



Environment Act 2021

2021 CHAPTER 30

PART 1

ENVIRONMENTAL GOVERNANCE

CHAPTER 2

THE OFFICE FOR ENVIRONMENTAL PROTECTION

The OEP's enforcement functions

31 Failure of public authorities to comply with environmental law

- (1) Sections 32 to 41 make provision about functions of the OEP in relation to failures by public authorities to comply with environmental law.
- (2) For the purposes of those sections, a reference to a public authority failing to comply with environmental law means the following conduct by that authority—
 - (a) unlawfully failing to take proper account of environmental law when exercising its functions;
 - (b) unlawfully exercising, or failing to exercise, any function it has under environmental law.
- (3) In this Part “public authority” means a person carrying out any function of a public nature that is not a devolved function, a parliamentary function or a function of any of the following persons—
 - (a) the OEP;
 - (b) a court or tribunal;
 - (c) either House of Parliament;
 - (d) a devolved legislature;
 - (e) the Scottish Ministers, the Welsh Ministers, a Northern Ireland department or a Minister within the meaning of the Northern Ireland Act 1998.

Status: Point in time view as at 28/02/2022.

Changes to legislation: There are currently no known outstanding effects for the Environment Act 2021, Cross Heading: The OEP's enforcement functions. (See end of Document for details)

Commencement Information

- I1** S. 31 not in force at Royal Assent, see [s. 147\(3\)](#)
I2 S. 31 in force at 24.1.2022 by [S.I. 2022/48](#), [reg. 2\(g\)](#)

32 Complaints

- (1) A person may make a complaint to the OEP under this section if the person believes that a public authority has failed to comply with environmental law.
- (2) The OEP must prepare and publish a document which sets out the procedure by which complaints can be made.
- (3) A complaint under this section must be made in accordance with that procedure (as most recently published).
- (4) A complaint under this section may not be made by any person whose functions include functions of a public nature.
- (5) A complaint about a public authority may not be made under this section if—
 - (a) the authority operates a procedure for considering complaints (“an internal complaints procedure”) under which the complaint could be considered, and
 - (b) that procedure has not been exhausted.
- (6) A complaint under this section may not be made after the later of—
 - (a) the end of the 1 year period beginning with the day on which the alleged failure that is the subject of the complaint last occurred, and
 - (b) if the substance of the complaint was subject to an internal complaints procedure, the end of the 3 month period beginning with the day on which that procedure was exhausted.
- (7) The OEP may waive the time limit in subsection (6) if it considers that there are exceptional reasons for doing so.

Commencement Information

- I3** S. 32 not in force at Royal Assent, see [s. 147\(3\)](#)
I4 S. 32 in force at 24.1.2022 by [S.I. 2022/48](#), [reg. 2\(g\)](#)

33 Investigations

- (1) The OEP may carry out an investigation under this section if it receives a complaint made under section 32 that, in its view, indicates that—
 - (a) a public authority may have failed to comply with environmental law, and
 - (b) if it has, the failure would be a serious failure.
- (2) The OEP may carry out an investigation under this section without having received such a complaint if it has information that, in its view, indicates that—
 - (a) a public authority may have failed to comply with environmental law, and
 - (b) if it has, the failure would be a serious failure.

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- (3) An investigation under this section is an investigation into whether the public authority has failed to comply with environmental law.
- (4) The OEP must notify the public authority of the commencement of the investigation.
- (5) The OEP must prepare a report on the investigation and provide it to the public authority.
- (6) The OEP is not required to prepare a report until it has concluded that it intends to take no further steps under this Chapter in relation to the alleged failure to comply with environmental law that is the subject of the investigation.
- (7) The OEP is not required to prepare a report if it has applied for an environmental review, judicial review or statutory review (see sections 38 and 39) in relation to the alleged failure.
- (8) The report must set out—
 - (a) whether the OEP considers that the public authority has failed to comply with environmental law,
 - (b) the reasons the OEP came to that conclusion, and
 - (c) any recommendations the OEP may have (whether generally or for the public authority) in light of those conclusions.
- (9) The OEP may publish the report or parts of it.
- (10) If the public authority is not a Minister of the Crown, the OEP must also—
 - (a) notify the relevant Minister of the commencement of the investigation, and
 - (b) provide the relevant Minister with the report prepared under subsection (5).
- (11) In this Part “the relevant Minister”, in relation to a failure (or alleged failure) of a public authority to comply with environmental law, means the Minister of the Crown that the OEP considers appropriate having regard to the nature of the public authority and the nature of the failure.

Commencement Information

- I5** S. 33 not in force at Royal Assent, see [s. 147\(3\)](#)
I6 [S. 33](#) in force at 24.1.2022 by [S.I. 2022/48](#), [reg. 2\(g\)](#)

34 Duty to keep complainants informed

- (1) Where a person makes a complaint to the OEP alleging that a public authority has failed to comply with environmental law, the OEP must keep the complainant informed about its handling of the complaint.
- (2) In particular, the OEP must—
 - (a) notify the complainant if it does not intend to consider the complaint because the complaint was not made in accordance with section 32;
 - (b) notify the complainant if it has concluded that it will not be commencing an investigation under section 33 in relation to the complaint;
 - (c) notify the complainant if it commences an investigation under section 33 in relation to the complaint;
 - (d) if such an investigation is commenced, notify the complainant—

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- (i) where it provides a report under section 33(5) to the public authority that is the subject of the investigation, that it has provided it;
- (ii) where it applies for an environmental review (see section 38), for permission to apply for judicial review or for statutory review (see section 39), in relation to the alleged failure to comply with environmental law that is the subject of the investigation, that it has made such an application;
- (e) provide the complainant with a copy of any document published under section 33(9) in relation to any investigation in relation to the complaint.

Commencement Information

- I7** S. 34 not in force at Royal Assent, see **s. 147(3)**
- I8** S. 34 in force at 24.1.2022 by **S.I. 2022/48, reg. 2(g)**

35 Information notices

- (1) The OEP may give an information notice to a public authority if—
 - (a) the OEP has reasonable grounds for suspecting that the authority has failed to comply with environmental law, and
 - (b) it considers that the failure, if it occurred, would be serious.
- (2) An information notice is a notice which—
 - (a) describes an alleged failure of a public authority to comply with environmental law,
 - (b) explains why the OEP considers that the alleged failure, if it occurred, would be serious, and
 - (c) requests that the authority provide such information relating to the allegation as may be specified in the notice.
- (3) The recipient of an information notice must—
 - (a) respond in writing to the notice, and
 - (b) so far as is reasonably practicable, provide the OEP with the information requested in the notice.
- (4) The recipient of an information notice must comply with subsection (3) by—
 - (a) the end of the 2 month period beginning with the day on which the notice was given, or
 - (b) such later date as may be specified in the notice.
- (5) The written response to an information notice must set out—
 - (a) the recipient's response to the allegation described in the notice, and
 - (b) what steps (if any) the recipient intends to take in relation to the allegation.
- (6) The OEP may—
 - (a) withdraw an information notice;
 - (b) give more than one information notice in respect of the same alleged failure of a public authority to comply with environmental law.

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- (7) Where the OEP intends to give an information notice to a public authority in respect of an alleged failure to comply with environmental law which relates to emissions of greenhouse gases (within the meaning of the Climate Change Act 2008), the OEP—
- (a) must notify the Committee on Climate Change of its intention before it gives the notice to the authority, and
 - (b) must provide that Committee with such information relating to the alleged failure as the OEP considers appropriate.

Commencement Information

I9 S. 35 not in force at Royal Assent, see [s. 147\(3\)](#)

I10 S. 35 in force at 24.1.2022 by [S.I. 2022/48](#), [reg. 2\(g\)](#)

36 Decision notices

- (1) The OEP may give a decision notice to a public authority if—
- (a) the OEP is satisfied, on the balance of probabilities, that the authority has failed to comply with environmental law, and
 - (b) it considers that the failure is serious.
- (2) A decision notice is a notice that—
- (a) describes a failure of a public authority to comply with environmental law,
 - (b) explains why the OEP considers that the failure is serious, and
 - (c) sets out the steps the OEP considers the authority should take in relation to the failure (which may include steps designed to remedy, mitigate or prevent reoccurrence of the failure).
- (3) The recipient of a decision notice must respond in writing to that notice by—
- (a) the end of the 2 month period beginning with the day on which the notice was given, or
 - (b) such later date as may be specified in the notice.
- (4) The written response to a decision notice must set out—
- (a) whether the recipient agrees that the failure described in the notice occurred,
 - (b) whether the recipient intends to take the steps set out in the notice, and
 - (c) what other steps (if any) the recipient intends to take in relation to the failure described in the notice.
- (5) The OEP—
- (a) may not give a decision notice to a public authority unless it has first given at least one information notice relating to the failure of the authority to comply with environmental law that is described in the decision notice;
 - (b) may withdraw a decision notice.

Commencement Information

I11 S. 36 not in force at Royal Assent, see [s. 147\(3\)](#)

I12 S. 36 in force at 24.1.2022 by [S.I. 2022/48](#), [reg. 2\(g\)](#)

Status: Point in time view as at 28/02/2022.

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37 **Linked notices**

- (1) If the OEP gives an information notice or a decision notice to more than one public authority in respect of the same or similar conduct, it may determine that those notices are linked.
 - (2) A Minister of the Crown may request that the OEP determine that information notices or decision notices are linked and the OEP must have regard to that request.
 - (3) The OEP must provide the recipient of an information notice or a decision notice (a “principal notice”) with a copy of every information notice or decision notice which is linked to it (and such a notice is referred to in this section as a “linked notice”).
 - (4) The OEP must provide the recipient of a principal notice with a copy of any relevant correspondence, relating to a linked notice, between the OEP and the recipient of that linked notice.
 - (5) The OEP must provide the recipient of a principal notice with a copy of any relevant correspondence between the OEP and the relevant Minister that relates to a linked notice.
 - (6) Subsection (5) does not apply where either the recipient of the principal notice or the linked notice is a Minister of the Crown.
- [^{F1}(6A) If the OEP considers that an information notice or a decision notice relates to conduct that is the same as or similar to conduct that is the subject of a Northern Ireland information notice or Northern Ireland decision notice, it may determine that those notices are linked.
- (6B) The OEP must provide the recipient of an information notice or a decision notice with—
 - (a) a copy of every Northern Ireland information notice or Northern Ireland decision notice which is linked to it, and
 - (b) a copy of any relevant correspondence, relating to such a notice, between the OEP and the recipient of that notice.]
 - (7) The obligation to provide a copy of any notice or correspondence under this section does not apply where the OEP considers that in the circumstances it would not be in the public interest to do so.
 - (8) For the purposes of this section, correspondence is relevant if—
 - (a) it is not correspondence in connection with an environmental review or any other legal proceedings (such as judicial review), and
 - (b) it is not correspondence sent by virtue of section 40(1)(a) or (b).

Textual Amendments

F1 S. 37(6A)(6B) inserted (28.2.2022) by Environment Act 2021 (c. 30), s. 147(6)(7), **Sch. 3 para. 26** (with s. 144); S.R. 2022/54, art. 2(1)(a)

Commencement Information

I13 S. 37 not in force at Royal Assent, see s. 147(3)

I14 S. 37 in force at 24.1.2022 by S.I. 2022/48, reg. 2(g)

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38 Environmental review

- (1) Where the OEP has given a decision notice to a public authority it may apply to the court for an environmental review, but only if—
 - (a) it is satisfied, on the balance of probabilities, that the authority has failed to comply with environmental law, and
 - (b) it considers that the failure is serious.
- (2) An environmental review is a review of alleged conduct of the authority that is described in the decision notice as constituting a failure to comply with environmental law.
- (3) An application for an environmental review may not be made—
 - (a) before the earlier of—
 - (i) the end of the period within which the authority must respond to the decision notice in accordance with section 36(3), and
 - (ii) the date on which the OEP receives the authority's response to that notice, or
 - (b) before the expiry of any time limit which applies to the commencement of judicial review or other similar legal proceedings for questioning the alleged conduct.
- (4) Any restriction imposed by or under any other enactment on questioning the conduct of a public authority in legal proceedings does not apply to an environmental review.
- (5) On an environmental review the court must determine whether the authority has failed to comply with environmental law, applying the principles applicable on an application for judicial review.
- (6) If the court finds that the authority has failed to comply with environmental law, it must make a statement to that effect (a “statement of non-compliance”).
- (7) A statement of non-compliance does not affect the validity of the conduct in respect of which it is given.
- (8) Where the court makes a statement of non-compliance it may grant any remedy that could be granted by it on a judicial review other than damages, but only if Condition A or Condition B is met.
- (9) Condition A is that the court is satisfied that granting the remedy would not—
 - (a) be likely to cause substantial hardship to, or substantially prejudice the rights of, any person other than the authority, or
 - (b) be detrimental to good administration.
- (10) Condition B is that Condition A is not met but the court is satisfied that—
 - (a) granting the remedy is necessary in order to prevent or mitigate serious damage to the natural environment or to human health, and
 - (b) there is an exceptional public interest reason to grant it.
- (11) In deciding whether to grant a remedy the court must (subject to subsection (8)) apply the principles applicable on an application for judicial review; but this does not require the court to apply section 31(2A) of the Senior Courts Act 1981 (High Court to refuse to grant relief where the outcome for the applicant not substantially different) on an environmental review in England and Wales.

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- (12) If, on an environmental review, the court has made a statement of non-compliance in respect of a public authority, and the statement has not been overturned on appeal, the authority must publish a statement that sets out the steps it intends to take in light of the review.
- (13) A statement under subsection (12) must be published before the end of the 2 month period beginning with the day the review (including any appeal) concludes.
- (14) In this section—
- “the court” means—
- (a) in relation to an environmental review arising under the law of England and Wales or Northern Ireland, the High Court, or
- (b) in relation to an environmental review arising under the law of Scotland, the Court of Session;
- “enactment” has the same meaning as in the European Union (Withdrawal) Act 2018;
- “the principles applicable on an application for judicial review” means, in relation to an environmental review, the principles that would apply on an application for judicial review in the jurisdiction under which the environmental review arises;
- “remedy” includes any relief or order.

Commencement Information

I15 S. 38 not in force at Royal Assent, see [s. 147\(3\)](#)

I16 S. 38 in force at 24.1.2022 by [S.I. 2022/48, reg. 2\(g\)](#)

39 Judicial review: powers to apply in urgent cases and to intervene

- (1) The OEP may apply for judicial review, or a statutory review, in relation to conduct of a public authority (whether or not it has given an information notice or a decision notice to the authority in respect of that conduct) if—
- (a) the OEP considers that the conduct constitutes a serious failure to comply with environmental law, and
- (b) the urgency condition is met.
- (2) The urgency condition is that making an application under subsection (1) (rather than proceeding under sections 35 to 38) is necessary to prevent, or mitigate, serious damage to the natural environment or to human health.
- (3) Section 31(2A), (3C) and (3D) of the Senior Courts Act 1981 (High Court to refuse to grant leave or relief where the outcome for the applicant not substantially different) does not apply to an application for judicial review made under subsection (1) in England and Wales.
- (4) If, on an application for judicial review or a statutory review made by virtue of subsection (1), there is a finding that a public authority has failed to comply with environmental law, and the finding has not been overturned on appeal, the authority must publish a statement that sets out the steps it intends to take in light of the finding.

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- (5) A statement under subsection (4) must be published before the end of the 2 month period beginning with the day the proceedings relating to the application for judicial review or the statutory review (including any appeal) conclude.
- (6) Subsection (7) applies to proceedings (including any appeal) that—
 - (a) are in respect of an application for judicial review or a statutory review, and
 - (b) relate to an alleged failure by a public authority to comply with environmental law (however the allegation is framed in those proceedings).
- (7) If the OEP considers that the alleged failure, if it occurred, would be serious, it may apply to intervene in the proceedings (whether it considers that the public authority has, or has not, failed to comply with environmental law).
- (8) In this Part—
 - (a) except in section 38, reference to an application for judicial review includes an application for the permission of the High Court or, as the case may be, the Court of Session to apply for judicial review;
 - (b) “statutory review” means a claim for statutory review under—
 - (i) section 287 or 288 of the Town and Country Planning Act 1990,
 - (ii) section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990,
 - (iii) section 22 of the Planning (Hazardous Substances) Act 1990, or
 - (iv) section 113 of the Planning and Compulsory Purchase Act 2004.

Commencement Information

I17 S. 39 not in force at Royal Assent, see **s. 147(3)**

I18 S. 39 in force at 24.1.2022 by **S.I. 2022/48, reg. 2(g)**

40 Duty of the OEP to involve the relevant Minister

- (1) Where the recipient of an information notice or a decision notice is not a Minister of the Crown, the OEP must—
 - (a) provide the relevant Minister with—
 - (i) a copy of the notice and,
 - (ii) a copy of any correspondence between the OEP and the recipient of the notice that relates to the notice (apart from correspondence sent by virtue of paragraph (b)), and
 - (b) provide the recipient of the notice with a copy of any correspondence between the OEP and the relevant Minister that relates to the notice (apart from correspondence sent by virtue of paragraph (a)).
- (2) The obligation to provide a copy of any notice or correspondence under subsection (1) does not apply where the OEP considers that in the circumstances it would not be in the public interest to do so.
- (3) Where the OEP makes an application for an environmental review, judicial review or statutory review in which the relevant Minister is not a party, it must provide the relevant Minister with—
 - (a) a copy of the application, and

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- (b) a statement of whether the OEP considers the relevant Minister should participate in the review (for example, by applying to be a party).

Commencement Information

I19 S. 40 not in force at Royal Assent, see [s. 147\(3\)](#)

I20 S. 40 in force at 24.1.2022 by [S.I. 2022/48](#), [reg. 2\(g\)](#)

41 Public statements

- (1) Where the OEP gives an information notice or a decision notice, applies for an environmental review, judicial review or statutory review or applies to intervene in a judicial review or statutory review, it must publish a statement that—
- (a) states that the OEP has taken that step,
 - (b) describes the failure (or alleged failure) of a public authority to comply with environmental law in relation to which that step was taken, and
 - (c) sets out such further information as the OEP considers appropriate.
- (2) Subsection (1) does not apply if the OEP considers that in the circumstances it would not be in the public interest to publish a statement.

Commencement Information

I21 S. 41 not in force at Royal Assent, see [s. 147\(3\)](#)

I22 S. 41 in force at 24.1.2022 by [S.I. 2022/48](#), [reg. 2\(g\)](#)

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