

Status: Point in time view as at 09/11/2021.

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SCHEDULES

VALID FROM 17/11/2021

SCHEDULE 1 **U.K.**

Section 22

THE OFFICE FOR ENVIRONMENTAL PROTECTION

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VALID FROM 25/07/2022

SCHEDULE 2 **N.I.**

Section 48

IMPROVING THE NATURAL ENVIRONMENT: NORTHERN IRELAND

PART 1 **N.I.**

ENVIRONMENTAL IMPROVEMENT PLANS

Environmental improvement plans

- 1 (1) The Department must prepare an environmental improvement plan.
- (2) An “environmental improvement plan” is a plan for significantly improving the natural environment.
- (3) The plan may—
 - (a) relate to a period specified in the plan, or
 - (b) be of no specified duration.
- (4) An environmental improvement plan must set out—
 - (a) the steps that the Department intends to take to improve the natural environment, and
 - (b) any steps that any other Northern Ireland department intends to take to improve the natural environment.
- (5) It may also set out steps that any Northern Ireland department intends to take to improve people’s enjoyment of the natural environment (and if it does so references in this Schedule to improving the natural environment, in relation to that plan, include improving people’s enjoyment of it).
- (6) In preparing an environmental improvement plan, the Department must consult such other Northern Ireland departments as it considers appropriate.

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- (7) The Department must lay before the Northern Ireland Assembly, and publish, an environmental improvement plan before the end of the 12 month period beginning with the day on which this paragraph comes into force.
- (8) References in this Schedule to the current environmental improvement plan are to the environmental improvement plan for the time being in effect.

Commencement Information

I47 Sch. 2 para. 1 not in force at Royal Assent, see [s. 147\(3\)](#)

Annual reports on environmental improvement plans

- 2 (1) The Department must prepare annual reports on the implementation of the current environmental improvement plan.
- (2) An annual report must—
- (a) describe what has been done, in the period to which the report relates, to implement the environmental improvement plan, and
 - (b) consider, having regard to any data obtained under paragraph 5, whether the natural environment has, or particular aspects of it have, improved during that period.
- (3) Annual reports on an environmental improvement plan must relate to—
- (a) the 12 month period beginning with the day on which the plan is published, and
 - (b) each subsequent 12 month period.
- (4) An annual report must be laid before the Northern Ireland Assembly before the end of the 4 month period beginning immediately after the last day of the period to which the report relates.
- (5) The Department must publish annual reports laid before the Northern Ireland Assembly under this paragraph.

Commencement Information

I48 Sch. 2 para. 2 not in force at Royal Assent, see [s. 147\(3\)](#)

Reviewing and revising environmental improvement plans

- 3 (1) The Department must—
- (a) review the current environmental improvement plan in accordance with this paragraph, and
 - (b) if the Department considers it appropriate as a result of the review, revise the plan.
- (2) The first review of an environmental improvement plan must be completed before the end of the 5 year period beginning with—
- (a) if it is the first environmental improvement plan, the day on which it is published, and

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- (b) otherwise, the day on which it replaces the previous plan (see paragraph 4(6)).
- (3) Subsequent reviews of an environmental improvement plan must be completed before the end of the 5 year period beginning with the day on which the previous review was completed.
- (4) In reviewing an environmental improvement plan, the Department must—
- (a) consider what has been done to implement the plan in the period since it was published or (if it has been reviewed before) last reviewed,
 - (b) consider whether, having regard to data obtained under paragraph 5^{F1} and reports made by the OEP under paragraph 1 of Schedule 3], the natural environment has, or particular aspects of it have, improved during that period, and
 - (c) consider whether any Northern Ireland department should take further or different steps to improve the natural environment (compared to those set out in the plan).
- (5) In reviewing and revising an environmental improvement plan, the Department must consult such other Northern Ireland departments as it considers appropriate.
- (6) If as a result of a review the Department considers it appropriate to revise the plan, the Department must lay before the Northern Ireland Assembly—
- (a) a revised environmental improvement plan, and
 - (b) a statement explaining the revisions and the reasons for them.
- (7) If as a result of a review the Department does not consider it appropriate to revise the plan, the Department must lay before the Northern Ireland Assembly a statement explaining that and the reasons for it.
- (8) The Department must publish the documents laid under sub-paragraph (6) or (7).
- (9) A review is completed when the Department has laid and published the documents mentioned in sub-paragraph (6) or (7).
- (10) References in this Schedule to an environmental improvement plan include a revised environmental improvement plan.

Textual Amendments

F1 Words in Sch. 2 para. 3(4)(b) inserted (28.2.2022) by Environment Act 2021 (c. 30), s. 147(6)(7), Sch. 3 para. 30(2) (with s. 144); S.R. 2022/54, art. 2(1)(a)

Commencement Information

I49 Sch. 2 para. 3 not in force at Royal Assent, see s. 147(3)

Renewing environmental improvement plans

- 4 (1) This paragraph applies where an environmental improvement plan relates to a period specified in the plan.
- (2) Before the end of the period to which the environmental improvement plan (the “old plan”) relates, the Department must prepare a new environmental improvement plan (the “new plan”).

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- (3) If the new plan relates to a period specified in the plan, that period must begin no later than immediately after the end of the period to which the old plan relates.
- (4) In preparing the new plan the Department must—
 - (a) consider what has been done to implement the old plan,
 - (b) consider whether, having regard to data obtained under paragraph 5^{F2} and reports made by the OEP under paragraph 1 of Schedule 3], the natural environment has improved since the beginning of the period to which the old plan relates,
 - (c) consider whether any Northern Ireland department should take further or different steps to improve the natural environment (compared to those set out in the old plan) after the end of that period, and
 - (d) consult such other Northern Ireland departments as it considers appropriate.
- (5) At or before the end of the period to which the old plan relates the Department must lay before the Northern Ireland Assembly, and publish, the new plan.
- (6) The new plan replaces the old plan when—
 - (a) it has been laid and published, and
 - (b) if it relates to a period specified in the new plan, that period has begun.

Textual Amendments

F2 Words in [Sch. 2 para. 4\(4\)\(b\)](#) inserted (28.2.2022) by [Environment Act 2021 \(c. 30\)](#), s. 147(6)(7), [Sch. 3 para. 30\(3\)](#) (with s. 144); S.R. 2022/54, art. 2(1)(a)

Commencement Information

I50 Sch. 2 para. 4 not in force at Royal Assent, see [s. 147\(3\)](#)

Environmental monitoring

- 5 (1) The Department must make arrangements for obtaining such data about the natural environment as the Department considers appropriate for the purpose of monitoring whether the natural environment is, or particular aspects of it are, improving in accordance with the current environmental improvement plan.
- (2) The Department must lay before the Northern Ireland Assembly, and publish, a statement setting out the kinds of data to be obtained under sub-paragraph (1).
- (3) The first statement must be laid before the end of the 4 month period beginning with the day on which this paragraph comes into force.
- (4) The Department may revise the statement at any time (and sub-paragraph (2) applies to any revised statement).
- (5) The Department must publish any data obtained under sub-paragraph (1).

Commencement Information

I51 Sch. 2 para. 5 not in force at Royal Assent, see [s. 147\(3\)](#)

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PART 2 **N.I.**

POLICY STATEMENT ON ENVIRONMENTAL PRINCIPLES

Policy statement on environmental principles

- 6 (1) The Department must prepare a policy statement on environmental principles in accordance with this paragraph and paragraph 7.
- (2) A “policy statement on environmental principles” is a statement explaining how the environmental principles should be interpreted and proportionately applied—
- (a) by Northern Ireland departments when making policy, and
 - (b) by Ministers of the Crown when making policy so far as relating to Northern Ireland.
- (3) It may also explain how Northern Ireland departments and Ministers of the Crown, when interpreting and applying the environmental principles, should take into account other considerations relevant to their policy.
- (4) The Department must be satisfied that the statement will, when it comes into effect, contribute to—
- (a) the improvement of environmental protection, and
 - (b) sustainable development.
- (5) In this Schedule “environmental principles” means the following principles—
- (a) the principle that environmental protection should be integrated into the making of policies,
 - (b) the principle of preventative action to avert environmental damage,
 - (c) the precautionary principle, so far as relating to the environment,
 - (d) the principle that environmental damage should as a priority be rectified at source, and
 - (e) the polluter pays principle.

Commencement Information

I52 Sch. 2 para. 6 not in force at Royal Assent, see [s. 147\(3\)](#)

Policy statement on environmental principles: process

- 7 (1) The Department must prepare a draft of the policy statement on environmental principles.
- (2) The Department must consult—
- (a) the other Northern Ireland departments,
 - (b) the Secretary of State, and
 - (c) such other persons as the Department considers appropriate, in relation to the draft statement.
- (3) The Department must lay the draft statement before the Northern Ireland Assembly.

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- (4) If before the end of the 21 day period the Northern Ireland Assembly passes a resolution in respect of the draft statement, the Department must produce a response and lay it before the Assembly.
- (5) The Department must prepare and lay before the Northern Ireland Assembly the final statement, but not before—
 - (a) if sub-paragraph (4) applies, the day on which the Department lays the response required by that sub-paragraph, or
 - (b) otherwise, the end of the 21 day period.
- (6) The final statement has effect when it is laid before the Northern Ireland Assembly.
- (7) The Department must publish the statement when it comes into effect.
- (8) The “21 day period” is the period of 21 sitting days beginning with the first sitting day after the day on which the draft statement is laid under sub-paragraph (3).
- (9) “Sitting day” means a day on which the Northern Ireland Assembly sits.
- (10) The requirements in sub-paragraphs (1) and (2) may be met by the preparation of a draft statement, and consultation, before this paragraph comes into force.
- (11) The Department may prepare a revised policy statement on environmental principles at any time (and sub-paragraphs (1) to (9) apply in relation to any revised statement).

Commencement Information

I53 Sch. 2 para. 7 not in force at Royal Assent, see [s. 147\(3\)](#)

Policy statement on environmental principles: effect

- 8 (1) A Northern Ireland department must, when making policy, have due regard to the policy statement on environmental principles currently in effect.
- (2) A Minister of the Crown must, when making policy so far as relating to Northern Ireland, have due regard to the policy statement on environmental principles currently in effect.
- (3) Nothing in this paragraph requires a Northern Ireland department or a Minister of the Crown to do anything (or refrain from doing anything) if doing it (or refraining from doing it)—
 - (a) would have no significant environmental benefit, or
 - (b) would be in any other way disproportionate to the environmental benefit.
- (4) Sub-paragraph (1) does not apply to policies so far as relating to taxation, spending or the allocation of resources within government.
- (5) Sub-paragraph (2) does not apply to policies so far as relating to—
 - (a) the armed forces, defence or national security, or
 - (b) taxation, spending or the allocation of resources within government.

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Commencement Information

I54 Sch. 2 para. 8 not in force at Royal Assent, see [s. 147\(3\)](#)

PART 3 **N.I.**

INTERPRETATION

Meaning of “natural environment”

- 9 In this Schedule the “natural environment” means—
- (a) plants, wild animals and other living organisms,
 - (b) their habitats,
 - (c) land (except buildings or other structures), air and water,
- and the natural systems, cycles and processes through which they interact.

Commencement Information

I55 Sch. 2 para. 9 not in force at Royal Assent, see [s. 147\(3\)](#)

Meaning of “environmental protection”

- 10 In this Schedule “environmental protection” means any of the following—
- (a) protection of the natural environment from the effects of human activity;
 - (b) protection of people from the effects of human activity on the natural environment;
 - (c) maintenance, restoration or enhancement of the natural environment;
 - (d) monitoring, assessing, considering, advising or reporting on anything in paragraphs (a) to (c).

Commencement Information

I56 Sch. 2 para. 10 not in force at Royal Assent, see [s. 147\(3\)](#)

General interpretation

- 11 (1) In this Schedule—
- “current environmental improvement plan” has the meaning given by paragraph [1\(8\)](#);
 - the “Department” means the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;
 - “environmental improvement plan” has the meaning given by paragraph [1](#) (and see also paragraph [3\(10\)](#));
 - “environmental principles” has the meaning given by paragraph [6\(5\)](#);
 - “improving the natural environment”, in relation to an environmental improvement plan, is to be read in accordance with paragraph [1\(5\)](#);
 - “making” policy includes developing, adopting or revising policy;

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“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

[^{F3}“OEP” has the meaning given by section 22;]

“policy” includes proposals for legislation, but does not include an administrative decision taken in relation to a particular person or case (for example, a decision on an application for planning permission, funding or a licence, or a decision about regulatory enforcement);

“policy statement on environmental principles” has the meaning given by paragraph 6.

- (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 Schedule, as it applies in relation to the laying of a statutory document under an Act of the Northern Ireland Assembly.

Textual Amendments

- F3** Words in [Sch. 2 para. 11\(1\)](#) inserted (28.2.2022) by [Environment Act 2021 \(c. 30\)](#), s. 147(6)(7), [Sch. 3 para. 30\(4\)](#) (with s. 144); S.R. 2022/54, art. 2(1)(a)

Commencement Information

- I57** Sch. 2 para. 11 not in force at Royal Assent, see [s. 147\(3\)](#)

VALID FROM 28/02/2022

SCHEDULE 3 U.K.

Section 49

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”).

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- (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
 - (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

I58 Sch. 3 para. 1 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

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—

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- (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

I59 Sch. 3 para. 2 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

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, 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

I60 Sch. 3 para. 3 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

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.

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- (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

I61 Sch. 3 para. 4 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

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;
 - (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).

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Commencement Information

I62 Sch. 3 para. 5 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

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
 - (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

I63 Sch. 3 para. 6 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

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

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- (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
 - (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

I64 Sch. 3 para. 7 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

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;

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- (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

I65 Sch. 3 para. 8 not in force at Royal Assent, see s. 147(6)(7)

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.

Status: Point in time view as at 09/11/2021.

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- (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

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

Decision notices

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

Status: Point in time view as at 09/11/2021.

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Commencement Information

I67 Sch. 3 para. 10 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

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.
- (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.

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Commencement Information

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

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
 - (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.

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Commencement Information

I69 Sch. 3 para. 12 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

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.
- (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

I70 Sch. 3 para. 13 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

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

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- (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

I71 Sch. 3 para. 14 not in force at Royal Assent, see s. 147(6)(7)

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

I72 Sch. 3 para. 15 not in force at Royal Assent, see s. 147(6)(7)

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

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- (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).

Commencement Information

I73 Sch. 3 para. 16 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

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);

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- (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—
 - (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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Commencement Information

I74 Sch. 3 para. 17 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

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.
- (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

I75 Sch. 3 para. 18 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

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;

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“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;

“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

I76 Sch. 3 para. 19 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

PART 2 **N.I.**

AMENDMENTS OF THE OEP’S GENERAL FUNCTIONS

Status: Point in time view as at 09/11/2021.

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Commencement Information

I77 Sch. 3 para. 20 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

- 21 (1) Section 23 (principal objective of the OEP and exercise of its functions) is amended as follows.
- (2) In subsection (6)—
- (a) after paragraph (a) insert—
- “(aa) how the OEP intends to determine whether failures to comply with relevant environmental law are serious for the purposes of paragraphs [7\(1\)\(b\)](#) and [\(2\)\(b\)](#), [9\(1\)\(b\)](#), [10\(1\)\(b\)](#), [12\(1\)\(b\)](#) and [13\(1\)](#) and (6) of Schedule 3,”;
- (b) at the end of paragraph (b) insert “or paragraph [13\(2\)](#) of Schedule 3,”;
- (c) omit the “and” at the end of paragraph (d);
- (d) after paragraph (d) insert—
- “(da) how the OEP intends to avoid any overlap between the exercise of its functions under paragraphs [6](#) to [8](#) of Schedule 3 (complaints) and the exercise by the Northern Ireland Public Services Ombudsman of its functions, and”.
- (3) In subsection (7)(c) after “environmental law” insert “or Northern Ireland environmental law”.
- (4) After subsection (7) insert—
- “(7A) In this section “relevant environmental law” and “Northern Ireland environmental law” have the meanings they have in Part [1](#) of Schedule 3 (see paragraphs [5](#) and [18\(2\)](#) of that Schedule).”
- (5) In subsection (8) after “sections 32 to 41” insert “and paragraphs [6](#) to [15](#) of Schedule 3”.

Commencement Information

I78 Sch. 3 para. 21 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

- 22 In section 24 (the OEP’s strategy: process), in subsection (1)(a) after “Parliament” insert “and the Northern Ireland Assembly”.

Commencement Information

I79 Sch. 3 para. 22 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

- 23 (1) Section 25 (guidance on the OEP’s enforcement policy and functions) is amended as follows.
- (2) At the end of subsection (1) insert “, so far as relating to the OEP’s Part 1 enforcement functions.”
- (3) In subsection (2)—
- (a) in paragraph (a) after “policy,” insert “so far as relating to its Part 1 enforcement functions,”;

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(b) in paragraph (b) for “enforcement functions” substitute “Part 1 enforcement functions”.

(4) In subsection (3) for “enforcement functions” substitute “Part 1 enforcement functions”.

Commencement Information

180 Sch. 3 para. 23 not in force at Royal Assent, see s. 147(6)(7)

24 After section 25 (guidance on the OEP’s enforcement policy and functions) insert—

“25A Guidance on the OEP’s Northern Ireland enforcement policy and functions

- (1) The Department of Agriculture, Environment and Rural Affairs in Northern Ireland may issue guidance to the OEP on the matters listed in section 23(6) (OEP’s enforcement policy), so far as relating to the OEP’s Northern Ireland enforcement functions.
- (2) The OEP must have regard to the guidance in—
 - (a) preparing its enforcement policy, so far as relating to its Northern Ireland enforcement functions, and
 - (b) exercising its Northern Ireland enforcement functions.
- (3) The OEP’s “Northern Ireland enforcement functions” are its functions under paragraphs 6 to 15 of Schedule 3.
- (4) Before issuing the guidance, the Department must—
 - (a) prepare a draft, and
 - (b) lay the draft before the Northern Ireland Assembly.
- (5) If before the end of the 21 day period the Northern Ireland Assembly passes a resolution in respect of the draft guidance, the Department must produce a response and lay it before the Assembly.
- (6) The Department may prepare and lay before the Northern Ireland Assembly the final guidance, but not before—
 - (a) if subsection (5) applies, the day on which the Department lays the response required by that subsection, or
 - (b) otherwise, the end of the 21 day period.
- (7) The final guidance has effect when it is laid before the Northern Ireland Assembly.
- (8) The Department must publish the guidance when it comes into effect.
- (9) The “21 day period” is the period of 21 sitting days beginning with the first sitting day after the day on which the draft guidance is laid under subsection (4).
- (10) “Sitting day” means a day on which the Northern Ireland Assembly sits.

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(11) The Department may revise the guidance at any time (and subsections (4) to (10) apply in relation to any revised guidance).”

Commencement Information

I81 Sch. 3 para. 24 not in force at Royal Assent, see s. 147(6)(7)

25 (1) Section 27 (co-operation duties of public authorities and the OEP) is amended as follows.

(2) In subsection (2)—

- (a) in paragraph (d) for “, the Welsh Ministers, a Northern Ireland department or a Minister within the meaning of the Northern Ireland Act 1998” substitute “or the Welsh Ministers”;
- (b) in paragraph (f) for “devolved functions” substitute “Scottish devolved functions or Welsh devolved functions”.

(3) In subsection (3) for “devolved functions”, in both places it occurs, substitute “Scottish devolved functions or Welsh devolved functions”.

(4) After subsection (3) insert—

“(3A) An implementation body is only required to co-operate with the OEP by virtue of subsection (1) to the extent that co-operation is in relation to functions of that body exercisable in or as regards Northern Ireland.

In this subsection “implementation body” has the meaning it has in section 55 of the Northern Ireland Act 1998 (see subsection (3) of that section).”

Commencement Information

I82 Sch. 3 para. 25 not in force at Royal Assent, see s. 147(6)(7)

26 In section 37 (linked notices), after subsection (6) insert—

“(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.”

Commencement Information

I83 Sch. 3 para. 26 not in force at Royal Assent, see s. 147(6)(7)

27 (1) Section 43 (confidentiality of proceedings) is amended as follows.

Status: Point in time view as at 09/11/2021.

Changes to legislation: Environment Act 2021 is up to date with all changes known to be in force on or before 15 July 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)

- (2) In subsection (2)—
- (a) in paragraph (b) after “(investigations)” insert “or paragraph 7 of Schedule 3 (functions of the OEP in Northern Ireland)”;
 - (b) after paragraph (c) insert—
 - “(ca) made for purposes connected with the co-ordination of the OEP’s functions that relate to investigations under paragraph 7 of Schedule 3 and the Northern Ireland Public Services Ombudsman’s functions that relate to investigations by the Ombudsman;”;
 - (c) in paragraph (d) after “section 33” insert “or paragraph 7 of Schedule 3”;
 - (d) in paragraph (e) after “sections 35 to 41” insert “or paragraphs 9 to 15 of Schedule 3”;
 - (e) in paragraph (h) after “this Chapter” insert “or Part 1 of Schedule 3”.
- (3) In subsection (3)(a) for “or decision notice” substitute “, decision notice, Northern Ireland information notice or Northern Ireland decision notice”.
- (4) In subsection (4)—
- (a) in paragraph (a)(i) for “or a decision notice” substitute “, a decision notice, a Northern Ireland information notice or a Northern Ireland decision notice”;
 - (b) in paragraph (b) after “section 33” insert “or paragraph 7 of Schedule 3”;
 - (c) in paragraph (d) after “judicial review” insert “(which includes a review application)”.
- (5) In subsection (5)—
- (a) for “or a decision notice” substitute “, a decision notice, a Northern Ireland information notice or a Northern Ireland decision notice”;
 - (b) after “this Chapter” insert “or Part 1 of Schedule 3”.
- (6) In subsection (6) after “this Chapter” insert “or Part 1 of Schedule 3”.

Commencement Information

184 Sch. 3 para. 27 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

- 28 (1) Section 47 (interpretation of Part 1 of the Act) is amended as follows.
- (2) The existing text becomes subsection (1).
- (3) In that subsection—
- (a) in the definition of “devolved environmental governance function”—
 - (i) for “devolved function” substitute “Scottish devolved function or Welsh devolved function”;
 - (ii) after “this Part” insert “or Part 1 of Schedule 3 (functions of the OEP in Northern Ireland)”;
 - (b) at the appropriate places insert—
 - ““Northern Ireland decision notice” means a notice given under paragraph 10 of Schedule 3 (functions of the OEP in Northern Ireland);”;
 - ““Northern Ireland information notice” means a notice given under paragraph 9 of Schedule 3;”;

Status: Point in time view as at 09/11/2021.

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““review application” has the meaning it has in Part 1 of Schedule 3 (see paragraph 12 of that Schedule);”;

““Scottish devolved function” means a function exercisable in or as regards Scotland, the exercise of which would be within devolved competence (within the meaning of section 54 of the Scotland Act 1998);”;

““Welsh devolved function” means a function exercisable in or as regards Wales that could be conferred by provision falling within the legislative competence of Senedd Cymru (see section 108A of the Government of Wales Act 2006).”.

(4) After that subsection insert—

“(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, as it applies in relation to the laying of a statutory document under an Act of the Northern Ireland Assembly.”

Commencement Information

I85 Sch. 3 para. 28 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

29 (1) Schedule 1 is amended as follows.

(2) In paragraph 1—

(a) in sub-paragraph (1), after paragraph (a) insert—

“(aa) a Northern Ireland member (who is to be a non-executive member);”;

(b) in sub-paragraph (2) after “Secretary of State” insert “, the Northern Ireland Department”;

(c) in sub-paragraph (3)—

(i) for “In making those appointments,” substitute “When exercising their functions of appointment”;

(ii) after “non-executive members” insert “(including the Northern Ireland member)”.

(3) In paragraph 2 for sub-paragraphs (1) and (2) substitute—

“(1) The Chair is to be appointed by the Secretary of State acting jointly with the Northern Ireland Department, other than the first Chair who is to be appointed by the Secretary of State.

(2) The Northern Ireland member is to be appointed by the Northern Ireland Department after consulting the Secretary of State and the Chair.

(2A) The other non-executive members are to be appointed by the Secretary of State after consulting the Northern Ireland Department and the Chair.

(2B) The Northern Ireland Department must appoint as the Northern Ireland member a person with experience of—

(a) Northern Ireland environmental law (within the meaning of Part 1 of Schedule 3),

(b) environmental science in Northern Ireland, or

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(c) environmental regulation in Northern Ireland.”

(4) In paragraph 3(3) after “Secretary of State” insert “and the Northern Ireland Department”.

(5) In paragraph 5—

- (a) in sub-paragraph (4) after “of non-executive members” insert “(including the Northern Ireland member)”;
- (b) after that sub-paragraph insert—

“(4A) The Northern Ireland Department must, in determining the length of a Northern Ireland member’s term, have regard to the desirability of securing that the appointments of non-executive members expire at different times.”;

(c) for sub-paragraph (6) substitute—

“(6) A non-executive member ceases to be a member of the OEP upon becoming its employee.

(7) A non-executive member, other than the Northern Ireland member—

- (a) may resign from office by giving notice to the Secretary of State, and
- (b) may be removed from office by notice given by the Secretary of State, after consulting the Northern Ireland Department, on the grounds that the member—
 - (i) has without reasonable excuse failed to discharge the member’s functions, or
 - (ii) is, in the opinion of the Secretary of State, unable or unfit to carry out the member’s functions.

(8) The Northern Ireland member—

- (a) may resign from office by giving notice to the Northern Ireland Department, and
- (b) may be removed from office by notice given by the Northern Ireland Department after consulting the Secretary of State, on the grounds that the member—
 - (i) has without reasonable excuse failed to discharge the member’s functions, or
 - (ii) is, in the opinion of the Northern Ireland Department, unable or unfit to carry out the member’s functions.”

(6) In paragraph 10(4)—

- (a) in paragraph (b) after “section 28 or 29” insert “, or a report under paragraph 1 or 2 of Schedule 3 (functions of the OEP in Northern Ireland)”;
- (b) in paragraph (c) after “section 30(1) or (3)” insert “, or written advice to a Northern Ireland department under paragraph 3(1) or (3) of Schedule 3”;
- (c) in paragraph (d) after “information notice” insert “or a Northern Ireland information notice”;

Status: Point in time view as at 09/11/2021.

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- (d) in paragraph (e) after “decision notice” insert “or a Northern Ireland decision notice”;
 - (e) after paragraph (g) insert—
 - “(ga) deciding whether to make a review application (see paragraph 12 of Schedule 3) or an application for judicial review by virtue of paragraph 13(1) of that Schedule or to intervene in proceedings that relate to a judicial review (see paragraph 13 of that Schedule);”.
- (7) In paragraph 12—
- (a) in sub-paragraph (1)—
 - (i) after “Secretary of State”, in the first place it occurs, insert “and the Northern Ireland Department”;
 - (ii) after “must” insert “, between them,”;
 - (iii) for “the Secretary of State considers” substitute “they consider”;
 - (b) in sub-paragraph (2)—
 - (i) after “Secretary of State”, in the first place it occurs, insert “, or the Northern Ireland Department,”;
 - (ii) after “Secretary of State”, in the second place it occurs, insert “, or that department,”.
- (8) In paragraph 13(2)(a) after “Parliament” insert “and the Northern Ireland Assembly”.
- (9) In paragraph 14—
- (a) in sub-paragraph (3) after “Secretary of State” insert “and the Northern Ireland Department”;
 - (b) in sub-paragraph (4) after “Secretary of State” insert “, the Northern Ireland Department”;
 - (c) in sub-paragraph (5)(b) after “Secretary of State” insert “, the Northern Ireland Department”;
 - (d) in sub-paragraph (6) after “Parliament” insert “and the Northern Ireland Assembly”.
- (10) In paragraph 17 after “Secretary of State” insert “and the Northern Ireland Department”.
- (11) After paragraph 23 insert—

“Meaning of “the Northern Ireland Department”

24 In this Schedule “the Northern Ireland Department” means the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.”

Commencement Information

I86 Sch. 3 para. 29 not in force at Royal Assent, see s. 147(6)(7)

- 30 (1) Schedule 2 (improving the natural environment: Northern Ireland) is amended as follows.

Status: Point in time view as at 09/11/2021.

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- (2) In paragraph 3(4)(b) after “under paragraph 5” insert “and reports made by the OEP under paragraph 1 of Schedule 3”.
- (3) In paragraph 4(4)(b) after “under paragraph 5” insert “and reports made by the OEP under paragraph 1 of Schedule 3”.
- (4) In paragraph 11(1), at the appropriate place insert—
““OEP” has the meaning given by section 22;”.

Commencement Information

I87 Sch. 3 para. 30 not in force at Royal Assent, see [s. 147\(6\)\(7\)](#)

VALID FROM 24/01/2022

SCHEDULE 4 **U.K.**

Section 50

PRODUCER RESPONSIBILITY OBLIGATIONS

VALID FROM 09/01/2022

SCHEDULE 5 **U.K.**

Section 51

PRODUCER RESPONSIBILITY FOR DISPOSAL COSTS

VALID FROM 09/01/2022

SCHEDULE 6 **U.K.**

Section 52

RESOURCE EFFICIENCY INFORMATION

Status: Point in time view as at 09/11/2021.

Changes to legislation: Environment Act 2021 is up to date with all changes known to be in force on or before 15 July 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)

VALID FROM 09/01/2022

SCHEDULE 7 **U.K.**

Section 53

RESOURCE EFFICIENCY REQUIREMENTS

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VALID FROM 09/01/2022

SCHEDULE
8 **E+W+N.I.**

Section 54

DEPOSIT SCHEMES

.....

VALID FROM 09/01/2022

SCHEDULE
9 **E+W+N.I.**

Section 55

CHARGES FOR SINGLE USE ITEMS

.....

VALID FROM 09/01/2022

SCHEDULE 10 **E+W**

Section 66

ENFORCEMENT POWERS

Powers to search and seize vehicles in connection with waste offences

1 In section 5(6) of the Control of Pollution (Amendment) Act 1989 (constable’s power to seize vehicles and contents)—

- (a) in paragraph (b) after “presence of” insert “or at the request of”;
- (b) in paragraph (c) for “without such an officer present” substitute “in any other case”.

Status: Point in time view as at 09/11/2021.

Changes to legislation: Environment Act 2021 is up to date with all changes known to be in force on or before 15 July 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)

Commencement Information

I189 Sch. 10 para. 1 in force at 9.1.2022, see s. 147(2)(h)

- 2 In section 34B(6) of the Environmental Protection Act 1990 (constable’s power to seize vehicles and contents)—
- (a) in paragraph (b) after “presence of” insert “or at the request of”;
 - (b) in paragraph (c) for “without such an officer present” substitute “in any other case”.

Commencement Information

I190 Sch. 10 para. 2 in force at 9.1.2022, see s. 147(2)(h)

Powers of direction in relation to waste

- 3 (1) Section 57 of the Environmental Protection Act 1990 (power to give directions) is amended as follows.
- (2) In subsection (2) omit the words from “with a view” to the end.
- (3) After subsection (2) insert—
- “(2A) The appropriate Minister may, by notice in writing—
- (a) direct a registered waste carrier to collect waste which is being kept on specified land and deliver it to a specified person on specified terms;
 - (b) direct any person who—
 - (i) is keeping waste on any land, or
 - (ii) owns or occupies land on which waste is being kept,to facilitate collection of the waste by a specified registered waste carrier to whom a direction in respect of the waste is given under paragraph (a).”

(4) In subsection (4), for “of treating or disposing of” substitute “in relation to”.

(5) After subsection (4) insert—

“(4A) A direction under subsection (2A)(b) may require the person to whom it is given—

 - (a) to pay to the specified registered waste carrier the reasonable costs of collecting and delivering the waste;
 - (b) to pay to the specified person to whom the waste is delivered (“P”) the reasonable costs incurred by P in relation to the waste (including any costs P is required by a direction under this section to pay to another person).”

(6) In subsection (7) for the words from “, where” to the end substitute “pay any costs mentioned in subsection (4).”

(7) After subsection (7) insert—

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“(7A) The appropriate Minister may pay any costs mentioned in subsection (4A).”

(8) In subsection (8), before the definition of “specified” insert—

““appropriate Minister” means—

(a) the Secretary of State, in relation to waste being kept on land in England, and

(b) the Welsh Ministers, in relation to waste being kept on land in Wales;

“registered waste carrier” means a person registered under the Control of Pollution (Amendment) Act 1989 as a carrier of controlled waste;”.

Commencement Information

1191 Sch. 10 para. 3 in force at 9.1.2022, see s. 147(2)(h)

Powers of entry in relation to pollution control etc

4 The Environment Act 1995 is amended as follows.

Commencement Information

1192 Sch. 10 para. 4 in force at 9.1.2022, see s. 147(2)(h)

5 (1) Section 108 (powers of enforcing authorities and their authorised officers) is amended as follows.

(2) In subsection (4), after paragraph (k) insert—

“(ka) as regards any premises which an English or Welsh authorised person has power to enter by virtue of paragraph (a), for the purposes of an examination or investigation under paragraph (c)—

(i) to search the premises;

(ii) to seize and remove documents or anything else found on the premises (other than an article or substance within paragraph (g));

(iii) to require any information which is stored in electronic form and is accessible from the premises to be produced in a form in which it can be removed and—

(a) in which it is visible and legible, or

(b) from which it can readily be produced in a visible and legible form;

(iv) to operate any equipment found on the premises for the purposes of producing such information in such a form;”.

(3) In subsection (6), omit paragraph (a).

(4) After subsection (7) insert—

“(7A) An English or Welsh authorised person may not exercise the powers in subsection (4)(ka) without—

Status: Point in time view as at 09/11/2021.

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- (a) the consent of a person entitled to grant access to material on or accessible from the premises, or
- (b) the authority of a warrant by virtue of Schedule 18 to this Act.

This is subject to subsections (7B) and (7C).

(7B) An English or Welsh authorised person may exercise a power in subsection (4)(ka)(ii) to (ka)(iv) in relation to a thing without consent or the authority of a warrant if the person has reasonable grounds for believing that—

- (a) it is evidence of a failure to comply with any provision of the pollution control enactments or flood risk activity enactments, and
- (b) exercising the power is necessary to prevent it being concealed, lost, altered or destroyed.

(7C) Subsection (7A) does not require consent or the authority of a warrant for doing something within the powers in subsection (4)(ka) if, and so far as, it may be done without them in exercise of another power conferred by subsection (4).

(7D) Where anything seized or removed from premises under subsection (4)(ka) contains protected material, that material—

- (a) may not be used for the purposes of an examination or investigation under subsection (4)(c), and
- (b) must be returned to the premises from which it was removed, or to the person who had possession or control of it immediately before it was removed, as soon as reasonably practicable after it is identified as protected material.

(7E) Subsection (7D) does not prevent any part of a thing containing protected material which is not protected material being used for the purposes of an examination or investigation, retained or copied.

(7F) “Protected material” means—

- (a) material subject to legal professional privilege,
- (b) excluded material within the meaning of section 11 of the Police and Criminal Evidence Act 1984, or
- (c) journalistic material, within the meaning of section 13 of that Act, which is not excluded material.”

(5) After subsection (12) insert—

“(12A) Subject to subsection (7D), anything seized or removed under subsection (4)(ka) may be retained for so long as is necessary in all the circumstances.”

(6) In subsection (15)—

- (a) after the definition of “authorised person” insert—
““document” includes anything in which information of any description is recorded (by any means) and any part of such a thing;”;
- (b) after the definition of “enforcing authority” insert—
““English or Welsh authorised person” means a person authorised under subsection (1) or (2) by the Secretary of State, the Welsh Ministers, the Agency, the Natural Resources Body for Wales, a

Status: Point in time view as at 09/11/2021.

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waste collection authority or a local enforcing authority in England or Wales;”;

- (c) in the definition of “pollution control functions” in relation to a waste collection authority, in paragraph (a) after “46” insert “to 46D”.

Commencement Information

I193 Sch. 10 para. 5 in force at 9.1.2022, see s. 147(2)(h)

- 6 (1) Schedule 18 (supplemental provision about powers of entry) is amended as follows.

- (2) In paragraph 2—

- (a) after sub-paragraph (2) insert—

“(2A) A justice of the peace may by warrant authorise an English or Welsh authorised person, designated for the purpose by the person who authorised them, to exercise the powers in section 108(4)(ka) in accordance with the warrant and, if need be, by force.

- (2B) The justice may do so only if satisfied that there are reasonable grounds for believing that—

- (a) there is material on or accessible from the premises in question which is likely to be of substantial value (by itself or together with other material) to an examination or investigation under section 108(4)(c), and
- (b) it is impracticable to communicate with a person entitled to grant access to it, or access to it is unlikely to be granted unless a warrant is produced.”;

- (b) omit sub-paragraph (3).

- (3) In paragraph 3 after “shall” insert “, if so required,”.

Commencement Information

I194 Sch. 10 para. 6 in force at 9.1.2022, see s. 147(2)(h)

VALID FROM 01/05/2022

SCHEDULE 11 **U.K.**

Section 72

LOCAL AIR QUALITY MANAGEMENT FRAMEWORK

- 1 The Environment Act 1995 is amended as follows.

Status: Point in time view as at 09/11/2021.

Changes to legislation: Environment Act 2021 is up to date with all changes known to be in force on or before 15 July 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)

Commencement Information

1195 Sch. 11 para. 1 not in force at Royal Assent, see [s. 147\(3\)](#)

- 2 (1) Section 80 (national air quality strategy) is amended as follows.
- (2) Omit subsection (3).
- (3) After subsection (4) insert—
- “(4A) The strategy must be reviewed, and if appropriate modified—
- (a) within the period of 12 months beginning with the day on which this subsection comes into force, and
- (b) within each period of 5 years beginning with the day on which the person carrying out the review completed their most recent review under this subsection.”

Commencement Information

1196 Sch. 11 para. 2 not in force at Royal Assent, see [s. 147\(3\)](#)

- 3 After that section insert—
- “80A Duty to report on air quality in England**
- As soon as reasonably practicable after the end of each financial year, beginning with the financial year in which this section comes into force, the Secretary of State must lay a statement before Parliament that sets out—
- (a) the Secretary of State’s assessment of the progress made in meeting air quality objectives, and air quality standards, in relation to England, and
- (b) the steps the Secretary of State has taken in that year in support of the meeting of those objectives and standards.”

Commencement Information

1197 Sch. 11 para. 3 not in force at Royal Assent, see [s. 147\(3\)](#)

- 4 After section 81 insert—
- “81A Functions of relevant public authorities etc**
- (1) The following persons must have regard to the strategy when exercising any function of a public nature that could affect the quality of air—
- (a) relevant public authorities;
- (b) local authorities in England;
- (c) county councils for areas in England for which there are district councils.

Status: Point in time view as at 09/11/2021.

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- (2) In this Part, “relevant public authority” means a person designated in accordance with subsection (3) as a relevant public authority in relation to an area in England.
- (3) The Secretary of State may by regulations designate a person as a relevant public authority in relation to an area in England if the person’s functions include functions of a public nature in relation to that area.
- (4) Before making regulations under subsection (3) the Secretary of State must consult—
 - (a) the person that is proposed to be designated, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (5) The requirement in subsection (4) may be met by consultation carried out before this section comes into force.
- (6) For the purposes of subsections (2) and (3), reference to England includes the territorial sea adjacent to England, which for this purpose does not include—
 - (a) any part of the territorial sea which is adjacent to Wales for the purposes of the Government of Wales Act 2006 (see section 158 of that Act), or
 - (b) any part of the territorial sea which is adjacent to Scotland for the purposes of the Scotland Act 1998 (see section 126 of that Act).”

Commencement Information

1198 Sch. 11 para. 4 not in force at Royal Assent, see [s. 147\(3\)](#)

- 5 (1) Section 82 (local authority reviews) is amended as follows.
 - (2) In subsection (3)—
 - (a) for “If” substitute “This subsection applies to a local authority where”;
 - (b) omit the words from “, the local authority shall” to the end.
 - (3) After subsection (3) insert—

“(4) Where subsection (3) applies to a local authority, it must identify any parts of its area in which it appears that air quality standards or objectives are not likely to be achieved within the relevant period.
 - (5) Where subsection (3) applies to a local authority in England, it must also—
 - (a) identify relevant sources of emissions that it considers are, or will be, responsible (in whole or in part) for any failure to achieve air quality standards or objectives in its area,
 - (b) in the case of a relevant source within the area of a neighbouring authority, identify that authority, and
 - (c) in the case of a relevant source within an area in relation to which a relevant public authority or the Agency has functions of a public nature, identify that person in relation to that source.
 - (6) For the purposes of subsection (5), a source is “relevant” if—

Status: Point in time view as at 09/11/2021.

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- (a) it is within the area of the local authority,
- (b) it is within the area of a neighbouring authority in England, or
- (c) it is within an area in relation to which a relevant public authority or the Agency has functions of a public nature and the local authority considers that the exercise of those functions is relevant to the source of the emissions.”

Commencement Information

1199 Sch. 11 para. 5 not in force at Royal Assent, see [s. 147\(3\)](#)

6 After section 83 insert—

“83A Duties of English local authorities in relation to designated areas

- (1) This section applies in relation to a local authority in England.
- (2) A local authority must, for the purpose of securing that air quality standards and objectives are achieved in an air quality management area designated by that authority, prepare an action plan in relation to that area.
- (3) An action plan is a written plan that sets out how the local authority will exercise its functions in order to secure that air quality standards and objectives are achieved in the area to which the plan relates.
- (4) An action plan must also set out how the local authority will exercise its functions to secure that air quality standards and objectives are maintained after they have been achieved in the area to which the plan relates.
- (5) An action plan must set out particular measures the local authority will take to secure the achievement, and maintenance, of air quality standards and objectives in the area to which the plan relates, and must in relation to each measure specify a date by which it will be carried out.
- (6) A local authority may revise an action plan at any time, and must revise an action plan if it considers that there is a need for further or different measures to be taken to secure that air quality standards and objectives are achieved or maintained in the area to which the plan relates.
- (7) Subsections (8) to (10) apply where a district council in an area for which there is a county council is preparing an action plan, or a revision of an action plan.
- (8) Where the county council disagrees with the contents of the proposed plan, or the proposed revision of a plan, a referral of the matter may be made to the Secretary of State by—
 - (a) the county council;
 - (b) the district council preparing the plan or revision.
- (9) The Secretary of State may, on a reference made under subsection (8), confirm (with or without modifications) or reject the proposed action plan, or revision of an action plan.

Status: Point in time view as at 09/11/2021.

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- (10) Where a reference has been made under subsection (8), the district council may not finally determine the proposed action plan or revision of an action plan, except in accordance with the decision of the Secretary of State on the reference or in pursuance of a direction made by the Secretary of State under section 85.”

Commencement Information

I200 Sch. 11 para. 6 not in force at Royal Assent, see [s. 147\(3\)](#)

- 7 (1) Section 84 (duties of local authorities in relation to designated areas) is amended as follows.
- (2) In the heading, after “of” insert “Scottish and Welsh”.
- (3) Before subsection (2) insert—
- “(1A) This section applies in relation to a local authority in Scotland or Wales.”
- (4) Omit subsection (5).

Commencement Information

I201 Sch. 11 para. 7 not in force at Royal Assent, see [s. 147\(3\)](#)

- 8 After section 85 insert—
- “85A Duty of air quality partners to co-operate**
- (1) For the purposes of this Part, an “air quality partner” of a local authority means a person identified by that authority in accordance with section 82(5)(b) or (c).
- (2) An air quality partner of a local authority must provide the authority with such assistance in connection with the carrying out of any of the authority’s functions under this Part as the authority requests.
- (3) An air quality partner may refuse a request under subsection (2) to the extent it considers the request unreasonable.
- 85B Role of air quality partners in relation to action plans**
- (1) Where a local authority in England intends to prepare an action plan it must notify each of its air quality partners that it intends to do so.
- (2) Where an air quality partner of a local authority has been given a notification under subsection (1) it must, before the end of the relevant period, provide the authority with proposals for particular measures the partner will take to contribute to the achievement, and maintenance, of air quality standards and objectives in the area to which the plan relates.
- (3) An air quality partner that provides proposals under subsection (2) must—
- (a) in those proposals, specify a date for each particular measure by which it will be carried out, and

Status: Point in time view as at 09/11/2021.

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- (b) as far as is reasonably practicable, carry out those measures by those dates.
- (4) An action plan prepared by a local authority in England must set out any proposals provided to it by its air quality partners under subsection (2) (including the dates specified by those partners by virtue of subsection (3) (a)).
- (5) The Secretary of State may direct an air quality partner to make further proposals under subsection (2) by a date specified in the direction where the Secretary of State considers the proposals made by the partner under that subsection are insufficient or otherwise inappropriate.
- (6) A direction under subsection (5) may make provision about the extent to which the further proposals are to supplement or replace any other proposals made under subsection (2) by the air quality partner.
- (7) An air quality partner must comply with any direction given to it under this section.”

Commencement Information

I202 Sch. 11 para. 8 not in force at Royal Assent, see [s. 147\(3\)](#)

- 9
- (1) Section 86 (functions of county councils for areas for which there are district councils) is amended as follows.
 - (2) Omit subsection (1).
 - (3) In subsection (2), for the words before paragraph (a) substitute “A county council for an area in England for which there are district councils may make recommendations to any of those district councils with respect to the carrying out of—”.
 - (4) After subsection (2) insert—
 - “(2A) Where a district council of a district in England for which there is a county council intends to prepare an action plan it must notify the county council that it intends to do so.”
 - (5) For subsections (3) to (5) substitute—
 - “(3) Where a county council has been given a notification by a district council under subsection (2A) it must, before the end of the relevant period, provide the district council with proposals for particular measures the county council will take to contribute to the achievement, and maintenance, of air quality standards and objectives in the area to which the plan relates.
 - (4) A county council that provides proposals under subsection (3) must—
 - (a) in those proposals, specify a date for each particular measure by which it will be carried out, and
 - (b) as far as is reasonably practicable, carry out those measures by those dates.
 - (5) An action plan prepared by a district council of a district in England for which there is a county council must set out any proposals provided to it

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by the county council under subsection (3) (including the dates specified by the county council by virtue of subsection (4)(a)).”

- (6) In subsection (6), in paragraph (a), after “district council” insert “of a district in England for which there is a county council”.
- (7) In subsection (7)—
- (a) in paragraph (a), omit the words from “above or” to the end;
 - (b) in paragraph (b)—
 - (i) omit “or statement”;
 - (ii) omit “or (4) above”;
 - (c) in paragraph (c)—
 - (i) omit “or statement”;
 - (ii) omit “or (4) above”.

Commencement Information

I203 Sch. 11 para. 9 not in force at Royal Assent, see [s. 147\(3\)](#)

10 For section 86A substitute—

“86A Role of the Mayor of London in relation to action plans

- (1) Where a local authority in London intends to prepare an action plan it must notify the Mayor of London (referred to in this section as “the Mayor”).
- (2) Where the Mayor has been given a notification under subsection (1) by a local authority in London the Mayor must, before the end of the relevant period, provide the authority with proposals for particular measures the Mayor will take to contribute to the achievement, and maintenance, of air quality standards and objectives in the area to which the plan relates.
- (3) Where the Mayor provides proposals under subsection (2), the Mayor must—
 - (a) in those proposals, specify a date for each particular measure by which it will be carried out, and
 - (b) as far as is reasonably practicable, carry out those measures by those dates.
- (4) An action plan prepared by a local authority in London must set out any proposals provided to it by the Mayor under subsection (2) (including the dates specified by the Mayor by virtue of subsection (3)(a)).

86B Role of combined authorities in relation to action plans

- (1) Where a local authority in the area of a combined authority intends to prepare an action plan it must notify the combined authority.
- (2) Where a combined authority has been given a notification under subsection (1) by a local authority, the combined authority must, before the end of the relevant period, provide the local authority with proposals for particular measures the combined authority will take to contribute to

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the achievement, and maintenance, of air quality standards and objectives in the area to which the plan relates.

- (3) Where a combined authority provides proposals under subsection (2), the combined authority must—
- (a) in those proposals, specify a date for each particular measure by which it will be carried out, and
 - (b) as far as is reasonably practicable, carry out those measures by those dates.
- (4) An action plan prepared by a local authority in the area of a combined authority must set out any proposals provided to it under subsection (2) (including the dates specified by virtue of subsection (3)(a)).
- (5) In this section “combined authority” has the meaning it has in Part 6 of the Local Democracy, Economic Development and Construction Act 2009 (see section 120 of that Act).”

Commencement Information

I204 Sch. 11 para. 10 not in force at Royal Assent, see [s. 147\(3\)](#)

11 (1) Section 87 (regulations) is amended as follows.

(2) In subsection (2)—

- (a) in paragraph (c), after “authorities” insert “, relevant county councils, relevant public authorities or the Agency”;
- (b) in paragraph (j), after “otherwise” insert “, relevant county councils, relevant public authorities, the Agency”;
- (c) in paragraph (l), after “authorities” insert “, relevant county councils, relevant public authorities or the Agency”;
- (d) in paragraph (m)—
 - (i) after “local authority” insert “, a relevant county council, a relevant public authority or the Agency”;
 - (ii) after “the authority”, in both places it occurs, insert “, council or Agency”.

(3) After that subsection insert—

“(2A) In subsection (2) “relevant county council” means a county council for an area in England for which there are district councils.”

Commencement Information

I205 Sch. 11 para. 11 not in force at Royal Assent, see [s. 147\(3\)](#)

12 In section 88, in subsection (3), after “district councils” insert “, relevant public authorities and the Agency”.

Commencement Information

I206 Sch. 11 para. 12 not in force at Royal Assent, see [s. 147\(3\)](#)

Status: Point in time view as at 09/11/2021.

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- 13 In section 91 (interpretation), in subsection (1)—
- (a) for the definition of “action plan” substitute—
- ““action plan” is to be construed—
- (a) in relation to England, in accordance with section 83A;
- (b) otherwise, in accordance with section 84(2);”;
- (b) at the appropriate places insert—
- ““air quality partner” has the meaning given by section 85A(1);”;
- ““neighbouring authority”, in relation to a local authority (“the principal authority”), means another local authority whose area is contiguous with the area of the principal authority;”;
- ““relevant public authority” has the meaning given by section 81A(2);”.

Commencement Information

I207 Sch. 11 para. 13 not in force at Royal Assent, see [s. 147\(3\)](#)

- 14 In Schedule 11 (air quality: supplemental provisions), in paragraph 1(2), for paragraph (d) substitute—
- “(d) every neighbouring authority;”.

Commencement Information

I208 Sch. 11 para. 14 not in force at Royal Assent, see [s. 147\(3\)](#)

SCHEDULE 12 **E+W**

Section 73

SMOKE CONTROL IN ENGLAND AND WALES

VALID FROM 01/05/2022

PART 1 **E+W**

PRINCIPAL AMENDMENTS TO THE CLEAN AIR ACT 1993: ENGLAND

- 1 The Clean Air Act 1993 is amended as follows.

Commencement Information

I209 Sch. 12 para. 1 not in force at Royal Assent, see [s. 147\(3\)](#)

- 2 After section 19 insert—

Status: Point in time view as at 09/11/2021.

Changes to legislation: Environment Act 2021 is up to date with all changes known to be in force on or before 15 July 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)

“Regulation of smoke and fuel in smoke control areas in England

19A Penalty for emission of smoke in smoke control area in England

Schedule 1A makes provision for financial penalties in relation to the emission of smoke in smoke control areas in England.”

Commencement Information

I210 Sch. 12 para. 2 not in force at Royal Assent, see [s. 147\(3\)](#)

3 After Schedule 1 insert—

“SCHEDULE
1A **E+W**

PENALTY FOR EMISSION OF SMOKE IN SMOKE CONTROL AREA IN ENGLAND

Key definitions

1 In this Schedule—

“relevant chimney” means—

- (a) a chimney of a building to which a smoke control order in England applies, or
- (b) a chimney which serves the furnace of any fixed boiler or industrial plant to which a smoke control order in England applies;

“person liable”, in relation to a relevant chimney, means—

- (a) if the chimney is the chimney of a building, the occupier of the building, or
- (b) if the chimney serves the furnace of any fixed boiler or industrial plant, the person having possession of the boiler or plant.

Notice of intent

2 (1) This paragraph applies where a local authority is satisfied, on the balance of probabilities, that on a particular occasion smoke has been emitted from a relevant chimney within a smoke control area declared by that authority.

(2) The local authority may give to the person liable a notice under this paragraph (a “notice of intent”).

(3) A notice of intent must—

- (a) inform the person that the local authority is satisfied as specified in sub-paragraph (1),
- (b) specify the occasion referred to in sub-paragraph (1),

Status: Point in time view as at 09/11/2021.

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- (c) inform the person that the local authority proposes to impose a financial penalty under this Schedule (including the proposed amount of the penalty), and
- (d) give details regarding the person's right to object to the imposition of a financial penalty.

Amount of penalty

- 3
- (1) The minimum amount of a financial penalty that may be imposed under this Schedule is £175.
 - (2) The maximum amount of a financial penalty that may be imposed under this Schedule is £300.
 - (3) The Secretary of State may by regulations amend sub-paragraph (1) or (2) so as to substitute a different amount for the amount specified there.
 - (4) Regulations under sub-paragraph (3) may not be made unless a draft of the regulations has been laid before, and approved by resolution of, each House of Parliament.

Right to object to proposed financial penalty

- 4
- (1) A person to whom a notice of intent is given may, within the period of 28 days beginning with the day after that on which the notice was given—
 - (a) object in writing to the local authority on a ground specified in sub-paragraph (2), and
 - (b) provide evidence that supports the objection.
 - (2) The grounds of objection referred to in sub-paragraph (1) are—
 - (a) that there was no emission of smoke from the chimney on the occasion specified in the notice of intent;
 - (b) that the chimney was not a chimney to which a smoke control order applied on the occasion specified in the notice of intent;
 - (c) that the person to whom the notice of intent was given was not a person liable in relation to the chimney on the occasion specified in the notice of intent;
 - (d) that there are other compelling reasons why the financial penalty should not be imposed.
 - (3) Where a person objects on the ground specified in sub-paragraph (2) (c), the objection must include the name and address of the person who was the person liable on the occasion specified in the notice of intent (if known).
 - (4) The Secretary of State may by regulations amend this paragraph so as to amend the grounds of objection listed in sub-paragraph (2).
 - (5) Before making regulations under sub-paragraph (4) the Secretary of State must consult anyone that the Secretary of State considers may have an interest in the proposed regulations.

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- (6) Regulations under sub-paragraph (4) may not be made unless a draft of the regulations has been laid before, and approved by resolution of, each House of Parliament.

Decision regarding a final notice

- 5 (1) Where a local authority in England has given a notice of intent to a person, the authority may impose a financial penalty on the person if the local authority so decides within—
- (a) the period of 56 days beginning with the day on which an objection is made under paragraph 4, or
 - (b) if no such objection is made, the period of 56 days beginning with the day after the day on which the period mentioned in paragraph 4(1) ended.
- (2) If the local authority decides not to impose a financial penalty on a person, or does not decide to impose a financial penalty on the person within the period specified in sub-paragraph (1), the authority must give a notice to that person that informs the person that a financial penalty will not be imposed.

Final notice

- 6 (1) This paragraph applies where a local authority in England decides to impose a financial penalty on a person who was given a notice of intent.
- (2) The local authority may impose a financial penalty by a notice given to that person (a “final notice”).
- (3) A final notice must specify—
- (a) the amount of the financial penalty,
 - (b) the reasons for imposing the penalty,
 - (c) information about how to pay the penalty,
 - (d) the period for payment of the penalty, and
 - (e) information about rights of appeal.
- (4) The final notice must require the financial penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

Withdrawal or amendment of notices

- 7 (1) A local authority may at any time—
- (a) withdraw a notice of intent or a final notice, or
 - (b) reduce the amount of the financial penalty specified in a final notice.
- (2) The power in sub-paragraph (1) is to be exercised by giving notice to the person to whom the notice of intent or final notice was given.

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Appeals

- 8 (1) A person on whom a financial penalty is imposed by a final notice may, within the period of 28 days beginning with the day after that on which the notice was given, appeal against the notice to the First-tier Tribunal.
- (2) The grounds for an appeal under this paragraph are that the decision to impose the financial penalty was—
- (a) based on an error of fact,
 - (b) wrong in law, or
 - (c) unreasonable.
- (3) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.
- (4) On an appeal under this paragraph the First-tier Tribunal may—
- (a) quash the final notice,
 - (b) confirm the final notice,
 - (c) vary the final notice by reducing the amount of the financial penalty, or
 - (d) remit to the local authority the decision whether to—
 - (i) withdraw or confirm the final notice, or
 - (ii) vary the final notice by reducing the amount of the financial penalty.

Recovery of penalties

- 9 A financial penalty is recoverable as a civil debt due to the local authority that imposed the penalty.

Delegation

- 10 (1) A local authority may delegate to a person the exercise of any of the authority's functions under this Schedule.
- (2) A delegation under this paragraph must be made by giving notice to the person.

Notices

- 11 (1) A notice under this Schedule must be in writing.
- (2) A notice under this Schedule may be given to a person by—
- (a) handing it to the person,
 - (b) leaving it at the person's address,
 - (c) sending it by post to the person at their address, or
 - (d) with the person's consent, sending it to them electronically.

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Notices: vessels which are moored

- 12 (1) This paragraph applies in relation to a vessel which is moored in a smoke control area in England and is subject to the operation of this Schedule (see section 44).
- (2) If the local authority is unable to give a notice of intent to the occupier of the vessel who is not the registered owner of the vessel, the local authority may give the notice to the registered owner of the vessel instead.
- (3) In such a case, the ground for objecting to the proposed financial penalty mentioned in paragraph 4(2)(c) does not apply.
- (4) Where a notice of intent is given to a person in respect of a vessel, that person may object under paragraph 4 on the further ground that, on the occasion specified in the notice, the emission of smoke was solely due to the use of the vessel’s engine to propel the vessel or to provide electric power to the vessel.”

Commencement Information

I211 Sch. 12 para. 3 not in force at Royal Assent, see [s. 147\(3\)](#)

4 After section 19A (as inserted by paragraph 2 above)—

“19B Acquisition and sale of controlled solid fuel in England

- (1) A person who acquires in England any controlled solid fuel for use in—
- (a) a building to which a smoke control order in England applies,
 - (b) a fireplace to which such an order applies, or
 - (c) a fixed boiler or industrial plant to which such an order applies,
- is guilty of an offence.
- (2) Where a smoke control order in England applies to a moored vessel (see section 44), subsection (1)(a) does not apply in relation to the acquisition of controlled solid fuel for use in the propulsion of the vessel or to provide electric power to the vessel.
- (3) Subsection (1)(b) does not apply where the fireplace was an approved fireplace at the time of the acquisition.
- (4) A person who—
- (a) offers controlled solid fuel for sale by retail in England where the fuel is to be taken away by a purchaser, and
 - (b) fails to take reasonable steps to notify potential purchasers that it is an offence to acquire that fuel for any of the uses mentioned in subsection (1),
- is guilty of an offence.
- (5) A person who sells any controlled solid fuel by retail in England for delivery by that person, or on that person’s behalf, to—

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- (a) a building to which a smoke control order in England applies, or
 - (b) premises in which there is any fixed boiler or industrial plant to which such an order applies,
- is guilty of an offence.

- (6) In proceedings for an offence under subsection (5) it is a defence for the person accused to prove that the person believed and had reasonable grounds for believing that—
- (a) the building referred to in subsection (5)(a) was not one to which the smoke control order in question applied, or
 - (b) the fuel was acquired for use in—
 - (i) a fireplace that was, at the time of the delivery, an approved fireplace, or
 - (ii) a boiler or plant to which the smoke control order did not apply.
- (7) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) A person guilty of an offence under subsection (4) or (5) is liable on summary conviction to a fine.

19C Exemptions relating to particular areas in England

- (1) The Secretary of State may, if it appears to the Secretary of State to be necessary or expedient to do so, by order suspend or relax the operation of—
- (a) Schedule 1A (penalty for emission of smoke), or
 - (b) section 19B(1), (4) or (5) (offences relating to acquisition and sale of fuel),
- in relation to the whole or part of a smoke control area in England.
- (2) Before making an order under subsection (1) the Secretary of State must consult the local authority that declared the smoke control area in question unless satisfied that, on account of urgency, such consultation is impracticable.
- (3) As soon as practicable after the making of such an order the local authority must take such steps as appear to them suitable for bringing the effect of the order to the notice of persons affected.

19D Interpretation: “approved fireplace” and “controlled solid fuel”

- (1) In section 19B, “approved fireplace” means a fireplace of a type specified in a list published by the Secretary of State.
- (2) The Secretary of State may only specify a type of fireplace in the list if satisfied that such a fireplace can, if used in compliance with any conditions specified in the list, be used for burning controlled solid fuel without producing any smoke or a substantial quantity of smoke.
- (3) In section 19B and this section, “controlled solid fuel” means any solid fuel other than an approved fuel.

Status: Point in time view as at 09/11/2021.

Changes to legislation: Environment Act 2021 is up to date with all changes known to be in force on or before 15 July 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)

- (4) In subsection (3), “approved fuel” means a solid fuel specified in a list which has been published by the Secretary of State for the purposes of this section.”

Commencement Information

I212 Sch. 12 para. 4 not in force at Royal Assent, see [s. 147\(3\)](#)

5 After section 26 insert—

“26A Duty of local authority to reimburse for adaptations of vessels in England

- (1) This section applies where—
- (a) a local authority in England makes a smoke control order,
 - (b) as a result of the order a vessel will, when the order comes into operation, be within a smoke control area and subject to the operation of Schedule 1A,
 - (c) the owner or occupier of the vessel has a right to moor the vessel at a single mooring place within that area for the period which—
 - (i) begins on the day on which the smoke control order is made, and
 - (ii) ends six months after it comes into operation, and
 - (d) the owner or occupier does not have access to a mains electricity or gas supply at the mooring place.
- (2) If—
- (a) before the coming into operation of the order, the owner or occupier incurs expenditure on adaptations to or in connection with the vessel to avoid the imposition of a penalty under Schedule 1A,
 - (b) the expenditure is incurred with the approval of the local authority given for the purpose of this section, and
 - (c) the adaptations are completed to the satisfaction of the local authority,
- the authority must pay to the owner or occupier of the vessel 70% of the expenditure.
- (3) That amount must be paid in equal instalments every month for a period of six months.
- (4) But the duty to pay instalments under this section ceases if, at any time after the coming into operation of the smoke control order—
- (a) the owner or occupier of the vessel ceases to have the right to moor the vessel at the single mooring place mentioned in subsection (1)(c), or
 - (b) the vessel is absent from the smoke control area for a period of, or periods together totalling, three months.”

Status: Point in time view as at 09/11/2021.

Changes to legislation: Environment Act 2021 is up to date with all changes known to be in force on or before 15 July 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)

Commencement Information

I213 Sch. 12 para. 5 not in force at Royal Assent, see [s. 147\(3\)](#)

6 After section 28 insert—

“28A Guidance for local authorities in England

A local authority in England must have regard to any guidance published by the Secretary of State about the exercise of the authority’s functions under this Part.”

Commencement Information

I214 Sch. 12 para. 6 not in force at Royal Assent, see [s. 147\(3\)](#)

7 In section 44 (vessels), after subsection (2) insert—

“(2A) A smoke control order made under section 18 by a local authority in England may provide for vessels which are moored in the smoke control area to be subject to the operation of Schedule 1A.

(2B) For the purposes of a smoke control order which so provides—

- (a) any reference in Part 3 and in section 54 to a building is to be read with any necessary modifications as a reference to such a vessel, but
- (b) references in sections 24 and 25 to dwellings do not include such vessels.

(2C) In subsection (2A) the reference to vessels which are moored includes a vessel which is unmoored but which is stationary at a mooring place in circumstances where it might reasonably be moored.”

Commencement Information

I215 Sch. 12 para. 7 not in force at Royal Assent, see [s. 147\(3\)](#)

8 In section 56 (rights of entry and inspection etc), for subsection (2) substitute—

“(2) Subsection (1) does not apply in relation to a private dwelling except in relation to—

- (a) a private dwelling in relation to which adaptations are required under section 24(1), or
- (b) a private dwelling that is a vessel in relation to which there is a duty to make payments under section 26A(3).”

Commencement Information

I216 Sch. 12 para. 8 not in force at Royal Assent, see [s. 147\(3\)](#)

Status: Point in time view as at 09/11/2021.

Changes to legislation: Environment Act 2021 is up to date with all changes known to be in force on or before 15 July 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)

PROSPECTIVE

PART 2 **E+W**

PRINCIPAL AMENDMENTS TO THE CLEAN AIR ACT 1993: WALES

9 The Clean Air Act 1993 is amended as follows.

Commencement Information

I217 Sch. 12 para. 9 not in force at Royal Assent, see [s. 147\(4\)](#)

10 (1) Section 20 (prohibition on emission of smoke in smoke control area) is amended as follows.

(2) After subsection (5C) insert—

“(5D) In the application of this Part to Wales, “authorised fuel” means a fuel included in a list of authorised fuels kept by the Welsh Ministers for the purposes of this Part.

(5E) The Welsh Ministers must—

- (a) publish the list of authorised fuels, and
- (b) publish a revised copy of the list as soon as is reasonably practicable after any change is made to it.

(5F) The list must be published in such manner as the Welsh Ministers consider appropriate.”

(3) Omit subsection (6).

Commencement Information

I218 Sch. 12 para. 10 not in force at Royal Assent, see [s. 147\(4\)](#)

11 (1) Section 21 (power to exempt certain fireplaces) is amended as follows.

(2) After subsection (4) insert—

“(4A) For the purposes of the application of this Part to Wales, the Welsh Ministers may exempt any class of fireplace from the provisions of section 20 (prohibition of smoke emissions in smoke control area) if they are satisfied that such fireplaces can be used for burning fuel other than authorised fuels without producing any smoke or a substantial quantity of smoke.

(4B) An exemption under subsection (4A) may be made subject to such conditions as the Welsh Ministers consider appropriate.

(4C) The Welsh Ministers must—

- (a) publish a list of those classes of fireplace that are exempt under subsection (4A) including details of any conditions to which an exemption is subject;

Status: Point in time view as at 09/11/2021.

Changes to legislation: Environment Act 2021 is up to date with all changes known to be in force on or before 15 July 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)

- (b) publish a revised copy of the list as soon as is reasonably practicable after any change is made to the classes of fireplace that are so exempt or to the conditions to which an exemption is subject.

(4D) The list must be published in such manner as the Welsh Ministers consider appropriate.”

(3) Omit subsection (5).

Commencement Information

I219 Sch. 12 para. 11 not in force at Royal Assent, see [s. 147\(4\)](#)

VALID FROM 01/05/2022

PART 3 **E+W**

MINOR AND CONSEQUENTIAL AMENDMENTS

Minor and consequential amendments to the Clean Air Act 1993

12 The Clean Air Act 1993 is amended as follows.

Commencement Information

I220 Sch. 12 para. 12 not in force at Royal Assent, see [s. 147\(3\)](#)

13 (1) Section 18 (declaration of smoke control area by local authority) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (b)—

(i) after “smoke” insert “in Wales”;

(ii) before “to” insert “or Schedule 1A (penalty for emission of smoke in England)”;

(b) in paragraph (c), after “section” insert “or Schedule”.

(3) After subsection (2) insert—

“(2A) For the purposes of this Part a smoke control order in England “applies” to a building, fireplace, fixed boiler or industrial plant if the operation of Schedule 1A is not excluded in relation to it by virtue of subsection (2)(b) or (c).”

Commencement Information

I221 Sch. 12 para. 13 not in force at Royal Assent, see [s. 147\(3\)](#)

14 (1) Section 20 (prohibition on emission of smoke in smoke control area) is amended as follows.

Status: Point in time view as at 09/11/2021.

Changes to legislation: Environment Act 2021 is up to date with all changes known to be in force on or before 15 July 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)

- (2) In the heading, at the end insert “in Wales”.
- (3) In subsections (1) and (2), after “area” insert “in Wales”.
- (4) Omit subsections (5ZA) to (5ZC).
- (5) If at the time of the coming into force of this paragraph Part 2 of this Schedule is not in force, in subsection (6)—
 - (a) omit “Except as provided by subsection (5ZA),”;
 - (b) for “Secretary of State” substitute “Welsh Ministers”.

Commencement Information

I222 Sch. 12 para. 14 not in force at Royal Assent, see [s. 147\(3\)](#)

- 15 (1) Section 21 (power to exempt certain fireplaces) is amended as follows.
- (2) In the heading, at the end insert “in Wales”.
 - (3) Omit subsections (A1) to (A4).
 - (4) If at the time of the coming into force of this paragraph Part 2 of this Schedule is not in force, in subsection (5)—
 - (a) omit “Except where subsection (A1) applies,”;
 - (b) for “Secretary of State” substitute “Welsh Ministers”;
 - (c) for “he is” substitute “they are”.

Commencement Information

I223 Sch. 12 para. 15 not in force at Royal Assent, see [s. 147\(3\)](#)

- 16 (1) Section 22 (exemptions relating to particular areas) is amended as follows.
- (2) In the heading, at the end insert “in Wales”.
 - (3) In subsection (1)—
 - (a) for “Secretary of State” substitute “Welsh Ministers”;
 - (b) for “him” substitute “them”;
 - (c) after “area”, in both places, insert “in Wales”.
 - (4) In subsection (2)—
 - (a) for “Secretary of State” substitute “Welsh Ministers”;
 - (b) for “he is” substitute “they are”.

Commencement Information

I224 Sch. 12 para. 16 not in force at Royal Assent, see [s. 147\(3\)](#)

- 17 (1) Section 23 (acquisition and sale of unauthorised fuel in a smoke control area) is amended as follows.
- (2) In the heading, at the end insert “in Wales”.

Status: Point in time view as at 09/11/2021.

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- (3) In subsection (1)—
- (a) in paragraph (a), after “area” in both places insert “in Wales”;
 - (b) in paragraph (b), after “area” insert “in Wales”;
 - (c) in paragraph (c)—
 - (i) after “fuel” insert “in Wales”;
 - (ii) in sub-paragraph (i), after “area” insert “in Wales”.
- (4) In subsection (3), after “area” insert “in Wales”.
- (5) In subsection (4)—
- (a) for “Secretary of State” substitute “Welsh Ministers”;
 - (b) after first “area” insert “in Wales”.
- (6) In subsection (5)—
- (a) after first “fuel” insert “in Wales”;
 - (b) after “premises” insert “in Wales”.

Commencement Information

I225 Sch. 12 para. 17 not in force at Royal Assent, see [s. 147\(3\)](#)

- 18 In section 24 (power to require adaptations of fireplaces), in subsection (1)—
- (a) after second “area” insert “in Wales”;
 - (b) at the end insert “or the imposition of a financial penalty under Schedule 1A (penalty for emission of smoke in England)”.

Commencement Information

I226 Sch. 12 para. 18 not in force at Royal Assent, see [s. 147\(3\)](#)

- 19 In section 26 (power to make grants for fireplaces in churches etc)—
- (a) in subsection (1)—
 - (i) after second “area” insert “in Wales”;
 - (ii) before “, the local authority” insert “or the imposition of a financial penalty under Schedule 1A (penalty for emission of smoke in England)”;
 - (b) after subsection (2) insert—

“(3) Where a smoke control order in England applies to a vessel which is moored (see section 44), subsection (2)(c) applies to the vessel as it applies in relation to premises.”

Commencement Information

I227 Sch. 12 para. 19 not in force at Royal Assent, see [s. 147\(3\)](#)

- 20 In section 27 (references to adaptations)—
- (a) in the heading, at the end insert “or Schedule 1A”;
 - (b) in subsection (1)—

Status: Point in time view as at 09/11/2021.

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- (i) after “area” insert “in Wales”;
- (ii) before “shall be read” insert “or the imposition of a financial penalty under Schedule 1A (penalty for emission of smoke in England)”;
- (iii) at the end insert “or incurring liability under Schedule 1A”;
- (c) in subsection (3), after “Act” insert “or liability under Schedule 1A to this Act”;
- (d) in subsection (4), at the end insert “, and to any vessel to which section 26 or 26A (adaptations of vessels in England) applies”.

Commencement Information

I228 Sch. 12 para. 20 not in force at Royal Assent, see [s. 147\(3\)](#)

- 21 In section 28 (expenditure on execution of works), in subsection (3), at the end insert “, and to any vessel to which section 26 or section 26A (adaptations of vessels in England) applies”.

Commencement Information

I229 Sch. 12 para. 21 not in force at Royal Assent, see [s. 147\(3\)](#)

- 22 In section 29 (interpretation)—
- (a) in the definition of “old private dwelling”, omit the final “and”;
 - (b) in the definition of “smoke control order”, at the end insert “and”;
 - (c) after that definition insert—
““smoke control order in England” means a smoke control order made by a local authority in England.”

Commencement Information

I230 Sch. 12 para. 22 not in force at Royal Assent, see [s. 147\(3\)](#)

- 23 In section 63 (orders and regulations)—
- (a) in subsection (2), after “47(2)” insert “or paragraph 3(4) or 4(6) of Schedule 1A”;
 - (b) in subsection (3), after “section” insert “19C”.

Commencement Information

I231 Sch. 12 para. 23 not in force at Royal Assent, see [s. 147\(3\)](#)

- 24 (1) Schedule 1 (coming into operation of smoke control orders) is amended as follows.
- (2) In paragraph 5—
- (a) after “area” insert “in Wales”;
 - (b) before “may” insert “or Schedule 1A (penalty for emission of smoke in England)”.
- (3) After paragraph 6 insert—

Status: Point in time view as at 09/11/2021.

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- “6A When a local authority in England has made an order, the authority must—
- (a) inform the Secretary of State that it has done so, and
- (b) provide the date on which the order is to come, or came, into operation.”

Commencement Information

I232 Sch. 12 para. 24 not in force at Royal Assent, see [s. 147\(3\)](#)

Commencement Information

I220 Sch. 12 para. 12 not in force at Royal Assent, see [s. 147\(3\)](#)
I221 Sch. 12 para. 13 not in force at Royal Assent, see [s. 147\(3\)](#)
I222 Sch. 12 para. 14 not in force at Royal Assent, see [s. 147\(3\)](#)
I223 Sch. 12 para. 15 not in force at Royal Assent, see [s. 147\(3\)](#)
I224 Sch. 12 para. 16 not in force at Royal Assent, see [s. 147\(3\)](#)
I225 Sch. 12 para. 17 not in force at Royal Assent, see [s. 147\(3\)](#)
I226 Sch. 12 para. 18 not in force at Royal Assent, see [s. 147\(3\)](#)
I227 Sch. 12 para. 19 not in force at Royal Assent, see [s. 147\(3\)](#)
I228 Sch. 12 para. 20 not in force at Royal Assent, see [s. 147\(3\)](#)
I229 Sch. 12 para. 21 not in force at Royal Assent, see [s. 147\(3\)](#)
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I231 Sch. 12 para. 23 not in force at Royal Assent, see [s. 147\(3\)](#)
I232 Sch. 12 para. 24 not in force at Royal Assent, see [s. 147\(3\)](#)

Minor amendments to other legislation

- 25 In section 79 of the Environmental Protection Act 1990 (statutory nuisances), in subsection (3)(i), insert “in Wales”.

Commencement Information

I233 Sch. 12 para. 25 not in force at Royal Assent, see [s. 147\(3\)](#)

PART 4 E+W

SMOKE CONTROL AREAS IN ENGLAND: TRANSITIONAL PROVISION

- 26 Where a local authority in England has made a smoke control order under section 18 of the Clean Air Act 1993, any limitations or exemptions from the operation of section 20 of that Act (prohibition of emissions of smoke) made by that order under section 18(2)(b) or (c) of that Act that apply immediately before the commencement of Parts 1 and 3 of this Schedule continue to apply as if they were limitations or exemptions from the operation of Schedule 1A to that Act (penalty for emission of smoke), as inserted by paragraph 3 of this Schedule.

Status: Point in time view as at 09/11/2021.

Changes to legislation: Environment Act 2021 is up to date with all changes known to be in force on or before 15 July 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)

Commencement Information

I234 Sch. 12 para. 26 in force at Royal Assent, see [s. 147](#)

VALID FROM 24/01/2022

SCHEDULE 13 **U.K.**

Section 86

MODIFYING WATER AND SEWERAGE UNDERTAKERS’ APPOINTMENTS: PROCEDURE FOR APPEALS

Commencement Information

I235 Sch. 13 not in force at Royal Assent, see [s. 147\(3\)](#)

“SCHEDULE 2ZA **U.K.**

Section 12E

PROCEDURE FOR APPEALS UNDER SECTION [12D](#)

Application for permission to bring appeal

- 1 (1) An application for permission to bring an appeal may be made only by sending a notice to the CMA requesting the permission.
- (2) Only a person entitled under section [12D](#) to bring the appeal if permission is granted may apply for permission.
- (3) Where the Authority publishes a decision to modify the conditions of any appointment under section [12A\(9\)](#), any application for permission to appeal is not to be made after the end of 20 working days beginning with the first working day after the day on which the decision is published.
- (4) An application for permission to appeal must be accompanied by all such information as may be required by appeal rules.
- (5) Appeal rules may require information contained in an application for permission to appeal to be verified by a statement of truth.
- (6) A person who applies for permission to bring an appeal in accordance with this paragraph is referred to in this Schedule as the appellant.
- (7) The appellant must send the Authority—
 - (a) a copy of the application for permission to appeal at the same time as it is sent to the CMA, and
 - (b) such other information as may be required by appeal rules.
- (8) The CMA’s decision whether to grant permission to appeal is to be taken by an authorised member of the CMA.

Status: Point in time view as at 09/11/2021.

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- (9) Before the authorised member decides whether to grant permission under this paragraph, the Authority must be given an opportunity of making representations or observations, in accordance with paragraph 3(2).
- (10) The CMA's decision on an application for permission to appeal must be made—
 - (a) where the Authority makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received;
 - (b) in any other case, before the end of 14 working days beginning with the first working day after the day on which the application for permission was received.
- (11) The grant of permission may be made subject to conditions, which may include—
 - (a) conditions which limit the matters that are to be considered on the appeal in question,
 - (b) conditions for the purpose of expediting the determination of the appeal, and
 - (c) conditions requiring that appeal to be considered together with other appeals (including appeals relating to different matters or decisions and appeals brought by different persons).
- (12) Where a decision is made to grant or to refuse an application for permission, an authorised member of the CMA must notify the decision, giving reasons—
 - (a) to the appellant, and
 - (b) to the Authority.
- (13) A decision of the CMA under this paragraph must be published, in a way an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is made.
- (14) Section 12I(2) applies to the publication of a decision under sub-paragraph (13) as it does to the publication under section 12I of a determination by the CMA on an appeal.

Suspension of decision

- 2 (1) The CMA may direct that, pending the determination of an appeal against a decision of the Authority—
 - (a) the decision is not to have effect, or
 - (b) the decision is not to have effect to such extent as may be specified in the direction.
- (2) In the case of an appeal against a decision of the Authority which already has effect by virtue of section 12B, the CMA may direct that the modification that is the subject of the decision—
 - (a) ceases to have effect entirely or to such extent as may be specified in the direction, and
 - (b) does not have effect, or does not have effect to the specified extent, pending the determination of the appeal.
- (3) The power to give a direction under this paragraph is exercisable only where—

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- (a) an application for its exercise has been made by the appellant at the same time the appellant made an application in accordance with paragraph 1(3) for permission to bring an appeal against a decision of the Authority,
 - (b) the Authority has been given an opportunity of making representations or observations, in accordance with paragraph 3(2),
 - (c) the appellant (or, where the appellant is within section 12D(2)(c) or (d), those represented by the appellant, or consumers, respectively) would incur significant costs if the decision were to have effect before the determination of the appeal, and
 - (d) the balance of convenience does not otherwise require effect to be given to the decision pending that determination.
- (4) The CMA's decision on an application for a direction under this paragraph must be made—
- (a) where the Authority makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received;
 - (b) in any other case, before the end of 14 working days beginning with the first working day following the day on which the application under sub-paragraph (3)(a) is received.
- (5) The appellant must send the Authority a copy of the application for a direction under this paragraph at the same time as it is sent to the CMA.
- (6) A direction under this paragraph must be—
- (a) given by an authorised member of the CMA, and
 - (b) published, in a way an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is given.
- (7) Section 12I(2) applies to the publication of a direction under sub-paragraph (6) as it does to the publication under section 12I of a determination by the CMA on an appeal.

Time limit for representations and observations by the Authority

- 3 (1) Sub-paragraph (2) applies where the Authority wishes to make representations or observations to the CMA in relation to—
- (a) an application for permission to bring an appeal under paragraph 1;
 - (b) an application for a direction under paragraph 2.
- (2) The Authority must make the representations or observations in writing before the end of 10 working days beginning with the first working day after the day on which it received a copy of the application under paragraph 1(7) or 2(5) as the case may be.
- (3) Sub-paragraph (4) applies where an application for permission to bring an appeal has been granted and the Authority wishes to make representations or observations to the CMA in relation to—
- (a) the Authority's reasons for the decision in relation to which the appeal is being brought, and
 - (b) any grounds on which that appeal is being brought against that decision.

Status: Point in time view as at 09/11/2021.

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- (4) The Authority must make the representations or observations in writing before the end of 15 working days beginning with the first working day after the day on which permission to bring the appeal was granted.
- (5) The Authority must send a copy of the representations and observations it makes under this paragraph to the appellant.

Consideration and determination of appeal by group

- 4 (1) A group constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purpose of carrying out functions of the CMA with respect to an appeal under section 12D must consist of three members of the CMA panel.
- (2) A decision of the group is effective if, and only if—
 - (a) all the members of the group are present when it is made, and
 - (b) at least two members of the group are in favour of the decision.

Matters to be considered on appeal

- 5 (1) The CMA, if it thinks it necessary to do so for the purpose of securing the determination of an appeal within the period provided for by section 12H, may disregard—
 - (a) any or all matters raised by an appellant that were not raised by that appellant at the time of the relevant application, and
 - (b) any or all matters raised by the Authority that were not contained in representations or observations made for the purposes of the appeal in accordance with paragraph 3.
- (2) In this paragraph “relevant application” means an application under paragraph 1 or 2.

Production of documents etc

- 6 (1) For the purposes of this Schedule, the CMA may, by notice, require—
 - (a) a person to produce to the CMA the documents specified or otherwise identified in the notice;
 - (b) any person who carries on a business to supply to the CMA such estimates, forecasts, returns or other information as may be specified or described in the notice in relation to that business.
- (2) The power to require the production of a document, or the supply of any estimate, forecast, return or other information, is a power to require its production or, as the case may be, supply—
 - (a) at the time and place specified in the notice, and
 - (b) in a legible form.
- (3) No person is to be compelled under this paragraph to produce a document or supply an estimate, forecast, return or other information that the person could not be compelled to produce in civil proceedings in the High Court.
- (4) An authorised member of the CMA may, for the purpose of the exercise of the functions of the CMA, make arrangements for copies to be taken of a document

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produced or an estimate, forecast, return or other information supplied under this paragraph.

- (5) A notice for the purposes of this paragraph—
- (a) may be issued on the CMA's behalf by an authorised member of the CMA;
 - (b) must include information about the possible consequences of not complying with the notice (as set out in paragraph 10).

Oral hearings

- 7 (1) For the purposes of this Schedule an oral hearing may be held, and evidence may be taken on oath—
- (a) by a person considering an application for permission to bring an appeal under paragraph 1,
 - (b) by a person considering an application for a direction under paragraph 2, or
 - (c) by a group with the function of determining an appeal,
- and, for that purpose, such a person or group may administer oaths.
- (2) The CMA may, by notice, require a person—
- (a) to attend at a time and place specified in the notice, and
 - (b) at that time and place, to give evidence to a person or group mentioned in sub-paragraph (1).
- (3) At any oral hearing, the person or group conducting the hearing may require—
- (a) the appellant, or the Authority, if present at the hearing to give evidence or to make representations or observations, or
 - (b) a person attending the hearing as a representative of the appellant or of the Authority to make representations or observations.
- (4) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of any party to the appeal.
- (5) If the appellant, the Authority, or the appellant's or Authority's representative is not present at a hearing—
- (a) there is no requirement to give notice to that person under sub-paragraph (2), and
 - (b) the person or group conducting the hearing may determine the application or appeal without hearing that person's evidence, representations or observations.
- (6) No person is to be compelled under this paragraph to give evidence which that person could not be compelled to give in civil proceedings in the High Court.
- (7) Where a person is required under this paragraph to attend at a place more than 10 miles from that person's place of residence, an authorised member of the CMA must arrange for that person to be paid the necessary expenses of attendance.
- (8) A notice for the purposes of this paragraph may be issued on the CMA's behalf by an authorised member of the CMA.

Status: Point in time view as at 09/11/2021.

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Written statements

- 8 (1) The CMA may, by notice, require a person to produce a written statement with respect to a matter specified in the notice to—
- (a) a person who is considering, or is to consider, an application for a direction under paragraph 2, or
 - (b) a group with the function of determining an appeal.
- (2) The power to require the production of a written statement includes power—
- (a) to specify the time and place at which it is to be produced, and
 - (b) to require it to be verified by a statement of truth,
- and a statement required to be so verified must be disregarded unless it is so verified.
- (3) No person is to be compelled under this paragraph to produce a written statement with respect to any matter about which that person could not be compelled to give evidence in civil proceedings in the High Court.
- (4) A notice for the purposes of this paragraph may be issued on the CMA’s behalf by an authorised member of the CMA.

Expert advice

- 9 Where permission to bring an appeal is granted under paragraph 1, the CMA may commission expert advice with respect to any matter raised by a party to that appeal.

Defaults in relation to evidence

- 10 (1) This paragraph applies if a person (“the defaulter”)—
- (a) fails to comply with a notice issued or other requirement imposed under paragraph 6, 7 or 8,
 - (b) in complying with a notice under paragraph 8, makes a statement that is false in any material particular, or
 - (c) in providing information verified in accordance with a statement of truth required by appeal rules, provides information that is false in a material particular.
- (2) An authorised member of the CMA may certify the failure, or the fact that such a false statement has been made or such false information has been given, to the High Court.
- (3) The High Court may inquire into a matter certified to it under this paragraph and if, after having heard—
- (a) any witness against or on behalf of the defaulter, and
 - (b) any statement in the defaulter’s defence,
- it is satisfied that the defaulter, without reasonable excuse, failed to comply with the notice or other requirement, or made the false statement, or gave the false information, that court may punish that defaulter as if the person had been guilty of contempt of court.

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- (4) Where the High Court has power under this paragraph to punish a body corporate for contempt of court, it may so punish any director or other officer of that body (either instead of or as well as punishing the body).
- (5) A person who wilfully alters, suppresses or destroys a document that the person has been required to produce under paragraph 6 is guilty of an offence and shall be liable—
 - (a) on summary conviction to a fine;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

Appeal rules

- 11 (1) The CMA Board may make rules of procedure regulating the conduct and disposal of appeals under section 12D.
- (2) Those rules may include provision supplementing the provisions of this Schedule in relation to any application, notice, hearing, power or requirement for which this Schedule provides; and that provision may, in particular, impose time limits or other restrictions on—
 - (a) the taking of evidence at an oral hearing, or
 - (b) the making of representations or observations at such a hearing.
- (3) The CMA Board must publish rules made under this paragraph in a way it considers appropriate for bringing them to the attention of those likely to be affected by them.
- (4) Before making rules under this paragraph, the CMA Board must consult such persons as it considers appropriate.
- (5) Rules under this paragraph may make different provision for different cases.

Costs

- 12 (1) A group that determines an appeal must make an order requiring the payment to the CMA of the costs incurred by the CMA in connection with the appeal.
- (2) An order under sub-paragraph (1) must require those costs to be paid—
 - (a) where the appeal is allowed in full, by the Authority,
 - (b) where the appeal is dismissed in full, by the appellant, or
 - (c) where the appeal is partially allowed, by one or more parties in such proportions as the CMA considers appropriate in all the circumstances.
- (3) The group that determines an appeal may also make such order as it thinks fit for requiring a party to the appeal to make payments to another party in respect of costs reasonably incurred by that other party in connection with the appeal.
- (4) A person who is required by an order under this paragraph to pay a sum to another person must comply with the order before the end of the period of 28 days beginning with the day after the making of the order.
- (5) Sums required to be paid by an order under this paragraph but not paid within the period mentioned in sub-paragraph (4) shall bear interest at such rate as may be determined in accordance with provision contained in the order.

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- (6) Any costs payable by virtue of an order under this paragraph and any interest that has not been paid may be recovered as a civil debt by the person in whose favour that order is made.

Interpretation of Schedule

13 (1) In this Schedule—

“appeal” means an appeal under section 12D;

“appeal rules” means rules of procedure under paragraph 11;

“authorised member of the CMA”—

- (a) in relation to a power exercisable in connection with an appeal in respect of which a group has been constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, means a member of that group who has been authorised by the chair of the CMA to exercise that power;

- (b) in relation to a power exercisable in connection with an application for permission to bring an appeal, or otherwise in connection with an appeal in respect of which a group has not been so constituted by the chair of the CMA, means—

- (i) any member of the CMA Board who is also a member of the CMA panel, or

- (ii) any member of the CMA panel authorised by the Secretary of State (whether generally or specifically) to exercise the power in question;

“CMA Board” and “CMA panel” have the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013;

“statement of truth”, in relation to the production of a statement or provision of information by a person, means a statement that the person believes the facts stated in the statement or information to be true;

“working day” means any day other than—

- (a) Saturday or Sunday;

- (b) Christmas Day or Good Friday;

- (c) a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

(2) References in this Schedule to a party to an appeal are references to—

- (a) the appellant, or

- (b) the Authority.”

VALID FROM 03/11/2023

SCHEDULE 14 **E+W**

Section 98

BIODIVERSITY GAIN AS CONDITION OF PLANNING PERMISSION

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Status: Point in time view as at 09/11/2021.

Changes to legislation: Environment Act 2021 is up to date with all changes known to be in force on or before 15 July 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)

PROSPECTIVE

SCHEDULE 15 **E+W**

Section 99

BIODIVERSITY GAIN IN NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS

PART 1 **E+W**

PRINCIPAL AMENDMENTS TO THE PLANNING ACT 2008

1 The Planning Act 2008 is amended as follows.

Commencement Information

I239 Sch. 15 para. 1 not in force at Royal Assent, see [s. 147\(3\)](#)

2 In section 103 (Secretary of State is to decide applications), after subsection (1) insert—

“(1A) Schedule 2A makes provision about biodiversity gain in relation to decisions of the Secretary of State under sections 104 and 105; and for related matters.”

Commencement Information

I240 Sch. 15 para. 2 not in force at Royal Assent, see [s. 147\(3\)](#)

3 (1) Section 104 (decisions in cases where national policy statement has effect) is amended as follows.

(2) For subsection (3) substitute—

“(3) The Secretary of State must decide the application in accordance with any relevant national policy statement.

(3A) In particular, if a relevant national policy statement contains a biodiversity gain statement under Schedule 2A in relation to development of the description to which the application relates, the Secretary of State may not grant the application unless satisfied that the biodiversity gain objective contained in the statement is met in relation to the development to which the application relates.

(3B) Subsections (3) and (3A) do not apply to the extent that one or more of subsections (4) to (8) applies.”

(3) In each of subsections (4), (5) and (6), for “any relevant national policy statement” substitute “subsection (3) or (3A)”.

(4) In subsection (8), for “a national policy statement” substitute “subsection (3) or (3A)”.

Status: Point in time view as at 09/11/2021.

Changes to legislation: Environment Act 2021 is up to date with all changes known to be in force on or before 15 July 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)

Commencement Information

I241 Sch. 15 para. 3 not in force at Royal Assent, see [s. 147\(3\)](#)

- 4 (1) Section 105 (decisions in cases where no national policy statement has effect), after subsection (2) insert—

“(3) Where there is a biodiversity gain statement under Schedule 2A in relation to development of the description to which the application relates, the Secretary of State may not grant the application unless satisfied that the biodiversity gain objective contained in the statement is met in relation to the development to which the application relates.

(4) Subsection (3) does not apply to the extent that the Secretary of State is satisfied that deciding the application in accordance with that subsection would have an effect referred to in section 104(4), (5), (6) or (7).”

Commencement Information

I242 Sch. 15 para. 4 not in force at Royal Assent, see [s. 147\(3\)](#)

- 5 After Schedule 2 insert—

“SCHEDULE
 2A **E+W**

Section 103

BIODIVERSITY GAIN

Introductory

- 1 (1) This Schedule applies to development which—
- (a) is of a description of development to which a development consent order application may relate, and
 - (b) is not excluded development,
- to the extent that the development is carried out in England.

- (2) In this Schedule—

“development consent order application” means an application made under section 37 which falls to be determined under section 104 or 105;

“excluded development” means development of a description specified in regulations made by the Secretary of State.

Biodiversity gain statement

- 2 (1) A biodiversity gain statement is a statement of government policy in relation to the biodiversity gain to be achieved in connection with any description of development to which this Schedule applies.

- (2) In particular the statement must—

Status: Point in time view as at 09/11/2021.

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- (a) set out a biodiversity gain objective for any description of development to which this Schedule applies, and
 - (b) set out that, where development consent order applications are made for any development of that description during a period specified in the statement, the development must meet that objective.
- (3) The statement may specify how development of any description may or must meet the biodiversity gain objective.
- (4) In this Schedule, references to the period for which a biodiversity gain statement has effect are to the period referred to in sub-paragraph (2)(b).
- 3
 - (1) A biodiversity gain objective is an objective that the biodiversity value attributable to development to which a biodiversity gain statement relates exceeds the pre-development biodiversity value of the onsite habitat by a percentage specified in the statement.
 - (2) The percentage specified under sub-paragraph (1) must be at least 10%.
 - (3) The Secretary of State may by regulations amend sub-paragraph (2) so as to change the percentage for the time being specified in it.
- 4
 - (1) A biodiversity gain statement may specify for the purposes of a biodiversity gain objective how the biodiversity value or relative biodiversity value of any habitat or habitat enhancement is to be calculated.
 - (2) That may include calculation by, or by reference to—
 - (a) a biodiversity metric set out in a document produced by the Secretary of State for the purposes of the statement,
 - (b) the biodiversity metric referred to in paragraph 4 of Schedule 7A to the Town and Country Planning Act 1990, or
 - (c) such other biodiversity metric as the Secretary of State considers appropriate.
 - (3) The Secretary of State must—
 - (a) lay any document within sub-paragraph (2)(a) before Parliament, and
 - (b) publish it in such manner as the Secretary of State considers appropriate.
- 5
 - (1) A biodiversity gain statement may specify for the purposes of a biodiversity gain objective—
 - (a) what the pre-development biodiversity value of onsite habitat consists of, and
 - (b) the date by reference to which it is calculated.
 - (2) A biodiversity gain statement may in particular under sub-paragraph (1)(b) specify a different date in relation to development on land where activities on the land before the making of a development consent order application have, or have had, the result that the biodiversity value of the onsite habitat is lower than it would otherwise have been.

Status: Point in time view as at 09/11/2021.

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- (3) A biodiversity gain statement must include provision to secure that, where a development consent order application relates to land which is registered in the biodiversity gain site register, the pre-development biodiversity value of the onsite habitat includes the biodiversity value of the habitat enhancement which is, on the date specified under sub-paragraph (1)(b), recorded in the register as habitat enhancement to be achieved on the land.
- 6 (1) A biodiversity gain statement may specify for the purposes of a biodiversity gain objective what the biodiversity value attributable to any development consists of.
- (2) In particular, a biodiversity gain statement may specify any of the following as included in the biodiversity value attributable to any development—
- (a) the post-development biodiversity value of the onsite habitat,
 - (b) the biodiversity value of any offsite biodiversity gain allocated to the development (which may be registered offsite biodiversity gain), and
 - (c) the biodiversity value of any biodiversity credits purchased for the development.
- (3) If pursuant to sub-paragraph (2)(a) a biodiversity gain statement specifies the post-development biodiversity value of the onsite habitat, the statement must specify what that value consists of.
- (4) If pursuant to sub-paragraph (2)(b) a biodiversity gain statement specifies the biodiversity value of any offsite biodiversity gain allocated to the development, other than registered offsite biodiversity gain, the statement must specify—
- (a) what offsite biodiversity gain consists of, and
 - (b) how the allocation of offsite biodiversity gain is to be recorded.
- (5) Provision under sub-paragraph (3) or (4) must include provision to secure that, where works are carried out for the purposes of any development that increase the biodiversity value of onsite or offsite habitat by an amount that is significant in relation to its previous biodiversity value, the increase is to be taken into account only if—
- (a) any habitat enhancement resulting from the works is maintained for a period specified in the statement, and
 - (b) the maintenance of that habitat enhancement is secured in a way specified in the statement (for example, through conservation covenants or requirements imposed by a development consent order).
- 7 (1) A biodiversity gain statement must set out whether, and if so how, the biodiversity gain objective applies in relation to development where the onsite habitat is irreplaceable habitat.
- (2) A biodiversity gain statement may specify requirements, in relation to any such development, relating to the making of arrangements for the purpose of minimising the adverse effect of the development on the onsite habitat.

Status: Point in time view as at 09/11/2021.

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- 8 A biodiversity gain statement must specify the evidence that persons making a development consent order application in relation to which the statement has effect must produce in order to demonstrate how the biodiversity gain objective is met.

Development covered by an existing national policy statement

- 9
- (1) This paragraph applies where, at the time this Schedule comes into force, an existing national policy statement sets out policy in respect of a description of development to which this Schedule applies.
 - (2) On the first review of the existing national policy statement under section 6 after the coming into force of this Schedule, the Secretary of State must amend the statement under section 6(5)(a) so as to include a biodiversity gain statement for development of that description.
 - (3) The Secretary of State may issue a separate biodiversity gain statement (a “separate biodiversity gain statement”) having effect for any period before that for which the statement included in the existing national policy statement under sub-paragraph (2) has effect.
 - (4) Before issuing a separate biodiversity gain statement the Secretary of State must consult such persons as the Secretary of State considers appropriate.
 - (5) The Secretary of State must keep a separate biodiversity gain statement under review and may amend it at any time.
 - (6) The Secretary of State must—
 - (a) lay a separate biodiversity gain statement before Parliament, and
 - (b) publish it in such manner as the Secretary of State considers appropriate.
 - (7) A separate biodiversity gain statement is for the purposes of section 104(2) to (9) to be regarded as contained in the existing national policy statement.
 - (8) If it appears to the Secretary of State that the existing national policy statement is inconsistent with a separate biodiversity gain statement, the Secretary of State may amend the existing national policy statement in such manner as seems appropriate to the Secretary of State to remove the inconsistency.
 - (9) Where the existing national policy statement is amended pursuant to sub-paragraph (2) to include a biodiversity gain statement in relation to any description of development, a separate biodiversity gain statement relating to development of that description must be revoked as from the beginning of the period for which the new statement has effect.
 - (10) If the existing national policy statement’s designation as a national policy statement is withdrawn in relation to any description of development, any separate biodiversity gain statement relating to development of that description has effect as if it were a biodiversity gain statement issued under paragraph 10(2).

Status: Point in time view as at 09/11/2021.

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- (11) References in sub-paragraphs (4) to (10) to separate biodiversity gain statements include amended versions of such statements.
- (12) For the purposes of this Schedule, “existing national policy statement” means a national policy statement which is designated under section 5 before the coming into force of this Schedule.
- (13) For the purposes of sub-paragraph (2), an existing national policy statement is only reviewed under section 6 after the coming into force of this Schedule if the review begins after that time.

Development not covered by a national policy statement

- 10
- (1) This paragraph applies where, at the time this Schedule comes into force or any subsequent time, no national policy statement sets out policy in respect of a description of development to which this Schedule applies.
 - (2) The Secretary of State may issue a biodiversity gain statement in relation to that description of development.
 - (3) Before issuing a biodiversity gain statement under sub-paragraph (2) the Secretary of State must consult such persons as the Secretary of State considers appropriate.
 - (4) The Secretary of State must keep a statement issued under sub-paragraph (2) under review and may amend or revoke it at any time.
 - (5) The Secretary of State must—
 - (a) lay a statement issued under sub-paragraph (2) before Parliament, and
 - (b) publish it in such manner as the Secretary of State considers appropriate.
 - (6) References in sub-paragraphs (3) to (5) to statements issued under sub-paragraph (2) include amended versions of such statements.
 - (7) If after a statement is issued under sub-paragraph (2) a national policy statement relating to the description of development is designated under section 5, the Secretary of State must—
 - (a) include a biodiversity gain statement in relation to that description of development in the national policy statement, and
 - (b) revoke the statement issued under sub-paragraph (2).

Development at sea

- 11
- (1) The Secretary of State may by regulations provide for this Schedule to apply, with or without modifications, to any development to which this paragraph applies.
 - (2) This paragraph applies to development which—
 - (a) is of a description to which a development consent order application may relate, and

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- (b) is not excluded development, to the extent that the development is carried out in the English marine region.
- (3) In sub-paragraph (2), the “English marine region” means—
- (a) the English offshore region, and
 - (b) the English inshore region, excluding waters in England.
- (4) Regulations under this paragraph may make provision modifying the application of this Schedule in relation to development which is carried out at an inter-tidal location.
- (5) In sub-paragraph (4), “inter-tidal location” means a location that—
- (a) is in England, and
 - (b) is also at any time in the English inshore region.

Interpretation

12 For the purposes of this Schedule—

“biodiversity credits” means credits under section 101 of the Environment Act 2021;

“biodiversity gain site register” means the register under section 100 of the Environment Act 2021;

a “biodiversity metric” is a means of measuring the biodiversity value or relative biodiversity value of habitat or habitat enhancement;

“development consent order application” has the meaning given by paragraph 1(2);

“English inshore region” and “English offshore region” have the meanings given by section 322 of the Marine and Coastal Access Act 2009;

“excluded development” has the meaning given by paragraph 1(2);

“existing national policy statement” has the meaning given by paragraph 9(12);

“irreplaceable habitat” has the meaning given in regulations under paragraph 18 of Schedule 7A to the Town and Country Planning Act 1990;

“onsite habitat”, in relation to any development, means habitat on the land to which the development consent order application relates, and “offsite habitat” means habitat on other land;

“registered offsite biodiversity gain” has the meaning given by paragraph 10 of Schedule 7A to the Town and Country Planning Act 1990.”

Commencement Information

I243 Sch. 15 para. 5 not in force at Royal Assent, see s. 147(3)

Status: Point in time view as at 09/11/2021.

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PART 2 E+W

SUPPLEMENTARY AMENDMENTS TO THE PLANNING ACT 2008

6 The Planning Act 2008 is amended as follows.

Commencement Information

I244 Sch. 15 para. 6 not in force at Royal Assent, see [s. 147\(3\)](#)

7 In section 37 (applications for orders for development consent), after subsection (3) insert—

“(3A) The documents and information prescribed under subsection (3)(d) may include documents and information demonstrating how any biodiversity gain objective in a biodiversity gain statement under Schedule 2A having effect in relation to the development is to be met.”

Commencement Information

I245 Sch. 15 para. 7 not in force at Royal Assent, see [s. 147\(3\)](#)

8 In section 120 (what may be included in development consent order), in subsection (2), at the end insert—

“(c) requirements designed to secure that—

- (i) the biodiversity gain objective under Schedule 2A relevant to the development is met;
- (ii) any proposals included in the application for the order for the purposes of meeting the biodiversity gain objective are implemented.”

Commencement Information

I246 Sch. 15 para. 8 not in force at Royal Assent, see [s. 147\(3\)](#)

9 (1) Section 232 (orders and regulations) is amended as follows.

(2) In subsection (5), at the end insert—

“(f) regulations under paragraph 3(3) or 11 of Schedule 2A.”

(3) In subsection (7), after “or 105(2)(b)” insert “or paragraph 3(3) or 11 of Schedule 2A”.

Commencement Information

I247 Sch. 15 para. 9 not in force at Royal Assent, see [s. 147\(3\)](#)

Status: Point in time view as at 09/11/2021.

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VALID FROM 01/01/2023

SCHEDULE 16 **E+W**

Section 114

CONTROLLING THE FELLING OF TREES IN ENGLAND

Introductory

- 1 Part 2 of the Forestry Act 1967 (power to control felling of trees) is amended as follows.

Commencement Information

I248 Sch. 16 para. 1 not in force at Royal Assent, see [s. 147\(3\)](#)

Penalty for felling without licence: increase of fine

- 2 In section 17(1) (penalty for felling without a licence)—
- (a) after “and” insert—
 - “(a) in relation to an offence committed in Wales,”;
 - (b) at the end insert “, or
 - (b) in relation to an offence committed in England, liable on summary conviction to a fine.”

Commencement Information

I249 Sch. 16 para. 2 not in force at Royal Assent, see [s. 147\(3\)](#)

Restocking notices to be local land charges

- 3 In section 17A (power to require restocking after unauthorised felling), after subsection (1A) insert—
- “(1B) A restocking notice served by the Commissioners is a local land charge; and for the purposes of the Local Land Charges Act 1975 the Commissioners are the originating authority as respects the charge.”

Commencement Information

I250 Sch. 16 para. 3 not in force at Royal Assent, see [s. 147\(3\)](#)

Enforcement notices to be local land charges

- 4 In section 24 (notice to require compliance with conditions or directions), at the end insert—

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“(6) A notice under this section given by the Commissioners is a local land charge; and for the purposes of the Local Land Charges Act 1975 the Commissioners are the originating authority as respects the charge.”

Commencement Information

I251 Sch. 16 para. 4 not in force at Royal Assent, see [s. 147\(3\)](#)

Further enforcement notices for new estate or interest holders

5 (1) In section 17C (enforcement of restocking notice), after “directions),” insert “24A (further notice under section 24 for next estate or interest holders),”.

(2) After section 24 insert—

“24A Further notice under section 24 for next estate or interest holders

(1) Subsection (2) applies where—

- (a) a notice has been given to a person under section 24 to require compliance with the conditions of a felling licence in relation to land in England,
- (b) steps required by the notice have not been taken, and
- (c) before the time specified in the notice has expired, the person ceases to have the estate or interest in the land by reference to which the notice was served.

(2) The Commissioners may give to the next estate or interest holder a further notice under section 24 requiring the steps that were not completed under the notice described in subsection (1) to be completed.

(3) In subsection (2) the “next estate or interest holder” means the person who has an estate or interest in the land as is referred to in section 10(1) immediately after the person referred to in subsection (1) ceased to have the estate or interest referred to in subsection (1)(c).

(4) The reference in subsection (1) to a notice under section 24 includes a notice given under subsection (2).”

Commencement Information

I252 Sch. 16 para. 5 not in force at Royal Assent, see [s. 147\(3\)](#)

Power of court to order restocking after conviction for failure to comply with enforcement notice

6 After section 24A (inserted by paragraph 5) insert—

“24B Restocking orders after conviction under section 24 in England

(1) This section applies where a person has been convicted of an offence under section 24(4) in England in relation to a failure to take steps

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required by a notice given under section 24 to remedy a default in the case of non-compliance with—

- (a) the conditions of a felling licence that relate to the restocking or stocking of land with trees, or
 - (b) the requirements of a restocking notice.
- (2) The court may make a restocking order.
- (3) A restocking order is an order that requires the person to take such steps as may be specified therein to be taken within such time as may be so specified—
- (a) to restock or stock with trees the land in respect of which the notice under section 24 was given, or such other land as the court considers appropriate, and
 - (b) to maintain those trees in accordance with the rules and practice of good forestry for a period not exceeding ten years specified in the order.
- (4) In deciding whether to make a restocking order the court must have regard to—
- (a) the interests of good forestry and agriculture and of the amenities of the district to which the restocking order would relate, and
 - (b) the desirability of promoting the establishment and maintenance of adequate reserves of growing trees in England.
- (5) Section 63(3) of the Magistrates’ Courts Act 1980 (power of magistrates’ court to deal with person for breach of order etc) applies in relation to a restocking order.”

Commencement Information

I253 Sch. 16 para. 6 not in force at Royal Assent, see [s. 147\(3\)](#)

Service of notices on directors of companies that have estates or interests in land

- 7
- (1) Section 30 (service of documents) is amended as follows.
 - (2) In subsection (2), at the end insert “or, in the case of service by the Commissioners, upon a director of the company or body”.
 - (3) In subsection (3), after “clerk” insert “or director”.

Commencement Information

I254 Sch. 16 para. 7 not in force at Royal Assent, see [s. 147\(3\)](#)

Requiring information from the owner of land

- 8
- In section 30(5) (power to require information regarding interests in land), after the second “land” insert “, and the owner of any land in England”.

Status: Point in time view as at 09/11/2021.

Changes to legislation: Environment Act 2021 is up to date with all changes known to be in force on or before 15 July 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)

Commencement Information

I255 Sch. 16 para. 8 not in force at Royal Assent, see [s. 147\(3\)](#)

VALID FROM 30/09/2022

SCHEDULE 17 **U.K.**

Section 116

USE OF FOREST RISK COMMODITIES IN COMMERCIAL ACTIVITY

PART 1 **U.K.**

REQUIREMENTS

Meaning of “forest risk commodity”

- 1 (1) In this Schedule “forest risk commodity” means a commodity specified in regulations made by the Secretary of State.
- (2) The regulations may specify only a commodity that has been produced from a plant, animal or other living organism.
- (3) The regulations may specify a commodity only if the Secretary of State considers that forest is being or may be converted to agricultural use for the purposes of producing the commodity.
- (4) “Forest” means an area of land of more than 0.5 hectares with a tree canopy cover of at least 10% (excluding trees planted for the purpose of producing timber or other commodities).
- (5) In sub-paragraph (4) the reference to land includes land that is wholly or partly submerged in water (whether temporarily or permanently).
- (6) The regulations may not specify timber or timber products, within the meaning of [Regulation \(EU\) No. 995/2010](#) of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market.
- (7) Before making regulations under this paragraph the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (8) The requirement to consult in sub-paragraph (7) may be met by consultation carried out before this paragraph comes into force.

Commencement Information

I256 Sch. 17 para. 1 not in force at Royal Assent, see [s. 147\(3\)](#)

Status: Point in time view as at 09/11/2021.

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Prohibition on using illegally produced commodities

- 2 (1) A regulated person in relation to a forest risk commodity must not use that commodity in their UK commercial activities unless relevant local laws were complied with in relation to that commodity.
- (2) A regulated person in relation to a forest risk commodity must not use a product derived from that commodity in their UK commercial activities unless relevant local laws were complied with in relation to that commodity.
- (3) In this Schedule “local law”, in relation to a forest risk commodity, means any law having effect in the country or territory where the source organism was grown, raised or cultivated.
- (4) In this Schedule “relevant local law”, in relation to a forest risk commodity, means local law—
- (a) which relates to the ownership of the land on which the source organism was grown, raised or cultivated,
 - (b) which relates to the use of that land, or
 - (c) which otherwise relates to that land and is specified in regulations made by the Secretary of State.
- (5) The regulations may specify a local law only if it relates to the prevention of forest being converted to agricultural use.
- (6) The “source organism” means the plant, animal or other living organism from which the forest risk commodity was produced.
- (7) Sub-paragraph (1) does not apply to the use of a forest risk commodity where—
- (a) the commodity is waste (within the meaning of article 2(1) of the Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072)), and
 - (b) the use of the commodity is for the purpose of making renewable transport fuel—
 - (i) that qualifies for the issue of an RTF certificate under article 17 of that Order, and
 - (ii) in respect of which an additional RTF certificate may be issued under article 17A(4) of that Order.
- (8) Sub-paragraph (2) does not apply to the use of a product derived from a forest risk commodity where—
- (a) the commodity is waste (within the meaning of article 2(1) of the Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072)), and
 - (b) the product is renewable transport fuel—
 - (i) that qualifies for the issue of an RTF certificate under article 17 of that Order, and
 - (ii) in respect of which an additional RTF certificate may be or has been issued under article 17A(4) of that Order.

Commencement Information

I257 Sch. 17 para. 2 not in force at Royal Assent, see [s. 147\(3\)](#)

Status: Point in time view as at 09/11/2021.

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Due diligence system

- 3 (1) A regulated person in relation to a forest risk commodity who uses that commodity or a product derived from that commodity in their UK commercial activities must establish and implement a due diligence system in relation to that commodity.
- (2) In this Schedule a “due diligence system”, in relation to a forest risk commodity, means a system for—
- (a) identifying, and obtaining information about, that commodity,
 - (b) assessing the risk that relevant local laws were not complied with in relation to that commodity, and
 - (c) mitigating that risk.
- (3) The Secretary of State may by regulations make further provision about the matters in sub-paragraph (2)(a) to (c), including in particular—
- (a) the information that should be obtained;
 - (b) the criteria to be used in assessing risk;
 - (c) the ways in which risk may be mitigated.

Commencement Information

I258 Sch. 17 para. 3 not in force at Royal Assent, see [s. 147\(3\)](#)

Annual report on due diligence system

- 4 (1) A regulated person in relation to a forest risk commodity who uses that commodity or a product derived from that commodity in their UK commercial activities must, for each reporting period, provide the relevant authority with a report on the actions taken by the person to establish and implement a due diligence system in relation to that commodity as required by paragraph 3.
- (2) The report must be provided no later than 6 months after the end of the reporting period to which it relates.
- (3) The Secretary of State may by regulations make provision—
- (a) about the content and form of reports under this paragraph;
 - (b) about the manner in which reports under this paragraph are to be provided.
- (4) The relevant authority must make reports under this paragraph available to the public in the way, and to the extent, specified in regulations made by the Secretary of State.
- (5) In this paragraph “relevant authority” means—
- (a) the Secretary of State, or
 - (b) if regulations made by the Secretary of State specify another person as the relevant authority for the purposes of this paragraph, that other person.
- (6) In this Schedule “reporting period” means—
- (a) the period beginning with the day on which this paragraph comes fully into force and ending with the following 31 March, and
 - (b) each successive period of 12 months.

Status: Point in time view as at 09/11/2021.

Changes to legislation: Environment Act 2021 is up to date with all changes known to be in force on or before 15 July 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)

Commencement Information

I259 Sch. 17 para. 4 not in force at Royal Assent, see [s. 147\(3\)](#)

Exemption

- 5 (1) A regulated person in relation to a forest risk commodity is exempt from the Part 1 requirements in respect of their use of that commodity, or a product derived from that commodity, in their UK commercial activities during a reporting period if they satisfy the following two conditions.
- (2) Condition 1 is that before the start of the period, the person gives a notice to the relevant enforcement authority containing—
- (a) a declaration that the person is satisfied on reasonable grounds that the amount of the commodity used in their UK commercial activities during the period will not exceed the prescribed threshold, and
 - (b) the prescribed information.
- (3) Condition 2 is that the amount of the commodity used in the person’s UK commercial activities during the period does not exceed the prescribed threshold.
- (4) Sub-paragraphs (5) and (6) apply where—
- (a) a regulated person gives a notice under sub-paragraph (2), but
 - (b) the amount of the commodity used in the person’s UK commercial activities during the period exceeds the prescribed threshold.
- (5) If, before the relevant date, the regulated person gives a notice to the relevant enforcement authority containing the prescribed information, the person is exempt from the Part 1 requirements in respect of their use of the commodity, or the product derived from the commodity, in their UK commercial activities during the part of the reporting period—
- (a) beginning with the start of the period, and
 - (b) ending with the date the notice is given.
- (6) If the regulated person does not give a notice under sub-paragraph (5), the person is not exempt from the Part 1 requirements in respect of their use of the commodity, or the product derived from the commodity, in their UK commercial activities during any part of the reporting period.
- (7) In this paragraph—
- “prescribed” means prescribed in regulations made by the Secretary of State;
 - “relevant date” means the date during the reporting period that the amount of the commodity used in the person’s UK commercial activities exceeds the prescribed threshold;
 - “relevant enforcement authority” means the enforcement authority on which the function of receiving notices under this paragraph has been conferred by Part 2 regulations.
- (8) Regulations under this paragraph may in particular—
- (a) prescribe thresholds by reference to weight or volume;

Status: Point in time view as at 09/11/2021.

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(b) make provision about how the amount of a forest risk commodity used in a regulated person’s UK commercial activities (including in relation to a forest risk commodity from which a product is derived) is to be determined, and regulations under paragraph (b) may include provision for determining the amount by reference to matters determined or published by the Secretary of State or other persons.

(9) Before making regulations under this paragraph (except under sub-paragraph (2) (b) or (5)) the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(10) The requirement to consult in sub-paragraph (9) may be met by consultation carried out before this paragraph comes into force.

Commencement Information

I260 Sch. 17 para. 5 not in force at Royal Assent, see [s. 147\(3\)](#)

Guidance

6 (1) The Secretary of State may issue guidance to an enforcement authority about the Part 1 requirements.

(2) An enforcement authority must have regard to guidance issued under sub-paragraph (1) when exercising its functions under Part 2 of this Schedule.

Commencement Information

I261 Sch. 17 para. 6 not in force at Royal Assent, see [s. 147\(3\)](#)

Meaning of “regulated person”

7 (1) In this Schedule “regulated person”, in relation to a forest risk commodity, means a person (other than an individual) who carries on commercial activities in the United Kingdom, and—

(a) meets such conditions in relation to turnover as may be specified in regulations made by the Secretary of State for the purposes of defining who is a regulated person in relation to that forest risk commodity, or

(b) is an undertaking which is a subsidiary of another undertaking which meets those conditions.

(2) Regulations under sub-paragraph (1) may make provision about how turnover is to be determined.

(3) Before making regulations under sub-paragraph (1) the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(4) The requirement to consult in sub-paragraph (3) may be met by consultation carried out before this paragraph comes into force.

(5) The Secretary of State may by regulations make provision for the Part 1 requirements not to apply, or to apply with modifications, in relation to a person

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who becomes a regulated person for such transitional period, after they become a regulated person, as may be specified in the regulations.

(6) The Secretary of State may by regulations make provision for a group of undertakings to be treated as a regulated person, in such circumstances, for such purposes and to such extent as may be provided (and may modify the application of the Schedule accordingly).

(7) In this paragraph—

“group” has the meaning given by section 474 of the Companies Act 2006;

“undertaking” has the meaning given by section 1161 of that Act, and whether an undertaking is a subsidiary of another undertaking is to be determined in accordance with section 1162 of that Act.

Commencement Information

I262 Sch. 17 para. 7 not in force at Royal Assent, see [s. 147\(3\)](#)

PART 2 **U.K.**

ENFORCEMENT

General power

8 The Secretary of State may by regulations (“Part 2 regulations”) make provision about the enforcement of requirements imposed by or under Part 1 of this Schedule (“Part 1 requirements”).

Commencement Information

I263 Sch. 17 para. 8 not in force at Royal Assent, see [s. 147\(3\)](#)

Powers to confer functions

9 (1) Part 2 regulations may include provision conferring functions on one or more persons specified in the regulations (each of whom is an “enforcement authority” for the purposes of this Schedule).

(2) Part 2 regulations may include provision—

- (a) conferring functions involving the exercise of discretion;
- (b) for the functions of an enforcement authority to be exercised on its behalf by persons authorised in accordance with the regulations.

(3) Part 2 regulations may include provision requiring an enforcement authority—

- (a) to issue guidance about the exercise of its functions;
- (b) to consult with specified persons before issuing such guidance.

Status: Point in time view as at 09/11/2021.

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Commencement Information

I264 Sch. 17 para. 9 not in force at Royal Assent, see [s. 147\(3\)](#)

Monitoring compliance

- 10 Part 2 regulations may include provision conferring on an enforcement authority the function of monitoring compliance with Part 1 requirements.

Commencement Information

I265 Sch. 17 para. 10 not in force at Royal Assent, see [s. 147\(3\)](#)

Records and information

- 11 Part 2 regulations may include provision—
- (a) requiring persons on whom Part 1 requirements are imposed to keep records;
 - (b) requiring persons on whom Part 1 requirements are imposed to provide records or other information to an enforcement authority;
 - (c) requiring an enforcement authority to make reports or provide information to the Secretary of State.

Commencement Information

I266 Sch. 17 para. 11 not in force at Royal Assent, see [s. 147\(3\)](#)

Powers of entry etc

- 12 (1) Part 2 regulations may include provision conferring on an enforcement authority powers of entry, inspection, examination, search and seizure.
- (2) Part 2 regulations may include provision—
- (a) for powers to be exercisable only under the authority of a warrant issued by a justice of the peace, sheriff, summary sheriff or lay magistrate;
 - (b) about applications for, and the execution of, warrants.
- (3) Part 2 regulations must secure that the authority of a warrant is required for the exercise of any powers conferred by the regulations to—
- (a) enter premises by force;
 - (b) enter a private dwelling without the consent of the occupier;
 - (c) search and seize material.

Commencement Information

I267 Sch. 17 para. 12 not in force at Royal Assent, see [s. 147\(3\)](#)

Status: Point in time view as at 09/11/2021.

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Sanctions

- 13 (1) Part 2 regulations may include provision—
- (a) for, about or connected with the imposition of civil sanctions in respect of—
 - (i) failures to comply with Part 1 requirements or Part 2 regulations, or
 - (ii) the obstruction of or failure to assist an enforcement authority;
 - (b) for appeals against such sanctions.
- (2) Part 2 regulations must include provision to ensure that in a case where—
- (a) a regulated person fails to comply with a requirement in paragraph 2(1) or (2) in relation to their use of a forest risk commodity or a product derived from a forest risk commodity, but
 - (b) an enforcement authority is satisfied that the regulated person took all reasonable steps to implement a due diligence system in relation to the commodity used by the person in that particular case,
- a civil sanction may not be imposed on the regulated person in respect of the failure to comply.
- (3) Part 2 regulations may include provision—
- (a) creating criminal offences punishable with a fine in respect of—
 - (i) failures to comply with civil sanctions imposed under Part 2 regulations, or
 - (ii) the obstruction of or failure to assist an enforcement authority;
 - (b) about such offences.
- (4) In this paragraph “civil sanction” means a sanction of a kind for which provision may be made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings).

Commencement Information

I268 Sch. 17 para. 13 not in force at Royal Assent, see [s. 147\(3\)](#)

- 14 Part 2 regulations may include provision for the imposition of sanctions of that kind whether or not—
- (a) the conduct in respect of which the sanction is imposed constitutes an offence, or
 - (b) the enforcement authority is a regulator for the purposes of Part 3 of the Regulatory Enforcement and Sanctions Act 2008.

Commencement Information

I269 Sch. 17 para. 14 not in force at Royal Assent, see [s. 147\(3\)](#)

Commencement Information

I268 Sch. 17 para. 13 not in force at Royal Assent, see [s. 147\(3\)](#)

I269 Sch. 17 para. 14 not in force at Royal Assent, see [s. 147\(3\)](#)

Status: Point in time view as at 09/11/2021.

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Charges

- 15 Part 2 regulations may include provision—
- (a) requiring persons on whom Part 1 requirements are imposed to pay to an enforcement authority charges, as a means of recovering costs incurred by that enforcement authority in performing its functions;
 - (b) authorising a court or tribunal dealing with any matter relating to Part 1 requirements or Part 2 regulations to award to an enforcement authority costs incurred by it in performing its functions in relation to that matter.

Commencement Information

I270 Sch. 17 para. 15 not in force at Royal Assent, see [s. 147\(3\)](#)

Consultation requirement

- 16 (1) Before making Part 2 regulations the Secretary of State must consult any persons the Secretary of State considers appropriate.
- (2) The requirement to consult in sub-paragraph (1) may be met by consultation carried out before this paragraph comes into force.

Commencement Information

I271 Sch. 17 para. 16 not in force at Royal Assent, see [s. 147\(3\)](#)

PART 3 U.K.

GENERAL PROVISIONS

Review

- 17 (1) The Secretary of State must review the effectiveness of the Part 1 requirements and any Part 2 regulations (“relevant provisions”) in accordance with this paragraph.
- (2) A review must consider in particular—
- (a) the amount of forest being converted to agricultural use for the purposes of producing commodities;
 - (b) the impact of the relevant provisions on the amount of forest being converted to agricultural use for the purposes of producing forest risk commodities;
 - (c) the impact of the relevant provisions on the use of forest risk commodities, or products derived from forest risk commodities, in UK commercial activities where relevant local laws were not complied with in relation to those commodities;
 - (d) any changes to relevant local laws in relation to forest risk commodities.
- (3) Having carried out a review the Secretary of State must lay before Parliament, and publish, a report stating—
- (a) the conclusions of the review, and

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- (b) the steps, if any, the Secretary of State intends to take to improve the effectiveness of the relevant provisions (including whether the Secretary of State intends to make any regulations under this Schedule).
- (4) The first review must be completed during the period—
 - (a) beginning with the second anniversary of the first date on which paragraphs 2 to 4 are fully in force, and
 - (b) ending with the third anniversary of the first date on which paragraphs 2 to 4 are fully in force.
- (5) Subsequent reviews must be completed before the end of the 2 year period beginning with the day on which the previous review was completed.
- (6) A review is completed when the Secretary of State has laid and published the report.

Commencement Information

I272 Sch. 17 para. 17 not in force at Royal Assent, see [s. 147\(3\)](#)

Interpretation

- 18 (1) In this Schedule—
- “agricultural use” includes use for horticulture and aquaculture;
 - “commercial activity” includes—
 - (a) producing, manufacturing and processing;
 - (b) distributing, selling, or supplying;
 - (c) purchasing for a purpose within paragraph (a) or (b) (but not purchasing as a consumer);
 - “due diligence system”, in relation to a forest risk commodity, has the meaning given by paragraph 3;
 - “enforcement authority” has the meaning given by paragraph 9;
 - “forest” has the meaning given by paragraph 1;
 - “forest risk commodity” has the meaning given by paragraph 1;
 - “local law”, in relation to a forest risk commodity, has the meaning given by paragraph 2;
 - “Part 1 requirements” has the meaning given by paragraph 8;
 - “Part 2 regulations” has the meaning given by paragraph 8;
 - “regulated person”, in relation to a forest risk commodity, has the meaning given by paragraph 7;
 - “relevant local law”, in relation to a forest risk commodity, has the meaning given by paragraph 2;
 - “reporting period” has the meaning given by paragraph 4;
 - “UK commercial activity” means commercial activity carried on in the United Kingdom.
- (2) References in this Schedule to a product derived from a forest risk commodity are to a product derived from a forest risk commodity in whole or in part (and include any product of an animal fed on a forest risk commodity or a product derived from a forest risk commodity).

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Commencement Information

I273 Sch. 17 para. 18 not in force at Royal Assent, see [s. 147\(3\)](#)

VALID FROM 30/09/2022

SCHEDULE 18 **E+W**

Section 130

DISCHARGE OR MODIFICATION OF OBLIGATIONS UNDER CONSERVATION COVENANTS

PART 1 **E+W**

DISCHARGE BY UPPER TRIBUNAL

Power to discharge on application by landowner or responsible body

- 1 (1) The Upper Tribunal may, on the application of a person bound by, or entitled to the benefit of, an obligation under a conservation covenant by virtue of being the holder of an estate in land, by order discharge the obligation in respect of any of the land to which it relates.
- (2) The Upper Tribunal must add as party to the proceedings on an application under sub-paragraph (1) the responsible body under the covenant.

Commencement Information

I274 Sch. 18 para. 1 not in force at Royal Assent, see [s. 147\(3\)](#)

- 2 (1) The Upper Tribunal may, on the application of the responsible body under a conservation covenant, by order discharge an obligation under the covenant in respect of any of the land to which it relates.
- (2) The Upper Tribunal must add as party to the proceedings on an application under sub-paragraph (1) any person who, by virtue of being the holder of an estate in land, is bound by, or entitled to the benefit of, the obligation to which the application relates.

Commencement Information

I275 Sch. 18 para. 2 not in force at Royal Assent, see [s. 147\(3\)](#)

Commencement Information

I274 Sch. 18 para. 1 not in force at Royal Assent, see [s. 147\(3\)](#)

I275 Sch. 18 para. 2 not in force at Royal Assent, see [s. 147\(3\)](#)

Status: Point in time view as at 09/11/2021.

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Deciding whether to discharge

- 3 (1) The Upper Tribunal may exercise its power under paragraph 1(1) or 2(1) if it considers it reasonable to do so in all the circumstances of the case.
- (2) In considering whether to exercise its power under paragraph 1(1) or 2(1), the matters to which the Upper Tribunal is to have regard include—
- (a) whether there has been any material change of circumstance since the making of the original agreement, in particular—
 - (i) change in the character of the land to which the obligation relates or of the neighbourhood of that land;
 - (ii) change affecting the enjoyment of the land to which the obligation relates;
 - (iii) change affecting the extent to which performance of the obligation is, or is likely in future to be, affordable;
 - (iv) change affecting the extent to which performance of the obligation is, or is likely in future to be, practicable;
 - (b) whether the obligation serves any conservation purpose it had—
 - (i) when the original agreement was entered into, or
 - (ii) if the obligation has since been modified (whether by agreement or by the Upper Tribunal), when the obligation was modified, as the case may be; and
 - (c) whether the obligation serves the public good.
- (3) In considering whether to exercise its power under paragraph 1(1), the matters to which the Upper Tribunal is to have regard also include—
- (a) whether any conservation purpose which the obligation in question had when the original agreement was entered into could be served equally well by an obligation relating to different land in respect of which the applicant holds a qualifying estate; and
 - (b) whether, if an order under paragraph 1(1) were made, such an alternative obligation could be created by means of a conservation covenant.
- (4) In considering, for the purposes of this paragraph, affordability or practicability in relation to performance of an obligation, change in the personal circumstances of a person bound by the obligation is to be disregarded.
- (5) In this paragraph references to the original agreement, in relation to an obligation under a conservation covenant, are to the agreement containing the provision which gave rise to the obligation.

Commencement Information

I276 Sch. 18 para. 3 not in force at Royal Assent, see [s. 147\(3\)](#)

Supplementary powers

- 4 (1) The Upper Tribunal may include in an order under paragraph 1(1) or 2(1) provision requiring the applicant to pay compensation in respect of loss of benefit resulting from the order.

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- (2) Compensation under sub-paragraph (1) shall be payable to such person at such time and be of such amount as the order may provide.

Commencement Information

I277 Sch. 18 para. 4 not in force at Royal Assent, see [s. 147\(3\)](#)

- 5 (1) The Upper Tribunal may, if it considers it reasonable to do so in connection with the discharge under paragraph 1(1) of an obligation under a conservation covenant, include in the order discharging the obligation provision making the discharge conditional on the entry by the applicant and the responsible body under the covenant into a conservation covenant agreement containing such provision as the order may specify.
- (2) The power under sub-paragraph (1) is exercisable only with the consent of the applicant and the responsible body.

Commencement Information

I278 Sch. 18 para. 5 not in force at Royal Assent, see [s. 147\(3\)](#)

Commencement Information

I277 Sch. 18 para. 4 not in force at Royal Assent, see [s. 147\(3\)](#)

I278 Sch. 18 para. 5 not in force at Royal Assent, see [s. 147\(3\)](#)

PART 2 **E+W**

MODIFICATION BY UPPER TRIBUNAL

Power to modify on application by landowner or responsible body

- 6 (1) The Upper Tribunal may, on the application of a person bound by, or entitled to the benefit of, an obligation under a conservation covenant by virtue of being the holder of an estate in land, by order modify the obligation in respect of any of the land to which it relates.
- (2) The Upper Tribunal must add as party to the proceedings on an application under sub-paragraph (1) the responsible body under the covenant.

Commencement Information

I279 Sch. 18 para. 6 not in force at Royal Assent, see [s. 147\(3\)](#)

- 7 (1) The Upper Tribunal may, on the application of the responsible body under a conservation covenant, by order modify an obligation under the covenant in respect of any of the land to which it relates.
- (2) The Upper Tribunal must add as party to the proceedings on an application under sub-paragraph (1) any person who, by virtue of being the holder of an estate in land,

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is bound by, or entitled to the benefit of, the obligation to which the application relates.

Commencement Information

I280 Sch. 18 para. 7 not in force at Royal Assent, see [s. 147\(3\)](#)

- 8 The power under paragraph [6\(1\)](#) or [7\(1\)](#) does not include power to make a change to an obligation which, had it been included in the original agreement, would have prevented the provision of the agreement which gave rise to the obligation being provision in relation to which the conditions in section [117\(1\)\(a\)](#) were met.

Commencement Information

I281 Sch. 18 para. 8 not in force at Royal Assent, see [s. 147\(3\)](#)

Commencement Information

I279 Sch. 18 para. 6 not in force at Royal Assent, see [s. 147\(3\)](#)

I280 Sch. 18 para. 7 not in force at Royal Assent, see [s. 147\(3\)](#)

I281 Sch. 18 para. 8 not in force at Royal Assent, see [s. 147\(3\)](#)

Deciding whether to modify

- 9 (1) The Upper Tribunal may exercise its power under paragraph [6\(1\)](#) or [7\(1\)](#) if it considers it reasonable to do so in all the circumstances of the case.
- (2) In considering whether to exercise its power under paragraph [6\(1\)](#) or [7\(1\)](#), the matters to which the Upper Tribunal is to have regard include—
- (a) whether there has been any material change of circumstance since the making of the original agreement, in particular—
 - (i) change in the character of the land to which the obligation relates or of the neighbourhood of that land;
 - (ii) change affecting the enjoyment of the land to which the obligation relates;
 - (iii) change affecting the extent to which performance of the obligation is, or is likely in future to be, affordable;
 - (iv) change affecting the extent to which performance of the obligation is, or is likely in future to be, practicable;
 - (b) whether the obligation serves any conservation purpose it had—
 - (i) when the original agreement was entered into, or
 - (ii) if the obligation has since been modified (whether by agreement or by the Upper Tribunal), when the obligation was modified, as the case may be; and
 - (c) whether the obligation serves the public good.
- (3) In considering, for the purposes of this paragraph, affordability or practicability in relation to performance of an obligation, change in the personal circumstances of a person bound by the obligation is to be disregarded.

Status: Point in time view as at 09/11/2021.

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Commencement Information

I282 Sch. 18 para. 9 not in force at Royal Assent, see [s. 147\(3\)](#)

Supplementary powers

- 10 (1) The Upper Tribunal may include in an order under paragraph [6\(1\)](#) or [7\(1\)](#) provision requiring the applicant to pay compensation in respect of loss of benefit resulting from the order.
- (2) Compensation under sub-paragraph [\(1\)](#) shall be payable to such person at such time and be of such amount as the order may provide.

Commencement Information

I283 Sch. 18 para. 10 not in force at Royal Assent, see [s. 147\(3\)](#)

- 11 (1) The Upper Tribunal may, if it considers it reasonable to do so in connection with the modification under paragraph [6\(1\)](#) of an obligation under a conservation covenant, include in the order modifying the obligation provision making the modification conditional on the entry by the applicant and the responsible body under the covenant into a conservation covenant agreement containing such provision as the order may specify.
- (2) The power under sub-paragraph [\(1\)](#) is exercisable only with the consent of the applicant and the responsible body.

Commencement Information

I284 Sch. 18 para. 11 not in force at Royal Assent, see [s. 147\(3\)](#)

Commencement Information

I283 Sch. 18 para. 10 not in force at Royal Assent, see [s. 147\(3\)](#)

I284 Sch. 18 para. 11 not in force at Royal Assent, see [s. 147\(3\)](#)

Effect of modification

- 12 (1) The modification of an obligation by an order under this Part binds—
- (a) the parties to the proceedings in which the order is made, and
 - (b) any person who, as respects any of the land to which the modification relates, becomes a successor of a person bound by the modification.
- (2) For the purposes of sub-paragraph [\(1\)](#) “successor of a person bound by the modification” means a person who holds, in respect of any of the land to which the modification relates—
- (a) the estate held by the person so bound when the order modifying the obligation was made, or
 - (b) an estate in land derived (whether immediately or otherwise) from that estate after the order modifying the obligation was made.

Status: Point in time view as at 09/11/2021.

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Commencement Information

I285 Sch. 18 para. 12 not in force at Royal Assent, see [s. 147\(3\)](#)

Interpretation

- 13 In this Part, references to the original agreement, in relation to an obligation under a conservation covenant, are to the agreement containing the provision which gave rise to the obligation.

Commencement Information

I286 Sch. 18 para. 13 not in force at Royal Assent, see [s. 147\(3\)](#)

VALID FROM 30/09/2022

SCHEDULE 19 **E+W**

Section 137

APPLICATION OF PART 7 TO CROWN LAND

PART 1 **E+W**

GENERAL

Application of Part 7

- 1 Part 7 applies in relation to Crown land as it applies in relation to any other land, subject to the provisions of this Schedule.

Commencement Information

I287 Sch. 19 para. 1 not in force at Royal Assent, see [s. 147\(3\)](#)

Interpretation

- 2 (1) In this Schedule—
- (a) “Crown land” means land in relation which there is an estate in land of a kind listed in column 1 of the following Table, and
 - (b) “the appropriate authority”, in relation to any Crown land, means the authority specified in column 2 for the estate in land in question.

Status: Point in time view as at 09/11/2021.

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<i>Estate in land</i>	<i>Appropriate authority</i>
Estate belonging to Her Majesty in right of the Crown (other than estate vesting as bona vacantia)	The Crown Estate Commissioners or other government department having management of the land
Estate vesting in Her Majesty in right of the Crown as bona vacantia	The Treasury Solicitor
Estate belonging to Her Majesty in right of Her private estates	A person appointed by Her Majesty under the Royal Sign Manual, or, if no such appointment is made, the Secretary of State
Estate belonging to Her Majesty in right of the Duchy of Lancaster	The Chancellor of the Duchy of Lancaster
Estate belonging to the Duchy of Cornwall	Such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints
Estate belonging to a government department or held in trust for Her Majesty for the purposes of a government department	That department

(2) References in this Schedule to Part 7 are to Part 7 of this Act (apart from this Schedule and Schedule 20).

(3) If any question arises as to what authority is the appropriate authority in relation to any Crown land, that question is to be referred to the Treasury, whose decision is final.

(4) In this paragraph the reference to Her Majesty’s private estates is to be read in accordance with section 1 of the Crown Private Estates Act 1862.

Commencement Information
I288 Sch. 19 para. 2 not in force at Royal Assent, see [s. 147\(3\)](#)

Demesne land

3 (1) Where land belongs to Her Majesty in right of the Crown but is not held for an estate in fee simple absolute in possession—

(a) Her Majesty in right of the Crown is to be regarded for the purposes of Part 7 and this Schedule as holding an estate in fee simple absolute in possession in the land, and

(b) any estate granted or created out of the land is to be regarded for those purposes as derived from that estate in fee simple.

(2) The land referred to in sub-paragraph (1) does not include land which becomes subject to escheat on the determination of an estate in fee simple absolute in possession in the land if—

(a) it is land to which an obligation under a conservation covenant related when the estate determined, or

Status: Point in time view as at 09/11/2021.

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- (b) it is not land to which such an obligation related at that time and Her Majesty in right of the Crown has not taken possession or control of the land, or entered into occupation of it.

Commencement Information

I289 Sch. 19 para. 3 not in force at Royal Assent, see [s. 147\(3\)](#)

Land subject to escheat

- 4 (1) This paragraph applies where land becomes subject to escheat on the determination of an estate in fee simple absolute in possession in land to which an obligation under a conservation covenant relates.
- (2) The conservation covenant is not terminated on the determination of that estate, even though the appropriate authority has no liability in respect of the obligation unless and until the Crown—
- (a) takes possession or control of the land, or enters into occupation of it, or
- (b) becomes the holder of—
- (i) an estate granted by the Crown out of the land, or
- (ii) an estate in land derived (whether immediately or otherwise) from an estate falling within sub-paragraph (i).
- (3) If the Crown takes possession or control of the land, or enters into occupation of it—
- (a) the Crown is to be regarded for the purposes of Part 7 and this Schedule as holding an estate in fee simple in possession in the land, and
- (b) that estate is to be regarded for those purposes as immediately derived from the determined estate.
- (4) If the Crown grants an estate out of the land after having previously taken possession or control of the land, or entered into occupation of it, the estate is to be regarded for the purposes of Part 7 and this Schedule as immediately derived from the estate mentioned in sub-paragraph (3)(a).
- (5) But if the Crown grants an estate out of the land without having previously taken possession or control of the land, or entered into occupation of it—
- (a) the acts of the Crown in granting that estate are not to be regarded for the purposes of Part 7 and this Schedule as taking possession or control of the land, or entering into occupation of it, and
- (b) the new estate is to be regarded for those purposes as immediately derived from the determined estate.
- (6) In this paragraph and paragraph 5 “the Crown” means Her Majesty in right of the Crown or of the Duchy of Lancaster, or the Duchy of Cornwall, as the case may be.

Commencement Information

I290 Sch. 19 para. 4 not in force at Royal Assent, see [s. 147\(3\)](#)

Status: Point in time view as at 09/11/2021.

Changes to legislation: Environment Act 2021 is up to date with all changes known to be in force on or before 15 July 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)

Bona vacantia

- 5 (1) This paragraph applies where an estate in land to which an obligation of the landowner under a conservation covenant relates vests in the Crown as bona vacantia.
- (2) The appropriate authority has no liability in respect of the obligation in relation to any period before the Crown takes possession or control of the land or enters into occupation of it.

Commencement Information

I291 Sch. 19 para. 5 not in force at Royal Assent, see [s. 147\(3\)](#)

PART 2 **E+W**

CONSERVATION COVENANTS RELATING TO CROWN LAND HELD
 BY A PERSON OTHER THAN THE APPROPRIATE AUTHORITY

Agreements for the purposes of section 117

- 6 (1) If Crown land which is a qualifying estate is held by a person other than the appropriate authority, the appropriate authority may, as respects that qualifying estate, enter into a conservation covenant agreement, in place of the holder of the estate.
- (2) An authority that enters into such an agreement by virtue of sub-paragraph (1) is to be treated for the purposes of section 117 as the holder of the qualifying estate (instead of the person in whose place the authority is acting).

Commencement Information

I292 Sch. 19 para. 6 not in force at Royal Assent, see [s. 147\(3\)](#)

Modification of Part 7 in relation to obligations under certain Crown conservation covenants

- 7 (1) Paragraphs 8 to 12 modify Part 7 in its application to obligations under a conservation covenant created by an agreement entered into by virtue of paragraph 6(1).
- (2) In those paragraphs, in relation to an obligation under the conservation covenant—
- “the appropriate authority” means the appropriate authority with respect to the estate in land of the original landowner which is the qualifying estate in relation to the obligation, and
- “the original landowner” means the person who held the qualifying estate when the agreement was entered into.

Status: Point in time view as at 09/11/2021.

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Commencement Information

I293 Sch. 19 para. 7 not in force at Royal Assent, see [s. 147\(3\)](#)

- 8 References in Part 7 to an obligation of the landowner under a conservation covenant are to be read as references to an obligation of the appropriate authority under the conservation covenant.

Commencement Information

I294 Sch. 19 para. 8 not in force at Royal Assent, see [s. 147\(3\)](#)

- 9 (1) Section 122 has effect with the following modifications in its application to an obligation mentioned in paragraph 8.
- (2) In subsection (2)—
- (a) in paragraph (a), the reference to the landowner under the covenant is to be read as a reference to the appropriate authority, and
 - (b) in paragraph (b), the reference to the landowner under the covenant is to be read as a reference to the original landowner.
- (3) In subsection (3) the reference to the landowner under the covenant is to be read as a reference to the original landowner.
- (4) In subsection (4)—
- (a) in the opening words and in paragraph (b), the reference to the landowner under the covenant is to be read as a reference to the appropriate authority,
 - (b) in the opening words, the reference to a successor of that landowner is to be read as a reference to a successor of the original landowner, and
 - (c) in paragraph (b), the reference to land in relation to which the landowner ceases to be the holder of the qualifying estate is to be read as a reference to land in relation to which the original landowner ceases to be the holder of the qualifying estate.
- (5) Subsection (5)(c) has effect, if the successor's immediate predecessor was the original landowner, as if the reference to the successor's immediate predecessor were a reference to the appropriate authority.

Commencement Information

I295 Sch. 19 para. 9 not in force at Royal Assent, see [s. 147\(3\)](#)

- 10 (1) Section 123 has effect with the following modifications in its application to an obligation of the responsible body under the conservation covenant.
- (2) In subsection (1)—
- (a) in paragraph (a), the reference to the landowner under the covenant is to be read as a reference to the appropriate authority, and
 - (b) in paragraph (b), the reference to the landowner under the covenant is to be read as a reference to the original landowner.

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(3) In subsection (2) the reference to the landowner under the covenant is to be read as a reference to the original landowner.

(4) In subsection (3)—

- (a) in the opening words and in paragraph (b), the reference to the landowner under the covenant is to be read as a reference to the appropriate authority,
- (b) in the opening words, the reference to a successor of that landowner is to be read as a reference to a successor of the original landowner, and
- (c) in paragraph (b), the reference to land in relation to which the landowner ceases to be the holder of the qualifying estate is to be read as a reference to land in relation to which the original landowner ceases to be the holder of the qualifying estate.

Commencement Information

I296 Sch. 19 para. 10 not in force at Royal Assent, see [s. 147\(3\)](#)

11 In section 129(4)(b) and (5) the references to a successor of a person bound by the modification (where the person bound is the appropriate authority) are to be read as references to a successor of the original landowner.

Commencement Information

I297 Sch. 19 para. 11 not in force at Royal Assent, see [s. 147\(3\)](#)

12 In Schedule 18—

- (a) the references in paragraphs 1(1) and 6(1) to a person bound by, or entitled to the benefit of, an obligation under a conservation covenant by virtue of holding an estate in land are to be read as references to the appropriate authority;
- (b) the references in paragraphs 2(2) and 7(2) to any person who by virtue of holding an estate in land is bound by or entitled to the benefit of an obligation are to be read as references to the appropriate authority;
- (c) the references in paragraph 12(1)(b) and (2) to a successor of a person bound by the modification (where the person bound is the appropriate authority) are to be read as references to a successor of the original landowner.

Commencement Information

I298 Sch. 19 para. 12 not in force at Royal Assent, see [s. 147\(3\)](#)

Commencement Information

I293 Sch. 19 para. 7 not in force at Royal Assent, see [s. 147\(3\)](#)

I294 Sch. 19 para. 8 not in force at Royal Assent, see [s. 147\(3\)](#)

I295 Sch. 19 para. 9 not in force at Royal Assent, see [s. 147\(3\)](#)

I296 Sch. 19 para. 10 not in force at Royal Assent, see [s. 147\(3\)](#)

I297 Sch. 19 para. 11 not in force at Royal Assent, see [s. 147\(3\)](#)

Status: Point in time view as at 09/11/2021.

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I298 Sch. 19 para. 12 not in force at Royal Assent, see [s. 147\(3\)](#)

PART 3 **E+W**

OTHER MODIFICATIONS OF PART 7

Cases where estate in land to which conservation covenant relates has been acquired by the Crown and is held by person other than the appropriate authority

- 13 (1) Paragraphs 14 to 17 apply where the estate in land by virtue of which a person is a successor of the landowner under a conservation covenant is held by or on behalf of the Crown by a person other than the appropriate authority.
- (2) In sub-paragraph (1) “successor” (in relation to the landowner under the covenant) means a person who holds, in respect of any of the land to which any obligation under the covenant relates—
- (a) the qualifying estate, or
 - (b) an estate in land derived (whether immediately or otherwise) from the qualifying estate after the creation of the covenant.

Commencement Information

I299 Sch. 19 para. 13 not in force at Royal Assent, see [s. 147\(3\)](#)

- 14 In section 122—
- (a) subsections (2)(b), (3) and (4) have effect as if the estate in land were held by the appropriate authority, and
 - (b) subsection (5)(c) has effect, in relation to a disposal of the estate in land, as if the successor’s immediate predecessor were the appropriate authority.

Commencement Information

I300 Sch. 19 para. 14 not in force at Royal Assent, see [s. 147\(3\)](#)

- 15 In section 123—
- (a) subsections (1)(b), (2) and (4) have effect as if the estate in land were held by the appropriate authority, and
 - (b) subsection (4) has effect as if the reference to the successor were a reference to the appropriate authority.

Commencement Information

I301 Sch. 19 para. 15 not in force at Royal Assent, see [s. 147\(3\)](#)

- 16 (1) In section 129(4)(b) and (5) references to a successor of a person bound by the modification (where the person bound is the appropriate authority) are to be read as references to a successor of the person in whose place the appropriate authority acts.

Status: Point in time view as at 09/11/2021.

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- (2) In section 129(4)(b) and (5) references to a successor of a person bound by the modification (where the person bound is not the appropriate authority) are to be read as if the estate in any of the land to which the modification relates which is held by the person in whose place the appropriate authority acts were held by the appropriate authority.

Commencement Information

I302 Sch. 19 para. 16 not in force at Royal Assent, see [s. 147\(3\)](#)

- 17 In Schedule 18—

- (a) the reference in paragraph 6(1) to a person bound by an obligation under a conservation covenant by virtue of holding an estate in land is to be read as a reference to the appropriate authority;
- (b) the reference in paragraph 7(2) to any person who is bound by or entitled to the benefit of an obligation by virtue of holding an estate in land is to be read as a reference to the appropriate authority;
- (c) the references in paragraph 12(1)(b) and (2) to a successor of a person bound by the modification (where the person bound is the appropriate authority) are to be read as references to a successor of the person in whose place the appropriate authority is acting.

Commencement Information

I303 Sch. 19 para. 17 not in force at Royal Assent, see [s. 147\(3\)](#)

Commencement Information

I299 Sch. 19 para. 13 not in force at Royal Assent, see [s. 147\(3\)](#)
I300 Sch. 19 para. 14 not in force at Royal Assent, see [s. 147\(3\)](#)
I301 Sch. 19 para. 15 not in force at Royal Assent, see [s. 147\(3\)](#)
I302 Sch. 19 para. 16 not in force at Royal Assent, see [s. 147\(3\)](#)
I303 Sch. 19 para. 17 not in force at Royal Assent, see [s. 147\(3\)](#)

Agreements under section 127(1) and (3)

- 18 (1) This paragraph applies where, in respect of any of the land to which an obligation of the landowner under a conservation covenant relates, the qualifying estate is held by or on behalf of the Crown by a person other than the appropriate authority.
- (2) The appropriate authority may enter into an agreement under section 127(1) or (3) in place of the holder of that estate.
- (3) An agreement entered into by virtue of sub-paragraph (2) is to be treated for the purposes of section 127(4)(c) as entered into by virtue of the estate in land held by the person in whose place the appropriate authority enters into the agreement.

Status: Point in time view as at 09/11/2021.

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Commencement Information

I304 Sch. 19 para. 18 not in force at Royal Assent, see [s. 147\(3\)](#)

Agreements under section 128(1)

- 19 (1) This paragraph applies if the responsible body under a conservation covenant enters into an agreement under section 128(1) in relation to an obligation which it owes to the other party to the agreement by virtue of paragraph [10\(2\)\(a\)](#) or [15\(a\)](#).
- (2) If the other party is entitled to the benefit of the obligation by virtue of paragraph [10\(2\)\(a\)](#), the reference in section 128(2)(c) to the estate in land by virtue of which the power is exercisable is to be read as a reference to the estate in land held by the person in whose place the other party acted in entering into the agreement which gave rise to the obligation.
- (3) If the other party is entitled to the benefit of the obligation by virtue of paragraph [15\(a\)](#), the reference in section 128(2)(c) to the estate in land by virtue of which the power is exercisable is to be read as a reference to the estate in land which the other party is treated by paragraph [15\(a\)](#) as holding.

Commencement Information

I305 Sch. 19 para. 19 not in force at Royal Assent, see [s. 147\(3\)](#)

Agreements under section 129(1)

- 20 (1) Sub-paragraph [\(2\)](#) applies where a person who—
- (a) is bound by an obligation of the landowner under the covenant by virtue of paragraph [9\(2\)\(a\)](#), or
 - (b) is entitled to the benefit of the obligation of the responsible body under a conservation covenant by virtue of paragraph [10\(2\)\(a\)](#),
- exercises the power under section 129(1) to modify the obligation.
- (2) The reference in section 129(3)(c) to the estate in land by virtue of which the power is exercisable is to be read as a reference to the estate in land held by the person in whose place the person exercising that power acted in entering into the agreement which gave rise to the obligation.

Commencement Information

I306 Sch. 19 para. 20 not in force at Royal Assent, see [s. 147\(3\)](#)

- 21 (1) Sub-paragraph [\(2\)](#) applies where a person who—
- (a) is bound by an obligation of the landowner under a conservation covenant by virtue of paragraph [14\(a\)](#), or
 - (b) is entitled to the benefit of an obligation of the responsible body under a conservation covenant by virtue of paragraph [15\(a\)](#),
- exercises the power in section 129(1) to modify the obligation.

Status: Point in time view as at 09/11/2021.

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- (2) The reference in section 129(3)(c) to the estate in land by virtue of which the power is exercisable is to be read as a reference to the estate in land which the person is treated by paragraph 14(a) or 15(a) as holding.

Commencement Information

I307 Sch. 19 para. 21 not in force at Royal Assent, see [s. 147\(3\)](#)

Commencement Information

I306 Sch. 19 para. 20 not in force at Royal Assent, see [s. 147\(3\)](#)

I307 Sch. 19 para. 21 not in force at Royal Assent, see [s. 147\(3\)](#)

VALID FROM 30/09/2022

SCHEDULE 20 E+W

Section 139

CONSEQUENTIAL AMENDMENTS RELATING TO PART 7

Acquisition of Land Act 1981 (c. 67)

- 1 The Acquisition of Land Act 1981 is amended as follows.

Commencement Information

I308 Sch. 20 para. 1 not in force at Royal Assent, see [s. 147\(3\)](#)

- 2 (1) Section 12 (notice of compulsory purchase by local and other authorities) is amended as follows.
- (2) In the title, for “and occupiers” insert “, occupiers and others”.
- (3) In subsection (2)—
- (a) omit the “or” at the end of paragraph (a), and
 - (b) at the end of paragraph (b) insert “, or
 - (c) the person is entitled to the benefit of an obligation under a conservation covenant (within the meaning of Part 7 of the Environment Act 2021) relating to the land.”

Commencement Information

I309 Sch. 20 para. 2 not in force at Royal Assent, see [s. 147\(3\)](#)

- 3 (1) Paragraph 3 of Schedule 1 (notice of compulsory purchase by Ministers) is amended as follows.
- (2) In the title, for “and occupiers” insert “, occupiers and others”.

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- (3) In sub-paragraph (2)—
- (a) omit the “or” at the end of paragraph (a), and
 - (b) at the end of paragraph (b) insert “, or
 - (c) the person is entitled to the benefit of an obligation under a conservation covenant (within the meaning of Part 7 of the Environment Act 2021) relating to the land.”

Commencement Information

I310 Sch. 20 para. 3 not in force at Royal Assent, see [s. 147\(3\)](#)

Commencement Information

I308 Sch. 20 para. 1 not in force at Royal Assent, see [s. 147\(3\)](#)

I309 Sch. 20 para. 2 not in force at Royal Assent, see [s. 147\(3\)](#)

I310 Sch. 20 para. 3 not in force at Royal Assent, see [s. 147\(3\)](#)

Housing and Planning Act 2016 (c. 22)

4 The Housing and Planning Act 2016 is amended as follows.

Commencement Information

I311 Sch. 20 para. 4 not in force at Royal Assent, see [s. 147\(3\)](#)

5 (1) Section 203 (power to override easements and other rights) is amended as follows.

- (2) In subsections (1)(b) and (4)(b)—
- (a) the words after “breaching” become sub-paragraph (i), and
 - (b) after that sub-paragraph insert “, or
 - (ii) an obligation under a conservation covenant.”

- (3) In subsection (10)—
- (a) omit the “or” at the end of paragraph (a), and
 - (b) at the end of paragraph (b)(ii) insert “, or
 - (c) a breach of an obligation under a conservation covenant owed to the National Trust.”

Commencement Information

I312 Sch. 20 para. 5 not in force at Royal Assent, see [s. 147\(3\)](#)

6 (1) Section 204 (compensation for overridden easements etc) is amended as follows.

(2) In subsection (1), after “section 203” insert “(1)(a) or (b)(i) or (4)(a) or (b)(i)”.

(3) After subsection (1) insert—

“(1A) But a person is not liable to pay compensation under this section for breaching an obligation under a conservation covenant.”

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Commencement Information

I313 Sch. 20 para. 6 not in force at Royal Assent, see [s. 147\(3\)](#)

- 7 In section 205(1) (interpretation), at the appropriate place insert—
 ““obligation under a conservation covenant” has the same meaning as in Part 7 of the Environment Act 2021;”.

Commencement Information

I314 Sch. 20 para. 7 not in force at Royal Assent, see [s. 147\(3\)](#)

Commencement Information

I311 Sch. 20 para. 4 not in force at Royal Assent, see [s. 147\(3\)](#)

I312 Sch. 20 para. 5 not in force at Royal Assent, see [s. 147\(3\)](#)

I313 Sch. 20 para. 6 not in force at Royal Assent, see [s. 147\(3\)](#)

I314 Sch. 20 para. 7 not in force at Royal Assent, see [s. 147\(3\)](#)

Neighbourhood Planning Act 2017 (c. 20)

- 8 The Neighbourhood Planning Act 2017 is amended as follows.

Commencement Information

I315 Sch. 20 para. 8 not in force at Royal Assent, see [s. 147\(3\)](#)

- 9 In section 20 (notice requirements relating to taking temporary possession), at the end insert—

“(10) For the purposes of subsection (1), a person entitled to the benefit of an obligation under a conservation covenant is to be treated as having an interest in the land to which the obligation relates.”

Commencement Information

I316 Sch. 20 para. 9 not in force at Royal Assent, see [s. 147\(3\)](#)

- 10 In section 23 (compensation), after subsection (5) insert—

“(5A) For the purposes of subsections (2) and (3), the person is not entitled to compensation under this section by virtue of being the person entitled to the benefit of an obligation under a conservation covenant.”

Commencement Information

I317 Sch. 20 para. 10 not in force at Royal Assent, see [s. 147\(3\)](#)

- 11 (1) Section 27 (powers of acquiring authority in temporary possession of land) is amended as follows.

Status: Point in time view as at 09/11/2021.

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- (2) In subsection (3)—
- (a) omit the “or” at the end of paragraph (a), and
 - (b) at the end of paragraph (b), insert “, or
 - (c) causing a person to be in breach of an obligation under a conservation covenant relating to the land.”
- (3) After subsection (4) insert—
- “(4A) The acquiring authority is not bound by an obligation under a conservation covenant relating to the land by virtue of acquiring a right to use the land under this section.”
- (4) In subsection (6)—
- (a) omit the “or” at the end of paragraph (a), and
 - (b) at the end of paragraph (b), insert “, or
 - (c) a use of land that causes a person (or, if the person were to permit or suffer the use, would cause the person) to be in breach of an obligation under a conservation covenant relating to the land owed to the National Trust.”

Commencement Information

I318 Sch. 20 para. 11 not in force at Royal Assent, see [s. 147\(3\)](#)

- 12 In section 30 (interpretation), at the appropriate place, insert—
- ““obligation under a conservation covenant” has the same meaning as in Part 7 of the Environment Act 2021.”.

Commencement Information

I319 Sch. 20 para. 12 not in force at Royal Assent, see [s. 147\(3\)](#)

Commencement Information

I315 Sch. 20 para. 8 not in force at Royal Assent, see [s. 147\(3\)](#)

I316 Sch. 20 para. 9 not in force at Royal Assent, see [s. 147\(3\)](#)

I317 Sch. 20 para. 10 not in force at Royal Assent, see [s. 147\(3\)](#)

I318 Sch. 20 para. 11 not in force at Royal Assent, see [s. 147\(3\)](#)

I319 Sch. 20 para. 12 not in force at Royal Assent, see [s. 147\(3\)](#)

Amendment of the REACH Regulation

- 1 (1) The Secretary of State may by regulations amend the REACH Regulation.

Status: Point in time view as at 09/11/2021.

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- (2) The Secretary of State may make regulations under this paragraph only if the Secretary of State considers that the provision made by the regulations is consistent with Article 1 of the REACH Regulation (aim and scope of the REACH Regulation).
- (3) The Secretary of State may not make regulations under this paragraph which amend any protected provision of the REACH Regulation.
- (4) But sub-paragraph (3) does not prevent any protected provision of the REACH Regulation from being amended by provision made under this paragraph by virtue of section 143(1)(a).
- (5) Before making regulations under this paragraph, the Secretary of State must publish an explanation of why the Secretary of State considers that the provision to be made by the regulations is consistent with Article 1 of the REACH Regulation.
- (6) The explanation relating to regulations under this paragraph is to be published—
 - (a) no later than the time when the Secretary of State begins the consultation on that exercise of the power that is required by paragraph 5, and
 - (b) in the manner which the Secretary of State considers appropriate.
- (7) Regulations under this paragraph are subject to the affirmative procedure.

Commencement Information

I320 Sch. 21 para. 1 in force at Royal Assent for specified purposes, see [s. 147\(1\)\(b\)](#)

Amendment of the REACH Enforcement Regulations 2008

- 2 (1) The Secretary of State or a relevant devolved authority may by regulations amend the REACH Enforcement Regulations 2008 ([S.I. 2008/2852](#)).
- (2) The Secretary of State or a relevant devolved authority may make regulations under this paragraph only if the Secretary of State or the authority considers that the provision made by the regulations is necessary or appropriate for, or in connection with, enforcement of the REACH Regulation.
- (3) The provision that may be made by regulations under this paragraph includes—
 - (a) provision creating, or widening the scope of, a criminal offence;
 - (b) provision specifying the punishment for a criminal offence.
- (4) But regulations under this paragraph may not provide for a criminal offence—
 - (a) under the law of England and Wales to be—
 - (i) punishable on conviction on indictment with imprisonment for more than two years, or
 - (ii) punishable on summary conviction with imprisonment for more than the prescribed term for England and Wales or with a fine that is calculated on a daily basis of more than £100 a day;
 - (b) under the law of Scotland to be—
 - (i) punishable on conviction on indictment with imprisonment for more than two years, or
 - (ii) punishable on summary conviction with imprisonment for more than the prescribed term for Scotland or with a fine of more than the

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- applicable maximum for Scotland (if not calculated on a daily basis) or a fine of more than £100 a day;
- (c) under the law of Northern Ireland to be—
- (i) punishable on conviction on indictment with imprisonment for more than two years, or
 - (ii) punishable on summary conviction with imprisonment for more than three months or with a fine of more than level 5 on the standard scale (if not calculated on a daily basis) or a fine of more than £100 a day.
- (5) In sub-paragraph (4)—
- “applicable maximum for Scotland” means—
- (a) level 5 on the standard scale, where the offence is a summary offence;
 - (b) the statutory maximum, where the offence is triable either way;
- “prescribed term for England and Wales” means—
- (a) 51 weeks, where the offence is a summary offence;
 - (b) 12 months, where the offence is triable either way;
- “prescribed term for Scotland” means—
- (a) 3 months, where the offence is a summary offence;
 - (b) 12 months, where the offence is triable either way.
- (6) But, in the definition of “prescribed term for England and Wales” in sub-paragraph (5)—
- (a) the reference to 51 weeks is to be read, until the commencement of section 281(5) of the Criminal Justice Act 2003, as a reference to 3 months;
 - (b) the reference to 12 months is to be read, until the commencement of section 282(3) of the Criminal Justice Act 2003, as a reference to 3 months.
- (7) Regulations under this paragraph—
- (a) made by the Welsh Ministers, may contain only provision which, if contained in an Act of Senedd Cymru, would be within the legislative competence of the Senedd;
 - (b) made by the Scottish Ministers, may contain only provision which, if contained in an Act of the Scottish Parliament, would be within the legislative competence of the Parliament;
 - (c) made by the Department of Agriculture, Environment and Rural Affairs or the Department for the Economy in Northern Ireland may contain only provision 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.
- (8) Regulations under this paragraph are subject to the affirmative procedure.

Commencement Information

I321 Sch. 21 para. 2 in force at Royal Assent for specified purposes, see [s. 147\(1\)\(b\)](#)

Status: Point in time view as at 09/11/2021.

Changes to legislation: Environment Act 2021 is up to date with all changes known to be in force on or before 15 July 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)

Consent of the devolved administrations

- 3 (1) The power of the Secretary of State to make regulations under this Schedule is subject to the consent requirement in Article 4A of the REACH Regulation.
- (2) Accordingly, in Article 4A(1) of the REACH Regulation, the reference to the REACH Regulation is to be read as including a reference to this Schedule.

Commencement Information

I322 Sch. 21 para. 3 in force at Royal Assent for specified purposes, see [s. 147\(1\)\(b\)](#)

Requests by devolved administrations for exercise of powers under this Schedule

- 4 The Secretary of State must consider any request made by a relevant devolved authority for the Secretary of State to make regulations under this Schedule.

Commencement Information

I323 Sch. 21 para. 4 in force at Royal Assent for specified purposes, see [s. 147\(1\)\(b\)](#)

Consultation

- 5 (1) Before making regulations under this Schedule the Secretary of State must consult—
- (a) the Agency,
 - (b) any person nominated by a relevant devolved authority as a consultee for the consultation in question, and
 - (c) such other persons the Secretary of State considers appropriate.
- (2) The nomination of a person as a consultee by a relevant devolved authority is to be made by that authority to the Secretary of State.
- (3) Before making regulations under paragraph 2 a relevant devolved authority must consult—
- (a) the Agency, and
 - (b) such other persons that authority considers appropriate.

Commencement Information

I324 Sch. 21 para. 5 in force at Royal Assent for specified purposes, see [s. 147\(1\)\(b\)](#)

The protected provisions

- 6 In paragraph 1 “protected provision of the REACH Regulation” means any of the provisions of the REACH Regulation set out in the following Table—

<i>Fundamental principles</i>
Article 1 (aim and scope of the REACH Regulation)
Article 5 (the principle of “no data, no market”)

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Article 25(1) (animal testing as a last resort)
Article 35 (access to information for workers)
Article 45 (evaluation of substances on the rolling action plan)
Article 48 (follow-up to substance evaluation)
Article 55 (the aim of Title VII, which is about authorisation of substances)
Article 67(1) (effect of restrictions contained in Annex XVII)
Article 92 or 93 (appeals)
Article 111, first subparagraph (formats and software for submission of information to the Agency)
Article 123 (communication to the public of information on risks of substances)
<i>Role of the devolved administrations</i>
Article 4A (the consent requirement)
Article 129(1) (the safeguard clause: basic principles)
<i>Transparency</i>
Article 54 (publication of information on evaluation)
Article 64(6) (publication of Agency authorisation opinions)
Article 72(2) (publication of Agency restriction opinions)
Article 77(A4) (Agency to act in a way that ensures a high degree of transparency) and (2)(e) (database(s) of registered substances)
Article 109 (general rules on transparency for the Agency)
<i>Collaboration between the Agency and other bodies</i>
Article 95 (conflicts of opinion with other bodies)
Article 108 (contacts with stakeholder organisations)
Article 110 (relations with relevant public bodies)
<i>Annexes</i>
The Annexes

Commencement Information

1325 Sch. 21 para. 6 in force at Royal Assent for specified purposes, see **s. 147(1)(b)**

Other interpretation

7 In this Schedule—

“Agency” has the same meaning as in the REACH Regulation (see Article 2A of the Regulation);

“REACH Regulation” means Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration,

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Changes to legislation: Environment Act 2021 is up to date with all changes known to be in force on or before 15 July 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)

Evaluation, Authorisation and Restriction of Chemicals (REACH),
establishing a European Chemicals Agency;

“relevant devolved authority” means—

- (a) the Scottish Ministers,
- (b) the Welsh Ministers, or
- (c) the Department of Agriculture, Environment and Rural Affairs or the Department for the Economy in Northern Ireland.

Commencement Information

I326 Sch. 21 para. 7 in force at Royal Assent for specified purposes, see [s. 147\(1\)\(b\)](#)

Status:

Point in time view as at 09/11/2021.

Changes to legislation:

Environment Act 2021 is up to date with all changes known to be in force on or before 15 July 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.