 by S.I. 2000/340, art. 2 (with art. 3); s. 89 in force for S. at 14.7.2000 by S.S.I. 2000/180, art. 2(1)(b) (subject to art. 2(2) and with art. 3); s. 89 in force for W. at 15.9.2001 by S.I. 2001/3211, art. 2(b) (with art. 3)

VALID FROM 01/04/1996

- 90 In section 141 of that Act (power to prohibit or restrict the importation or exportation of waste) subsection (5)(a)(ii) (power of Secretary of State by direction to make functions of certain authorities exercisable instead by him) shall cease to have effect.

VALID FROM 01/04/2000

- 91 Section 143 of that Act (public registers of land which may be contaminated) shall cease to have effect.

#### Commencement Information

**I16** S. 91 wholly in force; s. 91 not in force at Royal Assent see s. 125(3); s. 91 in force for E. at 1.4.2000 by S.I. 2000/340, art. 2 (with art. 3); s. 91 in force for S. at 14.7.2000 by S.S.I. 2000/180, art. 2(1)

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(b) (subject to art. 2(2) and with art. 3); S. 91 in force for W. at 15.9.2001 by S.I. 2001/3211, art. 2(b) (with art. 3)

VALID FROM 01/04/2000

- 92 In section 161 of that Act (regulations and orders) in subsection (4) (which specifies the orders under that Act which are not subject to negative resolution procedure under subsection (3)) after the words “does not apply to” there shall be inserted the words “a statutory instrument—
- (a) which contains an order under section 78M(4) above, or
  - (b) by reason only that it contains”.

#### Commencement Information

**I17** S. 92 wholly in force; s. 92 not in force at Royal Assent see s. 125(3); s. 92 in force for E. at 1.4.2000 by S.I. 2000/340, art. 2 (with art. 3); s. 92 in force for S. at 14.7.2000 by S.S.I. 2000/180, art. 2(1)(b) (subject to art. 2(2) and with art. 3); s. 92 in force for W. at 15.9.2001 by S.I. 2001/3211, art. 2(b) (with art. 3)

VALID FROM 01/04/1996

- 93 (1) Schedule 1 to that Act (authorisations for processes: supplementary provisions) shall be amended in accordance with the following provisions of this paragraph.
- (2) In Part I (grant of authorisations) in paragraph 3(3) (local inquiry or hearing to be held where request to be heard made by the applicant or the local enforcing authority) for the words “the local enforcing authority” there shall be substituted the words “ the enforcing authority ”.
- (3) In Part II (variation of authorisations) in paragraph 6, at the beginning of sub-paragraph (1) there shall be inserted the words “ Except as provided by sub-paragraph (1A) below, ”.
- (4) After that sub-paragraph there shall be inserted—
- “(1A) The requirements of this paragraph shall not apply in relation to any variations of an authorisation which an enforcing authority has decided to make in consequence of representations made in accordance with this paragraph and which are specified by way of variation of a variation notice by a further notice under section 10(3A) of this Act.”
- (5) After paragraph 7 (applications for variation) there shall be inserted—
- “ Call in of applications for variation*
- 8 (1) The Secretary of State may give directions to the enforcing authority requiring that any particular application or any class of applications for the variation of an authorisation shall be transmitted to him for determination pending a further direction under sub-paragraph (5) below.

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- (2) The enforcing authority shall inform the applicant of the fact that his application is being transmitted to the Secretary of State.
- (3) Where an application for the variation of an authorisation is referred to him under sub-paragraph (1) above the Secretary of State may—
- (a) cause a local inquiry to be held in relation to the application; or
  - (b) afford the applicant and the authority concerned an opportunity of appearing before and being heard by a person appointed by the Secretary of State;
- and he shall exercise one of the powers under this sub-paragraph in any case where, in the manner prescribed by regulations made by the Secretary of State, a request is made to be heard with respect to the application by the applicant or the enforcing authority concerned.
- (4) Subsections (2) to (5) of section 250 of the <sup>M11</sup>Local Government Act 1972 (supplementary provisions about local inquiries under that section) or, in relation to Scotland, subsections (2) to (8) of section 210 of the <sup>M12</sup>Local Government (Scotland) Act 1973 (which make similar provision) shall, without prejudice to the generality of subsection (1) of either of those sections, apply to local inquiries or other hearings in pursuance of sub-paragraph (3) above as they apply to inquiries in pursuance of either of those sections and, in relation to England and Wales, as if the reference to a local authority in subsection (4) of the said section 250 included a reference to the enforcing authority.
- (5) The Secretary of State shall, on determining any application transferred to him under this paragraph, give to the enforcing authority such a direction as he thinks fit as to whether it is to grant the application and, if so, as to the conditions that are to be attached to the authorisation by means of the variation notice.
- 9 The Secretary of State may give the enforcing authority a direction with respect to any particular application or any class of applications for the variation of an authorisation requiring the authority not to determine or not to proceed with the application or applications of that class until the expiry of any such period as may be specified in the direction, or until directed by the Secretary of State that they may do so, as the case may be.
- 10 (1) Except in a case where an application for the variation of an authorisation has been referred to the Secretary of State under paragraph 8 above and subject to sub-paragraph (3) below, the enforcing authority shall determine an application for the variation of an authorisation within the period of four months beginning with the day on which it received the application or within such longer period as may be agreed with the applicant.
- (2) If the enforcing authority fails to determine an application for the variation of an authorisation within the period allowed by or under this paragraph the application shall, if the applicant notifies the authority in writing that he treats the failure as such, be deemed to have been refused at the end of that period.
- (3) The Secretary of State may, by order, substitute for the period for the time being specified in sub-paragraph (1) above such other period as he



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considers appropriate and different periods may be substituted for different classes of application.”

#### Marginal Citations

M11 1972 c. 70.

M12 1973 c. 65.

VALID FROM 01/04/1996

94 In Schedule 2 to that Act (waste disposal authorities and companies) in paragraph 17(2) (which requires a waste regulation authority or waste disposal authority to furnish information on request to the Secretary of State) the words “a waste regulation authority or” shall cease to have effect.

VALID FROM 01/01/2005

95 After Schedule 2A to that Act there shall be inserted—

“SCHEDULE

2B E  
+W+S

#### CATEGORIES OF WASTE

- 1 Production or consumption residues not otherwise specified below.
- 2 Off-specification products.
- 3 Products whose date for appropriate use has expired.
- 4 Materials spilled, lost or having undergone other mishap, including any materials, equipment, etc, contaminated as a result of the mishap.
- 5 Materials contaminated or soiled as a result of planned actions (e.g. residues from cleaning operations, packing materials, containers, etc.).
- 6 Unusable parts (e.g. reject batteries, exhausted catalysts, etc.).
- 7 Substances which no longer perform satisfactorily (e.g. contaminated acids, contaminated solvents, exhausted tempering salts, etc.).
- 8 Residues of industrial processes (e.g. slags, still bottoms, etc.).
- 9 Residues from pollution abatement processes (e.g. scrubber sludges, baghouse dusts, spent filters, etc.).
- 10 Machining or finishing residues (e.g. lathe turnings, mill scales, etc.).
- 11 Residues from raw materials extraction and processing (e.g. mining residues, oil field slops, etc.).
- 12 Adulterated materials (e.g. oils contaminated with PCBs, etc.).
- 13 Any materials, substances or products whose use has been banned by law.



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| 14 | Products for which the holder has no further use (e.g. agricultural, household, office, commercial and shop discards, etc.). |
| 15 | Contaminated materials, substances or products resulting from remedial action with respect to land.                          |
| 16 | Any materials, substances or products which are not contained in the above categories.”                                      |

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