

*Status: Point in time view as at 28/02/2022.*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, PART 1. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 3 **U.K.**

#### THE OFFICE FOR ENVIRONMENTAL PROTECTION: NORTHERN IRELAND

#### **PART 1** **U.K.**

##### THE OEP'S NORTHERN IRELAND FUNCTIONS

###### *Monitoring and reporting on the Department's environmental improvement plans*

- 1 (1) The OEP must monitor progress in improving the natural environment in accordance with the current environmental improvement plan.
- (2) The OEP must prepare a progress report for each annual reporting period.
- (3) A progress report for an annual reporting period is a report on progress made in that period in improving the natural environment in accordance with the current environmental improvement plan.
- (4) An annual reporting period is a period for which the Department must prepare a report under paragraph 2 of Schedule 2 (a "Schedule 2 report").
- (5) In reporting on progress made in an annual reporting period, the OEP must consider—
  - (a) the Schedule 2 report for that period,
  - (b) the data published by the Department under paragraph 5 of Schedule 2 that relates to that period, and
  - (c) any other reports, documents or information it considers appropriate.
- (6) A progress report for an annual reporting period may include—
  - (a) consideration of how progress could be improved, and
  - (b) consideration of the adequacy of the data published by the Department under paragraph 5 of Schedule 2.
- (7) The OEP must—
  - (a) arrange for its reports under this paragraph to be laid before the Northern Ireland Assembly, and
  - (b) publish them.
- (8) A progress report for an annual reporting period must be laid no later than 6 months after the Schedule 2 report for that period is laid before the Northern Ireland Assembly.
- (9) The Department must—
  - (a) respond to a report under this paragraph, and

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- (b) lay before the Northern Ireland Assembly, and publish, a copy of the response.
- (10) Where a report under this paragraph contains a recommendation for how progress could be improved, the response must address that recommendation.
- (11) The response—
  - (a) must be laid no later than 12 months after the report is laid, and
  - (b) may be included in a Schedule 2 report.

#### **Commencement Information**

- I1** Sch. 3 para. 1 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)
- I2** Sch. 3 para. 1 in force at 28.2.2022 by [S.R. 2022/54](#), [art. 2\(1\)\(a\)](#)

#### *Monitoring and reporting on environmental law*

- 2 (1) The OEP must monitor the implementation of Northern Ireland environmental law.
- (2) The OEP may report on any matter concerned with the implementation of Northern Ireland environmental law.
- (3) But the OEP must not monitor the implementation of, or report on, a matter within the remit of the Committee on Climate Change.
- (4) A matter is within the remit of the Committee on Climate Change if it is a matter on which the Committee is, or may be, required to advise or report under Part 1, sections 34 to 36, or section 48 of the Climate Change Act 2008.
- (5) The OEP must—
  - (a) arrange for its reports under this paragraph to be laid before the Northern Ireland Assembly, and
  - (b) publish them.
- (6) The Department must—
  - (a) respond to a report under this paragraph, and
  - (b) lay before the Northern Ireland Assembly, and publish, a copy of the response.
- (7) The response to a report under this paragraph must be laid no later than 3 months after the report is laid.

#### **Commencement Information**

- I3** Sch. 3 para. 2 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)
- I4** Sch. 3 para. 2 in force at 28.2.2022 by [S.R. 2022/54](#), [art. 2\(1\)\(a\)](#)

#### *Advising on changes to Northern Ireland environmental law etc*

- 3 (1) The OEP must give advice to any Northern Ireland department about—
  - (a) any proposed change to Northern Ireland environmental law, or
  - (b) any other matter relating to the natural environment,

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- on which that department requires it to give advice.
- (2) The Northern Ireland department may specify matters which the OEP is to take into account in giving the required advice.
  - (3) The OEP may give advice to any Northern Ireland department about any changes to Northern Ireland environmental law proposed by that department.
  - (4) Advice under this paragraph is to be given in writing to the Northern Ireland department concerned.
  - (5) The OEP must publish—
    - (a) its advice, and
    - (b) if the advice is given under sub-paragraph (1), a statement of the matter on which it was required to give advice and any matters specified under sub-paragraph (2).
  - (6) The Northern Ireland department concerned may, if it thinks fit, lay before the Northern Ireland Assembly—
    - (a) the advice, and
    - (b) any response that department may make to the advice.

#### Commencement Information

**I5** Sch. 3 para. 3 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

**I6** [Sch. 3 para. 3](#) in force at 28.2.2022 by [S.R. 2022/54](#), [art. 2\(1\)\(a\)](#)

#### *Failure of relevant public authorities to comply with environmental law*

- 4 (1) Paragraphs [6](#) to [15](#) make provision about functions of the OEP in relation to failures by relevant public authorities to comply with relevant environmental law.
- (2) For the purposes of those paragraphs, a reference to a relevant public authority failing to comply with relevant environmental law means the following conduct by that authority—
  - (a) unlawfully failing to take proper account of relevant environmental law when exercising its functions;
  - (b) unlawfully exercising, or failing to exercise, any function it has under relevant environmental law.

#### Commencement Information

**I7** Sch. 3 para. 4 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

**I8** [Sch. 3 para. 4](#) in force at 28.2.2022 by [S.R. 2022/54](#), [art. 2\(1\)\(a\)](#)

#### *Meaning of relevant environmental law, relevant public authority etc*

- 5 (1) The following definitions apply for the purpose of this Part of this Schedule.
- (2) “Relevant environmental law” means—
  - (a) in relation to a Northern Ireland public authority, UK environmental law or Northern Ireland environmental law;

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- (b) in relation to any other relevant public authority, Northern Ireland environmental law.
- (3) “Relevant public authority” means—
- (a) a Northern Ireland public authority, or
  - (b) a person, other than a Northern Ireland public authority, carrying out any function of a public nature in or as regards Northern Ireland that is not a parliamentary function or a function of any of the following persons—
    - (i) the OEP;
    - (ii) a court or tribunal;
    - (iii) either House of Parliament;
    - (iv) the Northern Ireland Assembly.
- (4) “Northern Ireland public authority” means—
- (a) a Northern Ireland department, or
  - (b) a person carrying out a Northern Ireland devolved function (including an implementation body carrying out such a function) that is not a function in connection with proceedings in the Northern Ireland Assembly or a function of any of the following persons—
    - (i) the OEP;
    - (ii) a court or tribunal;
    - (iii) the Northern Ireland Assembly.
- (5) “Northern Ireland devolved function” means a function of a public nature exercisable in or as regards Northern Ireland that could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998).

**Commencement Information**

**I9** Sch. 3 para. 5 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

**I10** Sch. 3 para. 5 in force at 28.2.2022 by [S.R. 2022/54](#), [art. 2\(1\)\(a\)](#)

*Complaints about relevant public authorities*

- 6 (1) A person may make a complaint to the OEP under this paragraph if the person believes that a relevant public authority has failed to comply with relevant 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 paragraph must be made in accordance with that procedure (as most recently published).
- (4) A complaint under this paragraph may not be made by any person whose functions include functions of a public nature.
- (5) A complaint about a relevant public authority may not be made under this paragraph if—
- (a) the authority operates a procedure for considering complaints (“an internal complaints procedure”) under which the complaint could be considered, and

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- (b) that procedure has not been exhausted.
- (6) A complaint under this paragraph 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 sub-paragraph (6) if it considers that there are exceptional reasons for doing so.

#### Commencement Information

**I11** Sch. 3 para. 6 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

**I12** Sch. 3 para. 6 in force at 28.2.2022 by [S.R. 2022/54](#), [art. 2\(1\)\(a\)](#)

#### *Investigations: relevant public authorities*

- 7
- (1) The OEP may carry out an investigation under this paragraph if it receives a complaint made under paragraph 6 that, in its view, indicates that—
    - (a) a relevant public authority may have failed to comply with relevant environmental law, and
    - (b) if it has, the failure would be a serious failure.
  - (2) The OEP may carry out an investigation under this paragraph without having received such a complaint if it has information that, in its view, indicates that—
    - (a) a relevant public authority may have failed to comply with relevant environmental law, and
    - (b) if it has, the failure would be a serious failure.
  - (3) An investigation under this paragraph is an investigation into whether the relevant public authority has failed to comply with relevant environmental law.
  - (4) The OEP must notify the relevant public authority of the commencement of the investigation.
  - (5) The OEP must prepare a report on the investigation and provide it to the relevant 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 Part of this Schedule in relation to the alleged failure to comply with relevant environmental law that is the subject of the investigation.
  - (7) The OEP is not required to prepare a report if it has made a review application, or an application for judicial review by virtue of paragraph 13(1), in relation to the alleged failure.
  - (8) The report must set out—
    - (a) whether the OEP considers that the relevant public authority has failed to comply with relevant environmental law,
    - (b) the reasons the OEP came to that conclusion, and

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- (c) any recommendations the OEP may have (whether generally or for the relevant 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 Northern Ireland department, the OEP must also—
- (a) notify the relevant department of the commencement of the investigation, and
  - (b) provide the relevant department with the report prepared under subparagraph (5).
- (11) In this Part “the relevant department”, in relation to a failure (or alleged failure) of a relevant public authority to comply with relevant environmental law, means the Northern Ireland department that the OEP considers appropriate having regard to the nature of the authority and the nature of the failure.

**Commencement Information**

**I13** Sch. 3 para. 7 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

**I14** [Sch. 3 para. 7](#) in force at 28.2.2022 by [S.R. 2022/54](#), [art. 2\(1\)\(a\)](#)

*Duty to keep complainants informed*

- 8 (1) Where a person makes a complaint to the OEP alleging that a relevant public authority has failed to comply with relevant 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 paragraph 6;
  - (b) notify the complainant if it has concluded that it will not be commencing an investigation under paragraph 7 in relation to the complaint;
  - (c) notify the complainant if it commences an investigation under paragraph 7 in relation to the complaint;
  - (d) if such an investigation is commenced, notify the complainant—
    - (i) where it provides a report under paragraph 7(5) to the relevant public authority that is the subject of the investigation, that it has provided it;
    - (ii) where it makes a review application (see paragraph 12), or an application for judicial review by virtue of paragraph 13(1), in relation to the alleged failure to comply with relevant 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 paragraph 7(9) in relation to any investigation in relation to the complaint.

**Commencement Information**

**I15** Sch. 3 para. 8 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

**I16** [Sch. 3 para. 8](#) in force at 28.2.2022 by [S.R. 2022/54](#), [art. 2\(1\)\(a\)](#)

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### Information notices

- 9 (1) The OEP may give an information notice to a relevant public authority if—
- (a) the OEP has reasonable grounds for suspecting that the authority has failed to comply with relevant 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 relevant public authority to comply with relevant 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 sub-paragraph (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 relevant public authority to comply with relevant environmental law.
- (7) Where the OEP intends to give an information notice to a relevant public authority in respect of an alleged failure to comply with relevant 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

**I17** Sch. 3 para. 9 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

**I18** Sch. 3 para. 9 in force at 28.2.2022 by [S.R. 2022/54](#), [art. 2\(1\)\(a\)](#)

### Decision notices

- 10 (1) The OEP may give a decision notice to a relevant public authority if—

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- (a) the OEP is satisfied, on the balance of probabilities, that the authority has failed to comply with relevant 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 relevant public authority to comply with relevant 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 relevant public authority unless it has first given at least one information notice relating to the failure of the authority to comply with relevant environmental law that is described in the decision notice;
  - (b) may withdraw a decision notice.

#### **Commencement Information**

**I19** Sch. 3 para. 10 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

**I20** Sch. 3 para. 10 in force at 28.2.2022 by [S.R. 2022/54](#), [art. 2\(1\)\(a\)](#)

#### *Linked notices*

- 11 (1) If the OEP gives an information notice or a decision notice to more than one relevant public authority in respect of the same or similar conduct, it may determine that those notices are linked.
- (2) A Northern Ireland department 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.



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- (5) The OEP must provide the recipient of a principal notice with a copy of any relevant correspondence between the OEP and the relevant department that relates to a linked notice.
- (6) Sub-paragraph (5) does not apply where either the recipient of the principal notice or the linked notice is a Northern Ireland department.
- (7) 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 UK information notice or UK decision notice, it may determine that those notices are linked.
- (8) The OEP must provide the recipient of an information notice or a decision notice with—
  - (a) a copy of every UK information notice or UK 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.
- (9) The obligation to provide a copy of any notice or correspondence under this paragraph does not apply where the OEP considers that in the circumstances it would not be in the public interest to do so.
- (10) For the purposes of this paragraph, correspondence is relevant if—
  - (a) it is not correspondence in connection with a review application or any other legal proceedings, and
  - (b) it is not correspondence sent by virtue of paragraph 14(1)(a) or (b).
- (11) In this Part of this Schedule—

“UK decision notice” means a notice given under section 36;  
“UK information notice” means a notice given under section 35.

#### **Commencement Information**

**I21** Sch. 3 para. 11 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

**I22** Sch. 3 para. 11 in force at 28.2.2022 by [S.R. 2022/54](#), [art. 2\(1\)\(a\)](#)

#### *Review application*

- 12 (1) The OEP may make a review application in relation to conduct described in a decision notice given to a relevant public authority as a failure of the authority to comply with relevant environmental law, but only if—
  - (a) it is satisfied, on the balance of probabilities, that the authority has failed to comply with relevant environmental law, and
  - (b) it considers that the failure is serious.
- (2) A review application is an application for judicial review in respect of conduct of a relevant public authority, and any reference in this Part of this Schedule to a review application is to an application made by virtue of sub-paragraph (1).
- (3) A review application may not be made before the earlier of—
  - (a) the end of the period within which the authority must respond to the decision notice that precedes the application (see paragraph 10(3)), and

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- (b) the date on which the OEP receives the authority's response to that notice.
- (4) Subject to that, the OEP may make a review application at any time (and accordingly any time limit, that would otherwise apply to the making of a review application, does not apply).
- (5) The High Court may grant a remedy on a review application only if Condition A or Condition B is met.
- (6) 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.
- (7) 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.
- (8) If, on a review application, there is a finding that a relevant public authority has failed to comply with relevant 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.
- (9) A statement under sub-paragraph (8) must be published before the end of the 2 month period beginning with the day the proceedings relating to the review application (including any appeal) conclude.
- (10) In this Part of this Schedule reference to an application for judicial review includes an application for the permission of the High Court to apply for judicial review.

**Commencement Information**

**I23** Sch. 3 para. 12 not in force at Royal Assent, see **s. 147(6)(7)**

**I24** Sch. 3 para. 12 in force at 28.2.2022 by S.R. 2022/54, **art. 2(1)(a)**

*Judicial review: powers to apply to prevent serious damage and to intervene*

- 13 (1) The OEP may make an application for judicial review in relation to conduct of a relevant 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 relevant environmental law, and
  - (b) the urgency condition is met.
- (2) The urgency condition is that making an application under sub-paragraph (1) (rather than proceeding under paragraphs 9 to 12) is necessary to prevent, or mitigate, serious damage to the natural environment or to human health.
- (3) If, on an application for judicial review made by virtue of sub-paragraph (1), there is a finding that a relevant public authority has failed to comply with relevant 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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- (4) A statement under sub-paragraph (3) must be published before the end of the 2 month period beginning with the day the proceedings relating to the application for judicial review (including any appeal) conclude.
- (5) Sub-paragraph (6) applies to proceedings (including any appeal) that—
  - (a) are in respect of an application for judicial review, and
  - (b) relate to an alleged failure by a relevant public authority to comply with relevant environmental law (however the allegation is framed in those proceedings).
- (6) 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 relevant public authority has, or has not, failed to comply with relevant environmental law).

#### Commencement Information

**I25** Sch. 3 para. 13 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

**I26** Sch. 3 para. 13 in force at 28.2.2022 by [S.R. 2022/54](#), [art. 2\(1\)\(a\)](#)

#### *Duty of the OEP to involve the relevant department*

- 14 (1) Where the recipient of an information notice or a decision notice is not a Northern Ireland department, the OEP must—
- (a) provide the relevant department 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 department 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 sub-paragraph (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 a review application, or an application for judicial review by virtue of paragraph 13(1), in which the relevant department is not a party, it must provide the relevant department with—
- (a) a copy of the application, and
  - (b) a statement of whether the OEP considers the relevant department should participate in the review (for example, by applying to be a party).

#### Commencement Information

**I27** Sch. 3 para. 14 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

**I28** Sch. 3 para. 14 in force at 28.2.2022 by [S.R. 2022/54](#), [art. 2\(1\)\(a\)](#)

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### *Public statements*

- 15 (1) Where the OEP gives an information notice or a decision notice, makes a review application or an application for judicial review by virtue of paragraph 13(1) or applies to intervene in a judicial 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 relevant public authority to comply with relevant environmental law in relation to which that step was taken, and
  - (c) sets out such further information as the OEP considers appropriate.
- (2) Sub-paragraph (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**

**I29** Sch. 3 para. 15 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

**I30** Sch. 3 para. 15 in force at 28.2.2022 by [S.R. 2022/54](#), [art. 2\(1\)\(a\)](#)

### *Disclosures to the OEP*

- 16 (1) No obligation of secrecy imposed by statute or otherwise prevents a person from—
- (a) in accordance with section 27(1), providing the OEP with information in connection with an investigation under paragraph 7, an information notice or a decision notice, or
  - (b) providing information to the OEP in accordance with paragraph 9(3)(b).
- (2) But nothing in this Part of this Schedule—
- (a) requires a person to provide the OEP with information that the person would be entitled to refuse to provide in civil proceedings on grounds of legal professional privilege (or, in Scotland, confidentiality of communications), or
  - (b) requires a person to provide the OEP with information that the person would be entitled, or required by any rule of law, to refuse to provide in civil proceedings on grounds of public interest immunity.
- (3) No obligation of secrecy imposed by statute or otherwise prevents the Northern Ireland Public Services Ombudsman from providing information to the OEP—
- (a) for purposes connected with the exercise of the OEP’s functions under paragraph 7;
  - (b) for purposes connected with the co-ordination of the OEP’s functions that relate to investigations under paragraph 7 and the Ombudsman’s functions that relate to investigations by the Ombudsman.
- (4) Nothing in this Part of this Schedule requires or authorises a disclosure of information that would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the duties imposed and powers conferred by this Part of this Schedule).
- (5) In this paragraph “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act).

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#### Commencement Information

**I31** Sch. 3 para. 16 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

**I32** Sch. 3 para. 16 in force at 28.2.2022 for N.I. by [S.R. 2022/54](#), [art. 2\(1\)\(a\)](#)

#### Confidentiality of proceedings

- 17 (1) The OEP must not disclose—
- (a) information obtained under paragraph [9\(3\)\(b\)](#), or
  - (b) correspondence between the OEP and a relevant public authority that—
    - (i) relates to a particular information notice or decision notice, or
    - (ii) is, or contains, such a notice.
- (2) Sub-paragraph (1) does not apply to a disclosure—
- (a) other than a disclosure of an information notice or a decision notice, made with the consent of the person who provided the information or correspondence;
  - (b) made for purposes connected with an investigation under paragraph [7](#) or section 33;
  - (c) made for purposes connected with the co-ordination of the OEP’s functions that relate to investigations under paragraph [7](#) and the Northern Ireland Public Services Ombudsman’s functions that relate to investigations by the Ombudsman;
  - (d) made for purposes connected with the co-ordination of the OEP’s functions that relate to investigations under section 33 and functions of a relevant ombudsman that relate to investigations by that ombudsman;
  - (e) made for the purposes of any publication of a report (or part of it) on an investigation under paragraph [7](#) or section 33;
  - (f) made for purposes connected with the exercise of the OEP’s functions under paragraphs [9](#) to [15](#) or sections 35 to 41 (enforcement);
  - (g) made to a devolved environmental governance body for purposes connected with the exercise of a devolved environmental governance function;
  - (h) made for purposes connected with the protection of the natural environment in a country or territory outside the United Kingdom, to an authority of that country or territory, or an international organisation, that has functions in connection with the protection of the natural environment in that country or territory;
  - (i) of information, or correspondence, that relates only to a matter in relation to which the OEP has concluded that it intends to take no further steps under this Part of this Schedule or under Chapter 2 of Part 1 of this Act.
- (3) A relevant public authority must not disclose correspondence between the OEP and that, or any other, relevant public authority that—
- (a) relates to a particular information notice, decision notice, UK information notice or UK decision notice, or
  - (b) is, or contains, such a notice.
- (4) Sub-paragraph (3) does not apply to a disclosure—
- (a) made—

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- (i) in the case of a disclosure of correspondence between another relevant public authority and the OEP other than correspondence that is, or contains, an information notice, a decision notice, a UK information notice or a UK decision notice, with the consent of that authority and the OEP, or
  - (ii) in any other case, with the specific or general consent of the OEP;
  - (b) made for purposes connected with co-operating with any investigation under paragraph 7 or section 33;
  - (c) made for purposes connected with responding to any information notice or decision notice;
  - (d) made for purposes connected with any proceedings in relation to a review application, an environmental review, a judicial review or a statutory review (within the meaning given by section 39(8)(b)).
- (5) The OEP may not give a person consent to disclose an information notice, a decision notice, a UK information notice or a UK decision notice unless that notice relates only to a matter in relation to which the OEP has concluded that it intends to take no further steps under this Part of this Schedule or under Chapter 2 of Part 1 of this Act.
- (6) If a relevant public authority requests the consent of the OEP to disclose correspondence that relates only to a matter in relation to which the OEP has concluded that it intends to take no further steps under this Part of this Schedule or under Chapter 2 of Part 1 of this Act, the OEP may not withhold that consent.
- (7) If information referred to in sub-paragraph (1) and held by the OEP, or referred to in sub-paragraph (3) and held by a relevant public authority, is environmental information for the purposes of the Environmental Information Regulations 2004 (S.I. 2004/3391) or the Environmental Information (Scotland) Regulations 2004 (S.S.I. 2004/520), it is held by that person, for the purposes of the application of those regulations to that information, in connection with confidential proceedings.

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- I33** Sch. 3 para. 17 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)
- I34** Sch. 3 para. 17(1)-(6) in force at 28.2.2022 by [S.R. 2022/54](#), [art. 2\(1\)\(a\)](#)
- I35** Sch. 3 para. 17(7) in force at 28.2.2022 for N.I. by [S.R. 2022/54](#), [art. 2\(1\)\(a\)](#)

#### *Meaning of UK environmental law and Northern Ireland environmental law*

- 18 (1) In this Part of this Schedule “UK environmental law” means anything that is environmental law for the purposes of Part 1 of this Act (see section 46), but not anything that is environmental law only for the purposes of section 20.
- (2) In this Part of this Schedule “Northern Ireland environmental law” means any Northern Ireland legislative provision that—
- (a) is mainly concerned with environmental protection, and
  - (b) is not concerned with an excluded matter.
- (3) Excluded matters are—
- (a) disclosure of or access to information;
  - (b) taxation, spending or the allocation of resources within government.

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- (4) “Northern Ireland legislative provision” means—
- (a) legislative provision contained in, or in an instrument made under, Northern Ireland legislation, and
  - (b) legislative provision not within paragraph (a) which, if contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Assembly and would not require the Secretary of State’s consent.
- (5) The Department may by regulations provide that a Northern Ireland legislative provision specified in the regulations is, or is not, within the definition of “Northern Ireland environmental law” in sub-paragraph (2) (and this Part of this Schedule applies accordingly).
- (6) Before making regulations under sub-paragraph (5) the Department must consult—
- (a) the OEP, and
  - (b) any other persons the Department considers appropriate.
- (7) Regulations under sub-paragraph (5) are subject to the affirmative procedure.

#### Commencement Information

**I36** Sch. 3 para. 18 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

**I37** Sch. 3 para. 18 in force at 28.2.2022 by [S.R. 2022/54](#), [art. 2\(1\)\(a\)](#)

#### *Interpretation of Part 1 of this Schedule: general*

- 19 (1) In this Part of this Schedule—
- “application for judicial review” is to be read in accordance with paragraph [12\(10\)](#);
  - “current environmental improvement plan” has the meaning it has in Schedule 2 (see paragraph [1\(8\)](#) of that Schedule);
  - “decision notice” means a notice given under paragraph [10](#);
  - “the Department” means the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;
  - “devolved environmental governance body” has the meaning it has in Part 1 of this Act (see section [47](#));
  - “devolved environmental governance function” has the meaning it has in Part 1 of this Act (see section [47](#));
  - “environmental improvement plan” has the meaning it has in Schedule 2 (see paragraphs [1](#) and [3\(10\)](#) of that Schedule);
  - “environmental protection” has the meaning it has in Schedule 2 (see paragraph [10](#) of that Schedule);
  - “environmental review” has the meaning it has in Part 1 of this Act (see section [38](#));
  - “implementation body” has the meaning it has in section [55](#) of the Northern Ireland Act 1998 (see subsection (3) of that section);
  - “improving the natural environment”, in relation to an environmental improvement plan, is to be read in accordance with paragraph [1\(5\)](#) of Schedule 2;
  - “information notice” means a notice given under paragraph [9](#);

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“natural environment” has the meaning it has in Schedule 2 (see paragraph 9 of that Schedule);

“Northern Ireland devolved function” has the meaning given by paragraph 5(5);

“OEP” has the meaning given by section 22;

“parliamentary function” means a function in connection with proceedings in Parliament or the Northern Ireland Assembly;

“relevant department” has the meaning given by paragraph 7(11);

“relevant environmental law” has the meaning given by paragraph 5(2);

“relevant ombudsman” has the meaning it has in Part 1 of this Act (see section 23);

“relevant public authority” has the meaning given by paragraph 5(3);

“review application” has the meaning given by paragraph 12(2);

“UK decision notice” has the meaning given by paragraph 11(11);

“UK information notice” has the meaning given by paragraph 11(11).

- (2) Section 41(3) of the [Interpretation Act \(Northern Ireland\) 1954 \(c. 33 \(N.I.\)\)](#) applies in relation to the laying of a document before the Northern Ireland Assembly under this Part of this Schedule, as it applies in relation to the laying of a statutory document under an Act of the Northern Ireland Assembly.

#### Commencement Information

**I38** Sch. 3 para. 19 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

**I39** Sch. 3 para. 19 in force at 28.2.2022 by [S.R. 2022/54](#), [art. 2\(1\)\(a\)](#)



**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Environment Act 2021, PART 1.