



Water Act 2014

2014 CHAPTER 21

PART 3

ENVIRONMENTAL REGULATION

61 Regulation of the water environment

- (1) The Minister may by regulations make provision for any of the purposes listed in Part 1 of Schedule 8; and Part 2 of that Schedule has effect for supplementing Part 1.
- (2) Except as provided in Schedule 8, any provision so made is to be provision for or in connection with—
 - (a) regulating the use of water resources,
 - (b) securing the drainage of land or the management of flood risk, or
 - (c) safeguarding the movement of fish through regulated waters.
- (3) In making regulations under this section, the Minister is to have regard to the desirability of reducing burdens by ensuring that so far as is reasonably practicable any system established by regulations under this section is combined with, or is consistent with, systems for regulating activities or other matters that cause pollution.
- (4) Regulations under this section may—
 - (a) contain such consequential, incidental, supplementary, transitional or saving provisions (including provisions amending, repealing or revoking enactments) as the Minister considers appropriate, and
 - (b) make different provision for different cases, including different provision in relation to different persons, circumstances, areas or localities.
- (5) Before making any regulations under this section, the Minister is to consult—
 - (a) the Environment Agency;
 - (b) the Natural Resources Body for Wales;
 - (c) such bodies or persons appearing to the Minister to be representative of the interests of local government, industry, agriculture and small businesses respectively as the Minister may consider appropriate;

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- (d) such other bodies or persons as the Minister may consider appropriate.
- (6) It is immaterial for the purposes of subsection (5) whether consultation is carried out before or after the coming into force of this section.
- (7) The Secretary of State’s power to make regulations under this section is subject to the consent of the Scottish Ministers so far as the regulations apply as mentioned in subsection (11)(b),
- (8) In this section and Schedule 8 a reference to the use of water resources—
- (a) includes a reference to taking, diverting or impounding water from any inland waters, or taking water contained in underground strata, and applying it to any purpose, and
 - (b) includes a reference to wasting water whether by action or omission, but
 - (c) does not include a reference to the use, by a person other than a water undertaker, of water drawn from a water mains or pipe forming part of a system used by a water undertaker in carrying out a duty under section 37 of the Water Industry Act 1991.
- (9) In this section and Schedule 8—
- “enactment” includes—
- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
 - (b) an enactment contained in, or an instrument made under, an Act of the Scottish Parliament;
 - (c) an enactment contained in, or in an instrument made under, an Act or Measure of the National Assembly for Wales;
- “fish” means freshwater fish and migratory fish;
- “flood” has the meaning given in section 1 of the Flood and Water Management Act 2010;
- “flood risk” has the meaning given in section 2 of that Act;
- “freshwater fish” means any fish habitually living in fresh water;
- “inland waters” has the meaning given by section 221(1) of the Water Resources Act 1991;
- “migratory fish” means fish of a kind which migrates from fresh to salt water, or from salt to fresh water, in order to spawn;
- “the Minister” means—
- (a) the Secretary of State, in relation to England and in relation to so much of the River Esk and its banks and tributary streams as is mentioned in subsection (11)(b), and
 - (b) the Welsh Ministers, in relation to Wales;
- “regulated waters” means—
- (a) inland waters in England and Wales,
 - (b) the waters of so much of the River Esk and its tributary streams up to their source as is mentioned in subsection (11)(b), and
 - (c) waters adjoining the coast of England and Wales to a distance of six nautical miles measured from the baselines from which the breadth of the territorial sea is measured;
- “Wales” has the meaning given in section 158(1) of the Government of Wales Act 2006.

- (10) The reference in subsection (8)(a) to water contained in underground strata is to be read in accordance with section 221(3) of the Water Resources Act 1991, as if this section formed part of that Act.
- (11) Regulations made in reliance on subsection (2)(c)—
- (a) are not to apply in relation to the Tweed district (as defined in article 2(1) of the Scotland Act 1998 (River Tweed) Order 2006 (S.I. 2006/2913)), but
 - (b) may apply in relation to so much of the River Esk, with its banks and tributary streams up to their source, as is situated in Scotland.
- (12) Regulations under this section may make provision applying in relation to (and to places above and below) the territorial waters adjacent to any part of England and Wales.

62 Environmental regulation: procedure

- (1) The power to make regulations under section 61 is to be exercised by statutory instrument.
- (2) A statutory instrument containing regulations made by the Secretary of State under section 61 is subject to annulment in pursuance of a resolution of either House of Parliament, subject as follows.
- (3) A statutory instrument containing regulations made by the Welsh Ministers under section 61 is subject to annulment in pursuance of a resolution of the National Assembly for Wales, subject as follows.
- (4) A statutory instrument containing any of the following regulations (whether alone or with other regulations) is subject to the affirmative resolution procedure—
- (a) the first regulations to be made by the Secretary of State under section 61;
 - (b) the first regulations to be made by the Welsh Ministers under section 61;
 - (c) regulations under section 61 which create an offence or increase a penalty for an existing offence;
 - (d) regulations under section 61 which amend or repeal any provision of an Act, or an Act or Measure of the National Assembly for Wales.
- (5) A statutory instrument containing regulations made by the Secretary of State under both section 61 above and section 2 of the Pollution Prevention and Control Act 1999 is subject to the affirmative resolution procedure if an instrument containing only—
- (a) the regulations made by the Secretary of State under section 61 above, or
 - (b) the regulations made by the Secretary of State under section 2 of the Pollution Prevention and Control Act 1999,
- would be subject to the affirmative resolution procedure.
- (6) A statutory instrument containing regulations made by the Welsh Ministers under both section 61 above and section 2 of the Pollution Prevention and Control Act 1999 is subject to the affirmative resolution procedure if an instrument containing only—
- (a) the regulations made by the Welsh Ministers under section 61 above, or
 - (b) the regulations made by the Welsh Ministers under section 2 of the Pollution Prevention and Control Act 1999,
- would be subject to the affirmative resolution procedure.

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- (7) A statutory instrument containing regulations made by the Secretary of State that is subject to the affirmative resolution procedure may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (8) A statutory instrument containing regulations made by the Welsh Ministers that is subject to the affirmative resolution procedure may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (9) Subsections (11) and (12) apply in relation to a statutory instrument containing both—
- (a) regulations under section 61 made or to be made by the Secretary of State, and
 - (b) regulations under section 61 made or to be made by the Welsh Ministers.
- (10) Subsections (11) and (12) also apply in relation to a statutory instrument containing—
- (a) regulations under section 61 made or to be made by the Secretary of State,
 - (b) regulations under section 61 made or to be made by the Welsh Ministers, and
 - (c) regulations made under section 2 of the Pollution Prevention and Control Act 1999 (whether by the Secretary of State or the Welsh Ministers or both).
- (11) If in accordance with subsection (2) or (3) (negative resolution procedure)—
- (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing regulations made by the Secretary of State be annulled, or
 - (b) the National Assembly for Wales resolves that an instrument containing regulations made by the Welsh Ministers be annulled,
- nothing further is to be done under the instrument after the date of the resolution and Her Majesty may by Order in Council revoke the instrument.
- (12) If the statutory instrument contains any regulations which, on their own, would make the instrument subject to the affirmative resolution procedure, the instrument is subject to that procedure.
- (13) In section 2 of the Pollution Prevention and Control Act 1999, after subsection (9) there is inserted—
- “(10) See section 62 of the Water Act 2014 for further provision about the procedure applying to statutory instruments containing both regulations made under this section and regulations made under section 61 of that Act.”

63 Repeal of certain provisions about culverts

The following provisions of the Public Health Act 1936 are repealed—

- (a) section 262 (power of local authority to require culverting of watercourses and ditches where building operations in prospect);
- (b) section 263 (watercourses in urban districts not to be culverted except in accordance with approved plans).