Environmental Protection Act 1990

1990 CHAPTER 43

PART I U.K.

INTEGRATED POLLUTION CONTROL AND AIR POLLUTION CONTROL BY LOCAL AUTHORITIES

Modifications etc. (not altering text)

C1 Pt. I (ss. 1-28) modified (1.5.1994) by S.I. 1994/1056, reg. 1(3), 19, **Sch. 4 Pt. I para.8**
Pt. I (ss. 1-24): functions of River Purification Authorities tranferred (12.10.1995) to SEPA by 1995 c. 25, **s. 21(1)(a)(iii)**(with ss. 7(6), 115, 117); S.I. 1995/2649, **art.2**
Pt. I (ss. 1-24): functions of Chief Inspector for Scotland transferred (12.10.1995) to SEPA by 1995 c. 25, **s. 21(1)(d)**(with ss. 7(6), 115, 117); S.I. 1995/2649, **art.2**
Pt. I (ss. 1-24): functions of Local Authorities transferred (12.10.1995) to SEPA by 1995 c. 25, **s. 21(1)(h)**(with ss. 7(6), 115, 117); S.I. 1995/2649, **art.2**
Pt. I (ss. 1-28): functions of the Chief Inspector for England and Wales transferred (1.4.1996) to The Environment Agency by 1995 c. 25, **s. 2(1)(d)**(with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**
Pt. I (ss. 1-28) modified (1.2.1996) by 1995 c. 25, **s. 5(5)(e)**(with s. 115, 117); S.I. 1996/186, **art.2**
Pt. I (ss. 1-28) modified (1.4.1996) by 1995 c. 25, **s. 33(5)(e)**(with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**
Pt. I (ss. 1-28): power to make corresponding provisions conferred (27.7.1999) by 1999 c. 24, s. 2, **Sch. 1 Pt. I para. 20(1)(a)**

Preliminary

1 Preliminary. E+W+S

(1) The following provisions have effect for the interpretation of this Part.

(2) The "environment" consists of all, or any, of the following media, namely, the air, water and land; and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground.

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(3) "Pollution of the environment" means pollution of the environment due to the release (into any environmental medium) from any process of substances which are capable of causing harm to man or any other living organisms supported by the environment.

(4) "Harm" means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes offence caused to any of his senses or harm to his property; and "harmless" has a corresponding meaning.

(5) "Process" means any activities carried on in Great Britain, whether on premises or by means of mobile plant, which are capable of causing pollution of the environment and "prescribed process" means a process prescribed under section 2(1) below.

(6) For the purposes of subsection (5) above—

"activities" means industrial or commercial activities or activities of any other nature whatsoever (including, with or without other activities, the keeping of a substance);

"Great Britain" includes so much of the adjacent territorial sea as is, or is treated as, relevant territorial waters for the purposes of [F1Part III of the Water Resources Act 1991] or, as respects Scotland, Part II of the M1Control of Pollution Act 1974; and

"mobile plant" means plant which is designed to move or to be moved whether on roads or otherwise.

(7) The "enforcing authority", in relation to England and Wales, is the chief inspector or the local authority by whom, under section 4 below, the functions conferred or imposed by this Part otherwise than on the Secretary of State are for the time being exercisable in relation respectively to releases of substances into the environment or into the air; and "local enforcing authority" means any such local authority.

(8) The "enforcing authority", in relation to Scotland, is—

(a) in relation to releases of substances into the environment, the chief inspector or the river purification authority (which in this Part means a river purification authority within the meaning of the M2Rivers (Prevention of Pollution) (Scotland) Act 1951),

(b) in relation to releases of substances into the air, the local authority,

by whom, under section 4 below, the functions conferred or imposed by this Part otherwise than on the Secretary of State are for the time being exercisable; and "local enforcing authority" means any such local authority.

(9) "Authorisation" means an authorisation for a process (whether on premises or by means of mobile plant) granted under section 6 below; and a reference to the conditions of an authorisation is a reference to the conditions subject to which at any time the authorisation has effect.

(10) A substance is "released" into any environmental medium whenever it is released directly into that medium whether it is released into it within or outside Great Britain and "release" includes—

(a) in relation to air, any emission of the substance into the air;

(b) in relation to water, any entry (including any discharge) of the substance into water;

(c) in relation to land, any deposit, keeping or disposal of the substance in or on land;

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and for this purpose "water" and "land" shall be construed in accordance with subsections (11) and (12) below.

(11) For the purpose of determining into what medium a substance is released—

(a) any release into—

(i) the sea or the surface of the seabed,

(ii) any river, watercourse, lake, loch or pond (whether natural or artificial or above or below ground) or reservoir or the surface of the riverbed or of other land supporting such waters, or

(iii) ground waters,

is a release into water;

(b) any release into—

(i) land covered by water falling outside paragraph (a) above or the water covering such land; or

(ii) the land beneath the surface of the seabed or of other land supporting waters falling within paragraph (a)(ii) above,

is a release into land; and

(c) any release into a sewer (within the meaning of [F2the Water Industry Act 1991] or, in relation to Scotland, of the M3Sewerage (Scotland) Act 1968) shall be treated as a release into water;

but a sewer and its contents shall be disregarded in determining whether there is pollution of the environment at any time.

(12) In subsection (11) above "ground waters" means any waters contained in underground strata, or in—

(a) a well, borehole or similar work sunk into underground strata, including any adit or passage constructed in connection with the well, borehole or work for facilitating the collection of water in the well, borehole or work; or

(b) any excavation into underground strata where the level of water in the excavation depends wholly or mainly on water entering it from the strata.

(13) "Substance" shall be treated as including electricity or heat and "prescribed substance" has the meaning given by section 2(7) below.

Textual Amendments

F1 Words in s. 1(6) substituted (1. 12. 1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2, 4(1), **Sch. 1 para. 56(1)(a)**

F2 Words in s. 1(11)(c) substituted (1. 12. 1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2, 4(2), **Sch. 1 para. 56(1)(b)**

Modifications etc. (not altering text)

C2 Definitions in s. 1 applied (E.W.) (1. 12. 1991) by Water Industry Act 1991 (c. 56, SIF 130), **ss. 138(4)(a)**, 223 (with ss. 82(3), 186(1), 222(1), Sch. 14 para. 6)
S. 1 applied (1.3.1996) by 1986 c. 44, **s. 4** (as substituted (1.3.1996) by 1995 c. 45, **s.1**; S.I. 1996/218, **art.2**)

Marginal Citations

M1 1974 c. 40.

M2 1951 c. 64.

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M3 1968 c. 47.

2 Prescribed processes and prescribed substances. E+W+S

(1) The Secretary of State may, by regulations, prescribe any description of process as a process for the carrying on of which after a prescribed date an authorisation is required under section 6 below.

(2) Regulations under subsection (1) above may frame the description of a process by reference to any characteristics of the process or the area or other circumstances in which the process is carried on or the description of person carrying it on.

(3) Regulations under subsection (1) above may prescribe or provide for the determination under the regulations of different dates for different descriptions of persons and may include such transitional provisions as the Secretary of State considers necessary or expedient as respects the making of applications for authorisations and suspending the application of section 6(1) below until the determination of applications made within the period allowed by the regulations.

(4) Regulations under subsection (1) above shall, as respects each description of process, designate it as one for central control or one for local control.

(5) The Secretary of State may, by regulations, prescribe any description of substance as a substance the release of which into the environment is subject to control under sections 6 and 7 below.

(6) Regulations under subsection (5) above may—

(a) prescribe separately, for each environmental medium, the substances the release of which into that medium is to be subject to control; and

(b) provide that a description of substance is only prescribed, for any environmental medium, so far as it is released into that medium in such amounts over such periods, in such concentrations or in such other circumstances as may be specified in the regulations;

and in relation to a substance of a description which is prescribed for releases into the air, the regulations may designate the substance as one for central control or one for local control.

(7) In this Part "prescribed substance" means any substance of a description prescribed in regulations under subsection (5) above or, in the case of a substance of a description prescribed only for releases in circumstances specified under subsection (6)(b) above, means any substance of that description which is released in those circumstances.

VALID FROM 19/12/1991

3 Emission etc. limits and quality objectives. U.K.

(1) The Secretary of State may make regulations under subsection (2) or (4) below establishing standards, objectives or requirements in relation to particular prescribed processes or particular substances.

(2) Regulations under this subsection may—

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(a) in relation to releases of any substance from prescribed processes into any environmental medium, prescribe standard limits for—

(i) the concentration, the amount or the amount in any period of that substance which may be so released; and

(ii) any other characteristic of that substance in any circumstances in which it may be so released;

(b) prescribe standard requirements for the measurement or analysis of, or of releases of, substances for which limits have been set under paragraph (a) above; and

(c) in relation to any prescribed process, prescribe standards or requirements as to any aspect of the process.

(3) Regulations under subsection (2) above may make different provision in relation to different cases, including different provision in relation to different processes, descriptions of person, localities or other circumstances.

(4) Regulations under this subsection may establish for any environmental medium (in all areas or in specified areas) quality objectives or quality standards in relation to any substances which may be released into that or any other medium from any process.

(5) The Secretary of State may make plans for—

(a) establishing limits for the total amount, or the total amount in any period, of any substance which may be released into the environment in, or in any area within, the United Kingdom;

(b) allocating quotas as respects the release of substances to persons carrying on processes in respect of which any such limit is established;

(c) establishing limits of the descriptions specified in subsection (2)(a) above so as progressively to reduce pollution of the environment;

(d) the progressive improvement in the quality objectives and quality standards established by regulations under subsection (4) above;

and the Secretary of State may, from time to time, revise any plan so made.

(6) Regulations or plans under this section may be made for any purposes of this Part or for other purposes.

(7) The Secretary of State shall give notice in the London, Edinburgh and Belfast Gazettes of the making and the revision of any plan under subsection (5) above and shall make the documents containing the plan, or the plan as so revised, available for inspection by members of the public at the places specified in the notice.

(8) Subject to any Order made after the passing of this Act by virtue of subsection (1)(a) of section 3 of the [M4]Northern Ireland Constitution Act 1973, the making and revision of plans under subsection (5) above shall not be a transferred matter for the purposes of that Act but shall for the purposes of subsection (2) of that section be treated as specified in Schedule 3 to that Act.

Marginal Citations

M4 1973 c. 36.

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4 Discharge and scope of functions. E+W+S

(1) This section determines the authority by whom the functions conferred or imposed by this Part otherwise than on the Secretary of State are exercisable and the purposes for which they are exercisable.

(2) Those functions, in their application to prescribed processes designated for central control, shall be functions of the chief inspector appointed for England and Wales by the Secretary of State under section 16 below and, in relation to Scotland, of the chief inspector so appointed for Scotland or of the river purification authority, as determined under regulations made under section 5(1) below, and shall be exercisable for the purpose of preventing or minimising pollution of the environment due to the release of substances into any environmental medium.

(3) Subject to subsection (4) below, those functions, in their application to prescribed processes designated for local control, shall be functions of—

(a) in the case of a prescribed process carried on (or to be carried on) by means of mobile plant, the local authority in whose area the person carrying on the process has his principal place of business; and

(b) in any other cases, the local authority in whose area the prescribed processes are (or are to be) carried on;

and the functions applicable to such processes shall be exercisable for the purpose of preventing or minimising pollution of the environment due to the release of substances into the air (but not into any other environmental medium).

(4) The Secretary of State may, as respects the functions under this Part being exercised by a local authority specified in the direction, direct that those functions shall be exercised instead by the chief inspector while the direction remains in force or during a period specified in the direction.

(5) A transfer of functions under subsection (4) above to the chief inspector does not make them exercisable by him for the purpose of preventing or minimising pollution of the environment due to releases of substances into any other environmental medium than the air.

(6) A direction under subsection (4) above may transfer those functions as exercisable in relation to all or any description of prescribed processes carried on by all or any description of persons (a "general direction") or in relation to a prescribed process carried on by a specified person (a "specific direction").

(7) A direction under subsection (4) above may include such saving and transitional provisions as the Secretary of State considers necessary or expedient.

(8) The Secretary of State, on giving or withdrawing a direction under subsection (4) above, shall—

(a) in the case of a general direction—

(i) forthwith serve notice of it on the chief inspector and on the local enforcing authorities affected by the direction; and

(ii) cause notice of it to be published as soon as practicable in the London Gazette or, as the case may be, in the Edinburgh Gazette and in at least one newspaper circulating in the area of each authority affected by the direction;

(b) in the case of a specific direction—

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(i) forthwith serve notice of it on the chief inspector, the local enforcing authority and the person carrying on or appearing to the Secretary of State to be carrying on the process affected, and

(ii) cause notice of it to be published as soon as practicable in the London Gazette or, as the case may be, in the Edinburgh Gazette and in at least one newspaper circulating in the authority's area;

and any such notice shall specify the date at which the direction is to take (or took) effect and (where appropriate) its duration.

(9) It shall be the duty of the chief inspector or, in Scotland, of the chief inspector and river purification authorities to follow developments in technology and techniques for preventing or reducing pollution of the environment due to releases of substances from prescribed processes; and the local enforcing authorities shall follow such of those developments as concern releases into the air of substances from prescribed processes designated for local control.

(10) It shall be the duty of the chief inspector, river purification authorities and the local enforcing authorities to give effect to any directions given to them under any provision of this Part.

(11) In this Part "local authority" means, subject to subsection (12) below—

(a) in Greater London, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple;

(b) outside Greater London, a district council and the Council of the Isles of Scilly; and

(c) in Scotland, an islands or district council.

(12) Where, by an order under section 2 of the [M5]Public Health (Control of Disease) Act 1984, a port health authority has been constituted for any port health district, the port health authority shall have by virtue of this subsection, as respects its district, the functions conferred or imposed by this Part and no such order shall be made assigning those functions; and "local authority" and "area" shall be construed accordingly.

Marginal Citations

M5 1984 c. 22.

5 Further provision as to discharge and scope of functions: Scotland. S

(1) For the purposes of section 4(2) above in its application to Scotland, the Secretary of State shall make regulations prescribing—

(a) the method and arrangements for determining whether the functions referred to in that subsection shall be functions of the chief inspector or of a river purification authority;

(b) if the functions are determined under paragraph (a) above to be functions of a river purification authority, the river purification authority by whom they are to be exercised.

(2) The Secretary of State may make regulations prescribing—

(a) the circumstances and manner in which consultation shall be carried out between—

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(i) whichever of the chief inspector or river purification authority is determined under regulations made under subsection (1) above to be the enforcing authority, and

(ii) the other (the "consulted authority"),

before granting, varying, transferring or revoking an authorisation or serving an enforcement or prohibition notice;

(b) the circumstances in which the consulted authority may require the enforcing authority to include, in an authorisation, conditions which the consulted authority reasonably believe will achieve the objectives specified in section 7(2) below.

(3) Regulations under this section may contain such incidental, supplemental and consequential provision as the Secretary of State considers appropriate.

(4) This section applies to Scotland only.

Authorisations

6 Authorisations: general provisions. E+W+S

(1) No person shall carry on a prescribed process after the date prescribed or determined for that description of process by or under regulations under section 2(1) above (but subject to any transitional provision made by the regulations) except under an authorisation granted by the enforcing authority and in accordance with the conditions to which it is subject.

(2) An application for an authorisation shall be made to the enforcing authority in accordance with Part I of Schedule 1 to this Act and shall be accompanied by the fee prescribed under section 8(2)(a) below.

(3) Where an application is duly made to the enforcing authority, the authority shall either grant the authorisation subject to the conditions required or authorised to be imposed by section 7 below or refuse the application.

(4) An application shall not be granted unless the enforcing authority considers that the applicant will be able to carry on the process so as to comply with the conditions which would be included in the authorisation.

(5) The Secretary of State may, if he thinks fit in relation to any application for an authorisation, give to the enforcing authority directions as to whether or not the authority should grant the authorisation.

(6) The enforcing authority shall, as respects each authorisation in respect of which it has functions under this Part, from time to time but not less frequently than once in every period of four years, carry out a review of the conditions of the authorisation.

(7) The Secretary of State may, by regulations, substitute for the period for the time being specified in subsection (6) above such other period as he thinks fit.

(8) Schedule 1 to this Act (supplementary provisions) shall have effect in relation to authorisations.

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7 Conditions of authorisations. E+W+S

(1) There shall be included in an authorisation—

(a) subject to paragraph (b) below, such specific conditions as the enforcing authority considers appropriate, when taken with the general condition implied by subsection (4) below, for achieving the objectives specified in subsection (2) below;

(b) such conditions as are specified in directions given by the Secretary of State under subsection (3) below; and

(c) such other conditions (if any) as appear to the enforcing authority to be appropriate;

but no conditions shall be imposed for the purpose only of securing the health of persons at work (within the meaning of Part I of the [M6]Health and Safety at Work etc. Act 1974).

(2) Those objectives are—

(a) ensuring that, in carrying on a prescribed process, the best available techniques not entailing excessive cost will be used—

(i) for preventing the release of substances prescribed for any environmental medium into that medium or, where that is not practicable by such means, for reducing the release of such substances to a minimum and for rendering harmless any such substances which are so released; and

(ii) for rendering harmless any other substances which might cause harm if released into any environmental medium;

(b) compliance with any directions by the Secretary of State given for the implementation of any obligations of the United Kingdom under the Community Treaties or international law relating to environmental protection;

(c) compliance with any limits or requirements and achievement of any quality standards or quality objectives prescribed by the Secretary of State under any of the relevant enactments;

(d) compliance with any requirements applicable to the grant of authorisations specified by or under a plan made by the Secretary of State under section 3(5) above.

(3) Except as respects the general condition implied by subsection (4) below, the Secretary of State may give directions to the enforcing authorities as to the conditions which are, or are not, to be included in all authorisations, in authorisations of any specified description or in any particular authorisation.

(4) Subject to subsections (5) and (6) below, there is implied in every authorisation a general condition that, in carrying on the process to which the authorisation applies, the person carrying it on must use the best available techniques not entailing excessive cost—

(a) for preventing the release of substances prescribed for any environmental medium into that medium or, where that is not practicable by such means, for reducing the release of such substances to a minimum and for rendering harmless any such substances which are so released; and

(b) for rendering harmless any other substances which might cause harm if released into any environmental medium.

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(5) In the application of subsections (1) to (4) above to authorisations granted by a local enforcing authority references to the release of substances into any environmental medium are to be read as references to the release of substances into the air.

(6) The obligation implied by virtue of subsection (4) above shall not apply in relation to any aspect of the process in question which is regulated by a condition imposed under subsection (1) above.

(7) The objectives referred to in subsection (2) above shall, where the process—

(a) is one designated for central control; and

(b) is likely to involve the release of substances into more than one environmental medium;

include the objective of ensuring that the best available techniques not entailing excessive cost will be used for minimising the pollution which may be caused to the environment taken as a whole by the releases having regard to the best practicable environmental option available as respects the substances which may be released.

(8) An authorisation for carrying on a prescribed process may, without prejudice to the generality of subsection (1) above, include conditions—

(a) imposing limits on the amount or composition of any substance produced by or utilised in the process in any period; and

(b) requiring advance notification of any proposed change in the manner of carrying on the process.

(9) This section has effect subject to section 28 below and, in relation to Scotland, to any regulations made under section 5(2) above.

(10) References to the best available techniques not entailing excessive cost, in relation to a process, include (in addition to references to any technical means and technology) references to the number, qualifications, training and supervision of persons employed in the process and the design, construction, lay-out and maintenance of the buildings in which it is carried on.

(11) It shall be the duty of enforcing authorities to have regard to any guidance issued to them by the Secretary of State for the purposes of the application of subsections (2) and (7) above as to the techniques and environmental options that are appropriate for any description of prescribed process.

(12) In subsection (2) above "the relevant enactments" are any enactments or instruments contained in or made for the time being under—

(a) section 2 of the [M7]Clean Air Act 1968;

(b) section 2 of the [M8]European Communities Act 1972;

(c) Part I of the [M9]Health and Safety at Work etc. Act 1974;

(d) Parts II, III or IV of the [M10]Control of Pollution Act 1974;

[[F3](e) the Water Resources Act 1991; and**]**

(f) section 3 of this Act.

Textual Amendments

F3 S. 7(12)(e) substituted (1. 12. 1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2, 4(2), **Sch. 1 para. 56(2)**

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Marginal Citations

M6 1974 c. 37.
M7 1968 c. 62.
M8 1972 c. 68.
M9 1974 c. 37.
M10 1974 c. 40.

8 Fees and charges for authorisations. E+W+S

(1) There shall be charged by and paid to the enforcing authority such fees and charges as may be prescribed from time to time by a scheme under subsection (2) below (whether by being specified in or made calculable under the scheme).

(2) The Secretary of State may, with the approval of the Treasury, make, and from time to time revise, a scheme prescribing—

(a) fees payable in respect of applications for authorisations;

(b) fees payable by persons holding authorisations in respect of, or of applications for, the variation of authorisations; and

(c) charges payable by such persons in respect of the subsistence of their authorisations.

(3) The Secretary of State shall, on making or revising a scheme under subsection (2) above, lay a copy of the scheme or of the alterations made in the scheme or, if he considers it more appropriate, the scheme as revised, before each House of Parliament.

(4) The Secretary of State may make separate schemes for fees and charges payable to the chief inspector or, as the case may be, river purification authority and fees and charges payable to local enforcing authorities under this Part.

(5) A scheme under subsection (2) above may, in particular—

(a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities;

(b) allow for reduced fees or charges to be payable in respect of authorisations for a number of prescribed processes carried on by the same person;

(c) provide for the times at which and the manner in which the payments required by the scheme are to be made; and

(d) make such incidental, supplementary and transitional provision as appears to the Secretary of State to be appropriate.

(6) The Secretary of State, in framing a scheme under subsection (2) above, shall, so far as practicable, secure that the fees and charges payable under the scheme are sufficient, taking one financial year with another, to cover the relevant expenditure attributable to authorisations.

(7) The "relevant expenditure attributable to authorisations" is the expenditure incurred by the enforcing authorities in exercising their functions under this Part in relation to authorisations together with the expenditure incurred by the National Rivers Authority in exercising the Authority's functions in relation to authorisations for processes which may involve the release of any substance into water.

(8) If it appears to the enforcing authority that the holder of an authorisation has failed to pay a charge due in consideration of the subsistence of the authorisation, it may, by notice in writing served on the holder, revoke the authorisation.

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(9) The Secretary of State may make to the National Rivers Authority payments of such amounts as appear to him to be required to meet the estimated relevant expenditure of the Authority attributable to authorisations.

(10) Subsections (7) and (9) above shall not apply to Scotland, but in relation to Scotland the "relevant expenditure attributable to authorisations" is the expenditure incurred by the enforcing authorities in exercising their functions under this Part or in relation to consultation carried out under regulations made under section 5(2) above.

(11) In Scotland, the chief inspector may make to a river purification authority and a river purification authority may make to the chief inspector payments of such amounts as are appropriate to meet their estimated relevant expenditure attributable to authorisations, such amounts to be determined by the Secretary of State if the chief inspector and the authority fail to agree on an appropriate amount of payment.

9 Transfer of authorisations. E+W+S

(1) An authorisation for the carrying on of any prescribed process may be transferred by the holder to a person who proposes to carry on the process in the holder's place.

(2) Where an authorisation is transferred under this section, the person to whom it is transferred shall notify the enforcing authority in writing of that fact not later than the end of the period of twenty-one days beginning with the date of the transfer.

(3) An authorisation which is transferred under this section shall have effect on and after the date of the transfer as if it had been granted to that person under section 6 above, subject to the same conditions as were attached to it immediately before that date.

10 Variation of authorisations by enforcing authority. E+W+S

(1) The enforcing authority may at any time, subject to the requirements of section 7 above, and, in cases to which they apply, the requirements of Part II of Schedule 1 to this Act, vary an authorisation and shall do so if it appears to the authority at that time that that section requires conditions to be included which are different from the subsisting conditions.

(2) Where the enforcing authority has decided to vary an authorisation under subsection (1) above the authority shall notify the holder of the authorisation and serve a variation notice on him.

(3) In this Part a "variation notice" is a notice served by the enforcing authority on the holder of an authorisation—

(a) specifying variations of the authorisation which the enforcing authority has decided to make; and

(b) specifying the date or dates on which the variations are to take effect;

and, unless the notice is withdrawn, the variations specified in a variation notice shall take effect on the date or dates so specified.

(4) A variation notice served under subsection (2) above shall also—

(a) require the holder of the authorisation, within such period as may be specified in the notice, to notify the authority what action (if any) he proposes to take to ensure that the process is carried on in accordance with the authorisation as varied by the notice; and

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(b) require the holder to pay the fee (if any) prescribed by a scheme under section 8 above within such period as may be specified in the notice.

(5) Where in the opinion of the enforcing authority any action to be taken by the holder of an authorisation in consequence of a variation notice served under subsection (2) above will involve a substantial change in the manner in which the process is being carried on, the enforcing authority shall notify the holder of its opinion.

(6) The Secretary of State may, if he thinks fit in relation to authorisations of any description or particular authorisations, direct the enforcing authorities—

(a) to exercise their powers under this section, or to do so in such circumstances as may be specified in the directions, in such manner as may be so specified; or

(b) not to exercise those powers, or not to do so in such circumstances or such manner as may be so specified;

and the Secretary of State shall have the corresponding power of direction in respect of the powers of the enforcing authorities to vary authorisations under section 11 below.

(7) In this section and section 11 below a "substantial change", in relation to a prescribed process being carried on under an authorisation, means a substantial change in the substances released from the process or in the amount or any other characteristic of any substance so released; and the Secretary of State may give directions to the enforcing authorities as to what does or does not constitute a substantial change in relation to processes generally, any description of process or any particular process.

(8) In this section and section 11 below—

"prescribed" means prescribed in regulations made by the Secretary of State;

"vary", in relation to the subsisting conditions or other provisions of an authorisation, means adding to them or varying or rescinding any of them;

and "variation" shall be construed accordingly.

11 Variation of conditions etc: applications by holders of authorisations. E+W+S

(1) A person carrying on a prescribed process under an authorisation who wishes to make a relevant change in the process may at any time—

(a) notify the enforcing authority in the prescribed form of that fact, and

(b) request the enforcing authority to make a determination, in relation to the proposed change, of the matters mentioned in subsection (2) below;

and a person making a request under paragraph (b) above shall furnish the enforcing authority with such information as may be prescribed or as the authority may by notice require.

(2) On receiving a request under subsection (1) above the enforcing authority shall determine—

(a) whether the proposed change would involve a breach of any condition of the authorisation;

(b) if it would not involve such a breach, whether the authority would be likely to vary the conditions of the authorisation as a result of the change;

(c) if it would involve such a breach, whether the authority would consider varying the conditions of the authorisation so that the change may be made; and

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(d) whether the change would involve a substantial change in the manner in which the process is being carried on;

and the enforcing authority shall notify the holder of the authorisation of its determination of those matters.

(3) Where the enforcing authority has determined that the proposed change would not involve a substantial change, but has also determined under paragraph (b) or (c) of subsection (2) above that the change would lead to or require the variation of the conditions of the authorisation, then—

(a) the enforcing authority shall (either on notifying its determination under that subsection or on a subsequent occasion) notify the holder of the authorisation of the variations which the authority is likely to consider making; and

(b) the holder may apply in the prescribed form to the enforcing authority for the variation of the conditions of the authorisation so that he may make the proposed change.

(4) Where the enforcing authority has determined that a proposed change would involve a substantial change that would lead to or require the variation of the conditions of the authorisation, then—

(a) the authority shall (either on notifying its determination under subsection (2) above or on a subsequent occasion) notify the holder of the authorisation of the variations which the authority is likely to consider making; and

(b) the holder of the authorisation shall, if he wishes to proceed with the change, apply in the prescribed form to the enforcing authority for the variation of the conditions of the authorisation.

(5) The holder of an authorisation may at any time, unless he is carrying on a prescribed process under the authorisation and wishes to make a relevant change in the process, apply to the enforcing authority in the prescribed form for the variation of the conditions of the authorisation.

(6) A person carrying on a process under an authorisation who wishes to make a relevant change in the process may, where it appears to him that the change will require the variation of the conditions of the authorisation, apply to the enforcing authority in the prescribed form for the variation of the conditions of the authorisation specified in the application.

(7) A person who makes an application for the variation of the conditions of an authorisation shall furnish the authority with such information as may be prescribed or as the authority may by notice require.

(8) On an application for variation of the conditions of an authorisation under any provision of this section—

(a) the enforcing authority may, having fulfilled the requirements of Part II of Schedule 1 to this Act in cases to which they apply, as it thinks fit either refuse the application or, subject to the requirements of section 7 above, vary the conditions or, in the case of an application under subsection (6) above, treat the application as a request for a determination under subsection (2) above; and

(b) if the enforcing authority decides to vary the conditions, it shall serve a variation notice on the holder of the authorisation.

(9) Any application to the enforcing authority under this section shall be accompanied by the applicable fee (if any) prescribed by a scheme made under section 8 above.

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(10) This section applies to any provision other than a condition which is contained in an authorisation as it applies to a condition with the modification that any reference to the breach of a condition shall be read as a reference to acting outside the scope of the authorisation.

(11) For the purposes of this section a relevant change in a prescribed process is a change in the manner of carrying on the process which is capable of altering the substances released from the process or of affecting the amount or any other characteristic of any substance so released.

12 Revocation of authorisation. E+W+S

(1) The enforcing authority may at any time revoke an authorisation by notice in writing to the person holding the authorisation.

(2) Without prejudice to the generality of subsection (1) above, the enforcing authority may revoke an authorisation where it has reason to believe that a prescribed process for which the authorisation is in force has not been carried on or not for a period of twelve months.

(3) The revocation of an authorisation under this section shall have effect from the date specified in the notice; and the period between the date on which the notice is served and the date so specified shall not be less than twenty-eight days.

(4) The enforcing authority may, before the date on which the revocation of an authorisation takes effect, withdraw the notice or vary the date specified in it.

(5) The Secretary of State may, if he thinks fit in relation to an authorisation, give to the enforcing authority directions as to whether the authority should revoke the authorisation under this section.

Enforcement

13 Enforcement notices. E+W+S

(1) If the enforcing authority is of the opinion that the person carrying on a prescribed process under an authorisation is contravening any condition of the authorisation, or is likely to contravene any such condition, the authority may serve on him a notice ("an enforcement notice").

(2) An enforcement notice shall—

(a) state that the authority is of the said opinion;

(b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;

(c) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be; and

(d) specify the period within which those steps must be taken.

(3) The Secretary of State may, if he thinks fit in relation to the carrying on by any person of a prescribed process, give to the enforcing authority directions as to whether the authority should exercise its powers under this section and as to the steps which are to be required to be taken under this section.

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14 Prohibition notices. E+W+S

(1) If the enforcing authority is of the opinion, as respects the carrying on of a prescribed process under an authorisation, that the continuing to carry it on, or the continuing to carry it on in a particular manner, involves an imminent risk of serious pollution of the environment the authority shall serve a notice (a "prohibition notice") on the person carrying on the process.

(2) A prohibition notice may be served whether or not the manner of carrying on the process in question contravenes a condition of the authorisation and may relate to any aspects of the process, whether regulated by the conditions of the authorisation or not.

(3) A prohibition notice shall—

(a) state the authority's opinion;

(b) specify the risk involved in the process;

(c) specify the steps that must be taken to remove it and the period within which they must be taken; and

(d) direct that the authorisation shall, until the notice is withdrawn, wholly or to the extent specified in the notice cease to have effect to authorise the carrying on of the process;

and where the direction applies to part only of the process it may impose conditions to be observed in carrying on the part which is authorised to be carried on.

(4) The Secretary of State may, if he thinks fit in relation to the carrying on by any person of a prescribed process, give to the enforcing authority directions as to—

(a) whether the authority should perform its duties under this section; and

(b) the matters to be specified in any prohibition notice in pursuance of subsection (3) above which the authority is directed to issue.

(5) The enforcing authority shall, as respects any prohibition notice it has issued to any person, by notice in writing served on that person, withdraw the notice when it is satisfied that the steps required by the notice have been taken.

15 Appeals as respects authorisations and against variation, enforcement and prohibition notices. E+W+S

(1) The following persons, namely—

(a) a person who has been refused the grant of an authorisation under section 6 above;

(b) a person who is aggrieved by the conditions attached, under any provision of this Part, to his authorisation;

(c) a person who has been refused a variation of an authorisation on an application under section 11 above;

(d) a person whose authorisation has been revoked under section 12 above;

may appeal against the decision of the enforcing authority to the Secretary of State (except where the decision implements a direction of his).

(2) A person on whom a variation notice, an enforcement notice or a prohibition notice is served may appeal against the notice to the Secretary of State.

(3) Where an appeal under this section is made to the Secretary of State—

(a) the Secretary of State may refer any matter involved in the appeal to a person appointed by him for the purpose; or

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(b) the Secretary of State may, instead of determining the appeal himself, direct that the appeal or any matter involved in it shall be determined by a person appointed by him for the purpose;

and a person appointed under paragraph (b) above for the purpose of an appeal shall have the same powers under subsection (5), (6) or (7) below as the Secretary of State.

(4) An appeal under this section shall, if and to the extent required by regulations under subsection (10) below, be advertised in such manner as may be prescribed by regulations under that subsection.

(5) If either party to the appeal so requests or the Secretary of State so decides, an appeal shall be or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held, or held to any extent, in private).

(6) On determining an appeal against a decision of an enforcing authority under subsection (1) above, the Secretary of State—

(a) may affirm the decision;

(b) where the decision was a refusal to grant an authorisation or a variation of an authorisation, may direct the enforcing authority to grant the authorisation or to vary the authorisation, as the case may be;

(c) where the decision was as to the conditions attached to an authorisation, may quash all or any of the conditions of the authorisation;

(d) where the decision was to revoke an authorisation, may quash the decision;

and where he exercises any of the powers in paragraphs (b), (c) or (d) above, he may give directions as to the conditions to be attached to the authorisation.

(7) On the determination of an appeal under subsection (2) above the Secretary of State may either quash or affirm the notice and, if he affirms it, may do so either in its original form or with such modifications as he may in the circumstances think fit.

(8) Where an appeal is brought under subsection (1) above against the revocation of an authorisation, the revocation shall not take effect pending the final determination or the withdrawal of the appeal.

(9) Where an appeal is brought under subsection (2) above against a notice, the bringing of the appeal shall not have the effect of suspending the operation of the notice.

(10) Provision may be made by the Secretary of State by regulations with respect to appeals under this section and in particular—

(a) as to the period within which and the manner in which appeals are to be brought; and

(b) as to the manner in which appeals are to be considered.

15 Appeals as respects authorisations and against variation, enforcement and prohibition notices. E+W+S

(1) The following persons, namely—

(a) a person who has been refused the grant of an authorisation under section 6 above;

(b) a person who is aggrieved by the conditions attached, under any provision of this Part, to his authorisation;

(c) a person who has been refused a variation of an authorisation on an application under section 11 above;

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(d) a person whose authorisation has been revoked under section 12 above;

may appeal against the decision of the enforcing authority to the Secretary of State (except where the decision implements a direction of his).

(2) A person on whom a variation notice, an enforcement notice or a prohibition notice is served may appeal against the notice to the Secretary of State.

(3) Where an appeal under this section is made to the Secretary of State—

(a) the Secretary of State may refer any matter involved in the appeal to a person appointed by him for the purpose; or

(b) the Secretary of State may, instead of determining the appeal himself, direct that the appeal or any matter involved in it shall be determined by a person appointed by him for the purpose;

and a person appointed under paragraph (b) above for the purpose of an appeal shall have the same powers under subsection (5), (6) or (7) below as the Secretary of State.

(4) An appeal under this section shall, if and to the extent required by regulations under subsection (10) below, be advertised in such manner as may be prescribed by regulations under that subsection.

(5) If either party to the appeal so requests or the Secretary of State so decides, an appeal shall be or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held, or held to any extent, in private).

(6) On determining an appeal against a decision of an enforcing authority under subsection (1) above, the Secretary of State—

(a) may affirm the decision;

(b) where the decision was a refusal to grant an authorisation or a variation of an authorisation, may direct the enforcing authority to grant the authorisation or to vary the authorisation, as the case may be;

(c) where the decision was as to the conditions attached to an authorisation, may quash all or any of the conditions of the authorisation;

(d) where the decision was to revoke an authorisation, may quash the decision;

and where he exercises any of the powers in paragraphs (b), (c) or (d) above, he may give directions as to the conditions to be attached to the authorisation.

(7) On the determination of an appeal under subsection (2) above the Secretary of State may either quash or affirm the notice and, if he affirms it, may do so either in its original form or with such modifications as he may in the circumstances think fit.

(8) Where an appeal is brought under subsection (1) above against the revocation of an authorisation, the revocation shall not take effect pending the final determination or the withdrawal of the appeal.

(9) Where an appeal is brought under subsection (2) above against a notice, the bringing of the appeal shall not have the effect of suspending the operation of the notice.

(10) Provision may be made by the Secretary of State by regulations with respect to appeals under this section and in particular—

(a) as to the period within which and the manner in which appeals are to be brought; and

(b) as to the manner in which appeals are to be considered.

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16 Appointment of chief inspector and other inspectors. E+W+S

(1) The Secretary of State may appoint as inspectors (under whatever title he may determine) such persons having suitable qualifications as he thinks necessary for carrying this Part into effect in relation to prescribed processes designated for central control or for the time being transferred under section 4(4) above to central control, and may terminate any appointment made under this subsection.

(2) The Secretary of State may make to or in respect of any person so appointed such payments by way of remuneration, allowances or otherwise as he may with the approval of the Treasury determine.

(3) In relation to England and Wales the Secretary of State shall constitute one of the inspectors appointed under subsection (1) above to be the chief inspector for England and Wales and in relation to Scotland the Secretary of State shall constitute one of the said inspectors to be the chief inspector for Scotland.

(4) The functions conferred or imposed by or under this Part on the chief inspector as the enforcing authority may, to any extent, be delegated by him to any other inspector appointed under subsection (1) above.

(5) A river purification authority may appoint as inspectors (under whatever title the authority may determine) such persons having suitable qualifications as the authority thinks necessary for carrying this Part into effect in relation to prescribed processes designated for central control and may terminate any appointment made under this subsection.

(6) Any local authority may appoint as inspectors (under whatever title the authority may determine) such persons having suitable qualifications as the authority think necessary for carrying this Part into effect in the authority's area in relation to prescribed processes designated for local control (and not so transferred), and may terminate any appointment made under this subsection.

(7) An inspector shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under section 17 or 18 below if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(8) In the following provisions of this Part "inspector" means a person appointed as an inspector under subsection (1), (5) or (6) above.

Modifications etc. (not altering text)
C3 S. 16(3): Functions of the Chief Inspector for England and Wales tranferred (*prosp.*) to the Agency by 1995 c. 25, **ss. 2(1)(d)**, 125 (with s. 115)

17 Powers of inspectors and others. E+W+S

(1) An inspector may, on production (if so required) of his authority, exercise any of the powers in subsection (3) below for the purposes of the discharge of the functions of the enforcing authority.

(2) Those powers, so far as exercisable in relation to premises, are exercisable in relation—

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(a) to premises on which a prescribed process is, or is believed (on reasonable grounds) to be, carried on; and

(b) to premises on which a prescribed process has been carried on (whether or not the process was a prescribed process when it was carried on) the condition of which is believed (on reasonable grounds) to be such as to give rise to a risk of serious pollution of the environment.

(3) The powers of an inspector referred to above are—

(a) at any reasonable time (or, in a situation in which in his opinion there is an immediate risk of serious pollution of the environment, at any time) to enter premises which he has reason to believe it is necessary for him to enter;

(b) on entering any premises by virtue of paragraph (a) above to take with him—

(i) any person duly authorised by the chief inspector, the river purification authority or, as the case may be, the local enforcing authority and, if the inspector has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and

(ii) any equipment or materials required for any purpose for which the power of entry is being exercised;

(c) to make such examination and investigation as may in any circumstances be necessary;

(d) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (c) above;

(e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c) above;

(f) to take samples of any articles or substances found in or on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;

(g) in the case of any article or substance found in or on any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause pollution of the environment, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is necessary);

(h) in the case of any such article or substance as is mentioned in paragraph (g) above, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—

(i) to examine it and do to it anything which he has power to do under that paragraph;

(ii) to ensure that it is not tampered with before his examination of it is completed;

(iii) to ensure that it is available for use as evidence in any proceedings for an offence under section 23 below or any other proceedings relating to a variation notice, an enforcement notice or a prohibition notice;

(i) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (c) above to answer (in the absence of persons other than a person nominated to be present and any persons whom the inspector may allow to

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be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers;

(j) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which are required to be kept under this Part or it is necessary for him to see for the purposes of an examination or investigation under paragraph (c) above and to inspect and take copies of, or of any entry in, the records;

(k) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by this section;

(l) any other power for the purpose mentioned in subsection (1) above which is conferred by regulations made by the Secretary of State;

and in so far as any of the powers specified above are applicable in relation to mobile plant an inspector shall have, in circumstances corresponding to those specified in subsection (2) above, powers corresponding to those powers.

(4) The Secretary of State may by regulations make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under subsection (3)(f) above.

(5) Where an inspector proposes to exercise the power conferred by subsection (3)(g) above in the case of an article or substance found on any premises, he shall, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(6) Before exercising the power conferred by subsection (3)(g) above in the case of any article or substance, an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under the power.

(7) Where under the power conferred by subsection (3)(h) above an inspector takes possession of any article or substance found on any premises, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such substance under that power an inspector shall, if it is practical for him to do so, take a sample of it and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

(8) No answer given by a person in pursuance of a requirement imposed under subsection (3)(i) above shall be admissible in evidence in England and Wales against that person in any proceedings, or in Scotland against that person in any criminal proceedings.

(9) The powers conferred by subsection (3)(a), (b)(ii), (c), (e) and (f) above shall also be exercisable (subject to subsection (4) above) by any person authorised for the purpose in writing by the Secretary of State.

(10) Nothing in this section shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court or, in

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relation to Scotland, on an order for the production of documents in an action in the Court of Session.

18 Power to deal with cause of imminent danger of serious harm. E+W+S

(1) Where, in the case of any article or substance found by him on any premises which he has power to enter, an inspector has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious harm he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).

(2) Before there is rendered harmless under this section—

(a) any article that forms part of a batch of similar articles; or

(b) any substance,

the inspector shall, if it is practicable for him to do so, take a sample of it and give to a responsible person at the premises where the article or substance was found by him a portion of the sample marked in a manner sufficient to identify it.

(3) As soon as may be after any article or substance has been seized and rendered harmless under this section, the inspector shall prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and so dealt with by him, and shall—

(a) give a signed copy of the report to a responsible person at the premises where the article or substance was found by him; and

(b) unless that person is the owner of the article or substance, also serve a signed copy of the report on the owner;

and if, where paragraph (b) above applies, the inspector cannot after reasonable inquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under paragraph (a) above.

19 Obtaining of information from persons and authorities. E+W+S

(1) For the purposes of the discharge of his functions under this Part, the Secretary of State may, by notice in writing served on an enforcing authority, require the authority to furnish such information about the discharge of its functions as an enforcing authority under this Part as he may require.

(2) For the purposes of the discharge of their respective functions under this Part, the following authorities, that is to say—

(a) the Secretary of State,

(b) a local enforcing authority,

(c) the chief inspector, and

(d) in relation to Scotland, a river purification authority,

may, by notice in writing served on any person, require that person to furnish to the authority such information which the authority reasonably considers that it needs as is specified in the notice, in such form and within such period following service of the notice as is so specified.

(3) For the purposes of this section the discharge by the Secretary of State of an obligation of the United Kingdom under the Community Treaties or any international agreement relating to environmental protection shall be treated as a function of his under this Part.

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Publicity

20 Public registers of information. E+W+S

(1) It shall be the duty of each enforcing authority, as respects prescribed processes for which it is the enforcing authority, to maintain, in accordance with regulations made by the Secretary of State, a register containing prescribed particulars of or relating to—

(a) applications for authorisations made to that authority;

(b) the authorisations which have been granted by that authority or in respect of which the authority has functions under this Part;

(c) variation notices, enforcement notices and prohibition notices issued by that authority;

(d) revocations of authorisations effected by that authority;

(e) appeals under section 15 above;

(f) convictions for such offences under section 23(1) below as may be prescribed;

(g) information obtained or furnished in pursuance of the conditions of authorisations or under any provision of this Part;

(h) directions given to the authority under any provision of this Part by the Secretary of State; and

(i) such other matters relating to the carrying on of prescribed processes or any pollution of the environment caused thereby as may be prescribed;

but that duty is subject to sections 21 and 22 below.

(2) Subject to subsection (4) below, the register maintained by a local enforcing authority shall also contain prescribed particulars of such information contained in any register maintained by the chief inspector or river purification authority as relates to the carrying on in the area of the authority of prescribed processes in relation to which the chief inspector or river purification authority has functions under this Part; and the chief inspector or river purification authority shall furnish each authority with the particulars which are necessary to enable it to discharge its duty under this subsection.

(3) In Scotland, the register maintained by—

(a) the chief inspector shall also contain prescribed particulars of such information contained in any register maintained by a river purification authority as relates to the carrying on in the area of the authority of prescribed processes in relation to which the authority has functions under this Part, and each authority shall furnish the chief inspector with the particulars which are necessary to enable him to discharge his duty under this section;

(b) each river purification authority shall also contain prescribed particulars of such information contained in any register maintained by the chief inspector as relates to the carrying on in the area of the authority of prescribed processes in relation to which the chief inspector has functions under this Part, and the chief inspector shall furnish each authority with the particulars which are necessary to enable them to discharge their duty under this section.

(4) Subsection (2) above does not apply to port health authorities but each local enforcing authority whose area adjoins that of a port health authority shall include corresponding information in the register maintained by it; and the chief inspector shall furnish each such local enforcing authority with the particulars which are necessary to enable it to discharge its duty under this subsection.

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(5) Where information of any description is excluded from any register by virtue of section 22 below, a statement shall be entered in the register indicating the existence of information of that description.

(6) The Secretary of State may give to enforcing authorities directions requiring the removal from any register of theirs of any specified information not prescribed for inclusion under subsection (1) or (2) above or which, by virtue of section 21 or 22 below, ought to have been excluded from the register.

(7) It shall be the duty of each enforcing authority—

(a) to secure that the registers maintained by them under this section are available, at all reasonable times, for inspection by the public free of charge; and(b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges.

(8) Registers under this section may be kept in any form.

(9) For the purpose of enabling the National Rivers Authority to discharge its duty under [F4section 190(1)(f) of the Water Resources Act 1991] to keep corresponding particulars in registers under that section, the chief inspector shall furnish the Authority with the particulars contained in any register maintained by him under this section.

(10) In this section "prescribed" means prescribed in regulations under this section.

Textual Amendments

F4 Words in s. 20(9) substituted (1. 12. 1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2, 4(2), **Sch. 1 para. 56(3)**

20 Public registers of information. E+W+S

(1) It shall be the duty of each enforcing authority, as respects prescribed processes for which it is the enforcing authority, to maintain, in accordance with regulations made by the Secretary of State, a register containing prescribed particulars of or relating to—

(a) applications for authorisations made to that authority;

(b) the authorisations which have been granted by that authority or in respect of which the authority has functions under this Part;

(c) variation notices, enforcement notices and prohibition notices issued by that authority;

(d) revocations of authorisations effected by that authority;

(e) appeals under section 15 above;

(f) convictions for such offences under section 23(1) below as may be prescribed;

(g) information obtained or furnished in pursuance of the conditions of authorisations or under any provision of this Part;

(h) directions given to the authority under any provision of this Part by the Secretary of State; and

(i) such other matters relating to the carrying on of prescribed processes or any pollution of the environment caused thereby as may be prescribed;

but that duty is subject to sections 21 and 22 below.

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(2) Subject to subsection (4) below, the register maintained by a local enforcing authority shall also contain prescribed particulars of such information contained in any register maintained by the chief inspector or river purification authority as relates to the carrying on in the area of the authority of prescribed processes in relation to which the chief inspector or river purification authority has functions under this Part; and the chief inspector or river purification authority shall furnish each authority with the particulars which are necessary to enable it to discharge its duty under this subsection.

(3) In Scotland, the register maintained by—

(a) the chief inspector shall also contain prescribed particulars of such information contained in any register maintained by a river purification authority as relates to the carrying on in the area of the authority of prescribed processes in relation to which the authority has functions under this Part, and each authority shall furnish the chief inspector with the particulars which are necessary to enable him to discharge his duty under this section;

(b) each river purification authority shall also contain prescribed particulars of such information contained in any register maintained by the chief inspector as relates to the carrying on in the area of the authority of prescribed processes in relation to which the chief inspector has functions under this Part, and the chief inspector shall furnish each authority with the particulars which are necessary to enable them to discharge their duty under this section.

(4) Subsection (2) above does not apply to port health authorities but each local enforcing authority whose area adjoins that of a port health authority shall include corresponding information in the register maintained by it; and the chief inspector shall furnish each such local enforcing authority with the particulars which are necessary to enable it to discharge its duty under this subsection.

(5) Where information of any description is excluded from any register by virtue of section 22 below, a statement shall be entered in the register indicating the existence of information of that description.

(6) The Secretary of State may give to enforcing authorities directions requiring the removal from any register of theirs of any specified information not prescribed for inclusion under subsection (1) or (2) above or which, by virtue of section 21 or 22 below, ought to have been excluded from the register.

(7) It shall be the duty of each enforcing authority—

(a) to secure that the registers maintained by them under this section are available, at all reasonable times, for inspection by the public free of charge; and(b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges.

(8) Registers under this section may be kept in any form.

(9) For the purpose of enabling the National Rivers Authority to discharge its duty under section 117(l)(f) of the [M134]Water Act 1989 to keep corresponding particulars in registers under that section, the chief inspector shall furnish the Authority with the particulars contained in any register maintained by him under this section.

(10) In this section "prescribed" means prescribed in regulations under this section.

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Marginal Citations
M134 1989 c. 15.

21 Exclusion from registers of information affecting national security. E+W+S

(1) No information shall be included in a register maintained under section 20 above if and so long as, in the opinion of the Secretary of State, the inclusion in the register of that information, or information of that description, would be contrary to the interests of national security.

(2) The Secretary of State may, for the purpose of securing the exclusion from registers of information to which subsection (1) above applies, give to enforcing authorities directions—

(a) specifying information, or descriptions of information, to be excluded from their registers; or

(b) specifying descriptions of information to be referred to the Secretary of State for his determination;

and no information referred to the Secretary of State in pursuance of paragraph (b) above shall be included in any such register until the Secretary of State determines that it should be so included.

(3) The enforcing authority shall notify the Secretary of State of any information it excludes from the register in pursuance of directions under subsection (2) above.

(4) A person may, as respects any information which appears to him to be information to which subsection (1) above may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and, if he does so—

(a) he shall notify the enforcing authority that he has done so; and

(b) no information so notified to the Secretary of State shall be included in any such register until the Secretary of State has determined that it should be so included.

Modifications etc. (not altering text)
C4 S. 21(1)(2)(4): functions exercisable concurrently (1.7.1999) by the Scottish Ministers and Ministers of the Crown after consultation with the Secretary of State by S.I. 1999/1750, art. 3, **Sch. 2**

22 Exclusion from registers of certain confidential information. E+W+S

(1) No information relating to the affairs of any individual or business shall be included in a register maintained under section 20 above, without the consent of that individual or the person for the time being carrying on that business, if and so long as the information—

(a) is, in relation to him, commercially confidential; and

(b) is not required to be included in the register in pursuance of directions under subsection (7) below;

but information is not commercially confidential for the purposes of this section unless it is determined under this section to be so by the enforcing authority or, on appeal, by the Secretary of State.

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(2) Where information is furnished to an enforcing authority for the purpose of—

(a) an application for an authorisation or for the variation of an authorisation;

(b) complying with any condition of an authorisation; or

(c) complying with a notice under section 19(2) above;

then, if the person furnishing it applies to the authority to have the information excluded from the register on the ground that it is commercially confidential (as regards himself or another person), the authority shall determine whether the information is or is not commercially confidential.

(3) A determination under subsection (2) above must be made within the period of fourteen days beginning with the date of the application and if the enforcing authority fails to make a determination within that period it shall be treated as having determined that the information is commercially confidential.

(4) Where it appears to an enforcing authority that any information (other than information furnished in circumstances within subsection (2) above) which has been obtained by the authority under or by virtue of any provision of this Part might be commercially confidential, the authority shall—

(a) give to the person to whom or whose business it relates notice that that information is required to be included in the register unless excluded under this section; and

(b) give him a reasonable opportunity—

(i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and

(ii) of making representations to the authority for the purpose of justifying any such objection;

and, if any representations are made, the enforcing authority shall, having taken the representations into account, determine whether the information is or is not commercially confidential.

(5) Where, under subsection (2) or (4) above, an authority determines that information is not commercially confidential—

(a) the information shall not be entered on the register until the end of the period of twenty-one days beginning with the date on which the determination is notified to the person concerned;

(b) that person may appeal to the Secretary of State against the decision;

and, where an appeal is brought in respect of any information, the information shall not be entered on the register pending the final determination or withdrawal of the appeal.

(6) Subsections (3), (5) and (10) of section 15 above shall apply in relation to appeals under subsection (5) above.

(7) The Secretary of State may give to the enforcing authorities directions as to specified information, or descriptions of information, which the public interest requires to be included in registers maintained under section 20 above notwithstanding that the information may be commercially confidential.

(8) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this section at the expiry of the period of four years beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the authority for the information to remain

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excluded from the register on the ground that it is still commercially confidential and the authority shall determine whether or not that is the case.

(9) Subsections (5) and (6) above shall apply in relation to a determination under subsection (8) above as they apply in relation to a determination under subsection (2) or (4) above.

(10) The Secretary of State may, by order, substitute for the period for the time being specified in subsection (3) above such other period as he considers appropriate.

(11) Information is, for the purposes of any determination under this section, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that individual or person.

Provisions as to offences

23 Offences. E+W+S

(1) It is an offence for a person—

(a) to contravene section 6(1) above;

(b) to fail to give the notice required by section 9(2) above;

(c) to fail to comply with or contravene any requirement or prohibition imposed by an enforcement notice or a prohibition notice;

(d) without reasonable excuse, to fail to comply with any requirement imposed under section 17 above;

(e) to prevent any other person from appearing before or from answering any question to which an inspector may by virtue of section 17(3) require an answer;

(f) intentionally to obstruct an inspector in the exercise or performance of his powers or duties;

(g) to fail, without reasonable excuse, to comply with any requirement imposed by a notice under section 19(2) above;

(h) to make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made—

(i) in purported compliance with a requirement to furnish any information imposed by or under any provision of this Part; or

(ii) for the purpose of obtaining the grant of an authorisation to himself or any other person or the variation of an authorisation;

(i) intentionally to make a false entry in any record required to be kept under section 7 above;

(j) with intent to deceive, to forge or use a document issued or authorised to be issued under section 7 above or required for any purpose thereunder or to make or have in his possession a document so closely resembling any such document as to be likely to deceive;

(k) falsely to pretend to be an inspector;

(l) to fail to comply with an order made by a court under section 26 below.

(2) A person guilty of an offence under paragraph (a), (c) or (l) of subsection (1) above shall be liable:

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(a) on summary conviction, to a fine not exceeding £20,000;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

(3) A person guilty of an offence under paragraph (b), (g), (h), (i) or (j) of subsection (1) above shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

(4) A person guilty of an offence under paragraph (d), (e), (f) or (k) of subsection (1) above shall be liable, on summary conviction, to a fine not exceeding the statutory maximum.

(5) In England and Wales an inspector, if authorised to do so by the Secretary of State, may, although not of counsel or a solicitor, prosecute before a magistrates' court proceedings for an offence under subsection (1) above.

24 Enforcement by High Court. E+W+S

If the enforcing authority is of the opinion that proceedings for an offence under section 23(1)(c) above would afford an ineffectual remedy against a person who has failed to comply with the requirements of an enforcement notice or a prohibition notice, the authority may take proceedings in the High Court or, in Scotland, in any court of competent jurisdiction for the purpose of securing compliance with the notice.

25 Onus of proof as regards techniques and evidence. E+W+S

(1) In any proceedings for an offence under section 23(1)(a) above consisting in a failure to comply with the general condition implied in every authorisation by section 7(4) above, it shall be for the accused to prove that there was no better available technique not entailing excessive cost than was in fact used to satisfy the condition.

(2) Where—

(a) an entry is required under section 7 above to be made in any record as to the observance of any condition of an authorisation; and

(b) the entry has not been made;

that fact shall be admissible as evidence that that condition has not been observed.

26 Power of court to order cause of offence to be remedied. E+W+S

(1) Where a person is convicted of an offence under section 23(1)(a) or (c) above in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying those matters.

(2) The time fixed by an order under subsection (1) above may be extended or further extended by order of the court on an application made before the end of the time as originally fixed or as extended under this subsection, as the case may be.

(3) Where a person is ordered under subsection (1) above to remedy any matters, that person shall not be liable under section 23 above in respect of those matters in so far

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as they continue during the time fixed by the order or any further time allowed under subsection (2) above.

27 Power of chief inspector to remedy harm. E+W+S

(1) Where the commission of an offence under section 23(1)(a) or (c) above causes any harm which it is possible to remedy, the chief inspector or, in Scotland, a river purification authority may, subject to subsection (2) below—

(a) arrange for any reasonable steps to be taken towards remedying the harm; and

(b) recover the cost of taking those steps from any person convicted of that offence.

(2) The chief inspector or, as the case may be, the river purification authority shall not exercise their powers under this section except with the approval in writing of the Secretary of State and, where any of the steps are to be taken on or will affect land in the occupation of any person other than the person on whose land the prescribed process is being carried on, with the permission of that person.

Authorisations and other statutory controls

28 Authorisations and other statutory controls. E+W+S

(1) No condition shall at any time be attached to an authorisation so as to regulate the final disposal by deposit in or on land of controlled waste (within the meaning of Part II), nor shall any condition apply to such a disposal; but the enforcing authority shall notify the authority which is the waste regulation authority under that Part for the area in which the process is to be carried on of the fact that the process involves the final disposal of controlled waste by deposit in or on land.

(2) Where any of the activities comprising a prescribed process are regulated both by an authorisation granted by the enforcing authority under this Part and by a registration or authorisation under the [M11]Radioactive Substances Act 1960, then, if different obligations are imposed as respects the same matter by a condition attached to the authorisation under this Part and a condition attached to the registration or authorisation under that Act, the condition imposed by the authorisation under this Part shall be treated as not binding the person carrying on the process.

(3) Where the activities comprising a prescribed process designated for central control include the release of any substances into water included in waters which are controlled waters for the purposes of [[F5]Chapter I of Part III of the Water Resources Act 1991], then—

(a) the enforcing authority shall not grant an authorisation under this Part if the National Rivers Authority certifies to the enforcing authority its opinion that the release will result in or contribute to a failure to achieve any water quality objective in force under Part III of that Act; and

(b) any authorisation that is granted shall, as respects such releases, include (with or without others appearing to the enforcing authority to be appropriate) such conditions as appear to the National Rivers Authority to be appropriate for the purposes of this Part as that Authority requires by notice in writing given to the enforcing authority;

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but the enforcing authority may, if it appears to be appropriate to do so, make the authorisation subject to conditions more onerous than those (if any) notified to it under paragraph (b) above.

(4) Where the activities comprising a prescribed process carried on under an authorisation include the release of any substances into water as mentioned in subsection (3) above then, if at any time it appears to the National Rivers Authority appropriate for the purposes of this Part that the conditions of the authorisation should be varied, the enforcing authority shall exercise its powers under section 10 above so as to vary the conditions of the authorisation as required by the National Rivers Authority by notice in writing given to the enforcing authority.

Textual Amendments

F5 Words in s. 28(3) substituted (1. 12. 1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2, 4(2), **Sch. 1 para. 56(4)**

Marginal Citations

M11 1960 c. 34.

PART II U.K.

WASTE ON LAND

Modifications etc. (not altering text)

C5 Pt. II (ss. 29-78) amended: (1.4.1992) by S.I. 1992/588, **reg. 8**; (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 para. 9** (as amended (E.W.) (15.5.3006) by S.I. 2006/937, **reg. 6(10)(a)**)
Pt. II (ss. 29-78) modified: (1.2.1996) by 1995 c. 25, **s. 5(5)(e)** (with ss. 7(6), 115, 117) and S.I. 1996/186, **art.2**; (1.4.1996) by 1995 c. 25, **s. 33(5)(e)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
Pt. II (ss. 29-78): certain functions transferred on transfer date (1.4.1996) by 1995 c. 25, **ss. 2(1)(b)(ii)**, 21(1)(b)(ii), 56(1) (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**, S.I. 1995/2649, art. 2 and S.I. 1995/1983, **art. 2** (by which respectively s. 56 is in force from 28.7.1995, s. 21 is in force from 12.10.1995 and s. 2 is in force from 1.4.1996); S.I. 1996/136, **art. 2**; S.I. 1996/234), art. 2 (specifying transfer date)
Pt. II (ss. 29-78) extended (1.4.1996) by 1995 c. 25, s. 120(2), **Sch. 23 para. 13** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Commencement Information

I1 Pt. II partly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**
Pt. II partly in force at 13.12.1991 and for certain purposes at 01.04.1992 by S.I.1991/2829, **arts. 2**, 4.
Pt. II: power to make corresponding provisions conferred (27.7.1999) by 1999 c. 24, s. 2, **Sch. 1 Pt. I para. 20(1)(a)**

Preliminary

29 Preliminary. E+W+S

(1) The following provisions have effect for the interpretation of this Part.

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(2) The "environment" consists of all, or any, of the following media, namely land, water and the air.

(3) "Pollution of the environment" means pollution of the environment due to the release or escape (into any environmental medium) from—

(a) the land on which controlled waste is treated,

(b) the land on which controlled waste is kept,

(c) the land in or on which controlled waste is deposited,

(d) fixed plant by means of which controlled waste is treated, kept or disposed of,

of substances or articles constituting or resulting from the waste and capable (by reason of the quantity or concentrations involved) of causing harm to man or any other living organisms supported by the environment.

(4) Subsection (3) above applies in relation to mobile plant by means of which controlled waste is treated or disposed of as it applies to plant on land by means of which controlled waste is treated or disposed of.

(5) For the purposes of subsections (3) and (4) above "harm" means harm to the health of living organisms or other interference with the ecological systems of which they form part and in the case of man includes offence to any of his senses or harm to his property; and "harmless" has a corresponding meaning.

(6) The "disposal" of waste includes its disposal by way of deposit in or on land and, subject to subsection (7) below, waste is "treated" when it is subjected to any process, including making it re-usable or reclaiming substances from it and "recycle" (and cognate expressions) shall be construed accordingly.

(7) Regulations made by the Secretary of State may prescribe activities as activities which constitute the treatment of waste for the purposes of this Part or any provision of this Part prescribed in the regulations.

(8) "Land" includes land covered by waters where the land is above the low water mark of ordinary spring tides and references to land on which controlled waste is treated, kept or deposited are references to the surface of the land (including any structure set into the surface).

(9) "Mobile plant" means, subject to subsection (10) below, plant which is designed to move or be moved whether on roads or other land.

(10) Regulations made by the Secretary of State may prescribe descriptions of plant which are to be treated as being, or as not being, mobile plant for the purposes of this Part.

(11) "Substance" means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.

Commencement Information

I2 S. 29 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**

30 Authorities for purposes of this Part. E+W+S

(1) For the purposes of this Part the following authorities are, subject to section 31 below, waste regulation authorities, namely—

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(a) for any non-metropolitan county in England, the county council;
(b) for Greater London, the authority constituted as the London Waste Regulation Authority;
(c) for the metropolitan county of Greater Manchester, the authority constituted as the Greater Manchester Waste Disposal Authority;
(d) for the metropolitan county of Merseyside, the authority constituted as the Merseyside Waste Disposal Authority;
(e) for any district in any other metropolitan county in England, the council of the district;
(f) for any district in Wales, the council of the district;
(g) in Scotland, an islands or district council;

and the authorities mentioned in paragraph (c) and (d) above shall for the purposes of their functions as waste regulation authorities be known as the Greater Manchester Waste Regulation Authority and the Merseyside Waste Regulation Authority respectively.

(2) For the purposes of this Part the following authorities are waste disposal authorities, namely—
(a) for any non-metropolitan county in England, the county council;
(b) in Greater London, the following—
(i) for the area of a London waste disposal authority, the authority constituted as the waste disposal authority for that area;
(ii) for the City of London, the Common Council;
(iii) for any other London borough, the council of the borough;
(c) in the metropolitan county of Greater Manchester, the following—
(i) for the metropolitan district of Wigan, the district council;
(ii) for all other areas in the county, the authority constituted as the Greater Manchester Waste Disposal Authority;
(d) for the metropolitan county of Merseyside, the authority constituted as the Merseyside Waste Disposal Authority;
(e) for any district in any other metropolitan county in England, the council of the district;
(f) for any district in Wales, the council of the district;
(g) in Scotland, an islands or district council.

(3) For the purposes of this Part the following authorities are waste collection authorities—
(a) for any district in England and Wales not within Greater London, the council of the district;
(b) in Greater London, the following—
(i) for any London borough, the council of the borough;
(ii) for the City of London, the Common Council;
(iii) for the Temples, the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple respectively;
(c) in Scotland, an islands or district council.

(4) In this section references to particular authorities having been constituted as waste disposal or regulation authorities are references to their having been so constituted by the [M12]Waste Regulation and Disposal (Authorities) Order 1985 made by the Secretary

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of State under section 10 of the [M13]Local Government Act 1985 and the reference to London waste disposal authorities is a reference to the authorities named in Parts I, II, III, IV and V of Schedule 1 to that Order and this section has effect subject to any order made under the said section 10 establishing authorities to discharge any functions to which that section applies.

(5) In this Part "waste disposal contractor" means a person who in the course of a business collects, keeps, treats or disposes of waste, being either—

(a) a company formed for all or any of those purposes by a waste disposal authority whether in pursuance of section 32 below or otherwise; or

(b) either a company formed for all or any of those purposes by other persons or a partnership or an individual;

and "company" has the same meaning as in the [M14]Companies Act 1985 and "formed", in relation to a company formed by other persons, includes the alteration of the objects of the company.

(6) In this Part, in its application to Scotland, "river purification authority" means a river purification authority within the meaning of the [M15]Rivers (Prevention of Pollution) (Scotland) Act 1951.

(7) It shall be the duty of each authority which is both a waste regulation authority and a waste disposal authority—

(a) to make administrative arrangements for keeping its functions as a waste regulation authority separate from its functions as a waste disposal authority; and

(b) to submit details of the arrangements which it has made to the Secretary of State.

(8) The Secretary of State may give to an authority to which subsection (7) above applies directions as to the arrangements which it is to make for the purpose of keeping its functions as a waste regulation authority separate from its functions as a waste disposal authority; and it shall be the duty of the authority to give effect to the directions.

Commencement Information

I3 S. 30 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**

Marginal Citations

M12 S.I. 1985/1884.
M13 1985 c. 51.
M14 1985 c. 6.
M15 1951 c. 64.

31 Power to create regional authorities for purposes of waste regulation. E+W+S

(1) If it appears to the Secretary of State in the case of any two or more of the authorities mentioned in section 30(1) above that those authorities (in this section referred to as "relevant authorities") could with advantage make joint arrangements for the discharge of all or any of their functions as waste regulation authorities, he may by order establish a single authority (a "regional authority") to discharge such of those functions as may be specified in the order for the area comprising the areas of those authorities.

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(2) A regional authority shall exercise the functions specified in the order establishing it on and after a day specified in the order and, so far as the exercise of those functions (if not withdrawn) and any subsequently-conferred functions is concerned, shall (in place of the relevant authorities) be the waste regulation authority for the purposes of this Part.

(3) The members of a regional authority shall be appointed by the relevant authorities in accordance with the order establishing it and no person shall be such a member unless he is a member of one of the relevant authorities.

(4) The Secretary of State may by order made with respect to any regional authority—

(a) confer or impose on it further functions;

(b) withdraw from it any functions previously conferred or imposed; or

(c) dissolve it;

and functions may be so conferred or imposed or withdrawn as respects the whole or any part of the authority's area.

(5) An order under this section may contain such supplementary and transitional provisions as the Secretary of State thinks necessary or expedient, including provision for the transfer of property, staff, rights and liabilities.

Commencement Information

I4 S. 31 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**

32 Transition to waste disposal companies etc. E+W

(1) In this section "existing disposal authority" means any authority (including any joint authority) constituted as a waste disposal authority for any area before the day appointed for this section to come into force.

(2) The Secretary of State shall, subject to subsection (3) below, give directions to existing disposal authorities or, in the case of joint authorities, to the constituent authorities requiring them, before specified dates, to—

(a) form or participate in forming waste disposal companies; and

(b) transfer to the companies so formed, by and in accordance with a scheme made in accordance with Schedule 2 to this Act, the relevant part of their undertakings;

and a waste disposal authority shall accordingly have power to form, and hold securities in, any company so established.

(3) Subject to subsection (4) below, the Secretary of State shall not give any direction under subsection (2) above to an existing disposal authority, or to the constituent authorities of an existing disposal authority, as respects which or each of which he is satisfied that the authority—

(a) has formed or participated in forming a waste disposal company and transferred to it the relevant part of its undertaking;

(b) has, in pursuance of arrangements made with other persons, ceased to carry on itself the relevant part of its undertaking;

(c) has made arrangements with other persons to cease to carry on itself the relevant part of its undertaking; or

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(d) has, in pursuance of arrangements made with other persons, ceased to provide places at which and plant and equipment by means of which controlled waste can be disposed of or deposited for the purposes of disposal.

(4) Subsection (3) above does not apply in a case falling within paragraph (a) unless it appears to the Secretary of State that—

(a) the form of the company and the undertaking transferred are satisfactory; and

(b) the requirements of subsections (8) and (9) below are fulfilled;

and "satisfactory" means satisfactory by reference to the corresponding arrangements to which he would give his approval for the purposes of a transfer scheme under Schedule 2 to this Act.

(5) Where the Secretary of State is precluded from giving a direction under subsection (2) above to any authority by reason of his being satisfied as to the arrangements mentioned in subsection (3)(c) above, then, if those arrangements are not implemented within what appears to him to be a reasonable time, he may exercise his power to give directions under subsection (2) above as respects that authority.

(6) Part I of Schedule 2 to this Act has effect for the purposes of this section and Part II for regulating the functions of waste disposal authorities and the activities of waste disposal contractors.

(7) Subject to subsection (8) below, the activities of a company which a waste disposal authority has formed or participated in forming (whether in pursuance of subsection (2)(a) above or otherwise) may include activities which are beyond the powers of the authority to carry on itself, but, in the case of a company formed otherwise than in pursuance of subsection (2)(a) above, only if the Secretary of State has determined under subsection (4)(a) above that the form of the company and the undertaking transferred to it are satisfactory.

(8) A waste disposal authority shall, for so long as it controls a company which it has formed or participated in forming (whether in pursuance of subsection (2)(a) above or otherwise), so exercise its control as to secure that the company does not engage in activities other than the following activities or any activities incidental or conducive to, or calculated to facilitate, them, that is to say, the disposal, keeping or treatment of waste and the collection of waste.

(9) Subject to subsection (10) below, a waste disposal authority shall, for so long as it controls a company which it has formed or participated in forming (whether in pursuance of subsection (2)(a) above or otherwise), so exercise its control as to secure that, for the purposes of Part V of the [M16]Local Government and Housing Act 1989, the company is an arm's length company.

(10) Subsection (9) above shall not apply in the case of a company which a waste disposal authority has formed or participated in forming in pursuance of subsection (2)(a) above until after the vesting date for that company.

(11) In this section and Schedule 2 to this Act—

"control" (and cognate expressions) is to be construed in accordance with section 68 or, as the case requires, section 73 of the Local Government and Housing Act 1989;

"the relevant part" of the undertaking of an existing disposal authority is that part which relates to the disposal, keeping or treatment or the collection of waste;

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and in this section "securities" and "vesting date" have the same meaning as in Schedule 2.

(12) This section shall not apply to Scotland.

Commencement Information

I5 S. 32 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**

Marginal Citations

M16 1989 c. 42.

Prohibition on unauthorised or harmful depositing, treatment or disposal of waste

VALID FROM 13/12/1991

33 Prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste. **E+W+S**

(1) Subject to subsection (2) and (3) below and, in relation to Scotland, to section 54 below, a person shall not—

(a) deposit controlled waste, or knowingly cause or knowingly permit controlled waste to be deposited in or on any land unless a waste management licence authorising the deposit is in force and the deposit is in accordance with the licence;

(b) treat, keep or dispose of controlled waste, or knowingly cause or knowingly permit controlled waste to be treated, kept or disposed of—

(i) in or on any land, or

(ii) by means of any mobile plant,

except under and in accordance with a waste management licence;

(c) treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.

(2) Subsection (1) above does not apply in relation to household waste from a domestic property which is treated, kept or disposed of within the curtilage of the dwelling by or with the permission of the occupier of the dwelling.

(3) Subsection (1)(a), (b) or (c) above do not apply in cases prescribed in regulations made by the Secretary of State and the regulations may make different exceptions for different areas.

(4) The Secretary of State, in exercising his power under subsection (3) above, shall have regard in particular to the expediency of excluding from the controls imposed by waste management licences—

(a) any deposits which are small enough or of such a temporary nature that they may be so excluded;

(b) any means of treatment or disposal which are innocuous enough to be so excluded;

(c) cases for which adequate controls are provided by another enactment than this section.

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(5) Where controlled waste is carried in and deposited from a motor vehicle, the person who controls or is in a position to control the use of the vehicle shall, for the purposes of subsection (1)(a) above, be treated as knowingly causing the waste to be deposited whether or not he gave any instructions for this to be done.

(6) A person who contravenes subsection (1) above or any condition of a waste management licence commits an offence.

(7) It shall be a defence for a person charged with an offence under this section to prove—

(a) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence; or

(b) that he acted under instructions from his employer and neither knew nor had reason to suppose that the acts done by him constituted a contravention of subsection (1) above; or

(c) that the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to the public and that, as soon as reasonably practicable after they were done, particulars of them were furnished to the waste regulation authority in whose area the treatment or disposal of the waste took place.

(8) Except in a case falling within subsection (9) below, a person who commits an offence under this section shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding £20,000 or both; and

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.

(9) A person who commits an offence under this section in relation to special waste shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding £20,000 or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both.

Modifications etc. (not altering text)

C6 S. 33(1)(a)-(c) amended (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 Pt. I para.9(3)-(5)**
S. 33(1)(a)-(c) excluded (1.5.1994) by S.I. 1994/1056, **reg.16**

C7 S. 33(1)(a)(b) excluded (1.5.1994) by S.I. 1994/1056, **reg.17**

C8 S. 33(2) excluded (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 Pt. I para.9(6)**

C9 S. 33(5) amended (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 Pt. I para.9(3)**

Commencement Information

I6 S. 33 not in force at Royal Assent, see s. 164(3); s. 33(3)(4) in force at 13.12.1991, s. 33(1)(c) in force at 1.4.1992 and s. 33(2)(6)-(9) in force for certain purposes at 1.4.1992 by S.I. 1991/2829, **arts. 2**, 4; s. 33 in force in so far as not already in force at 1.5.1994 save for purposes of application to activities specified in art. 2(2) of the commencing S.I. and otherwise in force in relation to those activities in accordance with art. 3 of the commencing S.I. by S.I. 1994/1096, **arts. 2(2)(3)**, 3 (as amended by S.I. 1994/2487, **art. 2** and S.I. 1994/3234, **art. 2**)

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VALID FROM 05/11/2004

[F6 33A Fixed penalty notices for contraventions of section 33(1)(a) and (c): Scotland S

(1) Where—

(a) an authorised officer of a local authority has reason to believe that a person has committed a relevant offence in the area of that authority; or

(b) a constable, or an authorised officer of a waste regulation authority, has reason to believe that a person has committed a relevant offence,

he may give that person a notice under this section in respect of the offence.

(2) In subsection (1) above, "relevant offence" means an offence under section 33 above in respect of a contravention of subsection (1)(a) or (c) of that section.

(3) A notice under this section is a notice offering the opportunity, by paying a fixed penalty, of discharging any liability to conviction for the offence to which it relates.

(4) Where—

(a) a constable; or

(b) an authorised officer of a waste regulation authority,

gives a notice under this section to a person, he shall, no later than 24 hours after the giving of the notice, send a copy of it to the local authority in whose area the offence was committed.

(5) Where a person is given a notice under this section in respect of an offence—

(a) no proceedings shall be instituted for that offence before the expiration of fourteen days following the date of the notice; and

(b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.

(6) A notice under this section shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence and shall state—

(a) the period during which, by virtue of subsection (5)(a) above, proceedings will not be taken for the offence;

(b) the amount of the fixed penalty; and

(c) the person to whom and the address at which the fixed penalty may be paid;

and without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).

(7) Where a letter is sent in accordance with subsection (6) above payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(8) The form of notices under this section shall be such as the Scottish Ministers may by order prescribe.

(9) The fixed penalty payable in pursuance of a notice under this section shall, subject to subsection (10) below, be £50.

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(10) The Scottish Ministers may by order substitute a different amount (not exceeding level 2 on the standard scale) for the amount for the time being specified as the amount of the fixed penalty in subsection (9) above.

(11) In any proceedings a certificate which—

(a) purports to be signed by or on behalf of the proper officer for the local authority in whose area the offence was committed; and

(b) states that the payment of a fixed penalty was or was not received by a date specified in the certificate,

shall be evidence of the facts stated.

(12) A fixed penalty payable in pursuance of a notice under this section shall be payable to the local authority in whose area the offence was committed; and as respects the sums received by a local authority, those sums shall be treated as if the penalty were a fine imposed by a district court.

(13) In this section—

"authorised officer" means an officer of the authority in question who is authorised in writing by the authority for the purpose of issuing notices under this section;

"local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39); and "area", in relation to a local authority, means the local government area (within the meaning of that Act) for which the council is constituted;

"proper officer" means the officer who has, as respects the authority, the responsibility mentioned in section 95 of the Local Government (Scotland) Act 1973 (c. 65) (financial administration).**]**

Textual Amendments

F6 S. 33A inserted (S.) (5.11.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 55**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 2

VALID FROM 18/10/2005

[F7 33B Section 33 offences: clean-up costs **E+W**

(1) This section applies where a person is convicted of an offence under section 33 above in respect of a contravention of subsection (1) of that section consisting of the deposit or disposal of controlled waste.

(2) The reference in section 130(1)(a) of the Powers of Criminal Courts (Sentencing) Act 2000 (compensation orders) to loss or damage resulting from the offence includes costs incurred or to be incurred by a relevant person in—

(a) removing the waste deposited or disposed of in or on the land;

(b) taking other steps to eliminate or reduce the consequences of the deposit or disposal; or

(c) both.

(3) In subsection (2) above "relevant person" means—

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(a) the Environment Agency;
(b) a waste collection authority;
(c) the occupier of the land;
(d) the owner of the land (within the meaning of section 78A(9) below).

(4) The reference in subsection (2) above to costs incurred does not, in the case of the Environment Agency or a waste collection authority, include any costs which the Agency or authority has already recovered under section 59(8) below.

(5) In relation to the costs referred to in subsection (2) above, the reference in section 131(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (limit on amount payable) to £5000 is instead to be construed as a reference to the amount of those costs (or, if the costs have not yet been incurred, the likely amount).**]**

Textual Amendments

F7 S. 33B inserted (E.W.) (18.10.2005) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 43(1)**, 108 (with s. 43(3)); S.I. 2005/2896, **art. 2(b)**

VALID FROM 18/10/2005

[F8 33C Section 33 offences: forfeiture of vehicles **E+W**

(1) This section applies where a person is convicted of an offence under section 33 above in respect of a contravention of subsection (1) of that section consisting of the deposit or disposal of controlled waste.

(2) The court by or before which the offender is convicted may make an order under this section if—
(a) the court is satisfied that a vehicle was used in or for the purposes of the commission of the offence; and
(b) at the time of his conviction the offender has rights in the vehicle.

(3) An order under this section operates to deprive the offender of his rights in the vehicle (including its fuel) at the time of his conviction and to vest those rights in the relevant enforcement authority.

(4) In a case where a vehicle has been seized under section 34B below and the offender retains rights in any of the vehicle's contents, an order under this section may, if and to the extent that it so specifies, deprive the offender of those rights and vest them in the relevant enforcement authority.

(5) Where an order under this section is made, the relevant enforcement authority may take possession of the vehicle (if it has not already done so under section 34C below).

(6) The court may make an order under this section whether or not it also deals with the offender in any other way in respect of the offence of which he is convicted.

(7) In considering whether to make an order under this section a court must in particular have regard to—
(a) the value of the vehicle;

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(b) the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making);

(c) the offender's need to use the vehicle for lawful purposes;

(d) whether, in a case where it appears to the court that the offender is engaged in a business which consists wholly or partly in activities which are unlawful by virtue of section 33 above, the making of the order is likely to inhibit the offender from engaging in further such activities.

(8) Section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 (power to deprive offender of property) does not apply in any case where this section applies.

(9) For the purposes of this section, where a vehicle or its contents have been seized under section 34B below in connection with the offence referred to in subsection (1) above, any transfer by the offender after the seizure and before his conviction of any of his rights in the vehicle or its contents is of no effect.

(10) In this section—

"relevant enforcement authority" means—

(a) the Environment Agency, where the proceedings in respect of the offence have been brought by or on behalf of the Agency, or

(b) in any other case, the waste collection authority in whose area the offence was committed;

"vehicle" means any motor vehicle or trailer within the meaning of the Road Traffic Regulation Act 1984 or any mobile plant.**]**

Textual Amendments

F8 S. 33C inserted (E.W.) (18.10.2005) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 44(1)**, 108 (with s. 44(2)); S.I. 2005/2896, **art. 2(c)**

VALID FROM 13/12/1991

Duty of care etc. as respects waste

34 Duty of care etc. as respects waste. **E+W+S**

(1) Subject to subsection (2) below, it shall be the duty of any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste, to take all such measures applicable to him in that capacity as are reasonable in the circumstances—

(a) to prevent any contravention by any other person of section 33 above;

(b) to prevent the escape of the waste from his control or that of any other person; and

(c) on the transfer of the waste, to secure—

(i) that the transfer is only to an authorised person or to a person for authorised transport purposes; and

(ii) that there is transferred such a written description of the waste as will enable other persons to avoid a contravention of that section

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and to comply with the duty under this subsection as respects the escape of waste.

(2) The duty imposed by subsection (1) above does not apply to an occupier of domestic property as respects the household waste produced on the property.

(3) The following are authorised persons for the purpose of subsection (1)(c) above—

(a) any authority which is a waste collection authority for the purposes of this Part;

(b) any person who is the holder of a waste management licence under section 35 below **[**F9or of a disposal licence under section 5 of the Control M17of Pollution Act 1974;**]**

(c) any person to whom section 33(1) above does not apply by virtue of regulations under subsection (3) of that section;

(d) any person registered as a carrier of controlled waste under section 2 of M18 the Control of Pollution (Amendment) Act 1989;

(e) any person who is not required to be so registered by virtue of regulations under section 1(3) of that Act; and

(f) a waste disposal authority in Scotland.

(4) The following are authorised transport purposes for the purposes of subsection (1)(c) above—

(a) the transport of controlled waste within the same premises between different places in those premises;

(b) the transport to a place in Great Britain of controlled waste which has been brought from a country or territory outside Great Britain not having been landed in Great Britain until it arrives at that place; and

(c) the transport by air or sea of controlled waste from a place in Great Britain to a place outside Great Britain;

and "transport" has the same meaning in this subsection as in the Control of Pollution (Amendment) Act 1989.

[F10(4A) For the purposes of subsection (1)(c)(ii) above—

(a) a transfer of waste in stages shall be treated as taking place when the first stage of the transfer takes place, and

(b) a series of transfers between the same parties of waste of the same description shall be treated as a single transfer taking place when the first of the transfers in the series takes place.**]**

(5) The Secretary of State may, by regulations, make provision imposing requirements on any person who is subject to the duty imposed by subsection (1) above as respects the making and retention of documents and the furnishing of documents or copies of documents.

(6) Any person who fails to comply with the duty imposed by subsection (1) above or with any requirement imposed under subsection (5) above shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; and

(b) on conviction on indictment, to a fine.

(7) The Secretary of State shall, after consultation with such persons or bodies as appear to him representative of the interests concerned, prepare and issue a code of practice for the purpose of providing to persons practical guidance on how to discharge the duty imposed on them by subsection (1) above.

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(8) The Secretary of State may from time to time revise a code of practice issued under subsection (7) above by revoking, amending or adding to the provisions of the code.

(9) The code of practice prepared in pursuance of subsection (7) above shall be laid before both Houses of Parliament.

(10) A code of practice issued under subsection (7) above shall be admissible in evidence and if any provision of such a code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(11) Different codes of practice may be prepared and issued under subsection (7) above for different areas.

Textual Amendments

F9 Words repealed (*prosp.*) by Environmental Protection Act 1990 (c. 43, SIF 46:4), ss. 162(2), 164(3), **Sch. 16 Pt. II**

F10 S. 34(4A) inserted (*retrospectively*) by 1994 c. 40, **s. 33(1)** (with s. 33(2))

Commencement Information

I7 S. 34 wholly in force; s.34 not in force at Royal Assent see s. 164(3); s. 34(5)(7) to (9) and (11) in force at 13.12.1991; s. 34(1) to (4), (6) and (10) in force at 01.04.1992 by S.I. 1991/2829, **arts. 2**, 4.

Marginal Citations

M17 1974 c. 40.

M18 1989 c. 14.

VALID FROM 16/03/2006

[F11 34A Fixed penalty notices for certain offences under section 34 E+W

(1) This section applies where it appears to an enforcement authority that a person has failed to comply with a duty to furnish documents to that authority imposed under regulations made at any time under section 34(5) above.

(2) The authority may serve on that person a notice offering him the opportunity of discharging any liability to conviction for an offence under section 34(6) above by payment of a fixed penalty.

(3) Where a person is given a notice under this section in respect of an offence—

(a) no proceedings may be instituted for that offence before expiration of the period of fourteen days following the date of the notice; and

(b) he may not be convicted of that offence if he pays the fixed penalty before the expiration of the period.

(4) A notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(5) A notice under this section must also state—

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(a) the period during which, by virtue of subsection (3) above, proceedings will not be taken for the offence;

(b) the amount of the fixed penalty; and

(c) the person to whom and the address at which the fixed penalty may be paid.

(6) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in subsection (5)(c) above at the address so mentioned.

(7) Where a letter is sent in accordance with subsection (6) above payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(8) The form of a notice under this section is to be such as the appropriate person may by order prescribe.

(9) The fixed penalty payable to an enforcement authority under this section is, subject to subsection (10) below, £300.

(10) The appropriate person may by order substitute a different amount for the amount for the time being specified in subsection (9) above.

(11) The enforcement authority to which a fixed penalty is payable under this section may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the authority.

(12) The appropriate person may by regulations restrict the extent to which, and the circumstances in which, an enforcement authority may make provision under subsection (11) above.

(13) In any proceedings a certificate which—

(a) purports to be signed on behalf of the chief finance officer of the enforcement authority, and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(14) In this section—

"chief finance officer", in relation to an enforcement authority, means the person having responsibility for the financial affairs of the authority;

"enforcement authority" means the Environment Agency or a waste collection authority.**]**

Textual Amendments

F11 S. 34A inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 45**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4**

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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 16/03/2006

[F12 Offences under sections 33 and 34: powers of seizure etc

Textual Amendments

F12 Ss. 34B, 34C and preceding cross-heading inserted (E.W.) (16.3.2006 for certain purposes for W. and otherwise prosp.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 46(1)**, 108 (as amended by The Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005 (S.I. 2005/2900), reg. 3); S.I. 2006/768, **art. 3**

34B Power to search and seize vehicles etc E+W

(1) This section applies where an authorised officer of an enforcement authority or a constable reasonably believes that the grounds in subsection (2) or (3) below exist.

(2) The grounds in this subsection are that—

(a) **[**F13a relevant offence**]** has been committed,

(b) a vehicle was used in the commission of the offence, and

(c) proceedings for the offence have not yet been brought against any person.

(3) The grounds in this subsection are that—

(a) **[**F13a relevant offence**]** is being or is about to be committed, and

(b) a vehicle is being or is about to be used in the commission of the offence.

(4) The authorised officer or constable may—

(a) search the vehicle;

(b) seize the vehicle and any of its contents.

(5) In acting under subsection (4) above the authorised officer or constable may—

(a) stop the vehicle (but only a constable in uniform may stop a vehicle on any road);

(b) enter any premises for the purpose of searching or seizing the vehicle.

(6) A vehicle or its contents seized under subsection (4) above—

(a) by an authorised officer of an enforcement authority, are seized on behalf of that authority;

(b) by a constable in the presence of an authorised officer of an enforcement authority, are seized on behalf of that authority;

(c) by a constable without such an officer present, are seized on behalf of the waste collection authority in whose area the seizure takes place.

(7) A person commits an offence if—

(a) he fails without reasonable excuse to give any assistance that an authorised officer or constable may reasonably request in the exercise of a power under subsection (4) or (5) above;

(b) he otherwise intentionally obstructs an authorised officer or constable in exercising that power.

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(8) Where an authorised officer or constable has stopped a vehicle under subsection (5)(a) above, he may require any occupant of the vehicle to give him—

(a) the occupant's name and address;

(b) the name and address of the registered owner of the vehicle;

(c) any other information he may reasonably request.

(9) A person commits an offence if—

(a) he fails without reasonable excuse to comply with a requirement under subsection (8) above;

(b) he gives information required under that subsection that is—

(i) to his knowledge false or misleading in a material way, or

(ii) given recklessly and is false or misleading in a material way.

(10) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(11) In this section and section 34C below—

"authorised officer" means an officer of an enforcement authority who is authorised in writing by the authority for the purposes of this section;

"enforcement authority" means—

(a) the Environment Agency, or

(b) a waste collection authority;

[[F14]"relevant offence" means—

(a) an offence under section 33 above, or

(b) an offence under section 34 above consisting of a failure to comply with the duty imposed by subsection (1) of that section;**]**

"road" has the same meaning as in the Road Traffic Regulation Act 1984;

"vehicle" means any motor vehicle or trailer within the meaning of that Act or any mobile plant.

Textual Amendments

F13 In s. 46(1) in the new s. 34B to be inserted in the 1990 Act words substituted (21.11.2005) by The Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005 (S.I. 2005/2900), **reg. 3(2)**

F14 In s. 46(1) in the new s. 34B to be inserted in the 1990 Act definition of "relevant offence" inserted (21.11.2005) by The Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005 (S.I. 2005/2900), **reg. 3(3)**

34C Seizure of vehicles etc: supplementary E+W

(1) Where under section 34B above an authorised officer or constable seizes a vehicle or its contents ("seized property") on behalf of an enforcement authority, the authority may remove the seized property to such a place as it considers appropriate.

(2) An enforcement authority must deal with any seized property in accordance with regulations made by the appropriate person.

(3) Regulations under subsection (2) above may in particular include provision as to—

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(a) the duties of enforcement authorities in relation to the safe custody of seized property;

(b) the circumstances in which they must return any such property to a person claiming entitlement to it;

(c) the manner in which such persons, and the seized property to which they are entitled, may be determined;

(d) the circumstances in which an enforcement authority may sell, destroy or otherwise dispose of seized property;

(e) the uses to which the proceeds of any such sale may be put.

(4) Regulations making provision under subsection (3)(d) above—

(a) must (subject to paragraph (c) below) require the enforcement authority to publish a notice in such form, and to take any other steps, as may be specified in the regulations for informing persons who may be entitled to the seized property that it has been seized and is available to be claimed;

(b) must (subject to paragraph (c) below) prohibit the authority from selling, destroying or otherwise disposing of any seized property unless a period specified in the regulations has expired without any obligation arising under the regulations for the authority to return the property to any person;

(c) may allow for the requirements in paragraphs (a) and (b) above to be dispensed with if the condition of the seized property requires its disposal without delay.

(5) The appropriate person may issue guidance to enforcement authorities in relation to the performance of their functions under regulations under subsection (2) above.**]**

Waste Management Licences

VALID FROM 18/02/1993

35 Waste management licences: general. E+W+S

(1) A waste management licence is a licence granted by a waste regulation authority authorising the treatment, keeping or disposal of any specified description of controlled waste in or on specified land or the treatment or disposal of any specified description of controlled waste by means of specified mobile plant.

(2) A licence shall be granted to the following person, that is to say—

(a) in the case of a licence relating to the treatment, keeping or disposal of waste in or on land, to the person who is in occupation of the land; and

(b) in the case of a licence relating to the treatment or disposal of waste by means of mobile plant, to the person who operates the plant.

(3) A licence shall be granted on such terms and subject to such conditions as appear to the waste regulation authority to be appropriate and the conditions may relate—

(a) to the activities which the licence authorises, and

(b) to the precautions to be taken and works to be carried out in connection with or in consequence of those activities;

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and accordingly requirements may be imposed in the licence which are to be complied with before the activities which the licence authorises have begun or after the activities which the licence authorises have ceased.

(4) Conditions may require the holder of a licence to carry out works or do other things notwithstanding that he is not entitled to carry out the works or do the thing and any person whose consent would be required shall grant, or join in granting, the holder of the licence such rights in relation to the land as will enable the holder of the licence to comply with any requirements imposed on him by the licence.

(5) Conditions may relate, where waste other than controlled waste is to be treated, kept or disposed of, to the treatment, keeping or disposal of that other waste.

(6) The Secretary of State may, by regulations, make provision as to the conditions which are, or are not, to be included in a licence; and regulations under this subsection may make different provision for different circumstances.

(7) The Secretary of State may, as respects any licence for which an application is made to a waste regulation authority, give to the authority directions as to the terms and conditions which are, or are not, to be included in the licence; and it shall be the duty of the authority to give effect to the directions.

(8) It shall be the duty of waste regulation authorities to have regard to any guidance issued to them by the Secretary of State with respect to the discharge of their functions in relation to licences.

(9) A licence may not be surrendered by the holder except in accordance with section 39 below.

(10) A licence is not transferable by the holder but the waste regulation authority may transfer it to another person under section 40 below.

(11) A licence shall continue in force until it is revoked entirely by the waste regulation authority under section 38 below or it is surrendered or its surrender is accepted under section 39 below.

(12) In this Part "licence" means a waste management licence and "site licence" and "mobile plant licence" mean, respectively, a licence authorising the treatment, keeping or disposal of waste in or on land and a licence authorising the treatment or disposal of waste by means of mobile plant.

Modifications etc. (not altering text)

C10 S. 35 amended (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 Pt. I para.9(5)**

Commencement Information

I8 S. 35 not in force at Royal Assent, see s. 164(3); s. 35(6) in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**; s. 35 in force in so far as not already in force at 1.5.1994 save for purposes of application to activities specified in art. 2(2) of the commencing S.I. and otherwise in force in relation to those activities in accordance with art. 3 of the commencing S.I. by S.I. 1994/1096, **arts. 2(2)(3)**, 3 (as amended by S.I. 1994/2487, **art. 2** and S.I. 1994/3234, **art. 2**)

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VALID FROM 01/02/1996

[F15 35A Compensation where rights granted pursuant to section 35(4) or 38(9A). E +W+S

(1) This section applies in any case where—

(a) the holder of a licence is required—

(i) by the conditions of the licence; or

(ii) by a requirement imposed under section 38(9) below,

to carry out any works or do any other thing which he is not entitled to carry out or do;

(b) a person whose consent would be required has, pursuant to the requirements of section 35(4) above or 38(9A) below, granted, or joined in granting, to the holder of the licence any rights in relation to any land; and

(c) those rights, or those rights together with other rights, are such as will enable the holder of the licence to comply with any requirements imposed on him by the licence or, as the case may be, under section 38(9) below.

(2) In a case where this section applies, any person who has granted, or joined in granting, the rights in question shall be entitled to be paid compensation under this section by the holder of the licence.

(3) The Secretary of State shall by regulations provide for the descriptions of loss and damage for which compensation is payable under this section.

(4) The Secretary of State may by regulations—

(a) provide for the basis on which any amount to be paid by way of compensation under this section is to be assessed;

(b) without prejudice to the generality of subsection (3) and paragraph (a) above, provide for compensation under this section to be payable in respect of—

(i) any effect of any rights being granted, or

(ii) any consequence of the exercise of any rights which have been granted;

(c) provide for the times at which any entitlement to compensation under this section is to arise or at which any such compensation is to become payable;

(d) provide for the persons or bodies by whom, and the manner in which, any dispute—

(i) as to whether any, and (if so) how much and when, compensation under this section is payable; or

(ii) as to the person to or by whom it shall be paid,

is to be determined;

(e) provide for when or how applications may be made for compensation under this section;

(f) without prejudice to the generality of paragraph (d) above, provide for when or how applications may be made for the determination of any such disputes as are mentioned in that paragraph;

(g) without prejudice to the generality of paragraphs (e) and (f) above, prescribe the form in which any such applications as are mentioned in those paragraphs are to be made;

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(h) make provision similar to any provision made by paragraph 8 of Schedule 19 to the [M19]Water Resources Act 1991;

(j) make different provision for different cases, including different provision in relation to different persons or circumstances;

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

Textual Amendments

F15 S. 35A inserted (1.2.1996 for limited purposes, 1.4.1998 in so far as it imposes a duty, or confers power, to make regulations and 1.4.1999 so far as not already in force) by 1995 c. 25, s. 120(1), **Sch. 22 para.67** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 2**; S.I. 1998/604, **art.2**; S.I. 1999/803, **art. 3**

Modifications etc. (not altering text)

C11 S. 35A(4) applied by 1991 c. 57, **s. 161B(6)** (as inserted (21.9.1995 for limited purposes, 16.3.1999 for limited purposes and 29.4.1999 so far as not already in force) by 1995 c. 25, s. 120(1), **Sch. 22 para.162** (with ss. 7(6), 115, 117): S.I. 1995/1983, **art.3**; S.I. 1999/803, **art. 2**; S.I. 1999/1301, **art. 2**

Marginal Citations

M19 1991 c. 28.

36 Grant of licences. E+W+S

(1) An application for a licence shall be made—

(a) in the case of an application for a site licence, to the waste regulation authority in whose area the land is situated; and

(b) in the case of an application for a mobile plant licence, to the waste regulation authority in whose area the operator of the plant has his principal place of business;

and shall be made in the form prescribed by the Secretary of State in regulations and accompanied by the prescribed fee payable under section 41 below.

(2) A licence shall not be issued for a use of land for which planning permission is required in pursuance of the [M20]Town and Country Planning Act 1990 or the [M21]Town and Country Planning (Scotland) Act 1972 unless—

(a) such planning permission is in force in relation to that use of the land, or

(b) an established use certificate is in force under section 192 of the said Act of 1990 or section 90 of the said Act of 1972 in relation to that use of the land.

(3) Subject to subsection (2) above and subsection (4) below, a waste regulation authority to which an application for a licence has been duly made shall not reject the application if it is satisfied that the applicant is a fit and proper person unless it is satisfied that its rejection is necessary for the purpose of preventing—

(a) pollution of the environment;

(b) harm to human health; or

(c) serious detriment to the amenities of the locality;

but paragraph (c) above is inapplicable where planning permission is in force in relation to the use to which the land will be put under the licence.

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(4) Where the waste regulation authority proposes to issue a licence, the authority must, before it does so,—

(a) refer the proposal to the National Rivers Authority and the Health and Safety Executive; and

(b) consider any representations about the proposal which the Authority or the Executive makes to it during the allowed period.

(5) If, following the referral of a proposal to the National Rivers Authority under subsection (4)(a) above, the Authority requests that the licence be not issued or disagrees about the conditions of the proposed licence either of them may refer the matter to the Secretary of State and the licence shall not be issued except in accordance with his decision.

(6) Subsection (4) above shall not apply to Scotland, but in Scotland where a waste regulation authority[F16(other than an islands council)] proposes to issue a licence, the authority must, before it does so,—

(a) refer the proposal to—

(i) the river purification authority whose area includes any of the relevant land;

(ii) the Health and Safety Executive;

[F17(iii) where the waste regulation authority is not also a district planning authority within the meaning of section 172 of the M22Local Government (Scotland) Act 1973, the general planning authority within the meaning of that section whose area includes any of the relevant land; and**]**

(b) consider any representations about the proposal which the river purification authority, the Executive [F18or the general planning authority] makes to it during the allowed period,

and if the river purification authority requests that the licence be not issued or disagrees with the waste regulation authority about the conditions of the proposed licence either of them may refer the matter to the Secretary of State and the licence shall not be issued except in accordance with his decision.

(7) Where any part of the land to be used is land which has been notified under section 28(1) of the M23Wildlife and Countryside Act 1981 (protection for certain areas) and the waste regulation authority proposes to issue a licence, the authority must, before it does so—

(a) refer the proposal to the appropriate nature conservation body; and

(b) consider any representations about the proposal which the body makes to it during the allowed period;

and in this section any reference to the appropriate nature conservation body is a reference to the Nature Conservancy Council for England, **[**F19Scottish Natural Heritage**]** or the Countryside Council for Wales, according as the land is situated in England, Scotland or Wales.

[F20(8) Until the date appointed under section 131(3) below any reference in subsection (7) above to the appropriate nature conservation body is a reference to the Nature Conservancy Council.**]**

(9) If within the period of four months beginning with the date on which a waste regulation authority received an application for the grant of a licence, or within such longer period as the authority and the applicant may at any time agree in writing, the authority has

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neither granted the licence in consequence of the application nor given notice to the applicant that the authority has rejected the application, the authority shall be deemed to have rejected the application.

(10) The period allowed to the National Rivers Authority, the Health and Safety Executive, the appropriate nature conservancy body, a river purification authority [F21or general planning authority] for the making of representations under subsection (4), (6) or (7) above about a proposal is the period of twenty-one days beginning with that on which the proposal is received by the authority or such longer period as the waste regulation authority and the Authority, the Executive, the body, the river purification authority [F21or the general planning authority], as the case may be, agree in writing.

Textual Amendments

F16 Words in s. 36(6) repealed (S.) (*prosp.*) by 1994 c. 39, ss. 180(1)(2), 184(2), Sch. 13 para. 167(4)(a), **Sch. 14** (with s. 128(8))

F17 S. 36(6)(a)(iii) repealed (S.) (*prosp.*) by 1994 c. 39, ss. 180(1)(2), 184(2), Sch. 13 para. 167(4)(b)(iii), **Sch. 14** (with s. 128(8))

F18 Words in s. 36(6)(b) repealed (S.) (*prosp.*) by 1994 c. 39, ss. 180(1)(2), s. 184(2), Sch. 13 para. 167(4)(c)(ii), **Sch. 14** (with s. 128(8))

F19 Words in s. 36(7) substituted (1.4.1992) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), s. 4(10), **Sch. 2 para. 10(2)**; S.I. 1991/2633, **art. 4**.

F20 S. 36(8) repealed (*prosp.*) by Environmental Protection Act 1990 (c. 43, SIF 46:4), ss. 162(2), 164(3), **Sch. 16 Pt. II**

F21 Words in s. 36(10) repealed (S.) (*prosp.*) by 1994 c. 39, ss. 180(1)(2), 184(2), Sch. 13 para. 167(4)(d)(ii)(iv), **Sch. 14** (with s. 128(8))

Modifications etc. (not altering text)

C12 S. 36(3) amended (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 Pt. I para. 9(7)**

Commencement Information

I9 S. 36 partly in force; s. 36 not in force at Royal Assent see. s. 164(3); s. 36(1) in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**

Marginal Citations

M20 1990 c. 8.

M21 1972 c. 52.

M22 1973 c. 65.

M23 1981 c. 69.

36 Grant of licences. E+W+S

(1) An application for a licence shall be made—

(a) in the case of an application for a site licence, to the waste regulation authority in whose area the land is situated; and

(b) in the case of an application for a mobile plant licence, to the waste regulation authority in whose area the operator of the plant has his principal place of business;

and shall be made in the form prescribed by the Secretary of State in regulations and accompanied by the prescribed fee payable under section 41 below.

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(2) A licence shall not be issued for a use of land for which planning permission is required in pursuance of the [M135]Town and Country Planning Act 1990 or the [M136]Town and Country Planning (Scotland) Act 1972 unless—

(a) such planning permission is in force in relation to that use of the land, or

(b) an established use certificate is in force under section 192 of the said Act of 1990 or section 90 of the said Act of 1972 in relation to that use of the land.

(3) Subject to subsection (2) above and subsection (4) below, a waste regulation authority to which an application for a licence has been duly made shall not reject the application if it is satisfied that the applicant is a fit and proper person unless it is satisfied that its rejection is necessary for the purpose of preventing—

(a) pollution of the environment;

(b) harm to human health; or

(c) serious detriment to the amenities of the locality;

but paragraph (c) above is inapplicable where planning permission is in force in relation to the use to which the land will be put under the licence.

(4) Where the waste regulation authority proposes to issue a licence, the authority must, before it does so,—

(a) refer the proposal to the National Rivers Authority and the Health and Safety Executive; and

(b) consider any representations about the proposal which the Authority or the Executive makes to it during the allowed period.

(5) If, following the referral of a proposal to the National Rivers Authority under subsection (4)(a) above, the Authority requests that the licence be not issued or disagrees about the conditions of the proposed licence either of them may refer the matter to the Secretary of State and the licence shall not be issued except in accordance with his decision.

(6) Subsection (4) above shall not apply to Scotland, but in Scotland where a waste regulation authority (other than an islands council) proposes to issue a licence, the authority must, before it does so,—

(a) refer the proposal to—

(i) the river purification authority whose area includes any of the relevant land;

(ii) the Health and Safety Executive;

(iii) where the waste regulation authority is not also a district planning authority within the meaning of section 172 of the [M137]Local Government (Scotland) Act 1973, the general planning authority within the meaning of that section whose area includes any of the relevant land; and

(b) consider any representations about the proposal which the river purification authority, the Executive or the general planning authority makes to it during the allowed period,

and if the river purification authority requests that the licence be not issued or disagrees with the waste regulation authority about the conditions of the proposed licence either of them may refer the matter to the Secretary of State and the licence shall not be issued except in accordance with his decision.

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(7) Where any part of the land to be used is land which has been notified under section 28(1) of the [M138]Wildlife and Countryside Act 1981 (protection for certain areas) and the waste regulation authority proposes to issue a licence, the authority must, before it does so—

(a) refer the proposal to the appropriate nature conservation body; and

(b) consider any representations about the proposal which the body makes to it during the allowed period;

and in this section any reference to the appropriate nature conservation body is a reference to the Nature Conservancy Council for England, the Nature Conservancy Council for Scotland or the Countryside Council for Wales, according as the land is situated in England, Scotland or Wales.

[[F87](8) Until the date appointed under section 131(3) below any reference in subsection (7) above to the appropriate nature conservation body is a reference to the Nature Conservancy Council.**]**

(9) If within the period of four months beginning with the date on which a waste regulation authority received an application for the grant of a licence, or within such longer period as the authority and the applicant may at any time agree in writing, the authority has neither granted the licence in consequence of the application nor given notice to the applicant that the authority has rejected the application, the authority shall be deemed to have rejected the application.

(10) The period allowed to the National Rivers Authority, the Health and Safety Executive, the appropriate nature conservancy body, a river purification authority or general planning authority for the making of representations under subsection (4), (6) or (7) above about a proposal is the period of twenty-one days beginning with that on which the proposal is received by the authority or such longer period as the waste regulation authority and the Authority, the Executive, the body, the river purification authority or the general planning authority, as the case may be, agree in writing.

Textual Amendments

F87 S. 36(8) repealed (*prosp.*) by Environmental Protection Act 1990 (c. 43, SIF 46:4), ss. 162(2), 164(3), **Sch. 16 Pt. II**

Marginal Citations

M135 1990 c. 8.
M136 1972 c. 52.
M137 1973 c. 65.
M138 1981 c. 69.

36 Grant of licences. E+W+S

(1) An application for a licence shall be made—

(a) in the case of an application for a site licence, to the waste regulation authority in whose area the land is situated; and

(b) in the case of an application for a mobile plant licence, to the waste regulation authority in whose area the operator of the plant has his principal place of business;

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and shall be made in the form prescribed by the Secretary of State in regulations and accompanied by the prescribed fee payable under section 41 below.

(2) A licence shall not be issued for a use of land for which planning permission is required in pursuance of the [M139]Town and Country Planning Act 1990 or the [M140]Town and Country Planning (Scotland) Act 1972 unless—

(a) such planning permission is in force in relation to that use of the land, or

(b) an established use certificate is in force under section 192 of the said Act of 1990 or section 90 of the said Act of 1972 in relation to that use of the land.

(3) Subject to subsection (2) above and subsection (4) below, a waste regulation authority to which an application for a licence has been duly made shall not reject the application if it is satisfied that the applicant is a fit and proper person unless it is satisfied that its rejection is necessary for the purpose of preventing—

(a) pollution of the environment;

(b) harm to human health; or

(c) serious detriment to the amenities of the locality;

but paragraph (c) above is inapplicable where planning permission is in force in relation to the use to which the land will be put under the licence.

(4) Where the waste regulation authority proposes to issue a licence, the authority must, before it does so,—

(a) refer the proposal to the National Rivers Authority and the Health and Safety Executive; and

(b) consider any representations about the proposal which the Authority or the Executive makes to it during the allowed period.

(5) If, following the referral of a proposal to the National Rivers Authority under subsection (4)(a) above, the Authority requests that the licence be not issued or disagrees about the conditions of the proposed licence either of them may refer the matter to the Secretary of State and the licence shall not be issued except in accordance with his decision.

(6) Subsection (4) above shall not apply to Scotland, but in Scotland where a waste regulation authority[F88(other than an islands council)] proposes to issue a licence, the authority must, before it does so,—

(a) refer the proposal to—

(i) **[**F89where the authority is not the council (constituted under section 2 of the Local Government etc. (Scotland) Act 1994) for Orkney Islands, Shetland Islands or Western Isles**]**the river purification authority whose area includes any of the relevant land;

(ii) the Health and Safety Executive; **[**F90and**]**

[F91(iii) where the waste regulation authority is not also a district planning authority within the meaning of section 172 of the [M141]Local Government (Scotland) Act 1973, the general planning authority within the meaning of that section whose area includes any of the relevant land; and**]**

(b) consider any representations about the proposal which the river purification authority **[**F92or**]**, the Executive [F93or the general planning authority] makes to it during the allowed period,

and if the river purification authority requests that the licence be not issued or disagrees with the waste regulation authority about the conditions of the proposed licence either

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of them may refer the matter to the Secretary of State and the licence shall not be issued except in accordance with his decision.

(7) Where any part of the land to be used is land which has been notified under section 28(1) of the [M142]Wildlife and Countryside Act 1981 (protection for certain areas) and the waste regulation authority proposes to issue a licence, the authority must, before it does so—

(a) refer the proposal to the appropriate nature conservation body; and

(b) consider any representations about the proposal which the body makes to it during the allowed period;

and in this section any reference to the appropriate nature conservation body is a reference to the Nature Conservancy Council for England, **[**[F94]Scottish Natural Heritage**]** or the Countryside Council for Wales, according as the land is situated in England, Scotland or Wales.

[[F95](8) Until the date appointed under section 131(3) below any reference in subsection (7) above to the appropriate nature conservation body is a reference to the Nature Conservancy Council.**]**

(9) If within the period of four months beginning with the date on which a waste regulation authority received an application for the grant of a licence, or within such longer period as the authority and the applicant may at any time agree in writing, the authority has neither granted the licence in consequence of the application nor given notice to the applicant that the authority has rejected the application, the authority shall be deemed to have rejected the application.

(10) The period allowed to the National Rivers Authority, the Health and Safety Executive, the appropriate nature conservancy body **[**[F96]or**]**, a river purification authority [[F97]or general planning authority] for the making of representations under subsection (4), (6) or (7) above about a proposal is the period of twenty-one days beginning with that on which the proposal is received by the authority or such longer period as the waste regulation authority and the Authority, the Executive, the body **[**[F96]or**]**, the river purification authority [[F97]or the general planning authority], as the case may be, agree in writing.

Textual Amendments

F88 Words in s. 36(6) repealed (S.) (*prosp.*) by 1994 c. 39, ss. 180(1)(2), 184(2), Sch. 13 para. 167(4)(a), **Sch.14** (with s. 128(8))

F89 Words in s. 36(6)(a)(i) inserted (S.) (*prosp.*) by 1994 c. 39, ss. 180(1), 184(2), **Sch. 13 para. 167(4)(b)(i)** (with s. 128(8)) (which insertion was repealed (1.2.1996) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3(7)**)

F90 In s. 36(6)(a)(ii): word "and" inserted after sub-para. (ii) (S.) (*prosp.*) by 1994 c. 39, ss. 180(1), 184(2), **Sch. 13 para. 167(4)(b)(ii)** (with s. 128(8)) (which insertion was repealed (1.2.1996) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3(7)**)

F91 S. 36(6)(a)(iii) repealed (S.) (*prosp.*) by 1994 c. 39, ss. 180(1)(2), 184(2), Sch. 13 para. 167(4)(b)(iii), **Sch.14** (with s. 128(8))

F92 Word in s. 36(6)(b) inserted (S.) (*prosp.*) by 1994 c. 39, ss. 180(1), 184(2), **Sch. 13 para. 167(4)(c)(i)** (with s. 128(8)) (which insertion was repealed (1.2.1996) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3(7)**)

F93 Words in s. 36(6)(b) repealed (S.) (*prosp.*) by 1994 c. 39, ss. 180(1)(2), s. 184(2), Sch. 13 para. 167(4)(c)(ii), **Sch.14** (with s. 128(8))

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F94 Words in s. 36(7) substituted (1.04.1992) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), s. 4(10), **Sch. 2 para. 10(2)**; S.I. 1991/2633, **art. 4**.

F95 S. 36(8) repealed (*prosp.*) by Environmental Protection Act 1990 (c. 43, SIF 46:4), ss. 162(2), 164(3), **Sch. 16 Pt. II**

F96 Word in s. 36(10) inserted (S.) (*prosp.*) by 1994 c. 39, ss. 180(1), 184(2), **Sch. 13 para. 167(4)(d)(i)(iii)** (with s. 128(8)) (which insertion was repealed (1.2.1996) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3(7)**)

F97 Words in s. 36(10) repealed (S.) (*prosp.*) by 1994 c. 39, ss. 180(1)(2), 184(2), Sch. 13 para. 167(4)(d)(ii)(iv), **Sch.14** (with s. 128(8))

Modifications etc. (not altering text)

C68 S. 36(3) amended (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 Pt. I para. 9(7)**

Commencement Information

I91 S. 36 partly in force; s. 36 not in force at Royal Assent see. s. 164(3); s. 36(1) in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**

Marginal Citations

M139 1990 c. 8.
M140 1972 c. 52.
M141 1973 c. 65.
M142 1981 c. 69.

36 Grant of licences. E+W

(1) An application for a licence shall be made—

(a) in the case of an application for a site licence, to the waste regulation authority in whose area the land is situated; and

(b) in the case of an application for a mobile plant licence, to the waste regulation authority in whose area the operator of the plant has his principal place of business;

[F98and shall be made on a form provided for the purpose by the waste regulation authority and accompanied by such information as that authority reasonably requires and the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995.

F98(1A) Where an applicant for a licence fails to provide the waste regulation authority with any information required under subsection (1) above, the authority may refuse to proceed with the application, or refuse to proceed with it until the information is provided.**]**

(2) A licence shall not be issued for a use of land for which planning permission is required in pursuance of the M143Town and Country Planning Act 1990 or the M144Town and Country Planning (Scotland) Act 1972 unless—

(a) such planning permission is in force in relation to that use of the land, or

(b) an established use certificate is in force under section 192 of the said Act of 1990 or section 90 of the said Act of 1972 in relation to that use of the land.

(3) Subject to subsection (2) above and subsection (4) below, a waste regulation authority to which an application for a licence has been duly made shall not reject the application if it is satisfied that the applicant is a fit and proper person unless it is satisfied that its rejection is necessary for the purpose of preventing—

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(a) pollution of the environment;
(b) harm to human health; or
(c) serious detriment to the amenities of the locality;

but paragraph (c) above is inapplicable where planning permission is in force in relation to the use to which the land will be put under the licence.

(4) Where the waste regulation authority proposes to issue a licence, the authority must, before it does so,—
(a) refer the proposal to **[**F99the appropriate planning authority**]** and the Health and Safety Executive; and
(b) consider any representations about the proposal which the **[**F99authority**]** or the Executive makes to it during the allowed period.

F100(5) . . . . . .

F100(6) . . . . . .

(7) Where any part of the land to be used is **[**F101within a site of special scientific interest (within the meaning of the Wildlife and Countryside Act 1981)**]** and the waste regulation authority proposes to issue a licence, the authority must, before it does so—
(a) refer the proposal to the appropriate nature conservation body; and
(b) consider any representations about the proposal which the body makes to it during the allowed period;

and in this section any reference to the appropriate nature conservation body is a reference to **[**F102Natural England**]** , **[**F103Scottish Natural Heritage**]** or the Countryside Council for Wales, according as the land is situated in England, Scotland or Wales.

[(8) Until the date appointed under section 131(3) below any reference in subsection (7) above to the appropriate nature conservation body is a reference to the Nature Conservancy Council.**]**

(9) If within the period of four months beginning with the date on which a waste regulation authority received an application for the grant of a licence, or within such longer period as the authority and the applicant may at any time agree in writing, the authority has neither granted the licence in consequence of the application nor given notice to the applicant that the authority has rejected the application, the authority shall be deemed to have rejected the application.

[F104(9A) Subsection (9) above—
(a) shall not have effect in any case where, by virtue of subsection (1A) above, the waste regulation authority refuses to proceed with the application in question, and
(b) shall have effect in any case where, by virtue of subsection (1A) above, the waste regulation authority refuses to proceed with it until the required information is provided, with the substitution for the period of four months there mentioned of the period of four months beginning with the date on which the authority received the information.**]**

[F105(10) The period allowed to the appropriate planning authority, the Health and Safety Executive or the appropriate nature conservancy body for the making of representations under subsection (4) or (7) above about a proposal is the period of twenty-eight days beginning with the day on which the proposal is received by the waste regulation authority or such longer period as the waste regulation authority, the

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appropriate planning authority, the Executive or the body, as the case may be, agree in writing.

(11) In this section—

"the appropriate planning authority" means—

(a) where the relevant land is situated in the area of a London borough council, that London borough council;

(b) where the relevant land is situated in the City of London, the Common Council of the City of London;

(c) where the relevant land is situated in a non-metropolitan county in England, the council of that county;

(d) where the relevant land is situated in a National Park or the Broads, the National Park authority for that National Park or, as the case may be, the Broads Authority;

(e) where the relevant land is situated elsewhere in England or Wales, the council of the district or, in Wales, the county or county borough, in which the land is situated;

(f) where the relevant land is situated in Scotland, the council constituted under section 2 of the [M145]Local Government etc. (Scotland) Act 1994 for the area in which the land is situated;

"the Broads" has the same meaning as in the [M146]Norfolk and Suffolk Broads Act 1988;

"National Park authority", [F106]. . . means a National Park authority established under section 63 of the Environment Act 1995 which has become the local planning authority for the National Park in question;

"the relevant land" means—

(a) in relation to a site licence, the land to which the licence relates; and

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

[F107](12) . . . . . .

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

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

Extent Information

E10 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F98 In s. 36: words including s. 36(1A) substituted (1.4.1996 for limited purposes and 1.4.1998 in so far as not already in force) for words following para. 36(1)(b) by 1995 c. 25, s. 120(1), **Sch. 22 para. 68(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with saving in art. 4); S.I. 1998/604, **art. 2**.

F99 Words in s. 36(4)(a)(b) substituted (1.4.1996, subject to a saving with modifications in S.I. 1996/186, **art. 4**, in relation to certain applications for a licence made before 1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 68(3)(a)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F100 S. 36(5)(6) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 68(4), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F101 Words in s. 36(7) substituted (E.W) (30.1.2001) by 2000 c. 37, ss. 76(1), 103(2), **Sch. 10 Pt. II para. 8**

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F102 Words in s. 36(7) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 116**; S.I. 2006/2541, **art. 2**

F103 Words in s. 36(7) substituted (1.4.1992) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), s. 4(10), **Sch. 2 para. 10(2)**; S.I. 1991/2633, **art. 4**

F104 S. 36(9A) inserted (1.4.1998) by 1995 c. 25, s. 120(1), **Sch. 22 para. 68(5)** (with ss. 7(6), 115, 117); S.I. 1998/604, **art. 2**.

F105 S. 36(10)-(14) substituted (1.4.1996) for s. 36(10) by 1995 c. 25, s. 120(1), **Sch. 22 para. 68(6)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with saving in art. 4)

F106 S. 36(11): words in the definition of "National Park" repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**

F107 S. 36(12) repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**

Modifications etc. (not altering text)

C69 S. 36(2)(a) extended (S.) (27.5.1997) by 1997 c. 8, **ss. 150(7)(c)**, 278(2)

C70 S. 36(3) amended (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 Pt. I para. 9(7)**

C71 S. 36(8) repealed (prosp.) by Environmental Protection Act 1990 (c. 43, SIF 46:4), ss. 162(2), 164(3), **Sch. 16 Pt. II**

Commencement Information

I92 S. 36 not in force at Royal Assent, see. s. 164(3); s. 36(1) in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**; s. 36 in force in so far as not already in force at 1.5.1994 save for purposes of application to activities specified in art. 2(2) of the commencing S.I. and otherwise in force in relation to those activities in accordance with art. 3 of the commencing S.I. by S.I. 1994/1096, **arts. 2(2)(3)**, 3 (as amended by S.I. 1994/2487, **art. 2** and S.I. 1994/3234, **art. 2**)

Marginal Citations

M143 1990 c. 8.

M144 1972 c. 52.

M145 1994 c. 39.

M146 1988 c. 4.

VALID FROM 01/04/1998

[F22 36A Consultation before the grant of certain licences. E+W+S

(1) This section applies where an application for a licence has been duly made to a waste regulation authority, and the authority proposes to issue a licence subject (by virtue of section 35(4) above) to any condition which might require the holder of the licence to—

(a) carry out any works, or

(b) do any other thing,

which he might not be entitled to carry out or do.

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

(3) A person falls within this subsection if—

(a) he is the owner, lessee or occupier of any land; and

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(b) that land is land in relation to which it is likely that, as a consequence of the licence being issued subject to the condition in question, rights will have to be granted by virtue of section 35(4) above to the holder of the licence.

(4) A notice served under subsection (2) above shall—

(a) set out the condition in question;

(b) indicate the nature of the works or other things which that condition might require the holder of the licence to carry out or do; and

(c) specify the date by which, and the manner in which, any representations relating to the condition or its possible effects are to be made to the waste regulation authority by the person on whom the notice is served.

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

(a) beginning with the date on which the notice is served, and

(b) of such length as may be prescribed in regulations made by the Secretary of State.

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

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

(8) In subsection (3) above—

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

(a) is for the time being receiving the rack-rent of the land, whether on his own account or as agent or trustee for another person; or

(b) would receive the rack-rent if the land were let at a rack-rent,

but does not include a mortgagee not in possession; and

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

Textual Amendments

F22 S. 36A inserted (1.4.1998 so far as it confers power to make regulations and 1.4.1999 so far as not already in force) by 1995 c. 25, s. 120(1), **Sch. 22 para.69** (with ss. 7(6), 115, 117); S.I. 1998/604, **art.2**; S.I. 1999/803, **art. 3**

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VALID FROM 18/02/1993

37 Variation of licences. E+W+S

(1) While a licence issued by a waste regulation authority is in force, the authority may, subject to regulations under section 35(6) above and to subsection (3) below,—

(a) on its own initiative, modify the conditions of the licence to any extent which, in the opinion of the authority, is desirable and is unlikely to require unreasonable expense on the part of the holder; and

(b) on the application of the licence holder accompanied by the prescribed fee payable under section 41 below, modify the conditions of his licence to the extent requested in the application.

(2) While a licence issued by a waste regulation authority is in force, the authority shall, except where it revokes the licence entirely under section 38 below, modify the conditions of the licence—

(a) to the extent which in the opinion of the authority is required for the purpose of ensuring that the activities authorised by the licence do not cause pollution of the environment or harm to human health or become seriously detrimental to the amenities of the locality affected by the activities; and

(b) to the extent required by any regulations in force under section 35(6) above.

(3) The Secretary of State may, as respects any licence issued by a waste regulation authority, give to the authority directions as to the modifications which are to be made in the conditions of the licence under subsection (1)(a) or (2)(a) above; and it shall be the duty of the authority to give effect to the directions.

(4) Any modification of a licence under this section shall be effected by notice served on the holder of the licence and the notice shall state the time at which the modification is to take effect.

(5) Section 36(4), (5), (6), (7), (8) and (10) above shall with the necessary modifications apply to a proposal by a waste regulation authority to modify a licence under subsection (1) or (2)(a) above as they apply to a proposal to issue a licence, except that—

(a) the authority may postpone the reference so far as the authority considers that by reason of an emergency it is appropriate to do so; and

(b) the authority need not consider any representations as respects a modification which, in the opinion of the waste regulation authority, will not affect any authority mentioned in the subsections so applied.

(6) If within the period of two months beginning with the date on which a waste regulation authority received an application by the holder of a licence for a modification of it, or within such longer period as the authority and the applicant may at any time agree in writing, the authority has neither granted a modification of the licence in consequence of the application nor given notice to the applicant that the authority has rejected the application, the authority shall be deemed to have rejected the application.

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Commencement Information

I10 S. 37 not in force at Royal Assent, see s. 164(3); s. 37(3) in force for certain purposes at 18.2.1993 by S.I. 1993/274, **art. 2(2)**; s. 37 in force in so far as not already in force at 1.5.1994 save for purposes of application to activities specified in art. 2(2) of the commencing S.I. and otherwise in force in relation to those activities in accordance with art. 3 of the commencing S.I. by S.I. 1994/1096, **arts. 2(2)(3)**, 3 (as amended by S.I. 1994/2487, **art. 2** and S.I. 1994/3234, **art. 2**)

VALID FROM 01/04/1998

[F23 37A Consultation before certain variations. E+W+S

(1) This section applies where—

(a) a waste regulation authority proposes to modify a licence under section 37(1) or (2)(a) above; and

(b) the licence, if modified as proposed, would be subject to a relevant new condition.

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

(a) which he might not be entitled to carry out or do, and

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

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

(4) A person falls within this subsection if—

(a) he is the owner, lessee or occupier of any land; and

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

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

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

(b) indicate the nature of the works or other things which that condition might require the holder of the licence to carry out or do but which he could not be required to carry out or do by virtue of the conditions (if any) to which, prior to the modification, the licence is subject; and

(c) specify the date by which, and the manner in which, any representations relating to the condition or its possible effects are to be made to the waste regulation authority by the person on whom the notice is served.

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

(a) beginning with the date on which the notice is served, and

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Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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) of such length as may be prescribed in regulations made by the Secretary of State.

(7) Before the waste regulation authority issues the licence it must, subject to subsection (8) below, consider any representations made in relation to the condition in question, or its possible effects, by any person on whom a notice has been served under subsection (3) above.

(8) Subsection (7) above does not require the waste regulation authority to consider any representations made by a person after the date specified in the notice served on him under subsection (3) above as the date by which his representations in relation to the condition or its possible effects are to be made.

(9) A waste regulation authority may postpone the service of any notice or the consideration of any representations required under the foregoing provisions of this section so far as the authority considers that by reason of an emergency it is appropriate to do so.

(10) In subsection (3) above, "owner" has the same meaning as it has in subsection (3) of section 36A above by virtue of subsection (8) of that section.**]**

Textual Amendments

F23 S. 37A inserted (1.4.1998 in so far as it confers power to make regulations and 1.4.1999 so far as not already in force) by 1995 c. 25, s. 120(1), **Sch. 22 para. 71** (with ss. 7(6), 115, 117); S.I. 1998/604, **art. 2**; S.I. 1999/803, **art. 3**

Modifications etc. (not altering text)

C13 S. 37A excluded (S.) (30.3.2007) by The Waste Management Licensing Amendment (Waste Electrical and Electronic Equipment) (Scotland) Regulations 2007 (S.S.I. 2007/172), **reg. 8(3)**

C14 S. 37A excluded (E.W.) (3.11.2003) by The End-of-Life Vehicles Regulations 2003 (S.I. 2003/2635), regs. 1(2), **44(2)**, **46** (with regs. 3, 4)

VALID FROM 18/02/1993

38 Revocation and suspension of licences. E+W+S

(1) Where a licence granted by a waste regulation authority is in force and it appears to the authority—

(a) that the holder of the licence has ceased to be a fit and proper person by reason of his having been convicted of a relevant offence; or

(b) that the continuation of the activities authorised by the licence would cause pollution of the environment or harm to human health or would be seriously detrimental to the amenities of the locality affected; and

(c) that the pollution, harm or detriment cannot be avoided by modifying the conditions of the licence;

the authority may exercise, as it thinks fit, either of the powers conferred by subsections (3) and (4) below.

(2) Where a licence granted by a waste regulation authority is in force and it appears to the authority that the holder of the licence has ceased to be a fit and proper person by

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reason of the management of the activities authorised by the licence having ceased to be in the hands of a technically competent person, the authority may exercise the power conferred by subsection (3) below.

(3) The authority may, under this subsection, revoke the licence so far as it authorises the carrying on of the activities specified in the licence or such of them as the authority specifies in revoking the licence.

(4) The authority may, under this subsection, revoke the licence entirely.

(5) A licence revoked under subsection (3) above shall cease to have effect to authorise the carrying on of the activities specified in the licence or, as the case may be, the activities specified by the authority in revoking the licence but shall not affect the requirements imposed by the licence which the authority, in revoking the licence, specify as requirements which are to continue to bind the licence holder.

(6) Where a licence granted by a waste regulation authority is in force and it appears to the authority—

(a) that the holder of the licence has ceased to be a fit and proper person by reason of the management of the activities authorised by the licence having ceased to be in the hands of a technically competent person; or

(b) that serious pollution of the environment or serious harm to human health has resulted from, or is about to be caused by, the activities to which the licence relates or the happening or threatened happening of an event affecting those activities; and

(c) that the continuing to carry on those activities, or any of those activities, in the circumstances will continue or, as the case may be, cause serious pollution of the environment or serious harm to human health;

the authority may suspend the licence so far as it authorises the carrying on of the activities specified in the licence or such of them as the authority specifies in suspending the licence.

(7) The Secretary of State may, if he thinks fit in relation to a licence granted by a waste regulation authority, give to the authority directions as to whether and in what manner the authority should exercise its powers under this section; and it shall be the duty of the authority to give effect to the directions.

(8) A licence suspended under subsection (6) above shall, while the suspension has effect, be of no effect to authorise the carrying on of the activities specified in the licence or, as the case may be, the activities specified by the authority in suspending the licence.

(9) Where a licence is suspended under subsection (6) above, the authority, in suspending it or at any time while it is suspended, may require the holder of the licence to take such measures to deal with or avert the pollution or harm as the authority considers necessary.

(10) A person who, without reasonable excuse, fails to comply with any requirement imposed under subsection (9) above otherwise than in relation to special waste shall be liable—

(a) on summary conviction, to a fine of an amount not exceeding the statutory maximum; and

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.

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(11) A person who, without reasonable excuse, fails to comply with any requirement imposed under subsection (9) above in relation to special waste shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both; and

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both.

(12) Any revocation or suspension of a licence or requirement imposed during the suspension of a licence under this section shall be effected by notice served on the holder of the licence and the notice shall state the time at which the revocation or suspension or the requirement is to take effect and, in the case of suspension, the period at the end of which, or the event on the occurrence of which, the suspension is to cease.

Commencement Information

I11 S. 38 not in force at Royal Assent, see s. 164(3); s. 38(7) in force for certain purposes at 18.2.1993 by S.I. 1993/274, **art. 2(2)**; s. 38 in force in so far as not already in force at 1.5.1994 save for purposes of application to activities specified in art. 2(2) of the commencing S.I. and otherwise in force in relation to those activities in accordance with art. 3 of the commencing S.I. by S.I. 1994/1096, **arts. 2(2)(3)**, 3 (as amended by S.I. 1994/2487, **art. 2** and S.I. 1994/3234, **art. 2**)

39 Surrender of licences. E+W

(1) A licence may be surrendered by its holder to the authority which granted it but, in the case of a site licence, only if the authority accepts the surrender.

(2) The following provisions apply to the surrender and acceptance of the surrender of a site licence.

(3) The holder of a site licence who desires to surrender it shall make an application for that purpose to the authority in such form, giving such information and accompanied by such evidence as the Secretary of State prescribes by regulations and accompanied by the prescribed fee payable under section 41 below.

(4) An authority which receives an application for the surrender of a site licence—

(a) shall inspect the land to which the licence relates, and

(b) may require the holder of the licence to furnish to it further information or further evidence.

(5) The authority shall determine whether it is likely or unlikely that the condition of the land, so far as that condition is the result of the use of the land for the treatment, keeping or disposal of waste (whether or not in pursuance of the licence), will cause pollution of the environment or harm to human health.

(6) If the authority is satisfied that the condition of the land is unlikely to cause the pollution or harm mentioned in subsection (5) above, the authority shall, subject to subsection (7) below, accept the surrender of the licence; but otherwise the authority shall refuse to accept it.

(7) Where the authority proposes to accept the surrender of a site licence, the authority must, before it does so,—

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(a) refer the proposal to the National Rivers Authority; and

(b) consider any representations about the proposal which the Authority makes to it during the allowed period;

and if the Authority requests that the surrender of the licence be not accepted either of them may refer the matter to the Secretary of State and the surrender shall not be accepted except in accordance with his decision.

(8) Subsection (7) above shall not apply to Scotland, but in Scotland where the authority (not being an islands council) proposes to accept the surrender of a licence, the authority must, before it does so,—

(a) refer the proposal to—

(i) the river purification authority whose area includes any of the relevant land;

(ii) where the waste regulation authority is not also a district planning authority within the meaning of section 172 of the [M24]Local Government (Scotland) Act 1973, the general planning authority within the meaning of that section whose area includes any of the relevant land; and

(b) consider any representations about the proposal which the river purification authority or the general planning authority makes to it during the allowed period,

and if the river purification authority requests that the surrender of the licence be not accepted by the waste regulation authority either of them may refer the matter to the Secretary of State and the surrender shall not be accepted except in accordance with his decision.

(9) Where the surrender of a licence is accepted under this section the authority shall issue to the applicant, with the notice of its determination, a certificate (a "certificate of completion") stating that it is satisfied as mentioned in subsection (6) above and, on the issue of that certificate, the licence shall cease to have effect.

(10) If within the period of three months beginning with the date on which an authority receives an application to surrender a licence, or within such longer period as the authority and the applicant may at any time agree in writing, the authority has neither issued a certificate of completion nor given notice to the applicant that the authority has rejected the application, the authority shall be deemed to have rejected the application.

(11) Section 36(10) above applies for the interpretation of the "allowed period" in subsections (7) and (8) above.

Extent Information

E1 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only.

Commencement Information

I12 S. 39 partly in force; s. 39 not in force at Royal Assent see s. 164(3); s. 39(3) in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**

Marginal Citations

M24 1973 c. 65.

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39 Surrender of licences. S

(1) A licence may be surrendered by its holder to the authority which granted it but, in the case of a site licence, only if the authority accepts the surrender.

(2) The following provisions apply to the surrender and acceptance of the surrender of a site licence.

(3) The holder of a site licence who desires to surrender it shall make an application for that purpose to the authority in such form, giving such information and accompanied by such evidence as the Secretary of State prescribes by regulations and accompanied by the prescribed fee payable under section 41 below.

(4) An authority which receives an application for the surrender of a site licence—

(a) shall inspect the land to which the licence relates, and

(b) may require the holder of the licence to furnish to it further information or further evidence.

(5) The authority shall determine whether it is likely or unlikely that the condition of the land, so far as that condition is the result of the use of the land for the treatment, keeping or disposal of waste (whether or not in pursuance of the licence), will cause pollution of the environment or harm to human health.

(6) If the authority is satisfied that the condition of the land is unlikely to cause the pollution or harm mentioned in subsection (5) above, the authority shall, subject to subsection (7) below, accept the surrender of the licence; but otherwise the authority shall refuse to accept it.

(7) Where the authority proposes to accept the surrender of a site licence, the authority must, before it does so,—

(a) refer the proposal to the National Rivers Authority; and

(b) consider any representations about the proposal which the Authority makes to it during the allowed period;

and if the Authority requests that the surrender of the licence be not accepted either of them may refer the matter to the Secretary of State and the surrender shall not be accepted except in accordance with his decision.

(8) Subsection (7) above shall not apply to Scotland, but in Scotland where the authority[F108 (not being an islands council)] proposes to accept the surrender of a licence, the authority must, before it does so,—

[F109(a) where the authority is not the council (constituted under section 2 of the Local Government etc. (Scotland) Act 1994) for Orkney Islands, Shetland Islands or Western Isles, refer the proposal to the river purification authority whose area includes any of the relevant land;**]**

(b) consider any representations about the proposal which the river purification authority [F110 or the general planning authority] makes to it during the allowed period,

and if the river purification authority requests that the surrender of the licence be not accepted by the waste regulation authority either of them may refer the matter to the Secretary of State and the surrender shall not be accepted except in accordance with his decision.

(9) Where the surrender of a licence is accepted under this section the authority shall issue to the applicant, with the notice of its determination, a certificate (a "certificate of

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completion") stating that it is satisfied as mentioned in subsection (6) above and, on the issue of that certificate, the licence shall cease to have effect.

(10) If within the period of three months beginning with the date on which an authority receives an application to surrender a licence, or within such longer period as the authority and the applicant may at any time agree in writing, the authority has neither issued a certificate of completion nor given notice to the applicant that the authority has rejected the application, the authority shall be deemed to have rejected the application.

(11) Section 36(10) above applies for the interpretation of the "allowed period" in subsections (7) and (8) above.

Extent Information

E11 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

Textual Amendments

F108 Words in s. 39(8) repealed (S.) (*prosp.*) by 1994 c. 39, ss. 180(1)(2), 184(2), Sch. 13 para. 167(5)(a), **Sch.14** (with s. 128(8))

F109 S. 39(8)(a) substituted (S.) (*prosp.*) by 1994 c. 39, ss. 180(1), 184(2), **Sch. 13 para. 167(5)(b)** (with s. 128(8)) (which substitution was repealed (1.2.1996) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3(7)**)

F110 Words in s. 39(8)(b) repealed (S.) (*prosp.*) by 1994 c. 39, ss. 180(1)(2), 184(2), Sch. 13 para. 167(5)(c), **Sch.14** (with s. 128(8))

Commencement Information

I93 S. 39 partly in force; s. 39 not in force at Royal Assent see s. 164(3); s. 39(3) in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**

39 Surrender of licences. E+W

(1) A licence may be surrendered by its holder to the authority which granted it but, in the case of a site licence, only if the authority accepts the surrender.

(2) The following provisions apply to the surrender and acceptance of the surrender of a site licence.

(3) The holder of a site licence who desires to surrender it shall make an application for that purpose to the authority in such form, giving such information and accompanied by such evidence as the Secretary of State prescribes by regulations and accompanied by the prescribed fee payable under section 41 below.

(4) An authority which receives an application for the surrender of a site licence—

(a) shall inspect the land to which the licence relates, and

(b) may require the holder of the licence to furnish to it further information or further evidence.

(5) The authority shall determine whether it is likely or unlikely that the condition of the land, so far as that condition is the result of the use of the land for the treatment, keeping or disposal of waste (whether or not in pursuance of the licence), will cause pollution of the environment or harm to human health.

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(6) If the authority is satisfied that the condition of the land is unlikely to cause the pollution or harm mentioned in subsection (5) above, the authority shall, subject to subsection (7) below, accept the surrender of the licence; but otherwise the authority shall refuse to accept it.

(7) Where the authority proposes to accept the surrender of a site licence, the authority must, before it does so,—

(a) refer the proposal to the National Rivers Authority; and

(b) consider any representations about the proposal which the Authority makes to it during the allowed period;

and if the Authority requests that the surrender of the licence be not accepted either of them may refer the matter to the Secretary of State and the surrender shall not be accepted except in accordance with his decision.

(8) Subsection (7) above shall not apply to Scotland, but in Scotland where the authority (not being an islands council) proposes to accept the surrender of a licence, the authority must, before it does so,—

(a) refer the proposal to—

(i) the river purification authority whose area includes any of the relevant land;

(ii) where the waste regulation authority is not also a district planning authority within the meaning of section 172 of the [M147]Local Government (Scotland) Act 1973, the general planning authority within the meaning of that section whose area includes any of the relevant land; and

(b) consider any representations about the proposal which the river purification authority or the general planning authority makes to it during the allowed period,

and if the river purification authority requests that the surrender of the licence be not accepted by the waste regulation authority either of them may refer the matter to the Secretary of State and the surrender shall not be accepted except in accordance with his decision.

(9) Where the surrender of a licence is accepted under this section the authority shall issue to the applicant, with the notice of its determination, a certificate (a "certificate of completion") stating that it is satisfied as mentioned in subsection (6) above and, on the issue of that certificate, the licence shall cease to have effect.

(10) If within the period of three months beginning with the date on which an authority receives an application to surrender a licence, or within such longer period as the authority and the applicant may at any time agree in writing, the authority has neither issued a certificate of completion nor given notice to the applicant that the authority has rejected the application, the authority shall be deemed to have rejected the application.

(11) Section 36(10) above applies for the interpretation of the "allowed period" in subsections (7) and (8) above.

Extent Information

E12 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only.

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Commencement Information

I94 S. 39 partly in force; s. 39 not in force at Royal Assent see s. 164(3); s. 39(3) in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**

Marginal Citations

M147 1973 c. 65.

39 Surrender of licences. S

(1) A licence may be surrendered by its holder to the authority which granted it but, in the case of a site licence, only if the authority accepts the surrender.

(2) The following provisions apply to the surrender and acceptance of the surrender of a site licence.

(3) The holder of a site licence who desires to surrender it shall make an application for that purpose to the authority in such form, giving such information and accompanied by such evidence as the Secretary of State prescribes by regulations and accompanied by the prescribed fee payable under section 41 below.

(4) An authority which receives an application for the surrender of a site licence—

(a) shall inspect the land to which the licence relates, and

(b) may require the holder of the licence to furnish to it further information or further evidence.

(5) The authority shall determine whether it is likely or unlikely that the condition of the land, so far as that condition is the result of the use of the land for the treatment, keeping or disposal of waste (whether or not in pursuance of the licence), will cause pollution of the environment or harm to human health.

(6) If the authority is satisfied that the condition of the land is unlikely to cause the pollution or harm mentioned in subsection (5) above, the authority shall, subject to subsection (7) below, accept the surrender of the licence; but otherwise the authority shall refuse to accept it.

(7) Where the authority proposes to accept the surrender of a site licence, the authority must, before it does so,—

(a) refer the proposal to the National Rivers Authority; and

(b) consider any representations about the proposal which the Authority makes to it during the allowed period;

and if the Authority requests that the surrender of the licence be not accepted either of them may refer the matter to the Secretary of State and the surrender shall not be accepted except in accordance with his decision.

(8) Subsection (7) above shall not apply to Scotland, but in Scotland where the authority[F111 (not being an islands council)] proposes to accept the surrender of a licence, the authority must, before it does so,—

(a) refer to the proposal -

(i) the river purification authority whose area includes any of the relevant land;

(ii) where the waste regulation authority is not also a district planning authority within the meaning of section 172 of the M148Local

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Government (Scotland) Act 1973, the general planning authority within the meaning of that section whose area includes any of the relevant land; and

(b) consider any representations about the proposal which the river purification authority [F112 or the general planning authority] makes to it during the allowed period,

and if the river purification authority requests that the surrender of the licence be not accepted by the waste regulation authority either of them may refer the matter to the Secretary of State and the surrender shall not be accepted except in accordance with his decision.

(9) Where the surrender of a licence is accepted under this section the authority shall issue to the applicant, with the notice of its determination, a certificate (a "certificate of completion") stating that it is satisfied as mentioned in subsection (6) above and, on the issue of that certificate, the licence shall cease to have effect.

(10) If within the period of three months beginning with the date on which an authority receives an application to surrender a licence, or within such longer period as the authority and the applicant may at any time agree in writing, the authority has neither issued a certificate of completion nor given notice to the applicant that the authority has rejected the application, the authority shall be deemed to have rejected the application.

(11) Section 36(10) above applies for the interpretation of the "allowed period" in subsections (7) and (8) above.

Extent Information

E13 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

Textual Amendments

F111 Words in s. 39(8) repealed (S.) (*prosp.*) by 1994 c. 39, ss. 180(1)(2), 184(2), Sch. 13 para. 167(5)(a), **Sch. 14** (with s. 128(8))

F112 Words in s. 39(8)(b) repealed (S.) (*prosp.*) by 1994 c. 39, ss. 180(1)(2), 184(2), Sch. 13 para. 167(5)(c), **Sch. 14** (with s. 128(8))

Commencement Information

I95 S. 39 partly in force; s. 39 not in force at Royal Assent see s. 164(3); s. 39(3) in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**

Marginal Citations

M148 1973 c. 65

VALID FROM 18/02/1993

40 Transfer of licences. E+W+S

(1) A licence may be transferred to another person in accordance with subsections (2) to (6) below and may be so transferred whether or not the licence is partly revoked or suspended under any provision of this Part.

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
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(2) Where the holder of a licence desires that the licence be transferred to another person ("the proposed transferee") the licence holder and the proposed transferee shall jointly make an application to the waste regulation authority which granted the licence for a transfer of it.

(3) An application under subsection (2) above for the transfer of a licence shall be made in such form and shall include such information as the Secretary of State prescribes by regulations and shall be accompanied by the prescribed fee payable under section 41 below and the licence.

(4) If, on such an application, the authority is satisfied that the proposed transferee is a fit and proper person the authority shall effect a transfer of the licence to the proposed transferee.

(5) The authority shall effect a transfer of a licence under the foregoing provisions of this section by causing the licence to be endorsed with the name and other particulars of the proposed transferee as the holder of the licence from such date specified in the endorsement as may be agreed with the applicants.

(6) If within the period of two months beginning with the date on which the authority receives an application for the transfer of a licence, or within such longer period as the authority and the applicants may at any time agree in writing, the authority has neither effected a transfer of the licence nor given notice to the applicants that the authority has rejected the application, the authority shall be deemed to have rejected the application.

Commencement Information

I13 S. 40 not in force at Royal Assent, see s. 164(3); s. 40(3) in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**; s. 40 in force in so far as not already in force at 1.5.1994 save for purposes of application to activities specified in art. 2(2) of the commencing S.I. and otherwise in force in relation to those activities in accordance with art. 3 of the commencing S.I. by S.I. 1994/1096, **arts. 2(2)(3)**, 3 (as amended by S.I. 1994/2487, **art. 2** and S.I. 1994/3234, **art. 2**)

VALID FROM 18/02/1993

41 Fees and charges for licences. E+W+S

(1) There shall be charged by and paid to waste regulation authorities, in respect of applications for licences or relevant applications in respect of licences, and in respect of the holding of licences, such fees and charges as may be provided for from time to time by a scheme under subsection (2) below.

(2) The Secretary of State may, with the approval of the Treasury, make, and from time to time revise, a scheme prescribing—

(a) fees payable in respect of applications for licences or relevant applications in respect of licences, and

(b) charges payable in respect of the subsistence of licences,

to waste regulation authorities by persons making applications for or in respect of licences, or holding licences, as the case may be.

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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)*

(3) The applications in respect of licences which are relevant for the purposes of this section are—

(a) applications for a modification of the conditions of a licence;

(b) applications to surrender a licence; and

(c) applications for the transfer of a licence.

(4) The Secretary of State shall, on making or revising a scheme under subsection (2) above, lay a copy of the scheme or of the modifications made in the scheme before each House of Parliament.

(5) A waste regulation authority in England and Wales shall pay to the National Rivers Authority, and a waste regulation authority in Scotland shall pay to any river purification authority which it consults in relation to a licence, out of any fee or charge which—

(a) is payable to the authority under a scheme under subsection (2) above; and

(b) is of a description prescribed in such a scheme for the purposes of this subsection,

such amount as may be prescribed in the scheme in relation to fees or charges of that description.

(6) A scheme under subsection (2) above may in particular—

(a) provide for different fees or charges to be payable according to the description of activities authorised by licences and the descriptions and amounts of controlled waste to which those activities relate;

(b) provide for the times at which and manner in which payments of fees or charges are to be made; and

(c) make such incidental, supplementary and transitional provision as appears to the Secretary of State to be appropriate;

and different schemes may be made and revised for different areas.

(7) If it appears to the waste regulation authority that the holder of a licence has failed to pay a charge due in consideration of the subsistence of the licence, the authority may, by notice in writing served on the holder, revoke the licence so far as it authorises the carrying on of the activities specified in the licence.

(8) Section 38(5) above applies for the purposes of subsection (7) above as it applies for the purposes of subsection (3) of that section.

Commencement Information

I14 S. 41 wholly in force; s. 41 not in force at Royal Assent see s. 164(3); s. 41(2)(4)(5) in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**; remainder in force at 16.3.1994 by S.I. 1994/780, **art. 2**

VALID FROM 18/02/1993

42 Supervision of licensed activities. E+W+S

(1) While a licence is in force it shall be the duty of the waste regulation authority which granted the licence to take the steps needed—

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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)*

(a) for the purpose of ensuring that the activities authorised by the licence do not cause pollution of the environment or harm to human health or become seriously detrimental to the amenities of the locality affected by the activities; and

(b) for the purpose of ensuring that the conditions of the licence are complied with.

(2) Where, at any time during the subsistence of a licence, it appears to the waste regulation authority that pollution of water is likely to be caused by the activities to which the licence relates, it shall be the duty of the authority to consult the National Rivers Authority or, in Scotland, the river purification authority whose area includes any of the relevant land as to the discharge by the authority of the duty imposed on it by subsection (1) above.

(3) For the purpose of performing the duty imposed on it by subsection (1) above, any officer of the authority authorised in writing for the purpose by the authority may, if it appears to him that by reason of an emergency it is necessary to do so, carry out work on the land or in relation to plant or equipment on the land to which the licence relates or, as the case may be, in relation to the mobile plant to which the licence relates.

(4) Where a waste regulation authority incurs any expenditure by virtue of subsection (3) above, the authority may recover the amount of the expenditure from the holder of the licence or, if the licence has been surrendered, from the former holder of it, except where the holder or former holder of the licence shows that there was no emergency requiring any work or except such of the expenditure as he shows was unnecessary.

(5) Where it appears to a waste regulation authority that a condition of a licence granted by it is not being complied with, then, without prejudice to any proceedings under section 33(6) above, the authority may—

(a) require the licence holder to comply with the condition within a specified time; and

(b) if in the opinion of the authority the licence holder has not complied with the condition within that time, exercise any of the powers specified in subsection (6) below.

(6) The powers which become exercisable in the event mentioned in subsection (5)(b) above are the following—

(a) to revoke the licence so far as it authorises the carrying on of the activities specified in the licence or such of them as the authority specifies in revoking the licence;

(b) to revoke the licence entirely; and

(c) to suspend the licence so far as it authorises the carrying on of the activities specified in the licence or, as the case may be, the activities specified by the authority in suspending the licence.

(7) Where a licence is revoked or suspended under subsection (6) above, subsections (5) or (8) and (9), (10) and (11) of section 38 above shall apply with the necessary modifications as they respectively apply to revocations or suspensions of licences under that section; and the power to make a requirement under subsection (5)(a) above shall be exercisable by notice served on the holder of the licence (and "specified" shall be construed accordingly).

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(8) The Secretary of State may, if he thinks fit in relation to a licence granted by a waste regulation authority, give to the authority directions as to whether and in what manner the authority should exercise its powers under this section; and it shall be the duty of the authority to give effect to the directions.

Commencement Information

I15 S. 42 not in force at Royal Assent, see s. 164(3); s. 42(8) in force for certain purposes at 18.2.1993 by S.I. 1993/274, **art. 2(2)**; s. 42 in force in so far as not already in force at 1.5.1994 save for purposes of application to activities specified in art. 2(2) of the commencing S.I. and otherwise in force in relation to those activities in accordance with art. 3 of the commencing S.I. by S.I. 1994/1096, **arts. 2(2)(3)**, 3 (as amended by S.I. 1994/2487, **art. 2** and S.I. 1994/3234, **art. 2**)

VALID FROM 18/02/1993

43 Appeals to Secretary of State from decisions with respect to licences. E+W +S

(1) Where, except in pursuance of a direction given by the Secretary of State,—

(a) an application for a licence or a modification of the conditions of a licence is rejected;

(b) a licence is granted subject to conditions;

(c) the conditions of a licence are modified;

(d) a licence is suspended;

(e) a licence is revoked under section 38 or 42 above;

(f) an application to surrender a licence is rejected; or

(g) an application for the transfer of a licence is rejected;

then, except in the case of an application for a transfer, the applicant for the licence or, as the case may be, the holder or former holder of it may appeal from the decision to the Secretary of State and, in the case of an application for a transfer, the proposed transferee may do so.

(2) Where an appeal is made to the Secretary of State—

(a) the Secretary of State may refer any matter involved in the appeal to a person appointed by him for the purpose;

(b) the Secretary of State may, instead of determining the appeal himself, direct that the appeal or any matter involved in it shall be determined by a person appointed by him for the purpose (who shall have the same powers as the Secretary of State);

(c) if a party to the appeal so requests, or the Secretary of State so decides, the appeal shall be or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held or held to any extent in private).

(3) Where, on such an appeal, the Secretary of State or other person determining the appeal determines that the decision of the authority shall be altered it shall be the duty of the authority to give effect to the determination.

(4) While an appeal is pending in a case falling within subsection (1)(c) or (e) above, the decision in question shall, subject to subsection (6) below, be ineffective; and if the

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appeal is dismissed or withdrawn the decision shall become effective from the end of the day on which the appeal is dismissed or withdrawn.

(5) Where an appeal is made in a case falling within subsection (1)(d) above, the bringing of the appeal shall have no effect on the decision in question.

(6) Subsection (4) above shall not apply to a decision modifying the conditions of a licence under section 37 above or revoking a licence under section 38 or 42 above in the case of which the notice effecting the modification or revocation includes a statement that in the opinion of the authority it is necessary for the purpose of preventing or, where that is not practicable, minimising pollution of the environment or harm to human health that that subsection should not apply.

(7) Where the decision under appeal is one falling within subsection (6) above or is a decision to suspend a licence, if, on the application of the holder or former holder of the licence, the Secretary of State or other person determining the appeal determines that the authority acted unreasonably in excluding the application of subsection (4) above or, as the case may be, in suspending the licence, then—

(a) if the appeal is still pending at the end of the day on which the determination is made, subsection (4) above shall apply to the decision from the end of that day; and

(b) the holder or former holder of the licence shall be entitled to recover compensation from the authority in respect of any loss suffered by him in consequence of the exclusion of the application of that subsection or the suspension of the licence;

and any dispute as to a person's entitlement to such compensation or as to the amount of it shall be determined by arbitration or in Scotland by a single arbiter appointed, in default of agreement between the parties concerned, by the Secretary of State on the application of any of the parties.

(8) Provision may be made by the Secretary of State by regulations with respect to appeals under this section and in particular—

(a) as to the period within which and the manner in which appeals are to be brought; and

(b) as to the manner in which appeals are to be considered.

Commencement Information

I16 S. 43 not in force at Royal Assent, see s. 164(3); s. 43(8) in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**; s. 43 in force in so far as not already in force at 1.5.1994 save for purposes of application to activities specified in art. 2(2) of the commencing S.I. and otherwise in force in relation to those activities in accordance with art. 3 of the commencing S.I. by S.I. 1994/1096, **arts. 2(2)(3)**, 3 (as amended by S.I. 1994/2487, **art. 2** and S.I. 1994/3234, **art. 2**)

VALID FROM 01/05/1994

44 Offences of making false statements. E+W+S

A person who, in an application for a licence, for a modification of the conditions of a licence or for the surrender or transfer of a licence, makes any statement which he

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knows to be false in a material particular or recklessly makes any statement which is false in a material particular shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; and

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both.

Commencement Information

I17 S. 44 not in force at Royal Assent, see s. 164(3); s. 44 in force at 1.5.1994 save for purposes of application to activities specified in art. 2(2) of the commencing S.I. and otherwise in force in relation to those activities in accordance with art. 3 of the commencing S.I. by S.I. 1994/1096, **arts. 2(2)(3)**, 3 (as amended by S.I. 1994/2487, **art. 2** and S.I. 1994/3234, **art. 2**)

VALID FROM 01/04/2003

[F24 Integrated waste management plans: Scotland

Textual Amendments

F24 Ss. 44ZA-44ZD and preceding cross-heading inserted (S.) (1.4.2003) by Local Government in Scotland Act 2003 (asp 1), **ss. 34(1)**, 62(2); S.S.I. 2003/134, **art. 2(1)**, Sch.

44ZA Duty to prepare integrated waste management plan S

(1) It shall be the duty of a local authority to—

(a) prepare an integrated waste management plan; and

(b) submit it to the Scottish Ministers for approval.

(2) An integrated waste management plan is a plan which—

(a) sets out, by reference to policies contained in the National Waste Strategy, how the local authority intends to carry out its functions as waste disposal authority and waste collection authority (its "waste management functions"); and

(b) without prejudice to the generality of paragraph (a) above, contains statements on such matters relating to the carrying out of those functions as the Scottish Ministers may specify in directions.

(3) Directions under subsection (2)(b) above may, in particular, require integrated waste management plans to include statements setting out—

(a) levels of performance ("performance targets") which the local authority shall, in performing its waste management functions, endeavour to meet;

(b) steps which the local authority proposes to take in endeavouring to meet performance targets;

(c) arrangements which the local authority proposes to enter into with one or more other local authorities for the purpose of securing co-operation, in the carrying out of their respective waste management functions, between the local authorities.

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(4) Integrated waste management plans shall—

(a) be prepared, and submitted, under subsection (1) above by such date; and

(b) relate to such period of time,

as the Scottish Ministers may direct.

(5) A local authority shall, in preparing its integrated waste management plan, have regard to such matters as the Scottish Ministers may direct.

(6) In this section, and in sections 44ZB to 44ZD below—

"local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);

"National Waste Strategy" means the strategy prepared by SEPA under section 44B below, as modified from time to time; and

"SEPA" means the Scottish Environment Protection Agency.

44ZB Approval of integrated waste management plan S

(1) The Scottish Ministers shall—

(a) approve an integrated waste management plan submitted to them under section 44ZA(1)(b) above without modification;

(b) approve the plan with such modifications as they consider appropriate; or

(c) refuse to approve the plan.

(2) If the Scottish Ministers refuse to approve a plan which has been so submitted they shall—

(a) notify the local authority in writing of that fact; and

(b) require the local authority to prepare and submit, by such date as the Scottish Ministers may specify, a further integrated waste management plan.

(3) The Scottish Ministers shall—

(a) approve an integrated waste management plan submitted to them under subsection (2)(b) above without modification; or

(b) approve the plan with such modifications as they consider appropriate.

(4) The Scottish Ministers shall—

(a) give written notice of their approval, under subsection (1) or (3) above, of an integrated waste management plan to the local authority; and

(b) if they have modified the plan, send a copy of the plan as modified to the local authority.

(5) The local authority shall, on receipt of notice given under subsection (4)(a) above—

(a) give public notice of the approved integrated waste management plan; and

(b) send a copy of it to SEPA.

(6) It shall be the duty of a local authority to make arrangements for allowing any person to—

(a) inspect its approved integrated waste management plan at its principal offices at any reasonable time;

(b) obtain a copy of it, or any part of it, on payment of such reasonable fee (if any) as the local authority may determine.

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44ZC Implementation of integrated waste management plan S

(1) It shall be the duty of a local authority—

(a) to endeavour to carry out its waste management functions in accordance with its approved integrated waste management plan; and

(b) if requested by the Scottish Ministers, to provide the Scottish Ministers, by the date specified in their request, with a statement setting out whether the local authority is so carrying out its waste management functions.

(2) A statement provided under subsection (1)(b) above shall contain such information as the Scottish Ministers may direct.

(3) Directions under subsection (2) above may, in particular, require a local authority to—

(a) advise whether it has met, or is likely to meet, any performance targets set out in the plan; and

(b) if it has not done so, or is not likely to do so, explain why it considers the performance targets have not been, or are not likely to be, met.

44ZD Modification of integrated waste management plan S

(1) A local authority—

(a) may, from time to time; and

(b) shall, if requested by the Scottish Ministers,

modify its integrated waste management plan and submit it, as modified, to the Scottish Ministers for approval.

(2) Sections 44ZA to 44ZC apply in relation to a plan which is modified as they apply in relation to a plan prepared and submitted under section 44ZA(1) above.**]**

Collection, disposal or treatment of controlled waste

VALID FROM 01/04/1996

[F25 44A National waste strategy: England and Wales. E+W+S

(1) The Secretary of State shall as soon as possible prepare a statement ("the strategy") containing his policies in relation to the recovery and disposal of waste in England and Wales.

(2) The strategy shall consist of or include—

(a) a statement which relates to the whole of England and Wales; or

(b) two or more statements which between them relate to the whole of England and Wales.

(3) The Secretary of State may from time to time modify the strategy.

(4) Without prejudice to the generality of what may be included in the strategy, the strategy must include—

(a) a statement of the Secretary of State's policies for attaining the objectives specified in Schedule 2A to this Act;

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Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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) provisions relating to each of the following, that is to say—

(i) the type, quantity and origin of waste to be recovered or disposed of;

(ii) general technical requirements; and

(iii) any special requirements for particular wastes.

(5) In preparing the strategy or any modification of it, the Secretary of State—

(a) shall consult the Environment Agency,

(b) shall consult—

(i) such bodies or persons appearing to him to be representative of the interests of local government, and

(ii) such bodies or persons appearing to him to be representative of the interests of industry,

as he may consider appropriate, and

(c) may consult such other bodies or persons as he considers appropriate.

(6) Without prejudice to any power to give directions conferred by section 40 of the Environment Act 1995, the Secretary of State may give directions to the Environment Agency requiring it—

(a) to advise him on the policies which are to be included in the strategy;

(b) to carry out a survey of or investigation into—

(i) the kinds or quantities of waste which it appears to that Agency is likely to be situated in England and Wales,

(ii) the facilities which are or appear to that Agency likely to be available or needed in England and Wales for recovering or disposing of any such waste,

(iii) any other matter upon which the Secretary of State wishes to be informed in connection with his preparation of the strategy or any modification of it,

and to report its findings to him.

(7) A direction under subsection (6)(b) above—

(a) shall specify or describe the matters or the areas which are to be the subject of the survey or investigation; and

(b) may make provision in relation to the manner in which—

(i) the survey or investigation is to be carried out, or

(ii) the findings are to be reported or made available to other persons.

(8) Where a direction is given under subsection (6)(b) above, the Environment Agency shall, in accordance with any requirement of the direction,—

(a) before carrying out the survey or investigation, consult—

(i) such bodies or persons appearing to it to be representative of local planning authorities, and

(ii) such bodies or persons appearing to it to be representative of the interests of industry,

as it may consider appropriate; and

(b) make its findings available to those authorities.

(9) In this section—

"local planning authority" has the same meaning as in the [M25]Town and Country Planning Act 1990;

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"strategy" includes the strategy as modified from time to time and "statement" shall be construed accordingly.

(10) This section makes provision for the purpose of implementing Article 7 of the [M26]directive of the Council of the European Communities, dated 15th July 1975, on waste, as amended by—

(a) the [M27]directive of that Council, dated 18th March 1991, amending directive 75/442/EEC on waste; and

(b) the [M28]directive of that Council, dated 23rd December 1991, standardising and rationalising reports on the implementation of certain Directives relating to the environment.**]**

Textual Amendments

F25 Ss. 44A, 44B inserted (1.4.1996) by 1995, c. 25, s. 92(1) (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

Modifications etc. (not altering text)

C15 S. 44A applied (6.3.1997) by S.I. 1997/648, reg. 12(3)(d)(e), **Sch. 4 Pt. IV para. 11(b)**

Marginal Citations

M25 1990 c. 8.
M26 91/692/EEC.
M27 91/156/EEC.
M28 75/442/EEC.

VALID FROM 01/04/1996

[F26]44B National waste strategy: Scotland. E+W+S

(1) SEPA shall as soon as possible prepare a statement ("the strategy") containing its policies in relation to the recovery and disposal of waste in Scotland.

(2) SEPA may from time to time modify the strategy.

(3) Without prejudice to the generality of what may be included in the strategy, the strategy must include—

(a) a statement of SEPA's policies for attaining the objectives specified in Schedule 2A to this Act;

(b) provisions relating to each of the following, that is to say—

(i) the type, quantity and origin of waste to be recovered or disposed of;

(ii) general technical requirements; and

(iii) any special requirements for particular wastes.

(4) In preparing the strategy or any modification of it SEPA shall consult—

(a) such bodies or persons appearing to it to be representative of the interests of industry as it may consider appropriate;

(b) such local authorities as appear to it to be likely to be affected by the strategy or modification,

and may consult such other bodies or persons as it considers appropriate.

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(5) Without prejudice to any power to give directions conferred by section 40 of the Environment Act 1995, the Secretary of State may give directions to SEPA—

(a) as to the policies which are to be included in the strategy;

(b) requiring it to carry out a survey or investigation into—

(i) the kinds or quantities of waste which it appears to it is likely to be situated in Scotland,

(ii) the facilities which are or appear to it likely to be available or needed in Scotland for recovering or disposing of any such waste,

(iii) any other matter which the Secretary of State considers appropriate in connection with its preparation of the strategy or any modifications of it.

(6) A direction under subsection (5)(b) above—

(a) shall specify or describe the matters or the areas which are to be the subject of the survey or investigation; and

(b) may make provision in relation to the manner in which—

(i) the survey or investigation is to be carried out, or

(ii) the findings are to be reported or made available to other persons.

(7) Where a direction is given under subsection (5)(b) above SEPA shall, in accordance with any requirement of the direction—

(a) before carrying out the survey or investigation, consult—

(i) such bodies or persons appearing to it to be representative of planning authorities, and

(ii) such bodies or persons appearing to it to be representative of the interests of industry,

as it may consider appropriate; and

(b) make its findings available to those authorities.

(8) In this section—

"planning authority" means an authority within the meaning of section 172 of the [M29]Local Government (Scotland) Act 1973;

"strategy" includes the strategy as modified from time to time and "statement" shall be construed accordingly.

(9) This section makes provision for the purpose of implementing Article 7 of the [M30]directive of the Council of the European Communities dated 15th July 1975 on waste, as amended by—

(a) the [M31]directive of that Council dated 18th March 1991 amending directive 75/442/EEC on waste; and

(b) the [M32]directive of that Council dated 23rd December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment.

Textual Amendments

F26 Ss. 44A, 44B inserted (1.4.1996) by 1995, c. 25, s. 92(1) (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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Modifications etc. (not altering text)

C16 S. 44B applied (6.3.1997) by S.I. 1997/648, reg. 12(3)(d)(e), **Sch. 4 Pt. IV para. 11(b)**

Marginal Citations

M29 1973 c. 65.
M30 91/692/EEC.
M31 91/156/EEC.
M32 75/442/EEC.

VALID FROM 14/02/1992

45 Collection of controlled waste. E+W+S

(1) It shall be the duty of each waste collection authority—

(a) to arrange for the collection of household waste in its area except waste—

(i) which is situated at a place which in the opinion of the authority is so isolated or inaccessible that the cost of collecting it would be unreasonably high, and

(ii) as to which the authority is satisfied that adequate arrangements for its disposal have been or can reasonably be expected to be made by a person who controls the waste; and

(b) if requested by the occupier of premises in its area to collect any commercial waste from the premises, to arrange for the collection of the waste.

(2) Each waste collection authority may, if requested by the occupier of premises in its area to collect any industrial waste from the premises, arrange for the collection of the waste; but a collection authority in England and Wales shall not exercise the power except with the consent of the waste disposal authority whose area includes the area of the waste collection authority.

(3) No charge shall be made for the collection of household waste except in cases prescribed in regulations made by the Secretary of State; and in any of those cases—

(a) the duty to arrange for the collection of the waste shall not arise until a person who controls the waste requests the authority to collect it; and

(b) the authority may recover a reasonable charge for the collection of the waste from the person who made the request.

(4) A person at whose request waste other than household waste is collected under this section shall be liable to pay a reasonable charge for the collection and disposal of the waste to the authority which arranged for its collection; and it shall be the duty of that authority to recover the charge unless in the case of a charge in respect of commercial waste the authority considers it inappropriate to do so.

(5) It shall be the duty of each waste collection authority—

(a) to make such arrangements for the emptying, without charge, of privies serving one or more private dwellings in its area as the authority considers appropriate;

(b) if requested by the person who controls a cesspool serving only one or more private dwellings in its area to empty the cesspool, to remove such of the

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***Changes to legislation:** Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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)*

contents of the cesspool as the authority considers appropriate on payment, if the authority so requires, of a reasonable charge.

(6) A waste collection authority may, if requested by the person who controls any other privy or cesspool in its area to empty the privy or cesspool, empty the privy or, as the case may be, remove from the cesspool such of its contents as the authority consider appropriate on payment, if the authority so requires, of a reasonable charge.

(7) A waste collection authority may—

(a) construct, lay and maintain, within or outside its area, pipes and associated works for the purpose of collecting waste;

(b) contribute towards the cost incurred by another person in providing or maintaining pipes or associated works connecting with pipes provided by the authority under paragraph (a) above.

(8) A waste collection authority may contribute towards the cost incurred by another person in providing or maintaining plant or equipment intended to deal with commercial or industrial waste before it is collected under arrangements made by the authority under subsection (1)(b) or (2) above.

(9) Subject to section 48(1) below, anything collected under arrangements made by a waste collection authority under this section shall belong to the authority and may be dealt with accordingly.

(10) In relation to Scotland, sections 2, 3, 4 and 41 of the [M33]Sewerage (Scotland) Act 1968 (maintenance of public sewers etc.) shall apply in relation to pipes and associated works provided or to be provided under subsection (7)(a) above as those sections apply in relation to public sewers but as if—

(a) the said section 2 conferred a power and did not impose a duty on a local authority to do the things mentioned in that section;

(b) in the said section 4, the words from "but before any person" to the end were omitted,

and the [M34]Pipe-lines Act 1962 shall not apply to pipes and associated works provided or to be provided under the said subsection (7)(a).

(11) In the application of this section to Scotland, subsection (5)(b) and the references to a cesspool occurring in subsection (6) shall be omitted.

(12) In this section "privy" means a latrine which has a moveable receptacle and "cesspool" includes a settlement tank or other tank for the reception or disposal of foul matter from buildings.

Commencement Information

I18 S. 45 partly in force; s. 45 in force for certain purposes at 14.2.1992, s. 45(1)(3)-(12) wholly in force and s. 45(2) in force (S) at 1.4.1992 see s. 164(3) and S.I. 1992/266, **arts. 2**, 3.

Marginal Citations

M33 1968 c. 47.

M34 1962 c. 58.

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VALID FROM 30/12/2003

[F27 45A Arrangements for separate collection of recyclable waste E+W

(1) This section applies to any waste collection authority whose area is in England (an "English waste collection authority").

(2) Where an English waste collection authority has a duty by virtue of section 45(1)(a) above to arrange for the collection of household waste from any premises, the authority shall ensure that the arrangements it makes in relation to those premises include the arrangements mentioned in subsection (3) below, unless it is satisfied that (in that case)—

(a) the cost of doing so would be unreasonably high; or

(b) comparable alternative arrangements are available.

(3) The arrangements are arrangements for the collection of at least two types of recyclable waste together or individually separated from the rest of the household waste.

(4) The requirement in subsection (2) above shall apply from 31st December 2010.

(5) The Secretary of State may, if requested to do so by an English waste collection authority, direct the authority that subsection (4) above shall have effect in relation to that authority as if the date mentioned there were such later date as may be specified in the direction (being a date no later than 31st December 2015).

(6) In this section, "recyclable waste" means household waste which is capable of being recycled or composted.**]**

Textual Amendments

F27 S. 45A inserted (E.W.) (30.12.2003) by Household Waste Recycling Act 2003 (c. 29), **ss. 1**, 5(2)

VALID FROM 30/12/2003

[F28 45B Power to apply section 45A to Welsh waste collection authorities E+W

(1) The National Assembly for Wales may by order made by statutory instrument provide that section 45A above shall apply, subject to subsection (2) below, to all waste collection authorities whose areas are in Wales, as it applies to English waste collection authorities.

(2) Where the Assembly provides as mentioned in subsection (1) above, the reference to the Secretary of State in section 45A(5) above shall be read for these purposes as a reference to the National Assembly for Wales.

(3) Section 161(3) below (which relates to order-making powers) shall not apply to the making of an order under this section.**]**

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Textual Amendments

F28 S. 45B inserted (E.W.) (30.12.2003) by Household Waste Recycling Act 2003 (c. 29), **ss. 2**, 5(2)

VALID FROM 01/04/1992

46 Receptacles for household waste. E+W+S

(1) Where a waste collection authority has a duty by virtue of section 45(1)(a) above to arrange for the collection of household waste from any premises, the authority may, by notice served on him, require the occupier to place the waste for collection in receptacles of a kind and number specified.

(2) The kind and number of the receptacles required under subsection (1) above to be used shall be such only as are reasonable but, subject to that, separate receptacles or compartments of receptacles may be required to be used for waste which is to be recycled and waste which is not.

(3) In making requirements under subsection (1) above the authority may, as respects the provision of the receptacles—

(a) determine that they be provided by the authority free of charge;

(b) propose that they be provided, if the occupier agrees, by the authority on payment by him of such a single payment or such periodical payments as he agrees with the authority;

(c) require the occupier to provide them if he does not enter into an agreement under paragraph (b) above within a specified period; or

(d) require the occupier to provide them.

(4) In making requirements as respects receptacles under subsection (1) above, the authority may, by the notice under that subsection, make provision with respect to—

(a) the size, construction and maintenance of the receptacles;

(b) the placing of the receptacles for the purpose of facilitating the emptying of them, and access to the receptacles for that purpose;

(c) the placing of the receptacles for that purpose on highways or, in Scotland, roads;

(d) the substances or articles which may or may not be put into the receptacles or compartments of receptacles of any description and the precautions to be taken where particular substances or articles are put into them; and

(e) the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptacles.

(5) No requirement shall be made under subsection (1) above for receptacles to be placed on a highway or, as the case may be, road, unless—

(a) the relevant highway authority or roads authority have given their consent to their being so placed; and

(b) arrangements have been made as to the liability for any damage arising out of their being so placed.

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(6) A person who fails, without reasonable excuse, to comply with any requirements imposed under subsection (1), (3)(c) or (d) or (4) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Where an occupier is required under subsection (1) above to provide any receptacles he may, within the period allowed by subsection (8) below, appeal to a magistrates' court or, in Scotland, to the sheriff by way of summary application against any requirement imposed under subsection (1), subsection (3)(c) or (d) or (4) above on the ground that—

(a) the requirement is unreasonable; or

(b) the receptacles in which household waste is placed for collection from the premises are adequate.

(8) The period allowed to the occupier of premises for appealing against such a requirement is the period of twenty-one days beginning—

(a) in a case where a period was specified under subsection (3)(c) above, with the end of that period; and

(b) where no period was specified, with the day on which the notice making the requirement was served on him.

(9) Where an appeal against a requirement is brought under subsection (7) above—

(a) the requirement shall be of no effect pending the determination of the appeal;

(b) the court shall either quash or modify the requirement or dismiss the appeal; and

(c) no question as to whether the requirement is, in any respect, unreasonable shall be entertained in any proceedings for an offence under subsection (6) above.

(10) In this section—

"receptacle" includes a holder for receptacles; and

"specified" means specified in a notice under subsection (1) above.

Modifications etc. (not altering text)

C17 S. 46 applied (with modifications) (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), **19**

C18 S. 46(2)-(5) applied (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), **20(3)(9)** (with s. 20(10))

Commencement Information

I19 S. 46 wholly in force at 1.4.1992 see s. 164(3) and S.I. 1992/266, **art. 3**.

VALID FROM 01/04/1992

47 Receptacles for commercial or industrial waste. E+W+S

(1) A waste collection authority may, at the request of any person, supply him with receptacles for commercial or industrial waste which he has requested the authority to arrange to collect and shall make a reasonable charge for any receptacle supplied

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unless in the case of a receptacle for commercial waste the authority considers it appropriate not to make a charge.

(2) If it appears to a waste collection authority that there is likely to be situated, on any premises in its area, commercial waste or industrial waste of a kind which, if the waste is not stored in receptacles of a particular kind, is likely to cause a nuisance or to be detrimental to the amenities of the locality, the authority may, by notice served on him, require the occupier of the premises to provide at the premises receptacles for the storage of such waste of a kind and number specified.

(3) The kind and number of the receptacles required under subsection (2) above to be used shall be such only as are reasonable.

(4) In making requirements as respects receptacles under subsection (2) above, the authority may, by the notice under that subsection, make provision with respect to—

(a) the size, construction and maintenance of the receptacles;

(b) the placing of the receptacles for the purpose of facilitating the emptying of them, and access to the receptacles for that purpose;

(c) the placing of the receptacles for that purpose on highways or, in Scotland, roads;

(d) the substances or articles which may or may not be put into the receptacles and the precautions to be taken where particular substances or articles are put into them; and

(e) the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptacles.

(5) No requirement shall be made under subsection (2) above for receptacles to be placed on a highway or, as the case may be, road unless—

(a) the relevant highway authority or roads authority have given their consent to their being so placed; and

(b) arrangements have been made as to the liability for any damage arising out of their being so placed.

(6) A person who fails, without reasonable excuse, to comply with any requirements imposed under subsection (2) or (4) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Where an occupier is required under subsection (2) above to provide any receptacles he may, within the period allowed by subsection (8) below, appeal to a magistrates' court or, in Scotland, to the sheriff by way of summary application against any requirement imposed under subsection (2) or (4) above on the ground that—

(a) the requirement is unreasonable; or

(b) the waste is not likely to cause a nuisance or be detrimental to the amenities of the locality.

(8) The period allowed to the occupier of premises for appealing against such a requirement is the period of twenty-one days beginning with the day on which the notice making the requirement was served on him.

(9) Where an appeal against a requirement is brought under subsection (7) above—

(a) the requirement shall be of no effect pending the determination of the appeal;

(b) the court shall either quash or modify the requirement or dismiss the appeal; and

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(c) no question as to whether the requirement is, in any respect, unreasonable shall be entertained in any proceedings for an offence under subsection (6) above.

(10) In this section—

"receptacle" includes a holder for receptacles; and

"specified" means specified in a notice under subsection (2) above.

Modifications etc. (not altering text)

C19 S. 47 applied (with modifications) (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), **21**

C20 S. 47(3)-(6) applied (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), **22(3)(9)** (with s. 22(10))

Commencement Information

I20 S. 47 wholly in force at 1.4.1992 see s. 164(3) and S.I. 1992/266, **art. 3**.

VALID FROM 16/03/2006

[F29 47ZA Fixed penalty notices for offences under sections 46 and 47 E+W

(1) This section applies where on any occasion an authorised officer of a waste collection authority has reason to believe that a person has committed an offence under section 46 or 47 above in the area of that authority.

(2) The authorised officer may give that person a notice offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the waste collection authority.

(3) Where a person is given a notice under this section in respect of an offence—

(a) no proceedings may be instituted for that offence before the expiration of the period of fourteen days following the date of the notice; and

(b) he may not be convicted of that offence if he pays the fixed penalty before the expiration of that period.

(4) A notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(5) A notice under this section must also state—

(a) the period during which, by virtue of subsection (3) above, proceedings will not be taken for the offence;

(b) the amount of the fixed penalty; and

(c) the person to whom and the address at which the fixed penalty may be paid.

(6) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in subsection (5)(c) above at the address so mentioned.

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(7) Where a letter is sent in accordance with subsection (6) above payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(8) The form of a notice under this section is to be such as the appropriate person may by order prescribe.

(9) In any proceedings a certificate which—

(a) purports to be signed on behalf of the chief finance officer of the waste collection authority, and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(10) In this section—

"authorised officer", in relation to a waste collection authority, means—

(a) an employee of the authority who is authorised in writing by the authority for the purposes of giving notices under this section;

(b) any person who, in pursuance of arrangements made with the authority, has the function of giving such notices and is authorised in writing by the authority to perform that function;

(c) any employee of such a person who is authorised in writing by the authority for the purpose of giving such notices;

"chief finance officer", in relation to a waste collection authority, means the person having responsibility for the financial affairs of the authority.

Textual Amendments

F29 Ss. 47ZA, 47ZB inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 48**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4**

VALID FROM 16/03/2006

47ZB Amount of fixed penalty under section 47ZA E+W

(1) This section applies in relation to a fixed penalty payable to a waste collection authority in pursuance of a notice under section 47ZA above.

(2) The amount of the fixed penalty—

(a) is the amount specified by the waste collection authority in relation to the authority's area, or

(b) if no amount is so specified, is £100.

(3) The waste collection authority may make provision for treating the fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by the authority.

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(4) The appropriate person may by regulations make provision in connection with the powers conferred on waste collection authorities under subsections (2)(a) and (3) above.

(5) Regulations under subsection (4) may (in particular)—

(a) require an amount specified under subsection (2)(a) above to fall within a range prescribed in the regulations;

(b) restrict the extent to which, and the circumstances in which, a waste collection authority can make provision under subsection (3) above.

(6) The appropriate person may by order substitute a different amount for the amount for the time being specified in subsection (2)(b) above.**]**

Textual Amendments

F29 Ss. 47ZA, 47ZB inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 48**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4**

VALID FROM 30/12/2003

[F30 47A Recycling and composting: duty to report to Parliament E+W

(1) Not later than 31st October 2004, the Secretary of State shall lay before each House of Parliament a report of the performance—

(a) of each English waste authority in meeting its recycling and composting standards (if any); and

(b) of each English waste collection authority towards meeting the requirement imposed by section 45A(2) above.

(2) In this section—

"English waste authority" means a waste collection authority or a waste disposal authority whose area is in England;

"English waste collection authority" means a waste collection authority whose area is in England; and

"recycling and composting standards" means, in relation to an English waste authority, such performance standards and performance indicators (if any) as may be specified for that authority in an order made under section 4 of the Local Government Act 1999 in connection with the recycling and composting of household waste.**]**

Textual Amendments

F30 S. 47A inserted (E.W.) (30.12.2003) by Household Waste Recycling Act 2003 (c. 29), **ss. 3**, 5(2)

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VALID FROM 01/04/1992

48 Duties of waste collection authorities as respects disposal of waste collected. E+W

(1) Subject to subsections (2) and (6) below, it shall be the duty of each waste collection authority to deliver for disposal all waste which is collected by the authority under section 45 above to such places as the waste disposal authority for its area directs.

(2) The duty imposed on a waste collection authority by subsection (1) above does not, except in cases falling within subsection (4) below, apply as respects household waste or commercial waste for which the authority decides to make arrangements for recycling the waste; and the authority shall have regard, in deciding what recycling arrangements to make, to its waste recycling plan under section 49 below.

(3) A waste collection authority which decides to make arrangements under subsection (2) above for recycling waste collected by it shall, as soon as reasonably practicable, by notice in writing, inform the waste disposal authority for the area which includes its area of the arrangements which it proposes to make.

(4) Where a waste disposal authority has made with a waste disposal contractor arrangements, as respects household waste or commercial waste in its area or any part of its area, for the contractor to recycle the waste, or any of it, the waste disposal authority may, by notice served on the waste collection authority, object to the waste collection authority having the waste recycled; and the objection may be made as respects all the waste, part only of the waste or specified descriptions of the waste.

(5) Where an objection is made under subsection (4) above, subsection (2) above shall not be available to the waste collection authority to the extent objected to.

(6) A waste collection authority may, subject to subsection (7) below, provide plant and equipment for the sorting and baling of waste retained by the authority under subsection (2) above.

(7) Subsection (6) above does not apply to an authority which is also a waste disposal authority; but, in such a case, the authority may make arrangements with a waste disposal contractor for the contractor to deal with the waste as mentioned in that subsection.

(8) A waste collection authority may permit another person to use facilities provided by the authority under subsection (6) above and may provide for the use of another person any such facilities as the authority has power to provide under that subsection; and—

(a) subject to paragraph (b) below, it shall be the duty of the authority to make a reasonable charge in respect of the use by another person of the facilities, unless the authority considers it appropriate not to make a charge;

(b) no charge shall be made under this subsection in respect of household waste; and

(c) anything delivered to the authority by another person in the course of using the facilities shall belong to the authority and may be dealt with accordingly.

(9) This section shall not apply to Scotland.

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Commencement Information

I21 S. 48 partly in force; s. 48 not in force at Royal Assent see s. 164(3); s. 48(1)-(6)(8)(9) in force at 1.4.1992 see S.I. 1992/266, art. 3.

49 Waste recycling plans by collection authorities. E+W+S

(1) It shall be the duty of each waste collection authority, as respects household and commercial waste arising in its area—

(a) to carry out an investigation with a view to deciding what arrangements are appropriate for dealing with the waste by separating, baling or otherwise packaging it for the purpose of recycling it;

(b) to decide what arrangements are in the opinion of the authority needed for that purpose;

(c) to prepare a statement ("the plan") of the arrangements made and proposed to be made by the authority and other persons for dealing with waste in those ways;

(d) to carry out from time to time further investigations with a view to deciding what changes in the plan are needed; and

(e) to make any modification of the plan which the authority thinks appropriate in consequence of any such further investigation.

(2) In considering any arrangements or modification for the purposes of subsection (1)(c) or (e) above it shall be the duty of the authority to have regard to the effect which the arrangements or modification would be likely to have on the amenities of any locality and the likely cost or saving to the authority attributable to the arrangements or modification.

(3) It shall be the duty of a waste collection authority to include in the plan information as to—

(a) the kinds and quantities of controlled waste which the authority expects to collect during the period specified in the plan;

(b) the kinds and quantities of controlled waste which the authority expects to purchase during that period;

(c) the kinds and quantities of controlled waste which the authority expects to deal with in the ways specified in subsection (1)(a) above during that period;

(d) the arrangements which the authority expects to make during that period with waste disposal contractors or, in Scotland, waste disposal authorities and waste disposal contractors for them to deal with waste in those ways;

(e) the plant and equipment which the authority expects to provide under section 48(6) above or 53 below; and

(f) the estimated costs or savings attributable to the methods of dealing with the waste in the ways provided for in the plan.

(4) It shall be the duty of a waste collection authority, before finally determining the content of the plan or a modification, to send a copy of it in draft to the Secretary of State for the purpose of enabling him to determine whether subsection (3) above has been complied with; and, if the Secretary of State gives any directions to the authority for securing compliance with that subsection, it shall be the duty of the authority to comply with the direction.

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(5) When a waste collection authority has determined the content of the plan or a modification it shall be the duty of the authority—

(a) to take such steps as in the opinion of the authority will give adequate publicity in its area to the plan or modification; and

(b) to send to the waste disposal authority and waste regulation authority for the area which includes its area a copy of the plan or, as the case may be, particulars of the modification.

(6) It shall be the duty of each waste collection authority to keep a copy of the plan and particulars of any modifications to it available at all reasonable times at its principal offices for inspection by members of the public free of charge and to supply a copy of the plan and of the particulars of any modifications to it to any person who requests one, on payment by that person of such reasonable charge as the authority requires.

(7) The Secretary of State may give to any waste collection authority directions as to the time by which the authority is to perform any duty imposed by this section specified in the direction; and it shall be the duty of the authority to comply with the direction.

Commencement Information

I22 S. 49 wholly in force at 1.8.1991 see s. 164(3) and S.I. 1991/1577, **art. 3**

50 Waste disposal plans of waste regulation authorities. E+W+S

(1) It shall be the duty of each waste regulation authority—

(a) to carry out an investigation with a view to deciding what arrangements are needed for the purpose of treating or disposing of controlled waste which is situated in its area and controlled waste which is likely to be so situated so as to prevent or minimise pollution of the environment or harm to human health;

(b) to decide what arrangements are in the opinion of the authority needed for that purpose and how it should discharge its functions in relation to licences;

(c) to prepare a statement ("the plan") of the arrangements made and proposed to be made by waste disposal contractors, or, in Scotland, waste disposal authorities and waste disposal contractors, for the treatment or disposal of such waste;

(d) to carry out from time to time further investigations with a view to deciding what changes in the plan are needed; and

(e) to make any modification of the plan which the authority thinks appropriate in consequence of any such further investigation.

(2) In considering any arrangements or modification for the purposes of subsection (1)(c) or (e) above it shall be the duty of the authority to have regard both to the likely cost of the arrangements or modification and to their likely beneficial effects on the environment.

(3) It shall be the duty of the authority to include in the plan information as to—

(a) the kinds and quantities of controlled waste which the authority expects to be situated in its area during the period specified in the plan;

(b) the kinds and quantities of controlled waste which the authority expects to be brought into or taken for disposal out of its area during that period;

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(c) the kinds and quantities of controlled waste which the authority expects to be disposed of within its area during that period;

(d) the methods and the respective priorities for the methods by which in the opinion of the authority controlled waste in its area should be disposed of or treated during that period;

(e) the policy of the authority as respects the discharge of its functions in relation to licences and any relevant guidance issued by the Secretary of State;

(f) the sites and equipment which persons are providing and which during that period are expected to provide for disposing of controlled waste; and

(g) the estimated costs of the methods of disposal or treatment provided for in the plan;

but provision may be made by the Secretary of State by regulations for modifying the foregoing paragraphs and for requiring waste regulation authorities to take into account in preparing plans and any modifications of plans under this section such factors as may be prescribed in the regulations.

(4) In considering what information to include in the plan under subsection (3)(d) above, it shall be the duty of the authority to have regard to the desirability, where reasonably practicable, of giving priority to recycling waste.

(5) It shall be the duty of the authority—

(a) in preparing the plan and any modification of it, to consult—

(i) the National Rivers Authority or, in Scotland, any river purification authority any part of whose area is included in the area of the waste regulation authority;

(ii) the waste collection authorities whose areas are included in the area of the authority;

(iii) in a case where the plan or modification is prepared by a waste regulation authority in Wales, the county council whose area includes that of the authority;

(iv) in a case where the plan or modification is prepared by a Scottish waste regulation authority other than an islands council, the council of the region in which the area of the authority is included;

(v) in a case where provisions of the plan or modification relate to the taking of waste for disposal or treatment into the area of another waste regulation authority, that other authority; and

(vi) in any case, such persons as the authority considers it appropriate to consult from among persons who in the opinion of the authority are or are likely to be, or are representative of persons who are or are likely to be, engaged by way of trade or business in the disposal or treatment of controlled waste situated in the area of the authority; and

(b) before finally determining the content of the plan or modification, to take, subject to subsection (6) below, such steps as in the opinion of the authority will—

(i) give adequate publicity in its area to the plan or modification; and

(ii) provide members of the public with opportunities of making representations to the authority about it;

and to consider any representations made by the public and make any change in the plan or modification which the authority considers appropriate.

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Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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)*

(6) No steps need be taken under subsection (5)(b) above in respect of a modification which in the opinion of the waste regulation authority is such that no person will be prejudiced if those steps are not taken.

(7) Without prejudice to the duty of authorities under subsection (5) above, it shall be the duty of the authority, in preparing the plan and any modification of it, to consider, in consultation with the waste collection authorities in its area and any other persons,—

(a) what arrangements can reasonably be expected to be made for recycling waste; and

(b) what provisions should be included in the plan for that purpose.

(8) An authority shall not finally determine the content of the plan or modification in a case falling within subsection (5)(a)(v) above except with the consent of the other waste regulation authority or, if the other authority withholds its consent, with the consent of the Secretary of State.

(9) It shall be the duty of the authority, before finally determining the content of the plan or modification, to send a copy of it in draft to the Secretary of State for the purpose of enabling him to determine whether subsection (3) above has been complied with; and, if the Secretary of State gives any directions to the authority for securing compliance with that subsection, it shall be the duty of the authority to comply with the direction.

(10) When an authority has finally determined the content of the plan or a modification it shall be the duty of the authority—

(a) to take such steps as in the opinion of the authority will give adequate publicity in its area to the plan or modification; and

(b) to send to the Secretary of State a copy of the plan or, as the case may be, particulars of the modification.

(11) The Secretary of State may give to any waste regulation authority directions as to the time by which the authority is to perform any duty imposed by this section specified in the direction; and it shall be the duty of the authority to comply with the direction.

Modifications etc. (not altering text)
C21 S. 50(3) amended (1.5.1994) by S.I. 1994/1056, regs. 1(1)(3), 19, **Sch. 4 Pt. I para. 9(8)**

Commencement Information
I23 S. 50 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**

51 Functions of waste disposal authorities. E+W

(1) It shall be the duty of each waste disposal authority to arrange—

(a) for the disposal of the controlled waste collected in its area by the waste collection authorities; and

(b) for places to be provided at which persons resident in its area may deposit their household waste and for the disposal of waste so deposited;

in either case by means of arrangements made (in accordance with Part II of Schedule 2 to this Act) with waste disposal contractors, but by no other means.

(2) The arrangements made by a waste disposal authority under subsection (1)(b) above shall be such as to secure that—

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(a) each place is situated either within the area of the authority or so as to be reasonably accessible to persons resident in its area;

(b) each place is available for the deposit of waste at all reasonable times (including at least one period on the Saturday or following day of each week except a week in which the Saturday is 25th December or 1st January);

(c) each place is available for the deposit of waste free of charge by persons resident in the area;

but the arrangements may restrict the availability of specified places to specified descriptions of waste.

(3) A waste disposal authority may include in arrangements made under subsection (1)(b) above arrangements for the places provided for its area for the deposit of household waste free of charge by residents in its area to be available for the deposit of household or other controlled waste by other persons on such terms as to payment (if any) as the authority determines.

(4) For the purpose of discharging its duty under subsection (1)(a) above as respects controlled waste collected as mentioned in that paragraph a waste disposal authority—

(a) shall give directions to the waste collection authorities within its area as to the persons to whom and places at which such waste is to be delivered;

(b) may arrange for the provision, within or outside its area, by waste disposal contractors of places at which such waste may be treated or kept prior to its removal for treatment or disposal;

(c) may make available to waste disposal contractors (and accordingly own) plant and equipment for the purpose of enabling them to keep such waste prior to its removal for disposal or to treat such waste in connection with so keeping it or for the purpose of facilitating its transportation;

(d) may make available to waste disposal contractors (and accordingly hold) land for the purpose of enabling them to treat, keep or dispose of such waste in or on the land;

(e) may contribute towards the cost incurred by persons who produce commercial or industrial waste in providing and maintaining plant or equipment intended to deal with such waste before it is collected; and

(f) may contribute towards the cost incurred by persons who produce commercial or industrial waste in providing or maintaining pipes or associated works connecting with pipes provided by a waste collection authority within the area of the waste disposal authority.

(5) For the purpose of discharging its duties under subsection (1)(b) above as respects household waste deposited as mentioned in that paragraph a waste disposal authority—

(a) may arrange for the provision, within or outside its area, by waste disposal contractors of places at which such waste may be treated or kept prior to its removal for treatment or disposal;

(b) may make available to waste disposal contractors (and accordingly own) plant and equipment for the purpose of enabling them to keep such waste prior to its removal for disposal or to treat such waste in connection with so keeping it or for the purpose of facilitating its transportation; and

(c) may make available to waste disposal contractors (and accordingly hold) land for the purpose of enabling them to treat, keep or dispose of such waste in or on the land.

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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)*

(6) Where the arrangements made under subsection (1)(b) include such arrangements as are authorised by subsection (3) above, subsection (5) above applies as respects household or other controlled waste as it applies as respects household waste.

(7) Subsection (1) above is subject to section 77.

(8) This section shall not apply to Scotland.

Commencement Information

I24 S. 51 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**

VALID FROM 13/12/1991

52 Payments for recycling and disposal etc. of waste. E+W+S

(1) Where, under section 48(2) above, a waste collection authority retains for recycling waste collected by it under section 45 above, the waste disposal authority for the area which includes the area of the waste collection authority shall make to that authority payments, in respect of the waste so retained, of such amounts representing its net saving of expenditure on the disposal of the waste as the authority determines.

(2) Where, by reason of the discharge by a waste disposal authority of its functions, waste arising in its area does not fall to be collected by a waste collection authority under section 45 above, the waste collection authority shall make to the waste disposal authority payments, in respect of the waste not falling to be so collected, of such amounts representing its net saving of expenditure on the collection of the waste as the authority determines.

(3) Where a person other than a waste collection authority, for the purpose of recycling it, collects waste arising in the area of a waste disposal authority which would fall to be collected under section 45 above, the waste disposal authority may make to that person payments, in respect of the waste so collected, of such amounts representing its net saving of expenditure on the disposal of the waste as the authority determines.

(4) Where a person other than a waste collection authority, for the purpose of recycling it, collects waste which would fall to be collected under section 45 above, the waste collection authority may make to that person payments, in respect of the waste so collected, of such amounts representing its net saving of expenditure on the collection of the waste as the authority determines.

(5) The Secretary of State may, by regulations, impose on waste disposal authorities a duty to make payments corresponding to the payments which are authorised by subsection (3) above to such persons in such circumstances and in respect of such descriptions or quantities of waste as are specified in the regulations.

(6) For the purposes of subsections (1), (3) and (5) above the net saving of expenditure of a waste disposal authority on the disposal of any waste retained or collected for recycling is the amount of the expenditure which the authority would, but for the retention or collection, have incurred in having it disposed of less any amount payable by the authority to any person in consequence of the retention or collection for recycling (instead of the disposal) of the waste.

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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)*

(7) For the purposes of subsections (2) and (4) above the net saving of expenditure of a waste collection authority on the collection of any waste not falling to be collected by it is the amount of the expenditure which the authority would, if it had had to collect the waste, have incurred in collecting it .

(8) The Secretary of State shall, by regulations, make provision for the determination of the net saving of expenditure for the purposes of subsections (1), (2), (3), (4) and (5) above.

(9) A waste disposal authority shall be entitled to receive from a waste collection authority such sums as are needed to reimburse the waste disposal authority the reasonable cost of making arrangements under section 51(1) above for the disposal of commercial and industrial waste collected in the area of the waste disposal authority.

(10) A waste disposal authority shall pay to a waste collection authority a reasonable contribution towards expenditure reasonably incurred by the waste collection authority in delivering waste, in pursuance of a direction under section 51(4)(a) above, to a place which is unreasonably far from the waste collection authority's area.

(11) Any question arising under subsection (9) or (10) above shall, in default of agreement between the two authorities in question, be determined by arbitration.

Commencement Information

I25 S. 52 partly in force; s. 52 not in force at Royal Assent see s. 164(3); s. 52(8) in force for certain purposes at 13.12.1991 by S.I. 1991/2829 art. 2; s. 52(1)(3)-(7)(9)-(11) in force at 1.4.1992 see S.I. 1992/266, art. 3.

VALID FROM 01/01/2005

[F31 52A Payments for delivering waste pre-separated E+W

(1) A waste disposal authority in England which is not also a waste collection authority shall pay to a waste collection authority within its area such amounts as are needed to ensure that the collection authority is not financially worse off as a result of having to comply with any separation requirements.

(2) A waste disposal authority in England which is not also a waste collection authority may pay to a waste collection authority within its area—

(a) which performs its duty under section 48(1) above by delivering waste in a state of separation, but

(b) which is not subject to any separation requirements as respects the delivery of that waste,

contributions of such amounts as the disposal authority may determine towards expenditure of the collection authority that is attributable to its delivering the waste in that state.

(3) The Secretary of State may by regulations make provision about how amounts to be paid under subsection (1) above are to be determined.

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(4) Regulations under subsection (3) above may include provision for amounts to be less than they would otherwise be (or to be nil) if conditions specified in the regulations are not satisfied.

(5) Any question arising under subsection (1) above shall, in default of agreement between the paying and receiving authorities, be determined by arbitration.

(6) A waste collection authority in England which is not also a waste disposal authority shall supply the waste disposal authority for its area with such information as the disposal authority may reasonably require—

(a) for the purpose of determining amounts under this section, or

(b) for the purpose of estimating any amounts that would fall to be determined under this section were the collection authority to be subject to particular separation requirements.

(7) In this section "separation requirements", in relation to a waste collection authority, means requirements about separation included in directions given to it under section 51(4)(a) above.**]**

Textual Amendments

F31 S. 52A inserted (E.W.) (1.1.2005) by Waste and Emissions Trading Act 2003 (c. 33), **ss. 31(4)**, 40(1); S.I. 2004/3319, **art. 2**

VALID FROM 01/04/1992

53 Duties of authorities as respects disposal of waste collected: Scotland. S

(1) It shall be the duty of each waste disposal authority to arrange for the disposal of any waste collected by it, in its capacity as a waste collection authority, under section 45 above; and without prejudice to the authority's powers apart from the following provisions of this subsection, the powers exercisable by the authority for the purpose of performing that duty shall include power—

(a) to provide, within or outside its area, places at which to deposit waste before the authority transfers it to a place or plant or equipment provided under the following paragraph; and

(b) to provide, within or outside its area, places at which to dispose of or recycle the waste and plant or equipment for processing, recycling or otherwise disposing of it.

(2) Subsections (7) and (10) of section 45 above shall have effect in relation to a waste disposal authority as if the reference in paragraph (a) of the said subsection (7) to the collection of waste included the disposal of waste under this section and the disposal of anything produced from waste belonging to the authority.

(3) A waste disposal authority may permit another person to use facilities provided by the authority under the preceding provisions of this section and may provide for the use of another person any such facilities as the authority has power to provide under those provisions, and—

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(a) subject to the following paragraph, it shall be the duty of the authority to make a reasonable charge in respect of the use by another person of the facilities unless the authority considers it appropriate not to make a charge;

(b) no charge shall be made under this section in respect of household waste; and

(c) anything delivered to the authority by another person in the course of using the facilities shall belong to the authority and may be dealt with accordingly.

(4) References to waste in subsection (1) above do not include matter removed from privies under section 45(5)(a) or (6) above, and it shall be the duty of a waste collection authority (other than an islands council) by which matter is so removed—

(a) to deliver the matter, in accordance with any directions of the regional council, at a place specified in the directions (which must be in or within a reasonable distance from the waste collection authority's area), to the regional council or another person so specified;

(b) to give to the regional council from time to time a notice stating the quantity of the matter which the waste collection authority expects to deliver to or as directed by the regional council under the preceding paragraph during a period specified in the notice.

(5) Any question arising under paragraph (a) of the preceding subsection as to whether a place is within a reasonable distance from a waste collection authority's area shall, in default of agreement between the waste collection authority and the regional council in question, be determined by a single arbiter appointed, in default of agreement between the parties concerned, by the Secretary of State on the application of any of the parties; and anything delivered to a regional council under that subsection shall belong to the council and may be dealt with accordingly.

(6) This section applies to Scotland only.

Commencement Information

I26 S. 53 wholly in force at 1.4.1992 see s. 164(3) and S.I 1992/266, art. 3.

[F32 54 Special provisions for land occupied by disposal authorities: Scotland. S

(1) Nothing in subsection (1)(a) and (b) of section 33 above shall apply to—

(a) the deposit of controlled waste in or on land in the area of a waste disposal authority which is occupied by the authority; or

(b) the treating, keeping or disposing of controlled waste—

(i) in or on land so occupied;

(ii) by means of any mobile plant operated by the waste disposal authority,

if the requirements of subsection (3) below are satisfied.

(2) If any land occupied by a waste disposal authority is used by the authority as a site in or on which to deposit, treat, keep or dispose of or permit other persons to deposit, treat, keep or dispose of controlled waste or if the authority operates their mobile plant for the purpose aforesaid, it shall be the duty of the waste regulation authority to ensure that the land is used and the mobile plant operated in accordance with conditions which are—

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(a) calculated to prevent the use from causing pollution of the environment or harm to human health or serious detriment to the amenities of the locality in which the land is situated or the mobile plant may be operated; and

(b) specified in a resolution passed by the waste regulation authority in accordance with the following provisions of this section.

(3) The requirements mentioned in subsection (1) above are, where the deposit is made, or the treating, keeping or disposing is carried out—

(a) by the waste disposal authority that, as respects the land or as the case may be the mobile plant, conditions have been specified by the waste regulation authority by virtue of subsection (2)(b) above and (in so far as current) are complied with;

(b) by another person, that it is with the consent of the waste disposal authority and in accordance with any conditions to which the consent is subject.

(4) Where a waste disposal authority proposes that any land which the waste disposal authority occupies or intends to occupy should be used by that authority or that any mobile plant should be operated by the authority as mentioned in the preceding subsection, it shall be the duty of the waste regulation authority before it gives effect to the proposal—

(a) to prepare a statement of the conditions which the waste regulation authority intends to specify in a resolution to be passed by that authority under paragraph (d) below;

(b) to refer the proposal and the statement—

[(i) where the authority is not the council (constituted under section 2 of the Local Government etc. (Scotland) Act 1994) for Orkney Islands, Shetland Islands or Western Isles, to the river purification authority[F33] whose area includes any of the land in question;

(ii) to the Health and Safety Executive; and

(iii) where the authority is not the council (constituted under section 2 of the Local Government etc. (Scotland) Act 1994) for Orkney Islands, Shetland Islands or Western Isles, in the case of a proposal to operate mobile plant, to the river purification authority whose area includes the area of the waste disposal authority;**]**

(c) to consider any representations about the proposal and statement which the river purification authority **[**[F34]or**]** the Health and Safety Executive [[F35]or the general planning authority] makes to it during the allowed period;

(d) subject to subsection (7) of this section, to pass a resolution—

(i) authorising the deposit, keeping, treatment or disposal of any specified description of controlled waste in or on specified land occupied or to be occupied by the waste disposal authority or the treatment or disposal of any specified description of controlled waste by means of specified mobile plant;

(ii) specifying the conditions in accordance with which the land in question or the mobile plant is to be used by the waste disposal authority as mentioned in the preceding subsection;

(e) where any part of the land to be used is land which has been notified under section 28(1) of the [M35]Wildlife and Countryside Act 1981, to—

(i) refer the proposal and the statement to the appropriate nature conservation body, and

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(ii) consider any representations about the proposal and the statement which that body makes to it during the allowed period,

and in this subsection and subsection (13) of this section any reference to the appropriate nature conservation body is a reference, **[**F36Scottish Natural Heritage**]**.

(5) In subsection (4) **[**F37(d)**]** the words "subject to subsection (7) of this section", shall have effect only in a case where the proposal is made by a waste disposal authority other than **[**F37the council (constituted under section 2 of the Local Government etc. (Scotland) Act 1994) for Orkney Islands, Shetland Islands or Western Isles**]**.

(6) A separate resolution under subsection (4)(d) above shall be passed by the authority—

(a) in respect of each item of mobile plant; and

(b) in relation to each site.

(7) If a river purification authority to which a proposal is referred by a waste regulation authority under paragraph (b) of subsection (4) of this section requests the authority not to proceed with the resolution or disagrees with the authority as to the conditions to be specified in the resolution under paragraph (d) of that subsection, either of them may refer the matter to the Secretary of State and it shall be the duty of the authority not to pass a resolution under that paragraph except in accordance with his decision.

(8) A waste regulation authority by which a resolution has been passed under paragraph (d) of subsection (4) of this section or this subsection may vary or rescind the resolution by a subsequent resolution of the authority.

(9) Paragraphs (a) to (c) of subsection (4) and subsection (7) of this section shall with the necessary modifications apply to a proposal to pass a resolution under subsection (8) above and to such a resolution as they apply to such a proposal as is mentioned in those provisions and to a resolution under the said paragraph (d), except that—

(a) those provisions shall not apply to a resolution, or to a proposal to pass a resolution, which only rescinds a previous resolution; and

(b) the waste regulation authority may postpone the reference under the said subsection (4) so far as the authority considers that by reason of an emergency it is appropriate to do so; and

(c) the waste regulation authority may disregard any other authority or the Health and Safety Executive for the purposes of the preceding provisions of this subsection in relation to a resolution which, in the opinion of the waste regulation authority, will not affect the other authority.

(10) If while a resolution is in force under the preceding provisions of this section it appears to the authority which passed the resolution—

(a) that the continuation of activities to which the resolution relates would cause pollution of the environment or harm to human health or would be seriously detrimental to the amenities of the locality affected; and

(b) that the pollution, harm or detriment cannot be avoided by modifying the conditions relating to the carrying on of the activities,

it shall be the duty of the waste disposal authority to discontinue the activities and of the waste regulation authority to rescind the resolution.

(11) If it appears to a river purification authority that activities to which a resolution under this section relates are causing or likely to cause pollution to controlled waters (within the meaning of Part II of the M36Control of Pollution Act 1974) in the area of the

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authority, the authority may, without prejudice to the provisions of the preceding subsection or the said Part II, request the Secretary of State to direct the waste regulation authority which passed the resolution to rescind it and the waste disposal authority to discontinue the activities; and it shall be the duty of a waste disposal authority and a waste regulation authority to comply with a direction given to it under this subsection.

(12) It shall be the duty of waste regulation authorities to have regard to any guidance issued to them by the Secretary of State with regard to the discharge of their functions under this section.

(13) The period allowed to the river purification authority, the Health and Safety Executive and the general planning authority for the making of representations under subsection (4)(c) above or to the appropriate nature conservation body for the making of representations under subsection (4)(e) above about a proposal is the period of twenty-one days beginning with that on which the proposal is received by that body or such longer period as the waste regulation authority and that body agree in writing.

(14) The Secretary of State may, by regulations, make provision as to conditions which are, or are not, to be included in a resolution; and regulations under this subsection may make different provision for different circumstances.

(15) The Secretary of State may as respects any resolution made or to be made by the authority give to the authority directions—

(a) as to the conditions which are or are not to be included in the resolution;

(b) as to the modifications which it would be appropriate to make in the conditions included in a resolution by virtue of subsection (7) above;

(c) as to the rescinding of the resolution;

and it shall be the duty of the authority to give effect to the directions.

(16) Any resolution of a waste disposal authority under Part I of the [M37]Control of Pollution Act 1974 effective immediately before the commencement of this section shall have effect as if it were a resolution of a waste regulation authority under this section.

(17) This section applies to Scotland only.**]**

Textual Amendments

F32 S. 54 repealed (*prosp.*) by 1995 c. 25, ss. 120(2)(3), 125(3), Sch.24 (subject to saving with modifications by **Sch. 23 para. 18** and with ss. 7(6), 115, 117)

F33 S. 54(b)(i)-(iii) substituted (*prosp.*) for subparas. (i)-(iv) by 1994 c. 39, ss. 180(1), 184(2), **Sch. 13 para. 167(9)(a)(i)** (which Sch. 13 para. 167(9) was repealed (1.2.1996) by 1995 c. 25, s. 120(3), **Sch. 24**; S.I. 1996/186, **art. 2**)

F34 Word "or" in s. 54(4)(c) inserted (*prosp.*) by 1994 c. 39, ss. 180(1), 184(2), **Sch. 13 para. 167(9)(a)(ii)(a)** (which Sch. 13 para. 167(9) was repealed (1.2.1996) by 1995 c. 25, s. 120(3), **Sch. 24**; S.I. 1996/186, **art. 2**)

F35 Words in s. 54(4)(c) repealed (*prosp.*) by 1994 c. 39, ss. 180(1)(2), 184(2), **Sch. 13 para. 167(9)(a)(ii)(b)** (which Sch. 13 para. 167(9) was repealed (1.2.1996) by 1995 c. 25, s. 120(3), **Sch. 24**; S.I. 1996/186, **art. 2**), Sch.14

F36 Words in s. 54(4) expressed to be substituted (1.4.1992) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), s. 4(10), **Sch. 2 para. 10(3)**; S.I. 1991/2633, **art. 4**.

F37 Words in s. 54(5) substituted (*prosp.*) by 1994 c. 39, ss. 180(1), 184(2), **Sch. 13 para. 167(9)(b)(i)(ii)** (which Sch. 13 para. 167(9) was repealed (1.2.1996) by 1995 c. 25, s. 120(3), **Sch. 24**; S.I. 1996/186, **art. 2**)

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Modifications etc. (not altering text)

C22 S. 54(1)(a)(b)(2)(3)(4)(d) amended (1.5.1994) by S.I. 1994/1056, regs. 1(1)(3), 19, **Sch. 4 Pt. I para. 9(3)(4)**

Commencement Information

I27 S. 54 wholly in force; s. 54 not in force at Royal Assent see s. 164(3); s. 54(14) in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**; s. 54 wholly in force at 1.5.1994 by S.I. 1994/1096, **art. 2**

Marginal Citations

M35 1981 c. 69.
M36 1974 c. 40.
M37 1974 c. 40.

VALID FROM 01/04/1992

55 Powers for recycling waste. E+W

(1) This section has effect for conferring on waste disposal authorities and waste collection authorities powers for the purposes of recycling waste.

(2) A waste disposal authority may—

(a) make arrangements with waste disposal contractors for them to recycle waste as respects which the authority has duties under section 51(1) above or agrees with another person for its disposal or treatment;

(b) make arrangements with waste disposal contractors for them to use waste for the purpose of producing from it heat or electricity or both;

(c) buy or otherwise acquire waste with a view to its being recycled;

(d) use, sell or otherwise dispose of waste as respects which the authority has duties under section 51(1) above or anything produced from such waste.

(3) A waste collection authority may—

(a) buy or otherwise acquire waste with a view to recycling it;

(b) use, or dispose of by way of sale or otherwise to another person, waste belonging to the authority or anything produced from such waste.

(4) This section shall not apply to Scotland.

Commencement Information

I28 S. 55 wholly in force at 1.4.1992 see s. 164(3) and S.I. 1992/266, **art. 3**.

VALID FROM 01/04/1992

56 Powers for recycling waste: Scotland. E+W+S

(1) Without prejudice to the powers of waste disposal authorities apart from this section, a waste disposal authority may—

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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)*

(a) do such things as the authority considers appropriate for the purpose of—

(i) enabling waste belonging to the authority, or belonging to another person who requests the authority to deal with it under this section, to be recycled; or

(ii) enabling waste to be used for the purpose of producing from it heat or electricity or both;

(b) buy or otherwise acquire waste with a view to its being recycled;

(c) use, sell or otherwise dispose of waste belonging to the authority or anything produced from such waste.

(2) This section applies to Scotland only.

Commencement Information

I29 S. 56 wholly in force at 1.4.1992 see s. 164(3) and S.I. 1992/266, **art. 3**.

VALID FROM 01/05/1994

57 Power of Secretary of State to require waste to be accepted, treated, disposed of or delivered. E+W+S

(1) The Secretary of State may, by notice in writing, direct the holder of any waste management licence to accept and keep, or accept and treat or dispose of, controlled waste at specified places on specified terms.

(2) The Secretary of State may, by notice in writing, direct any person who is keeping controlled waste on any land to deliver the waste to a specified person on specified terms with a view to its being treated or disposed of by that other person.

(3) A direction under this section may impose a requirement as respects waste of any specified kind or as respects any specified consignment of waste.

(4) A direction under subsection (2) above may require the person who is directed to deliver the waste to pay to the specified person his reasonable costs of treating or disposing of the waste.

(5) A person who fails, without reasonable excuse, to comply with a direction under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) A person shall not be guilty of an offence under any other enactment prescribed by the Secretary of State by regulations made for the purposes of this subsection by reason only of anything necessarily done or omitted in order to comply with a direction under this section.

(7) The Secretary of State may, where the costs of the treatment or disposal of waste are not paid or not fully paid in pursuance of subsection (4) above to the person treating or disposing of the waste, pay the costs or the unpaid costs, as the case may be, to that person.

(8) In this section "specified" means specified in a direction under this section.

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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)*

Modifications etc. (not altering text)

C23 S. 57 modified (E.) (13.4.2001) by S.I. 2001/1478, **reg. 2(1)**
S. 57 modified (W.) (21.4.2001) by S.I. 2001/1506, **reg. 2(1)**

Commencement Information

I30 S. 57 not in force at Royal Assent, see s. 164(3); s. 57 in force at 1.5.1994 save for purposes of application to activities specified in art. 2(2) of the commencing S.I. and otherwise in force in relation to those activities in accordance with art. 3 of the commencing S.I. by S.I. 1994/1096, **arts. 2(2)(3)**, 3 (as amended by S.I. 1994/2487, **art. 2** and S.I. 1994/3234, **art. 2**)

VALID FROM 01/05/1994

58 Power of Secretary of State to require waste to be accepted, treated, disposed of or delivered: Scotland. E+W+S

In relation to Scotland, the Secretary of State may give directions to a waste disposal authority to accept and keep, or accept and treat or dispose of, controlled waste at specified places on specified terms; and it shall be the duty of the authority to give effect to the directions.

VALID FROM 01/05/1994

59 Powers to require removal of waste unlawfully deposited. E+W+S

(1) If any controlled waste is deposited in or on any land in the area of a waste regulation authority or waste collection authority in contravention of section 33(1) above, the authority may, by notice served on him, require the occupier to do either or both of the following, that is—

(a) to remove the waste from the land within a specified period not less than a period of twenty-one days beginning with the service of the notice;

(b) to take within such a period specified steps with a view to eliminating or reducing the consequences of the deposit of the waste.

(2) A person on whom any requirements are imposed under subsection (1) above may, within the period of twenty-one days mentioned in that subsection, appeal against the requirement to a magistrates' court or, in Scotland, to the sheriff by way of summary application.

(3) On any appeal under subsection (2) above the court shall quash the requirement if it is satisfied that—

(a) the appellant neither deposited nor knowingly caused nor knowingly permitted the deposit of the waste; or

(b) there is a material defect in the notice;

and in any other case shall either modify the requirement or dismiss the appeal.

(4) Where a person appeals against any requirement imposed under subsection (1) above, the requirement shall be of no effect pending the determination of the appeal; and

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***Changes to legislation:** Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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)*

where the court modifies the requirement or dismisses the appeal it may extend the period specified in the notice.

(5) If a person on whom a requirement imposed under subsection (1) above fails, without reasonable excuse, to comply with the requirement he shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale and to a further fine of an amount equal to one-tenth of level 5 on the standard scale for each day on which the failure continues after conviction of the offence and before the authority has begun to exercise its powers under subsection (6) below.

(6) Where a person on whom a requirement has been imposed under subsection (1) above by an authority fails to comply with the requirement the authority may do what that person was required to do and may recover from him any expenses reasonably incurred by the authority in doing it.

(7) If it appears to a waste regulation authority or waste collection authority that waste has been deposited in or on any land in contravention of section 33(1) above and that—

(a) in order to remove or prevent pollution of land, water or air or harm to human health it is necessary that the waste be forthwith removed or other steps taken to eliminate or reduce the consequences of the deposit or both; or

(b) there is no occupier of the land; or

(c) the occupier neither made nor knowingly permitted the deposit of the waste;

the authority may remove the waste from the land or take other steps to eliminate or reduce the consequences of the deposit or, as the case may require, to remove the waste and take those steps.

(8) Where an authority exercises any of the powers conferred on it by subsection (7) above it shall be entitled to recover the cost incurred by it in removing the waste or taking the steps or both and in disposing of the waste—

(a) in a case falling within subsection (7)(a) above, from the occupier of the land unless he proves that he neither made nor knowingly caused nor knowingly permitted the deposit of the waste;

(b) in any case, from any person who deposited or knowingly caused or knowingly permitted the deposit of any of the waste;

except such of the cost as the occupier or that person shows was incurred unnecessarily.

(9) Any waste removed by an authority under subsection (7) above shall belong to that authority and may be dealt with accordingly.

VALID FROM 06/04/2006

[F38 59ZA Section 59: supplementary power in relation to owner of land E+W

(1) Where the grounds in subsection (2), (3) or (4) below are met, a waste regulation authority or waste collection authority may, by notice served on him, require the owner of any land in its area to comply with either or both of the requirements mentioned in subsection (1)(a) and (b) of section 59 above.

(2) The grounds in this subsection are that it appears to the authority that waste has been deposited in or on the land in contravention of section 33(1) above and—

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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)*

(a) there is no occupier of the land, or

(b) the occupier cannot be found without the authority incurring unreasonable expense.

(3) The grounds in this subsection are that—

(a) the authority has served a notice under subsection (1) of section 59 above imposing a requirement on the occupier of the land,

(b) the occupier of the land is not the same person as the owner of the land, and

(c) the occupier has failed to comply with the requirement mentioned in paragraph (a) above within the period specified in the notice.

(4) The grounds in this subsection are that—

(a) the authority has served a notice under subsection (1) of section 59 above imposing a requirement on the occupier of the land,

(b) the occupier of the land is not the same person as the owner of the land, and

(c) the requirement mentioned in paragraph (a) above has been quashed on the ground specified in subsection (3)(a) of that section.

(5) Subsections (2) to (6) of section 59 above apply in relation to requirements imposed under this section on the owner of the land as they apply in relation to requirements imposed under that section on the occupier of the land but as if in subsection (3) there were inserted after paragraph (a)—

"(aa) in order to comply with the requirement the appellant would be required to enter the land unlawfully; or".

(6) In this section "owner" has the meaning given to it in section 78A(9) below.**]**

Textual Amendments

F38 S. 59ZA inserted (E.W.) (6.4.2006 for E. and 27.10.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 50(2)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 2(i)**

VALID FROM 31/03/2004

[F39 59A Directions in relation to exercise of powers under section 59 E+W

(1) The Secretary of State may issue directions setting out categories of waste to which a waste regulation authority or waste collection authority in England and Wales should give priority for the purposes of exercising its powers under section 59 above.

(2) Priorities set out in directions under subsection (1) above may be different for different authorities or areas.

(3) But nothing in this section or in any directions issued under it affects any power of an authority under section 59 above.**]**

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F39 S. 59A inserted (E.W.) (31.3.2004) by Anti-social Behaviour Act 2003 (c. 38), **ss. 55(4)**, 93; S.I. 2004/690, **art. 3**; S.I. 2004/999, **art. 2**

60 Interference with waste sites and receptacles for waste. E+W+S

(1) No person shall sort over or disturb—

(a) anything deposited at a place for the deposit of waste provided by a waste collection authority, by a waste disposal contractor under arrangements made with a waste disposal authority or by any other local authority or person or, in Scotland, by a waste disposal authority;

(b) anything deposited in a receptacle for waste, whether for public or private use, provided by a waste collection authority, by a waste disposal contractor under arrangements made with a waste disposal authority, by a parish or community council or by a holder of a waste management licence or, in Scotland, by a waste disposal authority or a roads authority; or

(c) the contents of any receptacle for waste which, in accordance with a requirement under section 46 or 47 above, is placed on any highway or, in Scotland, road or in any other place with a view to its being emptied;

unless he has the relevant consent or right to do so specified in subsection (2) below.

(2) The consent or right that is relevant for the purposes of subsection (1)(a), (b) or (c) above is—

(a) in the case of paragraph (a), the consent of the authority, contractor or other person who provides the place for the deposit of the waste;

(b) in the case of paragraph (b), the consent of the authority, contractor or other person who provides the receptacle for the deposit of the waste;

(c) in the case of paragraph (c), the right to the custody of the receptacle, the consent of the person having the right to the custody of the receptacle or the right conferred by the function by or under this Part of emptying such receptacles.

(3) A person who contravenes subsection (1) above shall be liable on summary conviction to a fine of an amount not exceeding level 3 on the standard scale.

Commencement Information

I31 S. 60 wholly in force at 1.5.1994; s. 60 not in force at Royal Assent, see s. 164(3); s. 60 in force for certain purposes at 31.5.1991 by S.I. 1991/1319, **art. 2**; s. 60 in force at 1.5.1994 by S.I. 1994/1096, **art. 2(1)**

[F40 61 Duty of waste regulation authorities as respects closed landfills. E+W+S

(1) Except as respects land in relation to which a site licence is in force, it shall be the duty of every waste regulation authority to cause its area to be inspected from time to time to detect whether any land is in such a condition, by reason of the relevant matters affecting the land, that it may cause pollution of the environment or harm to human health.

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
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(2) The matters affecting land relevant for the purposes of this section are the concentration or accumulation in, and emission or discharge from, the land of noxious gases or noxious liquids caused by deposits of controlled waste in the land.

(3) For the purpose of discharging the duty imposed by subsection (1) above on a waste regulation authority, the authority may enter and inspect any land—

(a) in or on which controlled waste has been deposited at any time under the authority of a waste management licence or a disposal licence under section 5 of the [M38]Control of Pollution Act 1974; or

(b) as respects which the authority has reason to believe that controlled waste has been deposited in the land at any time (whether before or after 1st January 1976); or

(c) in which there are, or the authority has reason to believe there may be, concentrations or accumulations of noxious gases or noxious liquids.

In this subsection "controlled waste" means household, industrial or commercial waste as defined in section 75(5), (6) and (7) below (subject, if the regulations so provide, to regulations under section 63(1) or 75(8) below).

(4) Where it appears to a waste regulation authority that the condition of any land in its area is such as is specified in subsection (1) above it shall be the duty of the authority, from time to time during the period of its responsibility for the land, to enter and inspect the land for the purpose of keeping its condition under review.

(5) Where, at any time during the period of its responsibility for any land, it appears to a waste regulation authority that the condition of the land is, by reason of the relevant matters affecting the land, such that pollution of water is likely to be caused, it shall be the duty of the authority to consult the National Rivers Authority or, in Scotland, the river purification authority whose area includes the land in question as to the discharge by the authority of the duty imposed on it in relation to the land by subsection (7) below.

(6) The "period of responsibility" for any land for the purposes of subsections (4) and (5) above extends from the time at which the condition of the land first appears to the authority to be such as is referred to in that subsection until the authority is satisfied that no pollution of the environment or harm to human health will be caused by reason of the relevant matters affecting the land.

(7) Where, on an inspection by a waste regulation authority of any land under this section, it appears to the authority that the condition of the land is, by reason of the relevant matters affecting the land, such that pollution of the environment or harm to human health is likely to be caused it shall be the duty of the authority to do such works and take such other steps (whether on the land affected or on adjacent land) as appear to the authority to be reasonable to avoid such pollution or harm.

(8) Where an authority exercises in relation to waste on any land the duty imposed by subsection (7) above, the authority shall, except in a case falling within subsection (9) below, be entitled to recover the cost or part of the cost incurred in doing so from the person who is for the time being the owner of the land, except such of the cost as that person shows was incurred unreasonably.

(9) Subsection (8) above does not apply in a case where the authority accepted the surrender under section 39 above of the waste management licence which authorised the activities in the course of which the waste was deposited.

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(10) In deciding whether to recover the cost and, if so, how much to recover of the cost which it is entitled to recover under subsection (8) above, the authority shall have regard to any hardship which the recovery may cause to the owner of the land.

(11) It shall be the duty of waste regulation authorities to have regard to any guidance issued to them by the Secretary of State as respects the discharge of their functions under this section.**]**

Textual Amendments

F40 S. 61 repealed (1.4.2000 for E., 14.7.2000 for S. and otherwise*prosp.*) by 1995 c. 25, s. 120(3), Sch. 22 para. 79, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 2000/340, **art. 2(1)(b)(c)** (with art. 3); S.S.I. 2000/180, **art. 2(1)(b)(c)** (with art. 3)

Marginal Citations

M38 1974 c. 40.

61 Duty of waste regulation authorities as respects closed landfills. E+W+S

(1) Except as respects land in relation to which a site licence is in force, it shall be the duty of every waste regulation authority to cause its area to be inspected from time to time to detect whether any land is in such a condition, by reason of the relevant matters affecting the land, that it may cause pollution of the environment or harm to human health.

(2) The matters affecting land relevant for the purposes of this section are the concentration or accumulation in, and emission or discharge from, the land of noxious gases or noxious liquids caused by deposits of controlled waste in the land.

(3) For the purpose of discharging the duty imposed by subsection (1) above on a waste regulation authority, the authority may enter and inspect any land—

(a) in or on which controlled waste has been deposited at any time under the authority of a waste management licence or a disposal licence under section 5 of the [M149]Control of Pollution Act 1974; or

(b) as respects which the authority has reason to believe that controlled waste has been deposited in the land at any time (whether before or after 1st January 1976); or

(c) in which there are, or the authority has reason to believe there may be, concentrations or accumulations of noxious gases or noxious liquids.

In this subsection "controlled waste" means household, industrial or commercial waste as defined in section 75(5), (6) and (7) below (subject, if the regulations so provide, to regulations under section 63(1) or 75(8) below).

(4) Where it appears to a waste regulation authority that the condition of any land in its area is such as is specified in subsection (1) above it shall be the duty of the authority, from time to time during the period of its responsibility for the land, to enter and inspect the land for the purpose of keeping its condition under review.

(5) Where, at any time during the period of its responsibility for any land, it appears to a waste regulation authority that the condition of the land is, by reason of the relevant matters affecting the land, such that pollution of water is likely to be caused, it shall be the duty of the authority to consult the National Rivers Authority or, in Scotland, the

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river purification authority whose area includes the land in question as to the discharge by the authority of the duty imposed on it in relation to the land by subsection (7) below.

(6) The "period of responsibility" for any land for the purposes of subsections (4) and (5) above extends from the time at which the condition of the land first appears to the authority to be such as is referred to in that subsection until the authority is satisfied that no pollution of the environment or harm to human health will be caused by reason of the relevant matters affecting the land.

(7) Where, on an inspection by a waste regulation authority of any land under this section, it appears to the authority that the condition of the land is, by reason of the relevant matters affecting the land, such that pollution of the environment or harm to human health is likely to be caused it shall be the duty of the authority to do such works and take such other steps (whether on the land affected or on adjacent land) as appear to the authority to be reasonable to avoid such pollution or harm.

(8) Where an authority exercises in relation to waste on any land the duty imposed by subsection (7) above, the authority shall, except in a case falling within subsection (9) below, be entitled to recover the cost or part of the cost incurred in doing so from the person who is for the time being the owner of the land, except such of the cost as that person shows was incurred unreasonably.

(9) Subsection (8) above does not apply in a case where the authority accepted the surrender under section 39 above of the waste management licence which authorised the activities in the course of which the waste was deposited.

(10) In deciding whether to recover the cost and, if so, how much to recover of the cost which it is entitled to recover under subsection (8) above, the authority shall have regard to any hardship which the recovery may cause to the owner of the land.

(11) It shall be the duty of waste regulation authorities to have regard to any guidance issued to them by the Secretary of State as respects the discharge of their functions under this section.

Marginal Citations
M149 1974 c. 40.

VALID FROM 26/01/2009

I[F41] Waste reduction schemes

Textual Amendments
F41 S. 60A inserted (prospectively in accordance with ss. 72-75 of the amending Act) (E.W.) by Climate Change Act 2008 (c. 27), ss. 71, 100, **Sch. 5 para. 1** and which amending provisions repealed (never in force) (15.1.2012) by Localism Act 2011 (c. 20), ss. 47, 240(1)(e), **Sch. 25 Pt. 8**

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60A Waste reduction schemes E+W

A waste collection authority whose area is in England may make a waste reduction scheme in accordance with Schedule 2AA to this Act.**]**

VALID FROM 18/02/1993

Special waste and non-controlled waste

VALID FROM 11/08/1995

62 Special provision with respect to certain dangerous or intractable waste. U.K.

(1) If the Secretary of State considers that controlled waste of any kind is or may be so dangerous or difficult to treat, keep or dispose of that special provision is required for dealing with it he shall make provision by regulations for the treatment, keeping or disposal of waste of that kind ("special waste").

(2) Without prejudice to the generality of subsection (1) above, the regulations may include provision—

(a) for the giving of directions by waste regulation authorities with respect to matters connected with the treatment, keeping or disposal of special waste;

(b) for securing that special waste is not, while awaiting treatment or disposal in pursuance of the regulations, kept at any one place in quantities greater than those which are prescribed and in circumstances which differ from those which are prescribed;

(c) in connection with requirements imposed on consignors or consignees of special waste, imposing, in the event of non-compliance, requirements on any person carrying the consignment to re-deliver it as directed;

(d) for requiring the occupier of premises on which special waste is situated to give notice of that fact and other prescribed information to a prescribed authority;

(e) for the keeping of records by waste regulation authorities and by persons who import, export, produce, keep, treat or dispose of special waste or deliver it to another person for treatment or disposal, for the inspection of the records and for the furnishing by such persons to waste regulation authorities of copies of or information derived from the records;

(f) for the keeping in the register under section 64(1) below of copies of such of those records, or such information derived from those records, as may be prescribed;

(g) providing that a contravention of the regulations shall be an offence and prescribing the maximum penalty for the offence, which shall not exceed, on summary conviction, a fine at level 5 on the standard scale and, on conviction on indictment, imprisonment for a term of two years or a fine or both.

(3) Without prejudice to the generality of subsection (1) above, the regulations may include provision—

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(a) for the supervision by waste regulation authorities of activities authorised by virtue of the regulations and for the recovery of the costs incurred by them from the persons carrying on the activities;

(b) as to the recovery of expenses or other charges for the treatment, keeping or disposal or the re-delivery of special waste in pursuance of the regulations;

(c) as to appeals to the Secretary of State from decisions of waste regulation authorities under the regulations.

(4) In the application of this section to Northern Ireland "waste regulation authority" means a district council established under the [M39]Local Government Act (Northern Ireland) 1972.

Extent Information

E2 S. 62: for extent of s. 62(2)(e) to Northern Ireland see s. 164(4)

Marginal Citations

M39 1972 c. 9 (N.I.).

VALID FROM 16/07/2005

[F42 62A Lists of waste displaying hazardous properties E+W

(1) The Secretary of State shall by regulations list any controlled waste in England which—

(a) is not listed as a hazardous waste in the Hazardous Waste List; and

(b) appears to him to display any of the properties listed in Annex III to Council Directive 91/689/EEC.

(2) The National Assembly for Wales shall by regulations list any controlled waste in Wales which—

(a) is not listed as a hazardous waste in the Hazardous Waste List; and

(b) appears to it to display any of the properties listed in Annex III to Council Directive 91/689/EEC.

(3) In this section çthe Hazardous Waste ListÇ means the list referred to in the first indent of Article 1(4) of Council Directive 91/689/EEC.

(4) Regulations under subsection (2) shall be made by statutory instrument but section 161(2) shall not apply to regulations under that subsection.**]**

Textual Amendments

F42 S. 62A inserted (E.W.) (16.7.2005) by The Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005/894), regs. 1, **72(3)** (with reg. 75)

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
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63 Waste other than controlled waste. E+W+S

(1) The Secretary of State may, after consultation with such bodies as he considers appropriate, make regulations providing that prescribed provisions of this Part shall have effect in a prescribed area—

(a) as if references in those provisions to controlled waste or controlled waste of a kind specified in the regulations included references to such waste as is mentioned in section 75(7)(c) below which is of a kind so specified; and

(b) with such modifications as may be prescribed;

and the regulations may make such modifications of other enactments as the Secretary of State considers appropriate.

(2) A person who—

(a) deposits any waste other than controlled waste, or

(b) knowingly causes or knowingly permits the deposit of any waste other than controlled waste,

in a case where, if the waste were special waste and any waste management licence were not in force, he would be guilty of an offence under section 33 above shall, subject to subsection (3) below, be guilty of that offence and punishable accordingly.

(3) No offence is committed by virtue of subsection (2) above if the act charged was done under and in accordance with any consent, licence, approval or authority granted under any enactment (excluding any planning permission under the enactments relating to town and country planning).

(4) Section 45(2) and section 47(1) above shall apply to waste other than controlled waste as they apply to controlled waste.

Commencement Information

I32 S. 63 partly in force; s. 63 not in force at Royal Assent see s. 164(3); s. 63(1) in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**

VALID FROM 19/11/1998

[F43 Powers of waste collection authority or waste disposal authority in relation to generation of controlled waste

Textual Amendments

F43 S. 63A and cross-heading inserted (19.11.1998) by 1998 c. 44, **s. 1**

F44 63A Power to take steps to minimise generation of controlled waste. E+W+S

(1) A relevant authority may do, or arrange for the doing of, or contribute towards the expenses of the doing of, anything which in its opinion is necessary or expedient for the purpose of minimising the quantities of controlled waste, or controlled waste of any description, generated in its area.

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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) Where a relevant authority in England ("the first authority") proposes to exercise any of its powers under subsection (1), it shall before doing so consult about the proposal every other relevant authority whose area includes all or part of the area of the first authority.

(3) In this section "relevant authority" means a waste collection authority or a waste disposal authority.**]**

Textual Amendments

F44 S. 63A and cross-heading inserted (19.11.1998) by 1998 c. 44, **s. 1**

VALID FROM 18/02/1993

Publicity

64 Public registers. **E+W+S**

(1) Subject to sections 65 and 66 below, it shall be the duty of each waste regulation authority to maintain a register containing prescribed particulars of or relating to—

(a) current or recently current licences ("licences") granted by the authority;

(b) current or recently current applications to the authority for licences;

(c) applications made to the authority under section 37 above for the modification of licences;

(d) notices issued by the authority under section 37 above effecting the modification of licences;

(e) notices issued by the authority under section 38 above effecting the revocation or suspension of licences or imposing requirements on the holders of licences;

(f) appeals under section 43 above relating to decisions of the authority;

(g) certificates of completion issued by the authority under section 39(9) above;

(h) notices issued by the authority imposing requirements on the holders of licences under section 42(5) above;

(i) convictions of the holders of licences granted by the authority for any offence under this Part (whether in relation to a licence so granted or not);

(j) the occasions on which the authority has discharged any function under section 42 or 61 above;

(k) directions given to the authority under any provision of this Part by the Secretary of State;

(l) in Scotland, resolutions made by the authority under section 54 above;

(m) such matters relating to the treatment, keeping or disposal of waste in the area of the authority or any pollution of the environment caused thereby as may be prescribed;

and any other document or information required to be kept in the register under any provision of this Act.

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(2) Where information of any description is excluded from any register by virtue of section 66 below, a statement shall be entered in the register indicating the existence of information of that description.

(3) For the purposes of subsection (1) above licences are "recently" current for the period of twelve months after they cease to be in force and applications for licences are "recently" current if they relate to a licence which is current or recently current or, in the case of an application which is rejected, for the period of twelve months beginning with the date on which the waste regulation authority gives notice of rejection or, as the case may be, on which the application is deemed by section 36(9) above to have been rejected.

(4) It shall be the duty of each waste collection authority in England which is not a waste regulation authority to maintain a register containing prescribed particulars of such information contained in any register maintained under subsection (1) above as relates to the treatment, keeping or disposal of controlled waste in the area of the authority.

(5) Waste regulation authorities in England which are not waste collection authorities shall furnish any waste collection authorities in their areas with the particulars necessary to enable them to discharge their duty under subsection (4) above.

(6) Each waste regulation authority and waste collection authority shall secure that any register maintained under this section is open to inspection at its principal office by members of the public free of charge at all reasonable hours and shall afford to members of the public reasonable facilities for obtaining, on payment of reasonable charges, copies of entries in the register.

(7) Registers under this section may be kept in any form.

(8) In this section "prescribed" means prescribed in regulations by the Secretary of State.

Commencement Information

I33 S. 64 wholly in force at 1.5.1994; s. 64 not in force at Royal Assent, see s. 164(3); s. 64(1)(4)(8) in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**; s. 64 in force in so far as not already in force at 1.5.1994 by S.I. 1994/1096, **art. 2(1)**

65 Exclusion from registers of information affecting national security. E+W+S

(1) No information shall be included in a register maintained under section 64 above (a "register") if and so long as, in the opinion of the Secretary of State, the inclusion in the register of that information, or information of that description, would be contrary to the interests of national security.

(2) The Secretary of State may, for the purpose of securing the exclusion from registers of information to which subsection (1) above applies, give to the authorities maintaining registers directions—

(a) specifying information, or descriptions of information, to be excluded from their registers; or

(b) specifying descriptions of information to be referred to the Secretary of State for his determination;

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and no information referred to the Secretary of State in pursuance of paragraph (b) above shall be included in any such register until the Secretary of State determines that it should be so included.

(3) An authority maintaining a register shall notify the Secretary of State of any information it excludes from the register in pursuance of directions under subsection (2) above.

(4) A person may, as respects any information which appears to him to be information to which subsection (1) above may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and, if he does so—

(a) he shall notify the authority concerned that he has done so; and

(b) no information so notified to the Secretary of State shall be included in the register kept by that authority until the Secretary of State has determined that it should be so included.

Modifications etc. (not altering text)

C24 S. 65(1)(2)(4): functions exercisable concurrently (1.7.1999) by the Scottish Ministers and Ministers of the Crown after consulatation with the Secretary of State by S.I. 1999/1750, art. 3, **Sch. 2**

Commencement Information

I34 S. 65 wholly in force at 1.5.1994; s. 65 not in force at Royal Assent, see s. 164(3); s. 65(2) in force for certain purposes at 18.2.1993 by S.I. 1993/274, **art. 2(2)**; s. 65 in force in so far as not already in force at 1.5.1994 by S.I. 1994/1096, **art. 2(1)**

66 Exclusion from registers of certain confidential information. E+W+S

(1) No information relating to the affairs of any individual or business shall be included in a register maintained under section 64 above (a "register"), without the consent of that individual or the person for the time being carrying on that business, if and so long as the information—

(a) is, in relation to him, commercially confidential; and

(b) is not required to be included in the register in pursuance of directions under subsection (7) below;

but information is not commercially confidential for the purposes of this section unless it is determined under this section to be so by the authority maintaining the register or, on appeal, by the Secretary of State.

(2) Where information is furnished to an authority maintaining a register for the purpose of—

(a) an application for, or for the modification of, a licence;

(b) complying with any condition of a licence; or

(c) complying with a notice under section 71(2) below;

then, if the person furnishing it applies to the authority to have the information excluded from the register on the ground that it is commercially confidential (as regards himself or another person), the authority shall determine whether the information is or is not commercially confidential.

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(3) A determination under subsection (2) above must be made within the period of fourteen days beginning with the date of the application and if the authority fails to make a determination within that period it shall be treated as having determined that the information is commercially confidential.

(4) Where it appears to an authority maintaining a register that any information (other than information furnished in circumstances within subsection (2) above) which has been obtained by the authority under or by virtue of any provision of this Part might be commercially confidential, the authority shall—

(a) give to the person to whom or whose business it relates notice that that information is required to be included in the register unless excluded under this section; and

(b) give him a reasonable opportunity—

(i) of objecting to the inclusion of the information on the grounds that it is commercially confidential; and

(ii) of making representations to the authority for the purpose of justifying any such objection;

and, if any representations are made, the authority shall, having taken the representations into account, determine whether the information is or is not commercially confidential.

(5) Where, under subsection (2) or (4) above, an authority determines that information is not commercially confidential—

(a) the information shall not be entered in the register until the end of the period of twenty-one days beginning with the date on which the determination is notified to the person concerned;

(b) that person may appeal to the Secretary of State against the decision;

and, where an appeal is brought in respect of any information, the information shall not be entered in the register pending the final determination or withdrawal of the appeal.

(6) Subsections (2) and (8) of section 43 above shall apply in relation to appeals under subsection (5) above.

(7) The Secretary of State may give to the authorities maintaining registers directions as to specified information, or descriptions of information, which the public interest requires to be included in the registers notwithstanding that the information may be commercially confidential.

(8) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this section at the expiry of the period of four years beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the authority for the information to remain excluded from the register on the ground that it is still commercially confidential and the authority shall determine whether or not that is the case.

(9) Subsections (5) and (6) above shall apply in relation to a determination under subsection (8) above as they apply in relation to a determination under subsection (2) or (4) above.

(10) The Secretary of State may, by order, substitute for the period for the time being specified in subsection (3) above such other period as he considers appropriate.

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(11) Information is, for the purposes of any determination under this section, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that individual or person.

Commencement Information

I35 S. 66 wholly in force at 1.5.1994; s. 66 not in force at Royal Assent, see s. 164(3); s. 66(7) in force for certain purposes at 18.2.1993 by S.I. 1993/274, **art. 2(2)**; s. 66 in force in so far as not already in force at 1.5.1994 by S.I. 1994/1096, **art. 2(1)**

VALID FROM 01/05/1994

67 Annual reports. E+W+S

(1) Each waste regulation authority shall, for each financial year of the authority, prepare and publish a report on the discharge by the authority of its functions under this Part or under any relevant instrument.

(2) A report under subsection (1) above shall include information as respects—

(a) the licences respectively applied for, granted, in force, modified, revoked, suspended, surrendered or transferred during the year and the appeals made against decisions taken in respect of them;

(b) the exercise by the authority of its powers under sections 42, 54, 61 or 62 of this Act or any relevant instrument;

(c) the implementation of the authority's plan under section 50 above, with particular reference to recycling waste;

(d) the number and description of prosecutions brought under this Part; and

(e) the cost incurred, and the sums received, by the authority in discharging its functions under this Part.

(3) Each waste regulation authority shall—

(a) arrange for the report for any year under subsection (1) above to be published not later than the end of the period of six months following the end of the year to which the report relates; and

(b) when it publishes it, send a copy of the report to the Secretary of State.

(4) In subsections (1) and (2) above "relevant instrument" means any instrument under section 2(2) of the [M40]European Communities Act 1972 under which waste regulation authorities have functions.

Marginal Citations

M40 1972 c. 68.

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Supervision and enforcement

68 Functions of Secretary of State and appointment etc. of inspectors. E+W+S

(1) The Secretary of State shall have the function of keeping under review the discharge by waste regulation authorities of their functions under this Part.

(2) The Secretary of State may appoint as inspectors (under whatever title he may determine) such persons having suitable qualifications as he thinks necessary for assisting him in discharging his functions under this Part, and may terminate any appointment made under this subsection.

(3) Any waste regulation authority having functions under this Part may appoint as inspectors (under whatever title the authority may determine) such persons having suitable qualifications as the authority thinks necessary for carrying this Part into effect in the authority's area, and may terminate any appointment made under this subsection.

(4) An inspector shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under section 69 or 70 below if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(5) In the following provisions of this Part "inspector" means a person appointed as an inspector under subsection (2) or (3) above.

Modifications etc. (not altering text)
C25 S. 68(3)-(5) applied (1.5.1994) by S.I. 1994/1056, **reg. 20(8)**.
S. 68(3)-(5) amended (1.5.1994) by S.I. 1994/1056, reg. 19, **Sch. 4 Pt. I para. 13(2)**.

Commencement Information
I36 S. 68 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**

VALID FROM 01/04/1992

69 Powers of entry etc. of inspectors. E+W+S

(1) An inspector may, on production (if so required) of his authority, exercise any of the powers specified in subsection (3) below for the purpose of—

(a) discharging any functions conferred or imposed by or under this Part on the Secretary of State or, as the case may be, a waste regulation authority or on the inspector;

(b) determining whether, and if so in what manner, such a function should be discharged; or

(c) determining whether any provision of this Part or of an instrument under it is being complied with.

(2) Those powers are exercisable in relation to—

(a) land in or on which, or vessels in or by means of which, controlled waste is being or has been deposited, treated, kept or disposed of;

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(b) land in or on which, or vessels in or by means of which, controlled waste is (on reasonable grounds) believed to be being, or to have been, deposited, treated, kept or disposed of;

(c) land which is or is (on reasonable grounds) believed to be affected by the deposit, treatment, keeping or disposal of controlled waste on other land;

and in this section "premises" means any such land or any such vessel.

(3) The powers of an inspector referred to above are—

(a) at any reasonable time (or, in a situation in which in his opinion there is an immediate risk of serious pollution of the environment or serious harm to human health, at any time) to enter premises which he has reason to believe it is necessary for him to enter;

(b) on entering any premises by virtue of paragraph (a) above to take with him—

(i) any person duly authorised by the Secretary of State or, as the case may be, the waste regulation authority and, if the inspector has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and

(ii) any equipment or materials required for any purpose for which the power of entry is being exercised;

(c) to make such examination and investigation as may in any circumstances be necessary;

(d) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (c) above;

(e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c) above;

(f) to take samples of any articles or substances found on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;

(g) in the case of any article or substance found in any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause pollution of the environment or harm to human health, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is necessary);

(h) in the case of any such article or substance as is mentioned in paragraph (g) above, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—

(i) to examine it and do to it anything which he has power to do under that paragraph;

(ii) to ensure that it is not tampered with before his examination of it is completed;

(iii) to ensure that it is available for use as evidence in any proceedings under this Part;

(i) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (c) above to answer (in the absence of persons other than a person nominated to be present and any persons whom the inspector may allow to

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be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers;

(j) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which are required to be kept under this Part or it is necessary for him to see for the purposes of an examination or investigation under paragraph (c) above and to inspect, and takes copies of, or of any entry in, the records;

(k) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by this section.

(4) The Secretary of State may by regulations make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under subsection (3)(f) above.

(5) Where an inspector proposes to exercise the power conferred by subsection (3)(g) above in the case of an article or substance found on any premises, he shall, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(6) Before exercising the power conferred by subsection (3)(g) above in the case of any article or substance, an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under the power.

(7) Where under the power conferred by subsection (3)(h) above an inspector takes possession of any article or substance found on any premises, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such substance under that power an inspector shall, if it is practical for him to do so, take a sample of it and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

(8) No answer given by a person in pursuance of a requirement imposed under subsection (3)(i) above shall be admissible in evidence in England and Wales against that person in any proceedings or in Scotland against that person in any criminal proceedings.

(9) Any person who—

(a) fails, without reasonable excuse, to comply with any requirement imposed under this section;

(b) prevents any other person from appearing before or from answering any question to which an inspector may by virtue of subsection (3) above require an answer; or

(c) intentionally obstructs an inspector in the exercise or performance of his powers or duties;

shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

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(10) The powers conferred by subsection (3)(a), (c), (e) and (f) above shall also be exercisable by any person authorised for the purpose in writing by the Secretary of State.

(11) Nothing in this section shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court or, in relation to Scotland, on an order for the production of documents in an action in the Court of Session.

Modifications etc. (not altering text)

C26 S. 69 amended (1.5.1994) by S.I. 1994/1056, reg. 19, **Sch. 4 Pt. I para. 13(2)**.
S. 69 applied (1.5.1994) by S.I. 1994/1056, **reg. 20(8)**.

C27 S. 69(2) amended (1.5.1994) by S.I. 1994/1056, reg. 19, **Sch. 4 Pt. I para.9(3)(4)**.

Commencement Information

I37 S. 69 wholly in force at 01.04.1992 see s. 164(3) and S.I. 1991/2829 art. 4.

VALID FROM 01/04/1992

70 Power to deal with cause of imminent danger of serious pollution etc. E+W +S

(1) Where, in the case of any article or substance found by him on any premises which he has power to enter, an inspector has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious pollution of the environment or serious harm to human health, he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).

(2) Before there is rendered harmless under this section—

(a) any article that forms part of a batch of similar articles; or

(b) any substance,

the inspector shall, if it is practicable for him to do so, take a sample of it and give to a responsible person at the premises where the article or substance was found by him a portion of the sample marked in a manner sufficient to identify it.

(3) As soon as may be after any article or substance has been seized and rendered harmless under this section, the inspector shall prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and so dealt with by him, and shall—

(a) give a signed copy of the report to a responsible person at the premises where the article or substance was found by him; and

(b) unless that person is the owner of the article or substance, also serve a signed copy of the report on the owner;

and if, where paragraph (b) above applies, the inspector cannot after reasonable inquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under paragraph (a) above.

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(4) Any person who intentionally obstructs an inspector in the exercise of his powers under this section shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

Commencement Information

I38 S. 70 wholly in force at 01.04.1992 see s. 164(3) and S.I. 1991/2829, **art. 4**.

71 Obtaining of information from persons and authorities. E+W+S

(1) For the purpose of the discharge of his functions under this Part, the Secretary of State may, by notice in writing served on a waste regulation authority, require the authority to furnish such information about the discharge of its functions under this Part as he may require.

(2) For the purpose of the discharge of their respective functions under this Part—

(a) the Secretary of State, and

(b) a waste regulation authority,

may, by notice in writing served on him, require any person to furnish such information specified in the notice as the Secretary of State or the authority, as the case may be, reasonably considers he or it needs, in such form and within such period following service of the notice as is so specified.

(3) A person who—

(a) fails, without reasonable excuse, to comply with a requirement imposed under subsection (2) above; or

(b) in furnishing any information in compliance with such a requirement, makes any statement which he knows to be false or misleading in a material particular, or recklessly makes a statement which is false or misleading in a material particular;

shall be liable—

(i) on summary conviction, to a fine not exceeding the statutory maximum;

(ii) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

Modifications etc. (not altering text)

C28 S. 71(2)(3) applied (1.5.1994) by S.I. 1994/1056, **reg. 20(8)**.
S. 71(2)(3) amended (1.5.1994) by S.I. 1994/1056, reg. 19, **Sch. 4 Pt. I para. 13(2)**.

Commencement Information

I39 S. 71 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
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72 Default powers of Secretary of State. E+W

(1) If the Secretary of State is satisfied that a waste regulation authority has failed, in any respect, to discharge any function under this Part which it ought to have discharged, he may make an order declaring the authority to be in default.

(2) The failure to discharge any such function may be a failure in a class of case to which the function relates or a failure in a particular case.

(3) An order made under subsection (1) above which declares an authority to be in default may, for the purpose of remedying the default, direct the authority ("the defaulting authority") to perform any function specified in the order (whether in relation to a class of case or a particular case) and may specify the manner in which and the time or times within which the function is to be performed by the authority.

(4) If the defaulting authority fails to comply with any direction contained in such an order the Secretary of State may, instead of enforcing the order by mandamus, make an order transferring to himself any function of the authority specified in the order, whether in relation to all the classes of case to which the function relates or to such of those classes or, as the case may be, such particular case as is specified in the order.

(5) Where any function of a defaulting authority is transferred under subsection (4) above, the amount of any expenses which the Secretary of State certifies were incurred by him in performing the function shall on demand be paid to him by the defaulting authority.

(6) Any expenses required to be paid by a defaulting authority under subsection (5) above shall be defrayed by the authority in like manner, and shall be debited to the like account, as if the functions had not been transferred and the expenses had been incurred by the authority in performing them.

(7) The Secretary of State may by order vary or revoke any order previously made by him under this section.

(8) An order transferring any functions of a defaulting authority may provide for the transfer to the Secretary of State of such of the property, rights, liabilities and obligations of the authority as he considers appropriate; and where such an order is revoked the Secretary of State may, by the revoking order or a subsequent order, make such provision as he considers appropriate with respect to the property, rights, liabilities and obligations held by him for the purposes of the transferred function.

(9) Any order under this section may include such incidental, supplemental and transitional provisions as the Secretary of State considers appropriate.

(10) This section shall not apply to Scotland.

Commencement Information

I40 S. 72 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**

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Supplemental

VALID FROM 01/04/1992

73 Appeals and other provisions relating to legal proceedings and civil liability. **E+W+S**

(1) An appeal against any decision of a magistrates' court under this Part (other than a decision made in criminal proceedings) shall lie to the Crown Court at the instance of any party to the proceedings in which the decision was given if such an appeal does not lie to the Crown Court by virtue of any other enactment.

(2) In Scotland an appeal against any decision of the sheriff under this Part (other than a decision made in criminal proceedings) shall lie to the Court of Session at the instance of any party to the proceedings in which the decision was given if such an appeal does not lie to the Court of Session by virtue of any other enactment.

(3) Where a person appeals to the Crown Court or the Court of Session against a decision of a magistrates' court or the sheriff dismissing an appeal against any requirement imposed under this Part which was suspended pending determination of that appeal, the requirement shall again be suspended pending the determination of the appeal to the Crown Court or Court of Session.

(4) Where an appeal against a decision of any authority lies to a magistrates' court or to the sheriff by virtue of any provision of this Part, it shall be the duty of the authority to include in any document by which it notifies the decision to the person concerned a statement indicating that such an appeal lies and specifying the time within which it must be brought.

(5) Where on an appeal to any court against or arising out of a decision of any authority under this Part the court varies or reverses the decision it shall be the duty of the authority to act in accordance with the court's decision.

(6) Where any damage is caused by waste which has been deposited in or on land, any person who deposited it, or knowingly caused or knowingly permitted it to be deposited, in either case so as to commit an offence under section 33(1) or 63(2) above, is liable for the damage except where the damage—

(a) was due wholly to the fault of the person who suffered it; or

(b) was suffered by a person who voluntarily accepted the risk of the damage being caused;

but without prejudice to any liability arising otherwise than under this subsection.

(7) The matters which may be proved by way of defence under section 33(7) above may be proved also by way of defence to an action brought under subsection (6) above.

(8) In subsection (6) above—

"damage" includes the death of, or injury to, any person (including any disease and any impairment of physical or mental condition); and

"fault" has the same meaning as in the [M41]Law Reform (Contributory Negligence) Act 1945.

(9) For the purposes of the following enactments—

(a) the [M42]Fatal Accidents Act 1976;

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Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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) the Law Reform (Contributory Negligence) Act 1945; and

(c) the [M43]Limitation Act 1980;

and for the purposes of any action of damages in Scotland arising out of the death of, or personal injury to, any person, any damage for which a person is liable under subsection (6) above shall be treated as due to his fault.

Extent Information

E3 For extent see s. 164(4)(5).

Commencement Information

I41 S. 73 wholly in force at 1.5.1994; s. 73 not in force at Royal Assent, see s. 164(3); s. 73(1)-(5) in force at 1.4.1992 by S.I 1992/266, art. 3; s. 73 in force in so far as not already in force at 1.5.1994 by S.I. 1994/1096, **art. 2(1)**

Marginal Citations

M41 1945 c. 28.
M42 1976 c. 30.
M43 1980 c. 58.

VALID FROM 16/03/2006

[F45 73A Use of fixed penalty receipts E+W

(1) The Environment Agency must pay amounts received by it under section 34A above to the Secretary of State.

(2) A waste collection authority may use amounts received by it under section 34A or 47ZA above (its "fixed penalty receipts") only for the purposes of—

(a) its functions under this Part (including functions relating to the enforcement of offences under this Part); and

(b) such other of its functions as may be specified in regulations made by the appropriate person.

(3) Regulations under subsection (2)(b) above may (in particular) have the effect that a waste collection authority may use its fixed penalty receipts for the purposes of any of its functions.

(4) A waste collection authority must supply the appropriate person with such information relating to its use of its fixed penalty receipts as the appropriate person may require.

(5) The appropriate person may by regulations—

(a) make provision for what a waste collection authority is to do with its fixed penalty receipts—

(i) pending their being used for the purposes of functions of the authority referred to in subsection (2) above;

(ii) if they are not so used before such time after their receipt as may be specified by the regulations;

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(b) make provision for accounting arrangements in respect of a waste collection authority's fixed penalty receipts.

(6) The provision that may be made under subsection (5)(a)(ii) above includes (in particular) provision for the payment of sums to a person (including the appropriate person) other than the waste collection authority.

(7) Before making regulations under this section, the appropriate person must consult—

(a) the waste collection authorities to which the regulations are to apply;

(b) such other persons as the appropriate person thinks fit.

(8) Regulations under this section may make different provision for different purposes (including different provision in relation to different authorities or different descriptions of authority).

(9) The powers to make regulations conferred by this section are, for the purposes of subsection (1) of section 100 of the Local Government Act 2003, to be regarded as included among the powers mentioned in subsection (2) of that section.**]**

Textual Amendments

F45 S. 73A inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 52**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4**

VALID FROM 18/02/1993

74 Meaning of "fit and proper person". E+W+S

(1) The following provisions apply for the purposes of the discharge by a waste regulation authority of any function under this Part which requires the authority to determine whether a person is or is not a fit and proper person to hold a waste management licence.

(2) Whether a person is or is not a fit and proper person to hold a licence is to be determined by reference to the carrying on by him of the activities which are or are to be authorised by the licence and the fulfilment of the requirements of the licence.

(3) Subject to subsection (4) below, a person shall be treated as not being a fit and proper person if it appears to the authority—

(a) that he or another relevant person has been convicted of a relevant offence;

(b) that the management of the activities which are or are to be authorised by the licence are not or will not be in the hands of a technically competent person; or

(c) that the person who holds or is to hold the licence has not made and either has no intention of making or is in no position to make financial provision adequate to discharge the obligations arising from the licence.

(4) The authority may, if it considers it proper to do so in any particular case, treat a person as a fit and proper person notwithstanding that subsection (3)(a) above applies in his case.

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(5) It shall be the duty of waste regulation authorities to have regard to any guidance issued to them by the Secretary of State with respect to the discharge of their functions of making the determinations to which this section applies.

(6) The Secretary of State may, by regulations, prescribe the offences that are relevant for the purposes of subsection (3)(a) above and the qualifications and experience required of a person for the purposes of subsection (3)(b) above.

(7) For the purposes of subsection (3)(a) above, another relevant person shall be treated, in relation to the licence holder or proposed licence holder, as the case may be, as having been convicted of a relevant offence if—

(a) any person has been convicted of a relevant offence committed by him in the course of his employment by the holder or, as the case may be, the proposed holder of the licence or in the course of the carrying on of any business by a partnership one of the members of which was the holder or, as the case may be, the proposed holder of the licence;

(b) a body corporate has been convicted of a relevant offence committed when the holder or, as the case may be, the proposed holder of the licence was a director, manager, secretary or other similar officer of that body corporate; or

(c) where the holder or, as the case may be, the proposed holder of the licence is a body corporate, a person who is a director, manager, secretary or other similar officer of that body corporate—

(i) has been convicted of a relevant offence; or

(ii) was a director, manager, secretary or other similar officer of another body corporate at a time when a relevant offence for which that other body corporate has been convicted was committed.

Commencement Information

I42 S. 74 wholly in force at 1.5.1994; s. 74 not in force at Royal Assent, see s. 164(3); s. 74(6) in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**; s. 74 in force in so far as not already in force at 1.5.1994 by S.I. 1994/1096, **art. 2(1)**

75 Meaning of "waste" and household, commercial and industrial waste and special waste. E+W+S

(1) The following provisions apply for the interpretation of this Part.

(2) "Waste" includes—

(a) any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process; and

(b) any substance or article which requires to be disposed of as being broken, worn out, contaminated or otherwise spoiled;

but does not include a substance which is an explosive within the meaning of the [M44]Explosives Act 1875.

(3) Any thing which is discarded or otherwise dealt with as if it were waste shall be presumed to be waste unless the contrary is proved.

(4) "Controlled waste" means household, industrial and commercial waste or any such waste.

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(5) Subject to subsection (8) below, "household waste" means waste from—

(a) domestic property, that is to say, a building or self-contained part of a building which is used wholly for the purposes of living accommodation;

(b) a caravan (as defined in section 29(1) of the [M45]Caravan Sites and Control of Development Act 1960) which usually and for the time being is situated on a caravan site (within the meaning of that Act);

(c) a residential home;

(d) premises forming part of a university or school or other educational establishment;

(e) premises forming part of a hospital or nursing home.

(6) Subject to subsection (8) below, "industrial waste" means waste from any of the following premises—

(a) any factory (within the meaning of the [M46]Factories Act 1961);

(b) any premises used for the purposes of, or in connection with, the provision to the public of transport services by land, water or air;

(c) any premises used for the purposes of, or in connection with, the supply to the public of gas, water or electricity or the provision of sewerage services; or

(d) any premises used for the purposes of, or in connection with, the provision to the public of postal or telecommunications services.

(7) Subject to subsection (8) below, "commercial waste" means waste from premises used wholly or mainly for the purposes of a trade or business or the purposes of sport, recreation or entertainment excluding—

(a) household waste;

(b) industrial waste;

(c) waste from any mine or quarry and waste from premises used for agriculture within the meaning of the [M47]Agriculture Act 1947 or, in Scotland, the [M48]Agriculture (Scotland) Act 1948; and

(d) waste of any other description prescribed by regulations made by the Secretary of State for the purposes of this paragraph.

(8) Regulations made by the Secretary of State may provide that waste of a description prescribed in the regulations shall be treated for the purposes of provisions of this Part prescribed in the regulations as being or not being household waste or industrial waste or commercial waste; but no regulations shall be made in respect of such waste as is mentioned in subsection (7)(c) above and references to waste in subsection (7) above and this subsection do not include sewage (including matter in or from a privy) except so far as the regulations provide otherwise.

(9) "Special waste" means controlled waste as respects which regulations are in force under section 62 above.

Commencement Information

I43 S. 75 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**

Marginal Citations

M44 1875 c. 17.

M45 1960 c. 62.

M46 1961 c. 34.

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
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M47 1947 c. 48.
M48 1948 c. 45.

76 Application of this Part to Isles of Scilly. E+W+S

This Part shall have effect in its application to the Isles of Scilly with such modifications as the Secretary of State may by order specify.

77 Transition from Control of Pollution Act 1974 to this Part. E+W+S

(1) This section has effect for the purposes of the transition from the provisions of Part I of the [M49]Control of Pollution Act 1974 ("the 1974 Act") to the corresponding provisions of this Part of this Act and in this section—

"existing disposal authority" has the same meaning as in section 32 above;

"existing disposal licence" means a disposal licence under section 5 of the 1974 Act subsisting on the day appointed under section 164(3) below for the repeal of sections 3 to 10 of the 1974 Act and "relevant appointed day for licences" shall be construed accordingly;

"existing disposal plan" means a plan under section 2 of the 1974 Act subsisting on the day appointed under section 164(3) below for the repeal of that section and "relevant appointed day for plans" shall be construed accordingly;

"relevant part of its undertaking", in relation to an existing disposal authority, has the same meaning as in section 32 above; and

"the vesting date", in relation to an existing disposal authority and its waste disposal contractors, means the vesting date under Schedule 2 to this Act.

(2) An existing disposal licence shall, on and after the relevant appointed day for licences, be treated as a site licence until it expires or otherwise ceases to have effect; and accordingly it shall be variable and subject to revocation or suspension under this Part of this Act and may not be surrendered or transferred except under this Part of this Act.

(3) The restriction imposed by section 33(1) above shall not apply in relation to land occupied by an existing disposal authority for which a resolution of the authority subsists under section 11 of the 1974 Act on the relevant appointed day for licences until the following date, that is to say—

(a) in the case of an authority which transfers the relevant part of its undertaking in accordance with a scheme under Schedule 2 to this Act, the date which is the vesting date for that authority; and

(b) in any other case, the date on which the authority transfers, or ceases itself to carry on, the relevant part of its undertaking or ceases to provide places at which and plant and equipment by means of which controlled waste can be disposed of or deposited for the purposes of disposal.

(4) Any existing disposal plan of an existing disposal authority shall, on and after the relevant appointed day for plans, be treated as the plan of that authority under section 50 above and that section shall accordingly have effect as if references in it to "the plan" included the existing disposal plan of that authority.

(5) Subsection (4) above applies to Scotland and, for the purposes of that application, "existing disposal authority" means any authority constituted as a disposal authority

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for any area before the day appointed for this section to come into force and "that authority" means the waste disposal authority for that area under section 30(2) above.

(6) Subject to subsection (7) below, as respects any existing disposal authority—

(a) the restriction imposed by section 51(1) of this Act on the means whereby the authority arranges for the disposal of controlled waste shall not apply to the authority—

(i) in the case of an authority which transfers the relevant part of its undertaking in accordance with a scheme under Schedule 2 to this Act, until the date which is the vesting date for that authority; and

(ii) in any other case, until the date on which the authority transfers, or ceases itself to carry on, the relevant part of its undertaking or ceases to provide places at which and plant and equipment by means of which controlled waste can be disposed of or deposited for the purposes of disposal; and

(b) on and after that date, section 14(4) of the 1974 Act shall not authorise the authority to arrange for the disposal of controlled waste except by means of arrangements made (in accordance with Part II of Schedule 2 to this Act) with waste disposal contractors.

(7) The Secretary of State may, as respects any existing disposal authority, direct that the restriction imposed by section 51(1) above shall not apply in the case of that authority until such date as he specifies in the direction and where he does so paragraph (a) of subsection (6) above shall not apply and paragraph (b) shall be read as referring to the date so specified.

(8) In section 14(4) of the 1974 Act, after the words "this subsection", there shall be inserted the words "but subject to subsection (6) of section 77 of the Environmental Protection Act 1990 as respects any time after the date applicable to the authority under paragraph (a) or (b) of that subsection".

(9) As respects any existing disposal authority, until the date which is, under subsection (6)(a) above, the date until which the restriction imposed by section 51(1) of this Act is disapplied,—

(a) the powers conferred on a waste disposal authority by section 55(2)(a) and (b) of this Act as respects the recycling of waste and the use of waste to produce heat or electricity shall be treated as powers which the authority may exercise itself; and

(b) the power conferred on a waste disposal authority by section 48(4) of this Act to object to a waste collection authority having waste recycled where the disposal authority has made arrangements with a waste disposal contractor for the contractor to recycle the waste shall be available to the waste disposal authority where it itself has the waste recycled.

Modifications etc. (not altering text)

C29 S. 77(2) extended (27.7.1999) by 1999 c. 24, **s. 4(3)(5)(8)**

Commencement Information

I44 S. 77 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
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Marginal Citations

M49 1974 c. 40.

VALID FROM 13/12/1991

78 This Part and radioactive substances. E+W+S

Except as provided by regulations made by the Secretary of State under this section, nothing in this Part applies to radioactive waste within the meaning of the [M50]Radioactive Substances Act 1960; but regulations may—

(a) provide for prescribed provisions of this Part to have effect with such modifications as the Secretary of State considers appropriate for the purposes of dealing with such radioactive waste;

(b) make such modifications of the Radioactive Substances Act 1960 and any other Act as the Secretary of State considers appropriate.

Commencement Information

I45 S. 78 wholly in force at 13.12.1991 see s. 164(3) and S.I. 1991/2829, **art. 2**.

Marginal Citations

M50 1960 c. 34.

VALID FROM 21/09/1995

[F46PART IIA E+W+S

CONTAMINATED LAND

Textual Amendments

F46 Pt. 2A (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57**, (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

Modifications etc. (not altering text)

C30 Pt. IIA (ss. 78A-78YC) applied (with modifications) (S.) (1.4.2007 for certain purposes, 30.10.2007 otherwise) by The Radioactive Contaminated Land (Scotland) Regulations (S.S.I. 2007/179), regs. 1(1)(2), 2-15 (as amended: (10.12.2007) by S.I. 2007/3240, **reg. 3** (with reg. 2); (26.6.2009) by S.S.I. 2009/202, **regs. 1**, 2; (30.9.2010) by S.I. 2010/2153, **regs. 1**, 2, 3; (coming into force in accordance with art. 1(2)-(5) of the amending S.I.) by The Nuclear Installations (Liability for Damage) Order 2016 (S.I. 2016/562), art. 1(2), **Sch. 2 para. 11** (with art. 40); (22.5.2019) by The Radiation (Emergency Preparedness and Public Information) Regulations 2019 (S.I. 2019/703), reg. 1(1), **Sch. 10 para. 8** (with reg. 3))

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C31 Pt. IIA (ss. 78A-78YC) modified (1.2.1996) by 1995 c. 25, **s. 5(5)(e)**, (with ss. 115, 117); S.I. 1996/186, **art.2**.
Pt. IIA (ss. 78A-78YC) modified (1.4.1996) by 1995 c. 25, **s. 33(5)(e)**, (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**.

C32 Pt. IIA (ss. 78A-78YC) applied (with modifications) (E.) (20.1.2006) by The Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005 (S.I. 2005/3467), regs. 1(4), 2, 3, Schs. 1, **2** (as amended (29.9.2010) by S.I. 2010/2147, **regs. 1(2)**, 2(2) and (18.4.2018) by S.I. 2018/429, **regs. 1(2)**, 2(4))

C33 Pt. IIA (ss. 78A-78YC) applied (with modifications) (E.) (4.8.2006) in so far as not already applied by S.I. 2005/3467 by The Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006 (S.I. 2006/1379), regs. 3-17, **Sch.** (as amended: (10.11.2007) by S.I. 2007/3245, **reg. 3**; (6.4.2008) by S.I. 2008/520, **regs. 1**, 2, 3; (23.8.2010 and 30.9.2010) by S.I. 2010/2147, **regs. 1(2)**, 3, 4; (coming into force in accordance with art. 1(2)-(5) of the amending S.I.) by The Nuclear Installations (Liability for Damage) Order 2016 (S.I. 2016/562), art. 1(2), **Sch. 2 para. 9** (with art. 40); (22.6.2018) by S.I. 2018/429, **regs. 1(3)**, 3; (22.5.2019) by The Radiation (Emergency Preparedness and Public Information) Regulations 2019 (S.I. 2019/703), reg. 1(1), **Sch. 10 para. 6** (with reg. 3))
Pt. IIA (ss. 78A-78YC) extended (Isles of Scilly) (with modifications) (4.8.2006) by The Environmental Protection Act 1990 (Isles of Scilly) Order 2006 (S.I. 2006/1381), **art. 2**

C34 Pt. IIA (ss. 78A-78YC) applied (with modifications) (W.) (16.11.2006 for certain purposes and otherwise 10.12.2006) by The Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006 (S.I. 2006/2988), regs. 1, 3-17, **Sch.** (as amended: (10.12.2007) by S.I. 2007/3250, **reg. 3** (with reg. 2); (6.4.2008) by S.I. 2008/521, **regs. 2(3)**, 3; (30.9.2010) by S.I. 2010/2146, **regs. 1**, 2, 3; (coming into force in accordance with art. 1(2)-(5) of the amending S.I.) by The Nuclear Installations (Liability for Damage) Order 2016 (S.I. 2016/562), art. 1(2), **Sch. 2 para. 10** (with art. 40); (4.7.2018) by S.I. 2018/725, **regs. 1(2)**, 3-5; (22.5.2019) by The Radiation (Emergency Preparedness and Public Information) Regulations 2019 (S.I. 2019/703), reg. 1(1), **Sch. 10 para. 7** (with reg. 3))

F47 78A Preliminary. E+W+S

(1) The following provisions have effect for the interpretation of this Part.

(2) "Contaminated land" is any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that—

(a) significant harm is being caused or there is a significant possibility of such harm being caused; or

(b) pollution of controlled waters is being, or is likely to be, caused;

and, in determining whether any land appears to be such land, a local authority shall, subject to subsection (5) below, act in accordance with guidance issued by the Secretary of State in accordance with section 78YA below with respect to the manner in which that determination is to be made.

(3) A "special site" is any contaminated land—

(a) which has been designated as such a site by virtue of section 78C(7) or 78D(6) below; and

(b) whose designation as such has not been terminated by the appropriate Agency under section 78Q(4) below.

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(4) "Harm" means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property.

(5) The questions—

(a) what harm is to be regarded as "significant",

(b) whether the possibility of significant harm being caused is "significant",

(c) whether pollution of controlled waters is being, or is likely to be caused,

shall be determined in accordance with guidance issued for the purpose by the Secretary of State in accordance with section 78YA below.

(6) Without prejudice to the guidance that may be issued under subsection (5) above, guidance under paragraph (a) of that subsection may make provision for different degrees of importance to be assigned to, or for the disregard of,—

(a) different descriptions of living organisms or ecological systems;

(b) different descriptions of places; or

(c) different descriptions of harm to health or property, or other interference;

and guidance under paragraph (b) of that subsection may make provision for different degrees of possibility to be regarded as "significant" (or as not being "significant") in relation to different descriptions of significant harm.

(7) "Remediation" means—

(a) the doing of anything for the purpose of assessing the condition of—

(i) the contaminated land in question;

(ii) any controlled waters affected by that land; or

(iii) any land adjoining or adjacent to that land;

(b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose—

(i) of preventing or minimising, or remedying or mitigating the effects of, any significant harm, or any pollution of controlled waters, by reason of which the contaminated land is such land; or

(ii) of restoring the land or waters to their former state; or

(c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters;

and cognate expressions shall be construed accordingly.

(8) Controlled waters are "affected by" contaminated land if (and only if) it appears to the enforcing authority that the contaminated land in question is, for the purposes of subsection (2) above, in such a condition, by reason of substances in, on or under the land, that pollution of those waters is being, or is likely to be caused.

(9) The following expressions have the meaning respectively assigned to them—

"the appropriate Agency" means—

(a) in relation to England and Wales, the Environment Agency;

(b) in relation to Scotland, the Scottish Environment Protection Agency;

"appropriate person" means any person who is an appropriate person, determined in accordance with section 78F below, to bear responsibility for any thing which is to be done by way of remediation in any particular case;

"charging notice" has the meaning given by section 78P(3)(b) below;

"controlled waters"—

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(a) in relation to England and Wales, has the same meaning as in Part III of the [M51]Water Resources Act 1991; and

(b) in relation to Scotland, has the same meaning as in section 30A of the [M52]Control of Pollution Act 1974;

"creditor" has the same meaning as in the [M53]Conveyancing and Feudal Reform (Scotland) Act 1970;

"enforcing authority" means—

(a) in relation to a special site, the appropriate Agency;

(b) in relation to contaminated land other than a special site, the local authority in whose area the land is situated;

"heritable security" has the same meaning as in the [M54]Conveyancing and Feudal Reform (Scotland) Act 1970;

"local authority" in relation to England and Wales means—

(a) any unitary authority;

(b) any district council, so far as it is not a unitary authority;

(c) the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;

and in relation to Scotland means a council for an area constituted under section 2 of the [M55]Local Government etc. (Scotland) Act 1994;

"notice" means notice in writing;

"notification" means notification in writing;

"owner", in relation to any land in England and Wales, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or, where the land is not let at a rack rent, would be so entitled if it were so let;

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

"pollution of controlled waters" means the entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter;

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Secretary of State;

"remediation declaration" has the meaning given by section 78H(6) below;

"remediation notice" has the meaning given by section 78E(1) below;

"remediation statement" has the meaning given by section 78H(7) below;

"required to be designated as a special site" shall be construed in accordance with section 78C(8) below;

"substance" means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

"unitary authority" means—

(a) the council of a county, so far as it is the council of an area for which there are no district councils;

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(b) the council of any district comprised in an area for which there is no county council;

(c) the council of a London borough;

(d) the council of a county borough in Wales.

Textual Amendments

F47 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

Marginal Citations

M51 1991 c. 57.
M52 1974 c. 40.
M53 1970 c. 35.
M54 1970 c. 35.
M55 1994 c. 39.

F48 78B Identification of contaminated land. E+W+S

(1) Every local authority shall cause its area to be inspected from time to time for the purpose—

(a) of identifying contaminated land; and

(b) of enabling the authority to decide whether any such land is land which is required to be designated as a special site.

(2) In performing its functions under subsection (1) above a local authority shall act in accordance with any guidance issued for the purpose by the Secretary of State in accordance with section 78YA below.

(3) If a local authority identifies any contaminated land in its area, it shall give notice of that fact to—

(a) the appropriate Agency;

(b) the owner of the land;

(c) any person who appears to the authority to be in occupation of the whole or any part of the land; and

(d) each person who appears to the authority to be an appropriate person;

and any notice given under this subsection shall state by virtue of which of paragraphs (a) to (d) above it is given.

(4) If, at any time after a local authority has given any person a notice pursuant to subsection (3)(d) above in respect of any land, it appears to the enforcing authority that another person is an appropriate person, the enforcing authority shall give notice to that other person—

(a) of the fact that the local authority has identified the land in question as contaminated land; and

(b) that he appears to the enforcing authority to be an appropriate person.

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F48 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F49 78C Identification and designation of special sites. E+W+S

(1) If at any time it appears to a local authority that any contaminated land in its area might be land which is required to be designated as a special site, the authority—

(a) shall decide whether or not the land is land which is required to be so designated; and

(b) if the authority decides that the land is land which is required to be so designated, shall give notice of that decision to the relevant persons.

(2) For the purposes of this section, "the relevant persons" at any time in the case of any land are the persons who at that time fall within paragraphs (a) to (d) below, that is to say—

(a) the appropriate Agency;

(b) the owner of the land;

(c) any person who appears to the local authority concerned to be in occupation of the whole or any part of the land; and

(d) each person who appears to that authority to be an appropriate person.

(3) Before making a decision under paragraph (a) of subsection (1) above in any particular case, a local authority shall request the advice of the appropriate Agency, and in making its decision shall have regard to any advice given by that Agency in response to the request.

(4) If at any time the appropriate Agency considers that any contaminated land is land which is required to be designated as a special site, that Agency may give notice of that fact to the local authority in whose area the land is situated.

(5) Where notice under subsection (4) above is given to a local authority, the authority shall decide whether the land in question—

(a) is land which is required to be designated as a special site, or

(b) is not land which is required to be so designated,

and shall give notice of that decision to the relevant persons.

(6) Where a local authority makes a decision falling within subsection (1)(b) or (5)(a) above, the decision shall, subject to section 78D below, take effect on the day after whichever of the following events first occurs, that is to say—

(a) the expiration of the period of twenty-one days beginning with the day on which the notice required by virtue of subsection (1)(b) or, as the case may be, (5)(a) above is given to the appropriate Agency; or

(b) if the appropriate Agency gives notification to the local authority in question that it agrees with the decision, the giving of that notification;

and where a decision takes effect by virtue of this subsection, the local authority shall give notice of that fact to the relevant persons.

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(7) Where a decision that any land is land which is required to be designated as a special site takes effect in accordance with subsection (6) above, the notice given under subsection (1)(b) or, as the case may be, (5)(a) above shall have effect, as from the time when the decision takes effect, as the designation of that land as such a site.

(8) For the purposes of this Part, land is required to be designated as a special site if, and only if, it is land of a description prescribed for the purposes of this subsection.

(9) Regulations under subsection (8) above may make different provision for different cases or circumstances or different areas or localities and may, in particular, describe land by reference to the area or locality in which it is situated.

(10) Without prejudice to the generality of his power to prescribe any description of land for the purposes of subsection (8) above, the Secretary of State, in deciding whether to prescribe a particular description of contaminated land for those purposes, may, in particular, have regard to—

(a) whether land of the description in question appears to him to be land which is likely to be in such a condition, by reason of substances in, on or under the land that—

(i) serious harm would or might be caused, or

(ii) serious pollution of controlled waters would be, or would be likely to be, caused; or

(b) whether the appropriate Agency is likely to have expertise in dealing with the kind of significant harm, or pollution of controlled waters, by reason of which land of the description in question is contaminated land.

Textual Amendments

F49 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F50 78D Referral of special site decisions to the Secretary of State. E+W+S

(1) In any case where—

(a) a local authority gives notice of a decision to the appropriate Agency pursuant to subsection (1)(b) or (5)(b) of section 78C above, but

(b) before the expiration of the period of twenty-one days beginning with the day on which that notice is so given, that Agency gives the local authority notice that it disagrees with the decision, together with a statement of its reasons for disagreeing,

the authority shall refer the decision to the Secretary of State and shall send to him a statement of its reasons for reaching the decision.

(2) Where the appropriate Agency gives notice to a local authority under paragraph (b) of subsection (1) above, it shall also send to the Secretary of State a copy of the notice and of the statement given under that paragraph.

(3) Where a local authority refers a decision to the Secretary of State under subsection (1) above, it shall give notice of that fact to the relevant persons.

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(4) Where a decision of a local authority is referred to the Secretary of State under subsection (1) above, he—

(a) may confirm or reverse the decision with respect to the whole or any part of the land to which it relates; and

(b) shall give notice of his decision on the referral—

(i) to the relevant persons; and

(ii) to the local authority.

(5) Where a decision of a local authority is referred to the Secretary of State under subsection (1) above, the decision shall not take effect until the day after that on which the Secretary of State gives the notice required by subsection (4) above to the persons there mentioned and shall then take effect as confirmed or reversed by him.

(6) Where a decision which takes effect in accordance with subsection (5) above is to the effect that at least some land is land which is required to be designated as a special site, the notice given under subsection (4)(b) above shall have effect, as from the time when the decision takes effect, as the designation of that land as such a site.

(7) In this section "the relevant persons" has the same meaning as in section 78C above.

Textual Amendments

F50 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F51 78E Duty of enforcing authority to require remediation of contaminated land etc. E+W+S

(1) In any case where—

(a) any land has been designated as a special site by virtue of section 78C(7) or 78D(6) above, or

(b) a local authority has identified any contaminated land (other than a special site) in its area,

the enforcing authority shall, in accordance with such procedure as may be prescribed and subject to the following provisions of this Part, serve on each person who is an appropriate person a notice (in this Part referred to as a "remediation notice") specifying what that person is to do by way of remediation and the periods within which he is required to do each of the things so specified.

(2) Different remediation notices requiring the doing of different things by way of remediation may be served on different persons in consequence of the presence of different substances in, on or under any land or waters.

(3) Where two or more persons are appropriate persons in relation to any particular thing which is to be done by way of remediation, the remediation notice served on each of them shall state the proportion, determined under section 78F(7) below, of the cost of doing that thing which each of them respectively is liable to bear.

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(4) The only things by way of remediation which the enforcing authority may do, or require to be done, under or by virtue of this Part are things which it considers reasonable, having regard to—

(a) the cost which is likely to be involved; and

(b) the seriousness of the harm, or pollution of controlled waters, in question.

(5) In determining for any purpose of this Part—

(a) what is to be done (whether by an appropriate person, the enforcing authority or any other person) by way of remediation in any particular case,

(b) the standard to which any land is, or waters are, to be remediated pursuant to the notice, or

(c) what is, or is not, to be regarded as reasonable for the purposes of subsection (4) above,

the enforcing authority shall have regard to any guidance issued for the purpose by the Secretary of State.

(6) Regulations may make provision for or in connection with—

(a) the form or content of remediation notices; or

(b) any steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of a remediation notice.

Textual Amendments

F51 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F52 78F Determination of the appropriate person to bear responsibility for remediation. E+W+S

(1) This section has effect for the purpose of determining who is the appropriate person to bear responsibility for any particular thing which the enforcing authority determines is to be done by way of remediation in any particular case.

(2) Subject to the following provisions of this section, any person, or any of the persons, who caused or knowingly permitted the substances, or any of the substances, by reason of which the contaminated land in question is such land to be in, on or under that land is an appropriate person.

(3) A person shall only be an appropriate person by virtue of subsection (2) above in relation to things which are to be done by way of remediation which are to any extent referable to substances which he caused or knowingly permitted to be present in, on or under the contaminated land in question.

(4) If no person has, after reasonable inquiry, been found who is by virtue of subsection (2) above an appropriate person to bear responsibility for the things which are to be done by way of remediation, the owner or occupier for the time being of the contaminated land in question is an appropriate person.

(5) If, in consequence of subsection (3) above, there are things which are to be done by way of remediation in relation to which no person has, after reasonable inquiry, been

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found who is an appropriate person by virtue of subsection (2) above, the owner or occupier for the time being of the contaminated land in question is an appropriate person in relation to those things.

(6) Where two or more persons would, apart from this subsection, be appropriate persons in relation to any particular thing which is to be done by way of remediation, the enforcing authority shall determine in accordance with guidance issued for the purpose by the Secretary of State whether any, and if so which, of them is to be treated as not being an appropriate person in relation to that thing.

(7) Where two or more persons are appropriate persons in relation to any particular thing which is to be done by way of remediation, they shall be liable to bear the cost of doing that thing in proportions determined by the enforcing authority in accordance with guidance issued for the purpose by the Secretary of State.

(8) Any guidance issued for the purposes of subsection (6) or (7) above shall be issued in accordance with section 78YA below.

(9) A person who has caused or knowingly permitted any substance ("substance A") to be in, on or under any land shall also be taken for the purposes of this section to have caused or knowingly permitted there to be in, on or under that land any substance which is there as a result of a chemical reaction or biological process affecting substance A.

(10) A thing which is to be done by way of remediation may be regarded for the purposes of this Part as referable to the presence of any substance notwithstanding that the thing in question would not have to be done—

(a) in consequence only of the presence of that substance in any quantity; or

(b) in consequence only of the quantity of that substance which any particular person caused or knowingly permitted to be present.

Textual Amendments

F52 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F53 78G Grant of, and compensation for, rights of entry etc. E+W+S

(1) A remediation notice may require an appropriate person to do things by way of remediation, notwithstanding that he is not entitled to do those things.

(2) Any person whose consent is required before any thing required by a remediation notice may be done shall grant, or join in granting, such rights in relation to any of the relevant land or waters as will enable the appropriate person to comply with any requirements imposed by the remediation notice.

(3) Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult every person who appears to the authority—

(a) to be the owner or occupier of any of the relevant land or waters, and

(b) to be a person who might be required by subsection (2) above to grant, or join in granting, any rights,

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concerning the rights which that person may be so required to grant.

(4) Subsection (3) above shall not preclude the service of a remediation notice in any case where it appears to the enforcing authority that the contaminated land in question is in such a condition, by reason of substances in, on or under the land, that there is imminent danger of serious harm, or serious pollution of controlled waters, being caused.

(5) A person who grants, or joins in granting, any rights pursuant to subsection (2) above shall be entitled, on making an application within such period as may be prescribed and in such manner as may be prescribed to such person as may be prescribed, to be paid by the appropriate person compensation of such amount as may be determined in such manner as may be prescribed.

(6) Without prejudice to the generality of the regulations that may be made by virtue of subsection (5) above, regulations by virtue of that subsection may make such provision in relation to compensation under this section as may be made by regulations by virtue of subsection (4) of section 35A above in relation to compensation under that section.

(7) In this section, "relevant land or waters" means—

(a) the contaminated land in question;

(b) any controlled waters affected by that land; or

(c) any land adjoining or adjacent to that land or those waters.

Textual Amendments

F53 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F54 78H Restrictions and prohibitions on serving remediation notices. E+W+S

(1) Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult—

(a) the person on whom the notice is to be served,

(b) the owner of any land to which the notice relates,

(c) any person who appears to that authority to be in occupation of the whole or any part of the land, and

(d) any person of such other description as may be prescribed,

concerning what is to be done by way of remediation.

(2) Regulations may make provision for, or in connection with, steps to be taken for the purposes of subsection (1) above.

(3) No remediation notice shall be served on any person by reference to any contaminated land during any of the following periods, that is to say—

(a) the period—

(i) beginning with the identification of the contaminated land in question pursuant to section 78B(1) above, and

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(ii) ending with the expiration of the period of three months beginning with the day on which the notice required by subsection (3)(d) or, as the case may be, (4) of section 78B above is given to that person in respect of that land;

(b) if a decision falling within paragraph (b) of section 78C(1) above is made in relation to the contaminated land in question, the period beginning with the making of the decision and ending with the expiration of the period of three months beginning with—

(i) in a case where the decision is not referred to the Secretary of State under section 78D above, the day on which the notice required by section 78C(6) above is given, or

(ii) in a case where the decision is referred to the Secretary of State under section 78D above, the day on which he gives the notice required by subsection (4)(b) of that section;

(c) if the appropriate Agency gives a notice under subsection (4) of section 78C above to a local authority in relation to the contaminated land in question, the period beginning with the day on which that notice is given and ending with the expiration of the period of three months beginning with—

(i) in a case where notice is given under subsection (6) of that section, the day on which that notice is given;

(ii) in a case where the authority makes a decision falling within subsection (5)(b) of that section and the appropriate Agency fails to give notice under paragraph (b) of section 78D(1) above, the day following the expiration of the period of twenty-one days mentioned in that paragraph; or

(iii) in a case where the authority makes a decision falling within section 78C(5)(b) above which is referred to the Secretary of State under section 78D above, the day on which the Secretary of State gives the notice required by subsection (4)(b) of that section.

(4) Neither subsection (1) nor subsection (3) above shall preclude the service of a remediation notice in any case where it appears to the enforcing authority that the land in question is in such a condition, by reason of substances in, on or under the land, that there is imminent danger of serious harm, or serious pollution of controlled waters, being caused.

(5) The enforcing authority shall not serve a remediation notice on a person if and so long as any one or more of the following conditions is for the time being satisfied in the particular case, that is to say—

(a) the authority is satisfied, in consequence of section 78E(4) and (5) above, that there is nothing by way of remediation which could be specified in a remediation notice served on that person;

(b) the authority is satisfied that appropriate things are being, or will be, done by way of remediation without the service of a remediation notice on that person;

(c) it appears to the authority that the person on whom the notice would be served is the authority itself; or

(d) the authority is satisfied that the powers conferred on it by section 78N below to do what is appropriate by way of remediation are exercisable.

(6) Where the enforcing authority is precluded by virtue of section 78E(4) or (5) above from specifying in a remediation notice any particular thing by way of remediation

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which it would otherwise have specified in such a notice, the authority shall prepare and publish a document (in this Part referred to as a "remediation declaration") which shall record—

(a) the reasons why the authority would have specified that thing; and

(b) the grounds on which the authority is satisfied that it is precluded from specifying that thing in such a notice.

(7) In any case where the enforcing authority is precluded, by virtue of paragraph (b), (c) or (d) of subsection (5) above, from serving a remediation notice, the responsible person shall prepare and publish a document (in this Part referred to as a "remediation statement") which shall record—

(a) the things which are being, have been, or are expected to be, done by way of remediation in the particular case;

(b) the name and address of the person who is doing, has done, or is expected to do, each of those things; and

(c) the periods within which each of those things is being, or is expected to be, done.

(8) For the purposes of subsection (7) above, the "responsible person" is—

(a) in a case where the condition in paragraph (b) of subsection (5) above is satisfied, the person who is doing or has done, or who the enforcing authority is satisfied will do, the things there mentioned; or

(b) in a case where the condition in paragraph (c) or (d) of that subsection is satisfied, the enforcing authority.

(9) If a person who is required by virtue of subsection (8)(a) above to prepare and publish a remediation statement fails to do so within a reasonable time after the date on which a remediation notice specifying the things there mentioned could, apart from subsection (5) above, have been served, the enforcing authority may itself prepare and publish the statement and may recover its reasonable costs of doing so from that person.

(10) Where the enforcing authority has been precluded by virtue only of subsection (5) above from serving a remediation notice on an appropriate person but—

(a) none of the conditions in that subsection is for the time being satisfied in the particular case, and

(b) the authority is not precluded by any other provision of this Part from serving a remediation notice on that appropriate person,

the authority shall serve a remediation notice on that person; and any such notice may be so served without any further endeavours by the authority to consult persons pursuant to subsection (1) above, if and to the extent that that person has been consulted pursuant to that subsection concerning the things which will be specified in the notice.

Textual Amendments

F54 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

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[F55]78J Restrictions on liability relating to the pollution of controlled waters. E+W+S

(1) This section applies where any land is contaminated land by virtue of paragraph (b) of subsection (2) of section 78A above (whether or not the land is also contaminated land by virtue of paragraph (a) of that subsection).

(2) Where this section applies, no remediation notice given in consequence of the land in question being contaminated land shall require a person who is an appropriate person by virtue of section 78F(4) or (5) above to do anything by way of remediation to that or any other land, or any waters, which he could not have been required to do by such a notice had paragraph (b) of section 78A(2) above (and all other references to pollution of controlled waters) been omitted from this Part.

(3) If, in a case where this section applies, a person permits, has permitted, or might permit, water from an abandoned mine or part of a mine—

(a) to enter any controlled waters, or

(b) to reach a place from which it is or, as the case may be, was likely, in the opinion of the enforcing authority, to enter such waters,

no remediation notice shall require him in consequence to do anything by way of remediation (whether to the contaminated land in question or to any other land or waters) which he could not have been required to do by such a notice had paragraph (b) of section 78A(2) above (and all other references to pollution of controlled waters) been omitted from this Part.

(4) Subsection (3) above shall not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.

(5) In determining for the purposes of subsection (4) above whether a mine or part of a mine became abandoned before, on or after 31st December 1999 in a case where the mine or part has become abandoned on two or more occasions, of which—

(a) at least one falls on or before that date, and

(b) at least one falls after that date,

the mine or part shall be regarded as becoming abandoned after that date (but without prejudice to the operation of subsection (3) above in relation to that mine or part at, or in relation to, any time before the first of those occasions which falls after that date).

(6) Where, immediately before a part of a mine becomes abandoned, that part is the only part of the mine not falling to be regarded as abandoned for the time being, the abandonment of that part shall not be regarded for the purposes of subsection (4) or (5) above as constituting the abandonment of the mine, but only of that part of it.

(7) Nothing in subsection (2) or (3) above prevents the enforcing authority from doing anything by way of remediation under section 78N below which it could have done apart from that subsection, but the authority shall not be entitled under section 78P below to recover from any person any part of the cost incurred by the authority in doing by way of remediation anything which it is precluded by subsection (2) or (3) above from requiring that person to do.

(8) In this section "mine" has the same meaning as in the [M56]Mines and Quarries Act 1954.

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Textual Amendments

F55 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

Marginal Citations

M56 1954 c. 70.

F56 78K Liability in respect of contaminating substances which escape to other land. E+W+S

(1) A person who has caused or knowingly permitted any substances to be in, on or under any land shall also be taken for the purposes of this Part to have caused or, as the case may be, knowingly permitted those substances to be in, on or under any other land to which they appear to have escaped.

(2) Subsections (3) and (4) below apply in any case where it appears that any substances are or have been in, on or under any land (in this section referred to as "land A") as a result of their escape, whether directly or indirectly, from other land in, on or under which a person caused or knowingly permitted them to be.

(3) Where this subsection applies, no remediation notice shall require a person—

(a) who is the owner or occupier of land A, and

(b) who has not caused or knowingly permitted the substances in question to be in, on or under that land,

to do anything by way of remediation to any land or waters (other than land or waters of which he is the owner or occupier) in consequence of land A appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of controlled waters is being, or is likely to be caused.

(4) Where this subsection applies, no remediation notice shall require a person—

(a) who is the owner or occupier of land A, and

(b) who has not caused or knowingly permitted the substances in question to be in, on or under that land,

to do anything by way of remediation in consequence of any further land in, on or under which those substances or any of them appear to be or to have been present as a result of their escape from land A ("land B") appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of controlled waters is being, or is likely to be caused, unless he is also the owner or occupier of land B.

(5) In any case where—

(a) a person ("person A") has caused or knowingly permitted any substances to be in, on, or under any land,

(b) another person ("person B") who has not caused or knowingly permitted those substances to be in, on or under that land becomes the owner or occupier of that land, and

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(c) the substances, or any of the substances, mentioned in paragraph (a) above appear to have escaped to other land,

no remediation notice shall require person B to do anything by way of remediation to that other land in consequence of the apparent acts or omissions of person A, except to the extent that person B caused or knowingly permitted the escape.

(6) Nothing in subsection (3), (4) or (5) above prevents the enforcing authority from doing anything by way of remediation under section 78N below which it could have done apart from that subsection, but the authority shall not be entitled under section 78P below to recover from any person any part of the cost incurred by the authority in doing by way of remediation anything which it is precluded by subsection (3), (4) or (5) above from requiring that person to do.

(7) In this section, "appear" means appear to the enforcing authority, and cognate expressions shall be construed accordingly.

Textual Amendments

F56 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F57 78L Appeals against remediation notices. E+W+S

(1) A person on whom a remediation notice is served may, within the period of twenty-one days beginning with the day on which the notice is served, appeal against the notice—

(a) if it was served by a local authority, to a magistrates' court or, in Scotland, to the sheriff by way of summary application; or

(b) if it was served by the appropriate Agency, to the Secretary of State;

and in the following provisions of this section "the appellate authority" means the magistrates' court, the sheriff or the Secretary of State, as the case may be.

(2) On any appeal under subsection (1) above the appellate authority—

(a) shall quash the notice, if it is satisfied that there is a material defect in the notice; but

(b) subject to that, may confirm the remediation notice, with or without modification, or quash it.

(3) Where an appellate authority confirms a remediation notice, with or without modification, it may extend the period specified in the notice for doing what the notice requires to be done.

(4) Regulations may make provision with respect to—

(a) the grounds on which appeals under subsection (1) above may be made;

(b) the cases in which, grounds on which, court or tribunal to which, or person at whose instance, an appeal against a decision of a magistrates' court or sheriff court in pursuance of an appeal under subsection (1) above shall lie; or

(c) the procedure on an appeal under subsection (1) above or on an appeal by virtue of paragraph (b) above.

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(5) Regulations under subsection (4) above may (among other things)—

(a) include provisions comparable to those in section 290 of the [M57]Public Health Act 1936 (appeals against notices requiring the execution of works);

(b) prescribe the cases in which a remediation notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;

(c) prescribe the cases in which the decision on an appeal may in some respects be less favourable to the appellant than the remediation notice against which he is appealing;

(d) prescribe the cases in which the appellant may claim that a remediation notice should have been served on some other person and prescribe the procedure to be followed in those cases;

(e) make provision as respects—

(i) the particulars to be included in the notice of appeal;

(ii) the persons on whom notice of appeal is to be served and the particulars, if any, which are to accompany the notice; and

(iii) the abandonment of an appeal;

(f) make different provision for different cases or classes of case.

(6) This section, so far as relating to appeals to the Secretary of State, is subject to section 114 of the [M58]Environment Act 1995 (delegation or reference of appeals etc).

Textual Amendments

F57 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

Modifications etc. (not altering text)

C35 S. 78L: power to delegate certain functions conferred (1.4.1996) by 1995 c. 25, **s.114** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Marginal Citations

M57 1936 c. 49.

M58 1995 c. 25.

[F58]78M Offences of not complying with a remediation notice. E+W+S

(1) If a person on whom an enforcing authority serves a remediation notice fails, without reasonable excuse, to comply with any of the requirements of the notice, he shall be guilty of an offence.

(2) Where the remediation notice in question is one which was required by section 78E(3) above to state, in relation to the requirement which has not been complied with, the proportion of the cost involved which the person charged with the offence is liable to bear, it shall be a defence for that person to prove that the only reason why he has not complied with the requirement is that one or more of the other persons who are liable to bear a proportion of that cost refused, or was not able, to comply with the requirement.

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(3) Except in a case falling within subsection (4) below, a person who commits an offence under subsection (1) above shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale and to a further fine of an amount equal to one-tenth of level 5 on the standard scale for each day on which the failure continues after conviction of the offence and before the enforcing authority has begun to exercise its powers by virtue of section 78N(3)(c) below.

(4) A person who commits an offence under subsection (1) above in a case where the contaminated land to which the remediation notice relates is industrial, trade or business premises shall be liable on summary conviction to a fine not exceeding £20,000 or such greater sum as the Secretary of State may from time to time by order substitute and to a further fine of an amount equal to one-tenth of that sum for each day on which the failure continues after conviction of the offence and before the enforcing authority has begun to exercise its powers by virtue of section 78N(3)(c) below.

(5) If the enforcing authority is of the opinion that proceedings for an offence under this section would afford an ineffectual remedy against a person who has failed to comply with any of the requirements of a remediation notice which that authority has served on him, that authority may take proceedings in the High Court or, in Scotland, in any court of competent jurisdiction, for the purpose of securing compliance with the remediation notice.

(6) In this section, "industrial, trade or business premises" means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purpose of manufacturing.

(7) No order shall be made under subsection (4) above unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

Textual Amendments

F58 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F59 78N Powers of the enforcing authority to carry out remediation. E+W+S

(1) Where this section applies, the enforcing authority shall itself have power, in a case falling within paragraph (a) or (b) of section 78E(1) above, to do what is appropriate by way of remediation to the relevant land or waters.

(2) Subsection (1) above shall not confer power on the enforcing authority to do anything by way of remediation if the authority would, in the particular case, be precluded by section 78YB below from serving a remediation notice requiring that thing to be done.

(3) This section applies in each of the following cases, that is to say—

(a) where the enforcing authority considers it necessary to do anything itself by way of remediation for the purpose of preventing the occurrence of any

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serious harm, or serious pollution of controlled waters, of which there is imminent danger;

(b) where an appropriate person has entered into a written agreement with the enforcing authority for that authority to do, at the cost of that person, that which he would otherwise be required to do under this Part by way of remediation;

(c) where a person on whom the enforcing authority serves a remediation notice fails to comply with any of the requirements of the notice;

(d) where the enforcing authority is precluded by section 78J or 78K above from including something by way of remediation in a remediation notice;

(e) where the enforcing authority considers that, were it to do some particular thing by way of remediation, it would decide, by virtue of subsection (2) of section 78P below or any guidance issued under that subsection,—

(i) not to seek to recover under subsection (1) of that section any of the reasonable cost incurred by it in doing that thing; or

(ii) to seek so to recover only a portion of that cost;

(f) where no person has, after reasonable inquiry, been found who is an appropriate person in relation to any particular thing.

(4) Subject to section 78E(4) and (5) above, for the purposes of this section, the things which it is appropriate for the enforcing authority to do by way of remediation are—

(a) in a case falling within paragraph (a) of subsection (3) above, anything by way of remediation which the enforcing authority considers necessary for the purpose mentioned in that paragraph;

(b) in a case falling within paragraph (b) of that subsection, anything specified in, or determined under, the agreement mentioned in that paragraph;

(c) in a case falling within paragraph (c) of that subsection, anything which the person mentioned in that paragraph was required to do by virtue of the remediation notice;

(d) in a case falling within paragraph (d) of that subsection, anything by way of remediation which the enforcing authority is precluded by section 78J or 78K above from including in a remediation notice;

(e) in a case falling within paragraph (e) or (f) of that subsection, the particular thing mentioned in the paragraph in question.

(5) In this section "the relevant land or waters" means—

(a) the contaminated land in question;

(b) any controlled waters affected by that land; or

(c) any land adjoining or adjacent to that land or those waters.

Textual Amendments

F59 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

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F60 78P Recovery of, and security for, the cost of remediation by the enforcing authority. E+W+S

(1) Where, by virtue of section 78N(3)(a), (c), (e) or (f) above, the enforcing authority does any particular thing by way of remediation, it shall be entitled, subject to sections 78J(7) and 78K(6) above, to recover the reasonable cost incurred in doing it from the appropriate person or, if there are two or more appropriate persons in relation to the thing in question, from those persons in proportions determined pursuant to section 78F(7) above.

(2) In deciding whether to recover the cost, and, if so, how much of the cost, which it is entitled to recover under subsection (1) above, the enforcing authority shall have regard—

(a) to any hardship which the recovery may cause to the person from whom the cost is recoverable; and

(b) to any guidance issued by the Secretary of State for the purposes of this subsection.

(3) Subsection (4) below shall apply in any case where—

(a) any cost is recoverable under subsection (1) above from a person—

(i) who is the owner of any premises which consist of or include the contaminated land in question; and

(ii) who caused or knowingly permitted the substances, or any of the substances, by reason of which the land is contaminated land to be in, on or under the land; and

(b) the enforcing authority serves a notice under this subsection (in this Part referred to as a "charging notice") on that person.

(4) Where this subsection applies—

(a) the cost shall carry interest, at such reasonable rate as the enforcing authority may determine, from the date of service of the notice until the whole amount is paid; and

(b) subject to the following provisions of this section, the cost and accrued interest shall be a charge on the premises mentioned in subsection (3)(a)(i) above.

(5) A charging notice shall—

(a) specify the amount of the cost which the enforcing authority claims is recoverable;

(b) state the effect of subsection (4) above and the rate of interest determined by the authority under that subsection; and

(c) state the effect of subsections (7) and (8) below.

(6) On the date on which an enforcing authority serves a charging notice on a person, the authority shall also serve a copy of the notice on every other person who, to the knowledge of the authority, has an interest in the premises capable of being affected by the charge.

(7) Subject to any order under subsection (9)(b) or (c) below, the amount of any cost specified in a charging notice and the accrued interest shall be a charge on the premises—

(a) as from the end of the period of twenty-one days beginning with the service of the charging notice, or

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(b) where an appeal is brought under subsection (8) below, as from the final determination or (as the case may be) the withdrawal, of the appeal,

until the cost and interest are recovered.

(8) A person served with a charging notice or a copy of a charging notice may appeal against the notice to a county court within the period of twenty-one days beginning with the date of service.

(9) On an appeal under subsection (8) above, the court may—

(a) confirm the notice without modification;

(b) order that the notice is to have effect with the substitution of a different amount for the amount originally specified in it; or

(c) order that the notice is to be of no effect.

(10) Regulations may make provision with respect to—

(a) the grounds on which appeals under this section may be made; or

(b) the procedure on any such appeal.

(11) An enforcing authority shall, for the purpose of enforcing a charge under this section, have all the same powers and remedies under the [M59]Law of Property Act 1925, and otherwise, as if it were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

(12) Where any cost is a charge on premises under this section, the enforcing authority may by order declare the cost to be payable with interest by instalments within the specified period until the whole amount is paid.

(13) In subsection (12) above—

"interest" means interest at the rate determined by the enforcing authority under subsection (4) above; and

"the specified period" means such period of thirty years or less from the date of service of the charging notice as is specified in the order.

(14) Subsections (3) to (13) above do not extend to Scotland.

Extent Information

E4 S. 78P(3)-(13) do not extend to Scotland see s. 78P(14)

Textual Amendments

F60 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

Marginal Citations

M59 1925 c. 20.

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F61 78Q Special sites. E+W+S

(1) If, in a case where a local authority has served a remediation notice, the contaminated land in question becomes a special site, the appropriate Agency may adopt the remediation notice and, if it does so,—

(a) it shall give notice of its decision to adopt the remediation notice to the appropriate person and to the local authority;

(b) the remediation notice shall have effect, as from the time at which the appropriate Agency decides to adopt it, as a remediation notice given by that Agency; and

(c) the validity of the remediation notice shall not be affected by—

(i) the contaminated land having become a special site;

(ii) the adoption of the remediation notice by the appropriate Agency; or

(iii) anything in paragraph (b) above.

(2) Where a local authority has, by virtue of section 78N above, begun to do any thing, or any series of things, by way of remediation—

(a) the authority may continue doing that thing, or that series of things, by virtue of that section, notwithstanding that the contaminated land in question becomes a special site; and

(b) section 78P above shall apply in relation to the reasonable cost incurred by the authority in doing that thing or those things as if that authority were the enforcing authority.

(3) If and so long as any land is a special site, the appropriate Agency may from time to time inspect that land for the purpose of keeping its condition under review.

(4) If it appears to the appropriate Agency that a special site is no longer land which is required to be designated as such a site, the appropriate Agency may give notice—

(a) to the Secretary of State, and

(b) to the local authority in whose area the site is situated,

terminating the designation of the land in question as a special site as from such date as may be specified in the notice.

(5) A notice under subsection (4) above shall not prevent the land, or any of the land, to which the notice relates being designated as a special site on a subsequent occasion.

(6) In exercising its functions under subsection (3) or (4) above, the appropriate Agency shall act in accordance with any guidance given for the purpose by the Secretary of State.

Textual Amendments

F61 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F62 78R Registers. E+W+S

(1) Every enforcing authority shall maintain a register containing prescribed particulars of or relating to—

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(a) remediation notices served by that authority;

(b) appeals against any such remediation notices;

(c) remediation statements or remediation declarations prepared and published under section 78H above;

(d) in relation to an enforcing authority in England and Wales, appeals against charging notices served by that authority;

(e) notices under subsection (1)(b) or (5)(a) of section 78C above which have effect by virtue of subsection (7) of that section as the designation of any land as a special site;

(f) notices under subsection (4)(b) of section 78D above which have effect by virtue of subsection (6) of that section as the designation of any land as a special site;

(g) notices given by or to the enforcing authority under section 78Q(4) above terminating the designation of any land as a special site;

(h) notifications given to that authority by persons—

(i) on whom a remediation notice has been served, or

(ii) who are or were required by virtue of section 78H(8)(a) above to prepare and publish a remediation statement,

of what they claim has been done by them by way of remediation;

(j) notifications given to that authority by owners or occupiers of land—

(i) in respect of which a remediation notice has been served, or

(ii) in respect of which a remediation statement has been prepared and published,

of what they claim has been done on the land in question by way of remediation;

(k) convictions for such offences under section 78M above as may be prescribed;

(l) such other matters relating to contaminated land as may be prescribed;

but that duty is subject to sections 78S and 78T below.

(2) The form of, and the descriptions of information to be contained in, notifications for the purposes of subsection (1)(h) or (j) above may be prescribed by the Secretary of State.

(3) No entry made in a register by virtue of subsection (1)(h) or (j) above constitutes a representation by the body maintaining the register or, in a case where the entry is made by virtue of subsection (6) below, the authority which sent the copy of the particulars in question pursuant to subsection (4) or (5) below—

(a) that what is stated in the entry to have been done has in fact been done; or

(b) as to the manner in which it has been done.

(4) Where any particulars are entered on a register maintained under this section by the appropriate Agency, the appropriate Agency shall send a copy of those particulars to the local authority in whose area is situated the land to which the particulars relate.

(5) In any case where—

(a) any land is treated by virtue of section 78X(2) below as situated in the area of a local authority other than the local authority in whose area it is in fact situated, and

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(b) any particulars relating to that land are entered on the register maintained under this section by the local authority in whose area the land is so treated as situated,

that authority shall send a copy of those particulars to the local authority in whose area the land is in fact situated.

(6) Where a local authority receives a copy of any particulars sent to it pursuant to subsection (4) or (5) above, it shall enter those particulars on the register maintained by it under this section.

(7) Where information of any description is excluded by virtue of section 78T below from any register maintained under this section, a statement shall be entered in the register indicating the existence of information of that description.

(8) It shall be the duty of each enforcing authority—

(a) to secure that the registers maintained by it under this section are available, at all reasonable times, for inspection by the public free of charge; and

(b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges;

and, for the purposes of this subsection, places may be prescribed by the Secretary of State at which any such registers or facilities as are mentioned in paragraph (a) or (b) above are to be available or afforded to the public in pursuance of the paragraph in question.

(9) Registers under this section may be kept in any form.

Textual Amendments

F62 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F63 78S Exclusion from registers of information affecting national security. E+W+S

(1) No information shall be included in a register maintained under section 78R above if and so long as, in the opinion of the Secretary of State, the inclusion in the register of that information, or information of that description, would be contrary to the interests of national security.

(2) The Secretary of State may, for the purpose of securing the exclusion from registers of information to which subsection (1) above applies, give to enforcing authorities directions—

(a) specifying information, or descriptions of information, to be excluded from their registers; or

(b) specifying descriptions of information to be referred to the Secretary of State for his determination;

and no information referred to the Secretary of State in pursuance of paragraph (b) above shall be included in any such register until the Secretary of State determines that it should be so included.

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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)*

(3) The enforcing authority shall notify the Secretary of State of any information which it excludes from the register in pursuance of directions under subsection (2) above.

(4) A person may, as respects any information which appears to him to be information to which subsection (1) above may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and, if he does so—

(a) he shall notify the enforcing authority that he has done so; and

(b) no information so notified to the Secretary of State shall be included in any such register until the Secretary of State has determined that it should be so included.

Textual Amendments

F63 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F64 78T Exclusion from registers of certain confidential information. E+W+S

(1) No information relating to the affairs of any individual or business shall be included in a register maintained under section 78R above, without the consent of that individual or the person for the time being carrying on that business, if and so long as the information—

(a) is, in relation to him, commercially confidential; and

(b) is not required to be included in the register in pursuance of directions under subsection (7) below;

but information is not commercially confidential for the purposes of this section unless it is determined under this section to be so by the enforcing authority or, on appeal, by the Secretary of State.

(2) Where it appears to an enforcing authority that any information which has been obtained by the authority under or by virtue of any provision of this Part might be commercially confidential, the authority shall—

(a) give to the person to whom or whose business it relates notice that that information is required to be included in the register unless excluded under this section; and

(b) give him a reasonable opportunity—

(i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and

(ii) of making representations to the authority for the purpose of justifying any such objection;

and, if any representations are made, the enforcing authority shall, having taken the representations into account, determine whether the information is or is not commercially confidential.

(3) Where, under subsection (2) above, an authority determines that information is not commercially confidential—

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(a) the information shall not be entered in the register until the end of the period of twenty-one days beginning with the date on which the determination is notified to the person concerned;

(b) that person may appeal to the Secretary of State against the decision;

and, where an appeal is brought in respect of any information, the information shall not be entered in the register until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn.

(4) An appeal under subsection (3) above shall, if either party to the appeal so requests or the Secretary of State so decides, take or continue in the form of a hearing (which must be held in private).

(5) Subsection (10) of section 15 above shall apply in relation to an appeal under subsection (3) above as it applies in relation to an appeal under that section.

(6) Subsection (3) above is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).

(7) The Secretary of State may give to the enforcing authorities directions as to specified information, or descriptions of information, which the public interest requires to be included in registers maintained under section 78R above notwithstanding that the information may be commercially confidential.

(8) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this section at the expiry of the period of four years beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the authority for the information to remain excluded from the register on the ground that it is still commercially confidential and the authority shall determine whether or not that is the case.

(9) Subsections (3) to (6) above shall apply in relation to a determination under subsection (8) above as they apply in relation to a determination under subsection (2) above.

(10) Information is, for the purposes of any determination under this section, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that individual or person.

(11) For the purposes of subsection (10) above, there shall be disregarded any prejudice to the commercial interests of any individual or person so far as relating only to the value of the contaminated land in question or otherwise to the ownership or occupation of that land.

Textual Amendments

F64 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

Modifications etc. (not altering text)

C36 S. 78T: power, to delegate certain functions, conferred (1.4.1996) by 1995 c. 25, **s.114** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**.

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
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F65 78U Reports by the appropriate Agency on the state of contaminated land. E+W+S

(1) The appropriate Agency shall—

(a) from time to time, or

(b) if the Secretary of State at any time so requests,

prepare and publish a report on the state of contaminated land in England and Wales or in Scotland, as the case may be.

(2) A local authority shall, at the written request of the appropriate Agency, furnish the appropriate Agency with such information to which this subsection applies as the appropriate Agency may require for the purpose of enabling it to perform its functions under subsection (1) above.

(3) The information to which subsection (2) above applies is such information as the local authority may have, or may reasonably be expected to obtain, with respect to the condition of contaminated land in its area, being information which the authority has acquired or may acquire in the exercise of its functions under this Part.

Textual Amendments

F65 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F66 78V Site-specific guidance by the appropriate Agency concerning contaminated land. E+W+S

(1) The appropriate Agency may issue guidance to any local authority with respect to the exercise or performance of the authority's powers or duties under this Part in relation to any particular contaminated land; and in exercising or performing those powers or duties in relation to that land the authority shall have regard to any such guidance so issued.

(2) If and to the extent that any guidance issued under subsection (1) above to a local authority is inconsistent with any guidance issued under this Part by the Secretary of State, the local authority shall disregard the guidance under that subsection.

(3) A local authority shall, at the written request of the appropriate Agency, furnish the appropriate Agency with such information to which this subsection applies as the appropriate Agency may require for the purpose of enabling it to issue guidance for the purposes of subsection (1) above.

(4) The information to which subsection (3) above applies is such information as the local authority may have, or may reasonably be expected to obtain, with respect to any contaminated land in its area, being information which the authority has acquired, or may acquire, in the exercise of its functions under this Part.

Textual Amendments

F66 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000)

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by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F67 78W The appropriate Agency to have regard to guidance given by the Secretary of State. E+W+S

(1) The Secretary of State may issue guidance to the appropriate Agency with respect to the exercise or performance of that Agency's powers or duties under this Part; and in exercising or performing those powers or duties the appropriate Agency shall have regard to any such guidance so issued.

(2) The duty imposed on the appropriate Agency by subsection (1) above is without prejudice to any duty imposed by any other provision of this Part on that Agency to act in accordance with guidance issued by the Secretary of State.

Textual Amendments

F67 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F68 78X Supplementary provisions. E+W+S

(1) Where it appears to a local authority that two or more different sites, when considered together, are in such a condition, by reason of substances in, on or under the land, that—

(a) significant harm is being caused or there is a significant possibility of such harm being caused, or

(b) pollution of controlled waters is being, or is likely to be, caused,

this Part shall apply in relation to each of those sites, whether or not the condition of the land at any of them, when considered alone, appears to the authority to be such that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of controlled waters is being or is likely to be caused.

(2) Where it appears to a local authority that any land outside, but adjoining or adjacent to, its area is in such a condition, by reason of substances in, on or under the land, that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of controlled waters is being, or is likely to be, caused within its area—

(a) the authority may, in exercising its functions under this Part, treat that land as if it were land situated within its area; and

(b) except in this subsection, any reference—

(i) to land within the area of a local authority, or

(ii) to the local authority in whose area any land is situated,

shall be construed accordingly;

but this subsection is without prejudice to the functions of the local authority in whose area the land is in fact situated.

(3) A person acting in a relevant capacity—

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(a) shall not thereby be personally liable, under this Part, to bear the whole or any part of the cost of doing any thing by way of remediation, unless that thing is to any extent referable to substances whose presence in, on or under the contaminated land in question is a result of any act done or omission made by him which it was unreasonable for a person acting in that capacity to do or make; and

(b) shall not thereby be guilty of an offence under or by virtue of section 78M above unless the requirement which has not been complied with is a requirement to do some particular thing for which he is personally liable to bear the whole or any part of the cost.

(4) In subsection (3) above, "person acting in a relevant capacity" means—

(a) a person acting as an insolvency practitioner, within the meaning of section 388 of the [M60]Insolvency Act 1986 (including that section as it applies in relation to an insolvent partnership by virtue of any order made under section 421 of that Act);

(b) the official receiver acting in a capacity in which he would be regarded as acting as an insolvency practitioner within the meaning of section 388 of the [M61]Insolvency Act 1986 if subsection (5) of that section were disregarded;

(c) the official receiver acting as receiver or manager;

(d) a person acting as a special manager under section 177 or 370 of the [M62]Insolvency Act 1986;

(e) the Accountant in Bankruptcy acting as permanent or interim trustee in a sequestration (within the meaning of the [M63]Bankruptcy (Scotland) Act 1985);

(f) a person acting as a receiver or receiver and manager—

(i) under or by virtue of any enactment; or

(ii) by virtue of his appointment as such by an order of a court or by any other instrument.

(5) Regulations may make different provision for different cases or circumstances.

Textual Amendments

F68 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

Marginal Citations

M60 1986 c. 63.
M61 1986 c. 45.
M62 1986 c. 45.
M63 1985 c. 51.

[F69]78Y Application to the Isles of Scilly. E+W+S

(1) Subject to the provisions of any order under this section, this Part shall not apply in relation to the Isles of Scilly.

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
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(2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application of any provisions of this Part to the Isles of Scilly; and any such order may provide for the application of those provisions to those Isles with such modifications as may be specified in the order.

(3) An order under this section may—

(a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and

(b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate, including provision saving provision repealed by or under any enactment.**]**

Textual Amendments

F69 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **ss. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F70 78YA Supplementary provisions with respect to guidance by the Secretary of State. E+W+S

(1) Any power of the Secretary of State to issue guidance under this Part shall only be exercisable after consultation with the appropriate Agency and such other bodies or persons as he may consider it appropriate to consult in relation to the guidance in question.

(2) A draft of any guidance proposed to be issued under section 78A(2) or (5), 78B(2) or 78F(6) or (7) above shall be laid before each House of Parliament and the guidance shall not be issued until after the period of 40 days beginning with the day on which the draft was so laid or, if the draft is laid on different days, the later of the two days.

(3) If, within the period mentioned in subsection (2) above, either House resolves that the guidance, the draft of which was laid before it, should not be issued, the Secretary of State shall not issue that guidance.

(4) In reckoning any period of 40 days for the purposes of subsection (2) or (3) above, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(5) The Secretary of State shall arrange for any guidance issued by him under this Part to be published in such manner as he considers appropriate.

Textual Amendments

F70 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes and otherwise*prosp.*) by 1995 c. 25, **s.57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art.3**

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
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[F71]78YBInteraction of this Part with other enactments. E+W

(1) A remediation notice shall not be served if and to the extent that it appears to the enforcing authority that the powers of the appropriate Agency under section 27 above may be exercised in relation to—

(a) the significant harm (if any), and

(b) the **[**[F72]significant **]** pollution of controlled waters (if any),

by reason of which the contaminated land in question is such land.

(2) Nothing in this Part shall apply in relation to any land in respect of which there is for the time being in force a site licence under Part II above, except to the extent that any significant harm, or **[**[F72]significant **]** pollution of controlled waters, by reason of which that land would otherwise fall to be regarded as contaminated land is attributable to causes other than—

(a) breach of the conditions of the licence; or

(b) the carrying on, in accordance with the conditions of the licence, of any activity authorised by the licence.

[[F73](2A) This Part shall not apply if and to the extent that—

(a) any significant harm, or pollution of controlled waters, by reason of which the land would otherwise fall to be regarded as contiminated, is attributable to the final disposal by deposit in or on land of controlled waste, and

(b) enforcement action may be taken in relation to that disposal.

(2B) A remediation notice shall not be served in respect of contaminated land if and to the extent that—

(a) the significant harm, or pollution of controlled waters, by reason of which the contaminated land is such land is attributable to an activity other than the final disposal by deposit in or on land of controlled waste, and

(b) enforcement action may be taken in relation to that activity.

(2C) In subsections (2A) and (2B) above—

"controlled waste" has the meaning given in section 75(4) of this Act; and

"enforcement action" means action under regulation 24 (enforcement notices) or regulation 26(2) (power of regulator to remedy pollution) of the Pollution Prevention and Control (England and Wales) Regulations 2000.**]**

(3) If, in a case falling within subsection (1) or (7) of section 59 above, the land in question is contaminated land, or becomes such land by reason of the deposit of the controlled waste in question, a remediation notice shall not be served in respect of that land by reason of that waste or any consequences of its deposit, if and to the extent that it appears to the enforcing authority that the powers of a waste regulation authority or waste collection authority under that section may be exercised in relation to that waste or the consequences of its deposit.

(4) No remediation notice shall require a person to do anything the effect of which would be to impede or prevent the making of a discharge in pursuance of a consent given under Chapter II of Part III of the [M64]Water Resources Act 1991 (pollution offences) or, in relation to Scotland, in pursuance of a consent given under Part II of the [M65]Control of Pollution Act 1974.

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Extent Information

E5 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F71 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F72 Words in s. 78YB(1)(b)(2) substituted (E.W.) (prosp.) by Water Act 2003 (c. 37), **ss. 86(7)**, 105

F73 S. 78YB(2A)(2B)(2C) inserted (E.W.) (1.8.2000) by S.I. 2000/1937, reg. 39, **Sch. 10 Pt. 1 para. 6**

Marginal Citations

M64 1991 c. 57.

M65 1974 c. 40.

[F74 78YC This Part and radioactivity. E+W+S

Except as provided by regulations, nothing in this Part applies in relation to harm, or pollution of controlled waters, so far as attributable to any radioactivity possessed by any substance; but regulations may—

(a) provide for prescribed provisions of this Part to have effect with such modifications as the Secretary of State considers appropriate for the purpose of dealing with harm, or pollution of controlled waters, so far as attributable to any radioactivity possessed by any substances; or

(b) make such modifications of the M66 Radioactive Substances Act 1993 or any other Act as the Secretary of State considers appropriate.]

Textual Amendments

F74 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

Marginal Citations

M66 1993 c. 12.

PART III E+W+S

STATUTORY NUISANCES AND CLEAN AIR

Modifications etc. (not altering text)

C37 Pt. III (ss. 79-85) applied: (E.W) (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 167(2)**, 225(2) (with ss. 16(6), 179, 222(3), Sch. 22 para. 1, Sch. 23 para. 6); (E.W.) (1.12.1991) by

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Land Drainage Act 1991 (c. 59, SIF 73:1), **ss. 15(3)**, 76(2) (with ss. 67(3)(5)(8), 72(6), 74(3)(4)); and (1.8.1991) by S.I. 1991/1773, art. 8, **Sch. 2**
Pt. III (ss. 79-85) amended (27.8.1993) by 1993 c. 12, ss. 40, 49(2), Sch. 3 Pt. I para.7, **Sch. 5 Pt. II para.8** (with ss. 42, 46)
Pt. III (ss. 79-85) excluded (27.8.1993) by 1993 c. 11, **s. 42(4)**
Pt. III (ss. 79-85) power to exclude conferred (27.8.1993) by 1993 c. 11, **ss. 45(1)(a)**, 47(1)(a)

C38 Pt. 3 modified (E.) (6.4.2010) by The Bristol Port Health Authority Order 2010 (S.I. 2010/1214), art. 4, **Sch.**

C39 Pt. 3 modified (E.) (6.4.2010) by The Cowes Port Health Authority Order 2010 (S.I. 2010/1216), art. 4, **Sch.**

C40 Pt. 3 modified (E.) (6.4.2010) by The Portsmouth Port Health Authority Order 2010 (S.I. 2010/1217), art. 4, **Sch.**

C41 Pt. 3 modified (E.) (6.4.2010) by The Southampton Port Health Authority Order 2010 (S.I. 2010/1218), art. 4, **Sch.**

Statutory nuisances: England and Wales

79 Statutory nuisances and inspections therefor. E+W

(1) Subject to subsections (2) to (6) below, the following matters constitute "statutory nuisances" for the purposes of this Part, that is to say—

(a) any premises in such a state as to be prejudicial to health or a nuisance;

(b) smoke emitted from premises so as to be prejudicial to health or a nuisance;

(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;

(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;

(e) any accumulation or deposit which is prejudicial to health or a nuisance;

(f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;

(g) noise emitted from premises so as to be prejudicial to health or a nuisance;

(h) any other matter declared by any enactment to be a statutory nuisance;

and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.

(2) Subsection (1)(b) and (g) above do not apply in relation to premises—

(a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or

(b) occupied by or for the purposes of a visiting force;

and "visiting force" means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952.

(3) Subsection (1)(b) above does not apply to—

(i) smoke emitted from a chimney of a private dwelling within a smoke control area,

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(ii) dark smoke emitted from a chimney of a building or a chimney serving the furnace of a boiler or industrial plant attached to a building or for the time being fixed to or installed on any land,

(iii) smoke emitted from a railway locomotive steam engine, or

(iv) dark smoke emitted otherwise than as mentioned above from industrial or trade premises.

(4) Subsection (1)(c) above does not apply in relation to premises other than private dwellings.

(5) Subsection (1)(d) above does not apply to steam emitted from a railway locomotive engine.

(6) Subsection (1)(g) above does not apply to noise caused by aircraft other than model aircraft.

(7) In this Part—

"chimney" includes structures and openings of any kind from or through which smoke may be emitted;

"dust" does not include dust emitted from a chimney as an ingredient of smoke;

"fumes" means any airborne solid matter smaller than dust;

"gas" includes vapour and moisture precipitated from vapour;

"industrial, trade or business premises" means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing;

"local authority" means, subject to subsection (8) below,—

(a) in Greater London, a London borough council, the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;

(b) outside Greater London, a district council; and

(c) the Council of the Isles of Scilly;

"noise" includes vibration;

"person responsible", in relation to a statutory nuisance, means the person to whose act, default or sufferance the nuisance is attributable;

"prejudicial to health" means injurious, or likely to cause injury, to health;

"premises" includes land and, subject to subsection (12) below, any vessel;

"private dwelling" means any building, or part of a building, used or intended to be used, as a dwelling;

"smoke" includes soot, ash, grit and gritty particles emitted in smoke;

and any expressions used in this section and in the [M67]Clean Air Act 1956 or the [M68]Clean Air Act 1968 have the same meaning in this section as in that Act and section 34(2) of the Clean Air Act 1956 shall apply for the interpretation of the expression "dark smoke" and the operation of this Part in relation to it.

(8) Where, by an order under section 2 of the [M69]Public Health (Control of Disease) Act 1984, a port health authority has been constituted for any port health district, the port

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health authority shall have by virtue of this subsection, as respects its district, the functions conferred or imposed by this Part in relation to statutory nuisances other than a nuisance falling within paragraph (g) of subsection (1) above and no such order shall be made assigning those functions; and "local authority" and "area" shall be construed accordingly.

(9) In this Part "best practicable means" is to be interpreted by reference to the following provisions—

(a) "practicable" means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications;

(b) the means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and structures;

(c) the test is to apply only so far as compatible with any duty imposed by law;

(d) the test is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances;

and, in circumstances where a code of practice under section 71 of the [M70]Control of Pollution Act 1974 (noise minimisation) is applicable, regard shall also be had to guidance given in it.

(10) A local authority shall not without the consent of the Secretary of State institute summary proceedings under this Part in respect of a nuisance falling within paragraph (b), (d) or (e) of subsection (1) above if proceedings in respect thereof might be instituted under Part I of the [M71]Alkali &c. Works Regulation Act 1906 or section 5 of the [M72]Health and Safety at Work etc. Act 1974.

(11) The area of a local authority which includes part of the seashore shall also include for the purposes of this Part the territorial sea lying seawards from that part of the shore; and subject to subsection (12) below, this Part shall have effect, in relation to any area included in the area of a local authority by virtue of this subsection—

(a) as if references to premises and the occupier of premises included respectively a vessel and the master of a vessel; and

(b) with such other modifications, if any, as are prescribed in regulations made by the Secretary of State.

(12) A vessel powered by steam reciprocating machinery is not a vessel to which this Part of this Act applies.

Marginal Citations

M67 1956 c. 52.
M68 1968 c. 62.
M69 1984 c. 22.
M70 1974 c. 40.
M71 1906 c. 14.
M72 1974 c. 37.

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80 Summary proceedings for statutory nuisances. E+W

(1) Where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the area of the authority, the local authority shall serve a notice ("an abatement notice") imposing all or any of the following requirements—

(a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;

(b) requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes,

and the notice shall specify the time or times within which the requirements of the notice are to be complied with.

(2) The abatement notice shall be served—

(a) except in a case falling within paragraph (b) or (c) below, on the person responsible for the nuisance;

(b) where the nuisance arises from any defect of a structural character, on the owner of the premises;

(c) where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, on the owner or occupier of the premises.

(3) The person served with the notice may appeal against the notice to a magistrates' court within the period of twenty-one days beginning with the date on which he was served with the notice.

(4) If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, he shall be guilty of an offence.

(5) Except in a case falling within subsection (6) below, a person who commits an offence under subsection (4) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction.

(6) A person who commits an offence under subsection (4) above on industrial, trade or business premises shall be liable on summary conviction to a fine not exceeding £20,000.

(7) Subject to subsection (8) below, in any proceedings for an offence under subsection (4) above in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

(8) The defence under subsection (7) above is not available—

(a) in the case of a nuisance falling within paragraph (a), (d), (e), (f) or (g) of section 79(1) above except where the nuisance arises on industrial, trade or business premises;

(b) in the case of a nuisance falling within paragraph (b) of section 79(1) above except where the smoke is emitted from a chimney; and

(c) in the case of a nuisance falling within paragraph (c) or (h) of section 79(1) above.

(9) In proceedings for an offence under subsection (4) above in respect of a statutory nuisance falling within paragraph (g) of section 79(1) above where the offence consists

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in contravening requirements imposed by virtue of subsection (1)(a) above it shall be a defence to prove—

(a) that the alleged offence was covered by a notice served under section 60 or a consent given under section 61 or 65 of the [M73]Control of Pollution Act 1974 (construction sites, etc); or

(b) where the alleged offence was committed at a time when the premises were subject to a notice under section 66 of that Act (noise reduction notice), that the level of noise emitted from the premises at that time was not such as to a constitute a contravention of the notice under that section; or

(c) where the alleged offence was committed at a time when the premises were not subject to a notice under section 66 of that Act, and when a level fixed under section 67 of that Act (new buildings liable to abatement order) applied to the premises, that the level of noise emitted from the premises at that time did not exceed that level.

(10) Paragraphs (b) and (c) of subsection (9) above apply whether or not the relevant notice was subject to appeal at the time when the offence was alleged to have been committed.

Marginal Citations

M73 1974 c. 40.

VALID FROM 26/01/2009

[[F75]80ZAFixed penalty notice: supplemental S

(1) This section applies to a fixed penalty notice given under section 80(4A).

(2) A fixed penalty notice must give reasonable particulars of the circumstances alleged to constitute the offence.

(3) A fixed penalty notice must also state—

(a) the amount of the fixed penalty;

(b) the period within which it may be paid;

(c) the—

(i) person to whom; and

(ii) address at which,

payment may be made;

(d) the method or methods by which payment may be made;

(e) the consequences of not making a payment within the period for payment.

(4) The amount of the fixed penalty under section 80(4A) is—

(a) in the case of a nuisance relating to industrial, trade or business premises, £400;

(b) in any other case, £150.

(5) The period for payment of the fixed penalty is 14 days beginning with the day after the day on which the notice is given.

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(6) The local authority may extend the period for paying the fixed penalty in any particular case if they consider it appropriate to do so by sending notice to the person to whom the fixed penalty notice was given.

(7) No proceedings for an offence under section 80(4) may be commenced before the end of the period for payment of the fixed penalty.

(8) In proceedings for an offence under section 80(4), a certificate which—

(a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the local authority; and

(b) states that payment of the amount specified in the fixed penalty notice was or was not received by the expiry of the period within which that fixed penalty may be paid,

is sufficient evidence of the facts stated.

(9) Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.

(10) Any sum received by a local authority under section 80(4A) accrues to that authority.

(11) The Scottish Ministers may, by regulations—

(a) provide that fixed penalty notices may not be given in such circumstances as may be prescribed;

(b) provide for the form of a fixed penalty notice;

(c) provide for the method or methods by which fixed penalties may be paid;

(d) modify subsection (4)(a) or (b) above so as to substitute a different amount (not exceeding level 2 on the standard scale) for the amount for the time being specified there;

(e) provide for the amount of the fixed penalty to be different in different cases or descriptions of case;

(f) modify subsection (5) above so as to substitute a different period for the period for the time being specified there;

(g) provide for the keeping of accounts, and the preparation and publication of statements of account relating to fixed penalties under section 80(4A).

(12) Before making regulations under subsection (11) above, the Scottish Ministers must consult, in so far as it is reasonably practicable to do so, the persons mentioned in subsection (13) below.

(13) Those persons are—

(a) such associations of local authorities; and

(b) such other persons,

as the Scottish Ministers consider appropriate.**]**

Textual Amendments

F75 S. 80ZA inserted (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5) {ss. 113(3)}, 128(2) (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1

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VALID FROM 05/01/1994

[F76 80A Abatement notice in respect of noise in street. **E+W+S**

(1) In the case of a statutory nuisance within section 79(1)(ga) above that—

(a) has not yet occurred, or

(b) arises from noise emitted from or caused by an unattended vehicle or unattended machinery or equipment,

the abatement notice shall be served in accordance with subsection (2) below.

(2) The notice shall be served—

(a) where the person responsible for the vehicle, machinery or equipment can be found, on that person;

(b) where that person cannot be found or where the local authority determines that this paragraph should apply, by fixing the notice to the vehicle, machinery or equipment.

(3) Where—

(a) an abatement notice is served in accordance with subsection (2)(b) above by virtue of a determination of the local authority, and

(b) the person responsible for the vehicle, machinery or equipment can be found and served with a copy of the notice within an hour of the notice being fixed to the vehicle, machinery or equipment,

a copy of the notice shall be served on that person accordingly.

(4) Where an abatement notice is served in accordance with subsection (2)(b) above by virtue of a determination of the local authority, the notice shall state that, if a copy of the notice is subsequently served under subsection (3) above, the time specified in the notice as the time within which its requirements are to be complied with is extended by such further period as is specified in the notice.

(5) Where an abatement notice is served in accordance with subsection (2)(b) above, the person responsible for the vehicle, machinery or equipment may appeal against the notice under section 80(3) above as if he had been served with the notice on the date on which it was fixed to the vehicle, machinery or equipment.

(6) Section 80(4) above shall apply in relation to a person on whom a copy of an abatement notice is served under subsection (3) above as if the copy were the notice itself.

(7) A person who removes or interferes with a notice fixed to a vehicle, machinery or equipment in accordance with subsection (2)(b) above shall be guilty of an offence, unless he is the person responsible for the vehicle, machinery or equipment or he does so with the authority of that person.

(8) A person who commits an offence under subsection (7) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.**]**

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Extent Information

E6 Ss. 79-82, which previously extended to England and Wales only, extend to Scotland from 1.4.1996 (except where specified) by virtue of the repeal of s. 83 of this Act by 1995 c. 25, s. 120(3), **Sch. 24**; S.I. 1996/186, **art. 3**

Textual Amendments

F76 S. 80A inserted (5.1.1994) by 1993 c. 40, **ss. 3(6)**, 12(1)

Modifications etc. (not altering text)

C42 S. 80A applied (with modifications)(17.12.1996) by 1996 c. ix, **ss. 1(1)**, 24(2)

C43 Ss. 79-81 excluded (S.) (22.4.2006 for certain purposes and otherwise prosp.) by Water Services etc. (Scotland) Act 2005 (asp 3), **ss. 26(10)**, 37(2) (with s. 36); S.S.I. 2006/167, **art. 2**, Sch. 2

81 Supplementary provisions. E+W

(1) Where more than one person is responsible for a statutory nuisance section 80 above shall apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance.

(2) Where a statutory nuisance which exists or has occurred within the area of a local authority, or which has affected any part of that area, appears to the local authority to be wholly or partly caused by some act or default committed or taking place outside the area, the local authority may act under section 80 above as if the act or default were wholly within that area, except that any appeal shall be heard by a magistrates' court having jurisdiction where the act or default is alleged to have taken place.

(3) Where an abatement notice has not been complied with the local authority may, whether or not they take proceedings for an offence under section 80(4) above, abate the nuisance and do whatever may be necessary in execution of the notice.

(4) Any expenses reasonably incurred by a local authority in abating, or preventing the recurrence of, a statutory nuisance under subsection (3) above may be recovered by them from the person by whose act or default the nuisance was caused and, if that person is the owner of the premises, from any person who is for the time being the owner thereof; and the court may apportion the expenses between persons by whose acts or defaults the nuisance is caused in such manner as the court consider fair and reasonable.

(5) If a local authority is of opinion that proceedings for an offence under section 80(4) above would afford an inadequate remedy in the case of any statutory nuisance , they may, subject to subsection (6) below, take proceedings in the High Court for the purpose of securing the abatement, prohibition or restriction of the nuisance, and the proceedings shall be maintainable notwithstanding the local authority have suffered no damage from the nuisance.

(6) In any proceedings under subsection (5) above in respect of a nuisance falling within paragraph (g) of section 79(1) above, it shall be a defence to prove that the noise was authorised by a notice under section 60 or a consent under section 61 (construction sites) of the [M74]Control of Pollution Act 1974.

(7) The further supplementary provisions in Schedule 3 to this Act shall have effect.

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Marginal Citations

M74 1974 c. 40.

VALID FROM 05/01/1994

[F77 81A Expenses recoverable from owner to be a charge on premises. E+W

(1) Where any expenses are recoverable under section 81(4) above from a person who is the owner of the premises there mentioned and the local authority serves a notice on him under this section—

(a) the expenses shall carry interest, at such reasonable rate as the local authority may determine, from the date of service of the notice until the whole amount is paid, and

(b) subject to the following provisions of this section, the expenses and accrued interest shall be a charge on the premises.

(2) A notice served under this section shall—

(a) specify the amount of the expenses that the local authority claims is recoverable,

(b) state the effect of subsection (1) above and the rate of interest determined by the local authority under that subsection, and

(c) state the effect of subsections (4) to (6) below.

(3) On the date on which a local authority serves a notice on a person under this section the authority shall also serve a copy of the notice on every other person who, to the knowledge of the authority, has an interest in the premises capable of being affected by the charge.

(4) Subject to any order under subsection (7)(b) or (c) below, the amount of any expenses specified in a notice under this section and the accrued interest shall be a charge on the premises—

(a) as from the end of the period of twenty-one days beginning with the date of service of the notice, or

(b) where an appeal is brought under subsection (6) below, as from the final determination of the appeal,

until the expenses and interest are recovered.

(5) For the purposes of subsection (4) above, the withdrawal of an appeal has the same effect as a final determination of the appeal.

(6) A person served with a notice or copy of a notice under this section may appeal against the notice to the county court within the period of twenty-one days beginning with the date of service.

(7) On such an appeal the court may—

(a) confirm the notice without modification,

(b) order that the notice is to have effect with the substitution of a different amount for the amount originally specified in it, or

(c) order that the notice is to be of no effect.

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(8) A local authority shall, for the purpose of enforcing a charge under this section, have all the same powers and remedies under the [M75]Law of Property Act 1925, and otherwise, as if it were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

(9) In this section—

"owner", in relation to any premises, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the premises or, where the premises are not let at a rack rent, would be so entitled if they were so let, and

"premises" does not include a vessel.**]**

Textual Amendments

F77 Ss. 81A, 81B inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 10(2)**, 12(1)

Marginal Citations

M75 1925 c. 20.

VALID FROM 05/01/1994

[F78]81B Payment of expenses by instalments. E+W

(1) Where any expenses are a charge on premises under section 81A above, the local authority may by order declare the expenses to be payable with interest by instalments within the specified period, until the whole amount is paid.

(2) In subsection (1) above—

"interest" means interest at the rate determined by the authority under section 81A (1) above, and

"the specified period" means such period of thirty years or less from the date of service of the notice under section 81A above as is specified in the order.

(3) Subject to subsection (5) below, the instalments and interest, or any part of them, may be recovered from the owner or occupier for the time being of the premises.

(4) Any sums recovered from an occupier may be deducted by him from the rent of the premises.

(5) An occupier shall not be required to pay at any one time any sum greater than the aggregate of—

(a) the amount that was due from him on account of rent at the date on which he was served with a demand from the local authority together with a notice requiring him not to pay rent to his landlord without deducting the sum demanded, and

(b) the amount that has become due from him on account of rent since that date.

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Textual Amendments

F78 Ss. 81A, 81B inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 10(2)**, 12(1)

82 Summary proceedings by persons aggrieved by statutory nuisances. E+W

(1) A magistrates' court may act under this section on a complaint made by any person on the ground that he is aggrieved by the existence of a statutory nuisance.

(2) If the magistrates' court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, the court shall make an order for either or both of the following purposes—

(a) requiring the defendant to abate the nuisance, within a time specified in the order, and to execute any works necessary for that purpose;

(b) prohibiting a recurrence of the nuisance, and requiring the defendant, within a time specified in the order, to execute any works necessary to prevent the recurrence;

and may also impose on the defendant a fine not exceeding level 5 on the standard scale.

(3) If the magistrates' court is satisfied that the alleged nuisance exists and is such as, in the opinion of the court, to render premises unfit for human habitation, an order under subsection (2) above may prohibit the use of the premises for human habitation until the premises are, to the satisfaction of the court, rendered fit for that purpose.

(4) Proceedings for an order under subsection (2) above shall be brought—

(a) except in a case falling within paragraph (b) or (c) below, against the person responsible for the nuisance;

(b) where the nuisance arises from any defect of a structural character, against the owner of the premises;

(c) where the person responsible for the nuisance cannot be found, against the owner or occupier of the premises.

(5) Where more than one person is responsible for a statutory nuisance, subsections (1) to (4) above shall apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance.

(6) Before instituting proceedings for an order under subsection (2) above against any person, the person aggrieved by the nuisance shall give to that person such notice in writing of his intention to bring the proceedings as is applicable to proceedings in respect of a nuisance of that description and the notice shall specify the matter complained of.

(7) The notice of the bringing of proceedings in respect of a statutory nuisance required by subsection (6) above which is applicable is—

(a) in the case of a nuisance falling within paragraph (g) of section 79(1) above, not less than three days' notice; and

(b) in the case of a nuisance of any other description, not less than twenty-one days' notice;

but the Secretary of State may, by order, provide that this subsection shall have effect as if such period as is specified in the order were the minimum period of notice applicable to any description of statutory nuisance specified in the order.

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(8) A person who, without reasonable excuse, contravenes any requirement or prohibition imposed by an order under subsection (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction.

(9) Subject to subsection (10) below, in any proceedings for an offence under subsection (8) above in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

(10) The defence under subsection (9) above is not available—

(a) in the case of a nuisance falling within paragraph (a), (d), (e), (f) or (g) of section 79(1) above except where the nuisance arises on industrial, trade or business premises;

(b) in the case of a nuisance falling within paragraph (b) of section 79(1) above except where the smoke is emitted from a chimney;

(c) in the case of a nuisance falling within paragraph (c) or (h) of section 79(1) above; and

(d) in the case of a nuisance which is such as to render the premises unfit for human habitation.

(11) If a person is convicted of an offence under subsection (8) above, a magistrates' court may, after giving the local authority in whose area the nuisance has occurred an opportunity of being heard, direct the authority to do anything which the person convicted was required to do by the order to which the conviction relates.

(12) Where on the hearing of proceedings for an order under subsection (2) above it is proved that the alleged nuisance existed at the date of the making of the complaint, then, whether or not at the date of the hearing it still exists or is likely to recur, the court shall order the defendant (or defendants in such proportions as appears fair and reasonable) to pay to the person bringing the proceedings such amount as the court considers reasonably sufficient to compensate him for any expenses properly incurred by him in the proceedings.

(13) If it appears to the magistrates' court that neither the person responsible for the nuisance nor the owner or occupier of the premises can be found the court may, after giving the local authority in whose area the nuisance has occurred an opportunity of being heard, direct the authority to do anything which the court would have ordered that person to do.

Statutory nuisances: Scotland

83 Statutory nuisances: Scotland. E+W+S

(1) Sections 79 to 82 above do not apply to Scotland.

(2) In section 16 of the [M76]Public Health (Scotland) Act 1897 (definition of nuisances), after paragraph (5) there shall be inserted the following paragraphs—

"(5A) Any fumes ("fumes" meaning airborne solid matter smaller than dust), gases or vapours emitted, so as to be a nuisance or injurious or dangerous to health,

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from any premises, or part thereof, used or intended to be used as a dwelling house.

(5B) Any dust caused by any trade, business, manufacture or process, being a nuisance or injurious or dangerous to health."

Marginal Citations
M76 1897 c. 38.

Termination of existing controls over offensive trades and businesses

84 Termination of Public Health Act controls over offensive trades etc. E+W+S

(1) Where a person carries on, in the area or part of the area of any local authority—

(a) in England or Wales, a trade which—

(i) is an offensive trade within the meaning of section 107 of the [M77]Public Health Act 1936 in that area or part of that area, and

(ii) constitutes a prescribed process designated for local control for the carrying on of which an authorisation is required under section 6 of this Act; or

(b) in Scotland, a business which—

(i) is mentioned in section 32(1) of the Public Health (Scotland) Act 1897 (or is an offensive business by virtue of that section) in that area or part of that area; and

(ii) constitutes a prescribed process designated for local control for the carrying on of which an authorisation is required under the said section 6,

subsection (2) below shall have effect in relation to that trade or business as from the date on which an authorisation is granted under section 6 of this Act or, if that person has not applied for such an authorisation within the period allowed under section 2(1) above for making applications under that section, as from the end of that period.

(2) Where this subsection applies in relation to the trade or business carried on by any person—

(a) nothing in section 107 of the Public Health Act 1936 or in section 32 of the Public Health (Scotland) Act 1897 shall apply in relation to it, and

(b) no byelaws or further byelaws made under section 108(2) of the said Act of 1936, or under subsection (2) of the said section 32, with respect to a trade or business of that description shall apply in relation to it;

but without prejudice to the continuance of, and imposition of any penalty in, any proceedings under the said section 107 or the said section 32 which were instituted before the date as from which this subsection has effect in relation to the trade or business.

(3) Subsection (2)(b) above shall apply in relation to the trade of fish frying as it applies in relation to an offensive trade.

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(4) When the Secretary of State considers it expedient to do so, having regard to the operation of Part I and the preceding provisions of this Part of this Act in relation to offensive trades or businesses, he may by order repeal—

(a) sections 107 and 108 of the [M78]Public Health Act 1936; and

(b) section 32 of the [M79]Public Health (Scotland) Act 1897;

and different days may be so appointed in relation to trades or businesses which constitute prescribed processes and those which do not.

(5) In this section—

"prescribed process" has the same meaning as in Part I of this Act; and

"offensive trade" or "trade" has the same meaning as in section 107 of the Public Health Act 1936.

Marginal Citations

M77 1936 c. 49.

M78 1936 c. 49.

M79 1897 c. 38.

Application to gases of certain Clean Air Act provisions

85 Application to gases of certain Clean Air Act provisions. E+W+S

After section 7 of the [M80]Clean Air Act 1968 there shall be inserted the following section—

"**7A Application to gases of certain provisions as to grit and dust.**

(1) The Minister may by regulations—

(a) apply all or any of the provisions of sections 2, 3, 4 and 5 of this Act and of sections 7, 18(2), 19(3), 20(4) and 22(1) of the principal Act (provisions relating to grit and dust or smoke) to prescribed gases as they apply to grit and dust; and

(b) apply all or any of the provisions of section 3 of the principal Act (requirement that new furnaces shall be so far as practicable smokeless) to prescribed gases as they apply to smoke;

subject, in either case, to such exceptions and modifications as the Minister thinks expedient.

(2) Regulations under this section may make different provision for different cases.

(3) No regulations shall be made under this section unless a draft of the regulations has been laid before Parliament and approved by each House of Parliament.

(4) In the application of any provision of the principal Act or this Act to prescribed gases by virtue of regulations under this section, any reference to the rate of emission of any substance shall be construed as a reference to the percentage by volume or by mass of the gas which may be emitted during a period specified in the regulations.

(5) In this section—

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"gas" includes vapour and moisture precipitated from vapour; and
"prescribed" means prescribed in regulations under this section."

Marginal Citations
M80 1968 c. 62.

PART IV E+W+S

LITTER ETC

Modifications etc. (not altering text)
C44 Pt. IV amended: by S.I. 1991/476, **art. 2**; (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para.10**; S.I. 1994/2038, **art. 3**.
C45 Pt. IV extended: by S.I.1991/961, **art. 2**; (E.W.) (1.11.1996) by 1996 c. 56, ss. 19, 583(2), **Sch. 1 para.10** (with ss. 1(4), 561, 562, Sch. 39)

Provisions relating to litter

86 Preliminary. E+W+S

(1) The following provisions have effect for the purposes of this Part.

(2) In England and Wales the following are "principal litter authorities"—
(a) a county council,
(b) a district council,
(c) a London borough council,
(d) the Common Council of the City of London, and
(e) the Council of the Isles of Scilly;
but the Secretary of State may, by order, designate other descriptions of local authorities as litter authorities for the purposes of this Part; and any such authority shall also be a principal litter authority.

(3) In Scotland the following are "principal litter authorities"—
(a) a regional council;
(b) a district or islands council; and
(c) a joint board.

(4) Subject to subsection (8) below, land is "relevant land" of a principal litter authority if, not being relevant land falling within subsection (7) below, it is open to the air and is land (but not a highway or in Scotland a public road) which is under the direct control of such an authority to which the public are entitled or permitted to have access with or without payment.

(5) Land is "Crown land" if it is land—
(a) occupied by the Crown Estate Commissioners as part of the Crown Estate,
(b) occupied by or for the purposes of a government department or for naval, military or air force purposes, or

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(c) occupied or managed by any body acting on behalf of the Crown;

is "relevant Crown land" if it is Crown land which is open to the air and is land (but not a highway or in Scotland a public road) to which the public are entitled or permitted to have access with or without payment; and "the appropriate Crown authority" for any Crown land is the Crown Estate Commissioners, the Minister in charge of the government department or the body which occupies or manages the land on the Crown's behalf, as the case may be.

(6) Subject to subsection (8) below, land is "relevant land" of a designated statutory undertaker if it is land which is under the direct control of any statutory undertaker or statutory undertaker of any description which may be designated by the Secretary of State, by order, for the purposes of this Part, being land to which the public are entitled or permitted to have access with or without payment or, in such cases as may be prescribed in the designation order, land in relation to which the public have no such right or permission.

(7) Subject to subsection (8) below, land is "relevant land" of a designated educational institution if it is open to the air and is land which is under the direct control of the governing body of or, in Scotland, of such body or of the education authority responsible for the management of, any educational institution or educational institution of any description which may be designated by the Secretary of State, by order, for the purposes of this Part.

(8) The Secretary of State may, by order, designate descriptions of land which are not to be treated as relevant Crown land or as relevant land of principal litter authorities, of designated statutory undertakers or of designated educational institutions or of any description of any of them.

(9) Every highway maintainable at the public expense other than a trunk road which is a special road is a "relevant highway" and the local authority which is, for the purposes of this Part, "responsible" for so much of it as lies within its area is, subject to any order under subsection (11) below—

(a) in Greater London, the council of the London borough or the Common Council of the City of London;

(b) outside Greater London, the council of the district; and

(c) the Council of the Isles of Scilly.

(10) In Scotland, every public road other than a trunk road which is a special road is a "relevant road" and the local authority which is, for the purposes of this Part, "responsible" for so much of it as lies within its area is, subject to any order under subsection (11) below, the district or islands council or (in the case of a special road) the regional or islands council.

(11) The Secretary of State may, by order, as respects relevant highways or relevant roads, relevant highways or relevant roads of any class or any part of a relevant highway or relevant road specified in the order, transfer the responsibility for the discharge of the duties imposed by section 89 below from the local authority to the highway or roads authority; but he shall not make an order under this subsection unless—

(a) (except where he is the highway or roads authority) he is requested to do so by the highway or roads authority;

(b) he consults the local authority; and

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(c) it appears to him to be necessary or expedient to do so in order to prevent or minimise interference with the passage or with the safety of traffic along the highway or, in Scotland, road in question;

and where, by an order under this subsection, responsibility for the discharge of those duties is transferred, the authority to which the transfer is made is, for the purposes of this Part, "responsible" for the highway, road or part specified in the order.

(12) Land is "relevant land within a litter control area of a local authority" if it is land included in an area designated by the local authority under section 90 below to which the public are entitled or permitted to have access with or without payment.

(13) A place on land shall be treated as "open to the air" notwithstanding that it is covered if it is open to the air on at least one side.

(14) The Secretary of State may, by order, apply the provisions of this Part which apply to refuse to any description of animal droppings in all or any prescribed circumstances subject to such modifications as appear to him to be necessary.

(15) Any power under this section may be exercised differently as respects different areas, different descriptions of land or for different circumstances.

Commencement Information

I46 S. 86 partly in force; s. 86 not in force at Royal Assent see s. 164(3); s. 86(2)(6)-(8)(11)(14)(15) wholly in force at 14.1.1991 and s. 86(1)(4)(5)(9)(13) in force (E.W.) at 13.2.1991 by S.I. 1991/96, **arts. 2**, 3; s. 86(3)(10) wholly in force at 1.4.1991, s. 86(1)(4)(5)(13) in force (S.) at 1.4.1991 and s. 86(12) wholly in force at 1.6.1991 by S.I. 1991/1042, **arts. 2**, 3

87 Offence of leaving litter. E+W+S

(1) If any person throws down, drops or otherwise deposits in, into or from any place to which this section applies, and leaves, any thing whatsoever in such circumstances as to cause, or contribute to, or tend to lead to, the defacement by litter of any place to which this section applies, he shall, subject to subsection (2) below, be guilty of an offence.

(2) No offence is committed under this section where the depositing and leaving of the thing was—

(a) authorised by law, or

(b) done with the consent of the owner, occupier or other person or authority having control of the place in or into which that thing was deposited.

(3) This section applies to any public open place and, in so far as the place is not a public open place, also to the following places—

(a) any relevant highway or relevant road and any trunk road which is a special road;

(b) any place on relevant land of a principal litter authority;

(c) any place on relevant Crown land;

(d) any place on relevant land of any designated statutory undertaker;

(e) any place on relevant land of any designated educational institution;

(f) any place on relevant land within a litter control area of a local authority.

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(4) In this section "public open place" means a place in the open air to which the public are entitled or permitted to have access without payment; and any covered place open to the air on at least one side and available for public use shall be treated as a public open place.

(5) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) A local authority, with a view to promoting the abatement of litter, may take such steps as the authority think appropriate for making the effect of subsection (5) above known to the public in their area.

(7) In any proceedings in Scotland for an offence under this section it shall be lawful to convict the accused on the evidence of one witness.

Modifications etc. (not altering text)
C46 S. 87 applied (20.9.2000) by 2000 c. vii, **ss. 1(1)**, 21

Commencement Information
I47 S. 87 partly in force; s. 87 not in force at Royal Assent see s. 164(2); s. 87(1) (2) (3)(a)-(e) (4)-(6) in force (E.W) 13.2.1991 by S.I. 1991/96, **art. 3**
S. 87(7) in force at 1.4.1991; s. 87(1)(2)(3)(a)-(e) (4)-(6) in force (S.) 1.4.1991 and s. 87(3)(f) in force 1.6.1991 see s. 164(3) and S.I. 1991/1042, **arts. 2**, 3

88 Fixed penalty notices for leaving litter. E+W+S

(1) Where on any occasion an authorised officer of a litter authority finds a person who he has reason to believe has on that occasion committed an offence under section 87 above in the area of that authority, he may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

(2) Where a person is given a notice under this section in respect of an offence—

(a) no proceedings shall be instituted for that offence before the expiration of fourteen days following the date of the notice; and

(b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.

(3) A notice under this section shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and shall state—

(a) the period during which, by virtue of subsection (2) above, proceedings will not be taken for the offence;

(b) the amount of the fixed penalty; and

(c) the person to whom and the address at which the fixed penalty may be paid;

and, without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).

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(4) Where a letter is sent in accordance with subsection (3) above payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(5) The form of notices under this section shall be such as the Secretary of State may by order prescribe.

(6) The fixed penalty payable to a litter authority in pursuance of a notice under this section shall, subject to subsection (7) below, be £10; and as respects the sums received by the authority, those sums—

(a) if received by an authority in England and Wales, shall be paid to the Secretary of State;

(b) if received by an authority in Scotland, shall be treated as if the penalty were a fine imposed by a district court.

(7) The Secretary of State may by order substitute a different amount for the amount for the time being specified as the amount of the fixed penalty in subsection (6) above.

(8) In any proceedings a certificate which—

(a) purports to be signed by or on behalf of—

(i) in England and Wales, the chief finance officer of the litter authority; or

(ii) in Scotland, the proper officer; and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

shall be evidence of the facts stated.

(9) For the purposes of this section the following are "litter authorities"—

(a) any principal litter authority, other than a county council, a regional council or a joint board;

(b) any county council , regional council or joint board designated by the Secretary of State, by order, in relation to such area as is specified in the order (not being an area in a National Park);

(c) any National Park Committee;

(d) any Park board for any area in a National Park; and

(e) the Broads Authority.

(10) In this section—

"authorised officer" means an officer of, or in the case of any Park board or National Park Committee, an officer acting on behalf of, a litter authority who is authorised in writing by the authority for the purpose of issuing notices under this section;

"chief finance officer", in relation to a litter authority, means the person having responsibility for the financial affairs of the authority;

"National Park Committee" means a committee appointed to perform functions under paragraph 5 of Schedule 17 to the [M81]Local Government Act 1972;

"Park board", in relation to a National Park, means—

(a) a joint planning board reconstituted under paragraph 1 of Schedule 17 to the Local Government Act 1972; or

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(b) a board reconstituted as a special planning board under paragraph 3 of that Schedule;

"proper officer" means the officer who has, as respects the authority, the responsibility mentioned in section 95 of the [M82]Local Government (Scotland) Act 1973 (financial administration).

Modifications etc. (not altering text)

C47 S. 88 extended (with modifications) (E.W.) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para.12(b)** (with ss. 7(6), 115, 117, Sch. 8 para. 7).

Commencement Information

I48 S. 88 wholly in force; s. 88 not in force at Royal Assent see s. 164(2); s. 88((7)(9)(b) in force at 14.1.1991 and s. 88(1)-(4)(6)(8)(9)(a)(c)-(e)(10) in force (E.W) at 13.2.1991 by S.I. 1991/96, **arts. 2**, 3 S. 88(1)-(4)(6)(8)(9)(a)(c)(d)(10) in force (S.) at 1.4.1991 by S.I. 1991/1042, **art. 2**

Marginal Citations

M81 1972 c. 70.
M82 1973 c. 65.

89 Duty to keep land and highways clear of litter etc. E+W+S

(1) It shall be the duty of—

(a) each local authority, as respects any relevant highway or, in Scotland, relevant road for which it is responsible,

(b) the Secretary of State, as respects any trunk road which is a special road and any relevant highway or relevant road for which he is responsible,

(c) each principal litter authority, as respects its relevant land,

(d) the appropriate Crown authority, as respects its relevant Crown land,

(e) each designated statutory undertaker, as respects its relevant land,

(f) the governing body of each designated educational institution or in Scotland such body or, as the case may be, the education authority responsible for the management of the institution, as respects its relevant land, and

(g) the occupier of any relevant land within a litter control area of a local authority,

to ensure that the land is, so far as is practicable, kept clear of litter and refuse.

(2) Subject to subsection (6) below, it shall also be the duty of—

(a) each local authority, as respects any relevant highway or relevant road for which it is responsible,

(b) the Secretary of State, as respects any trunk road which is a special road and any relevant highway or relevant road for which he is responsible,

to ensure that the highway or road is, so far as is practicable, kept clean.

(3) In determining what standard is required, as respects any description of land, highway or road, for compliance with subsections (1) and (2) above, regard shall be had to the character and use of the land, highway or road as well as the measures which are practicable in the circumstances.

(4) Matter of any description prescribed by regulations made by the Secretary of State for the purposes of subsections (1)(a) and (2) above shall be litter or refuse to which the

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duties imposed by those subsections apply as respects relevant highways or relevant roads whether or not it would be litter or refuse apart from this subsection.

(5) It shall be the duty of a local authority, when discharging its duty under subsection (1)(a) or (2) above as respects any relevant highway or relevant road, to place and maintain on the highway or road such traffic signs and barriers as may be necessary for giving warning and preventing danger to traffic or for regulating it and afterwards to remove them as soon as they cease to be necessary for those purposes; but this subsection has effect subject to any directions given under subsection (6) below.

(6) In discharging its duty under subsection (1)(a) or (2) above to keep clear of litter and refuse or to clean any relevant highway or relevant road for which it is responsible, the local authority shall comply with any directions given to it by the highway or roads authority with respect to—

(a) the placing and maintenance of any traffic signs or barriers;

(b) the days or periods during which clearing or cleaning shall not be undertaken or undertaken to any extent specified in the direction;

and for the purpose of enabling it to discharge its duty under subsection (1)(a) or (2) above as respects any relevant highway or relevant road the local authority may apply to the highway authority or roads authority for that authority to exercise its powers under section 14(1) or (3) of the [M83]Road Traffic Regulation Act 1984 (temporary prohibition or restriction of traffic).

(7) The Secretary of State shall prepare and issue a code of practice for the purpose of providing practical guidance on the discharge of the duties imposed by subsections (1) and (2) above.

(8) Different codes of practice may be prepared and issued under subsection (7) above for different areas.

(9) The Secretary of State may issue modifications of, or withdraw, a code issued under subsection (7) above; but where a code is withdrawn, he shall prepare and issue a new code under that subsection in substitution for it.

(10) Any person subject to any duty imposed by subsection (1) or (2) above shall have regard to the code of practice in force under subsection (7) above in discharging that duty.

(11) A draft code prepared under subsection (7) above shall be laid before both Houses of Parliament and shall not be issued until after the end of the period of 40 days beginning with the day on which the code was so laid, or if the draft is laid on different days, the later of the two days.

(12) If, within the period mentioned in subsection (11) above, either House resolves that the code the draft of which was laid before it should not be issued, the Secretary of State shall not issue that code.

(13) No account shall be taken in reckoning any period of 40 days for the purposes of this section of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(14) In this section "traffic sign" has the meaning given in section 64(1) of the [M84]Road Traffic Regulation Act 1984.

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Modifications etc. (not altering text)

C48 S. 89(1)(a) modified by S.I. 1991/719, **reg. 3(1)**
C49 S. 89(1)(c) modified by s.I. 1991/719, reg. 3(2)
C50 S. 89(1)(f) modified by S.I. 1991/719, **reg. 3(3)**
C51 S. 89(2) modified by S.I. 1991/719, **reg. 3(4)**

Commencement Information

I49 S. 89 wholly in force at 1.6.1991; s. 89 not in force at Royal Assent see s. 164(2); s. 89(7)(8)(9)(11)(12)(13) in force 13.11.1990 by S.I. 1990/2243; s. 89(4) in force at 14.1.1991 by S.I. 1991/96, **art. 2** S. 89(1)(a)-(f)(2)(3)(5)(6)(10)(14) in force 1.4.1991 and s. 89(1)(g) in force 1.6.1991 see s. 164(3) and S.I. 1991/1042, **arts. 2**, 3

Marginal Citations

M83 1984 c. 27.
M84 1984 c. 27.

90 Litter control areas. E+W+S

(1) The Secretary of State may, by order, prescribe descriptions of land which may be designated under subsection (3) below as, or as part of, a litter control area.

(2) The power of the Secretary of State to prescribe descriptions of land under subsection (1) above includes power to describe land by reference to the ownership or occupation of the land or the activities carried on on it.

(3) Any principal litter authority other than a county council, regional council or joint board may, in accordance with the following provisions of this section, by order designate any land in their area as, or as part of, a litter control area.

(4) No order under subsection (3) above designating any land shall be made unless the authority is of the opinion that, by reason of the presence of litter or refuse, the condition of the land is, and unless they make a designation order is likely to continue to be, such as to be detrimental to the amenities of the locality.

(5) The power to make a designation order under subsection (3) above shall be excluded from the functions to which section 101 of the [M85]Local Government Act 1972 (functions capable of delegation) applies.

(6) An authority proposing to make a designation order in relation to any land shall—

(a) notify persons who appear to the authority to be persons who will be affected by the proposed order;

(b) give them an opportunity to make representations about it within the period of twenty-one days beginning with the service of the notice; and

(c) take any representations so made into account in making their decision.

(7) A designation order under subsection (3) above shall identify the land to which it applies and shall be in such form as the Secretary of State may by order prescribe.

Extent Information

E7 see s. 164(4)(5).

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Commencement Information

I50 S. 90 wholly in force at 1.6.1991; s. 90 not in force at Royal Assent see s. 164(2); s. 90(1)(2)(7) in force at 14.1.1991 by S.I. 1991/96, **art. 2**
S. 90(3)-(6) in force 1.6.1991 see s. 164(3) and S.I. 1991/1042, **art. 3**

Marginal Citations

M85 1972 c. 70.

91 Summary proceedings by persons aggrieved by litter. E+W+S

(1) A magistrates' court may act under this section on a complaint made by any person on the ground that he is aggrieved by the defacement, by litter or refuse, of—

(a) any relevant highway;
(b) any trunk road which is a special road;
(c) any relevant land of a principal litter authority;
(d) any relevant Crown land;
(e) any relevant land of a designated statutory undertaker;
(f) any relevant land of a designated educational institution; or
(g) any relevant land within a litter control area of a local authority.

(2) A magistrates' court may also act under this section on a complaint made by any person on the ground that he is aggrieved by the want of cleanliness of any relevant highway or any trunk road which is a special road.

(3) A principal litter authority shall not be treated as a person aggrieved for the purposes of proceedings under this section.

(4) Proceedings under this section shall be brought against the person who has the duty to keep the land clear under section 89(1) above or to keep the highway clean under section 89(2) above, as the case may be.

(5) Before instituting proceedings under this section against any person, the complainant shall give to the person not less than five days written notice of his intention to make the complaint and the notice shall specify the matter complained of.

(6) If the magistrates' court is satisfied that the highway or land in question is defaced by litter or refuse or, in the case of a highway, is wanting in cleanliness, the court may, subject to subsections (7) and (8) below, make an order ("a litter abatement order") requiring the defendant to clear the litter or refuse away or, as the case may be, clean the highway within a time specified in the order.

(7) The magistrates' court shall not make a litter abatement order if the defendant proves that he has complied, as respects the highway or land in question, with his duty under section 89(1) and (2) above.

(8) The magistrates' court shall not make a litter abatement order where it appears that the matter complained of is the result of directions given to the local authority under section 89(6) above by the highway authority.

(9) A person who, without reasonable excuse, fails to comply with a litter abatement order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale together with a further fine of an amount equal to one-twentieth of that level for each day on which the offence continues after the conviction.

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
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(10) In any proceedings for an offence under subsection (9) above it shall be a defence for the defendant to prove that he has complied, as respects the highway or land in question, with his duty under section 89(1) and (2) above.

(11) A code of practice under section 89(7) shall be admissible in evidence in any proceedings under this section and if any provision of such a code appears to the court to be relevant to any question in the proceedings it shall be taken into account in determining that question.

(12) Where a magistrates' court is satisfied on the hearing of a complaint under this section—

(a) that, when the complaint was made to it, the highway or land in question was defaced by litter or refuse or, as the case may be, was wanting in cleanliness, and

(b) that there were reasonable grounds for bringing the complaint,

the court shall order the defendant to pay such reasonable sum to the complainant as the court may determine in respect of the expenses incurred by the complainant in bringing the complaint and the proceedings before the court.

(13) In the application of this section to Scotland—

(a) for any reference to a magistrates' court there shall be substituted a reference to the sheriff;

(b) for any reference to a complaint there shall be substituted a reference to a summary application, and "complainant" shall be construed accordingly;

(c) for any reference to the defendant there shall be substituted a reference to the person against whom the proceedings are taken;

(d) for any reference to a highway and a relevant highway there shall be substituted a reference to a road and a relevant road; and

(e) for any reference to a highway authority there shall be substituted a reference to a roads authority,

and any person against whom proceedings are brought may appeal on a point of law to the Court of Session against the making of a litter abatement order.

Commencement Information

I51 S. 91 in force: s. 91 not in force at Royal Assent see s. 164(2); s. 91(1)(a)-(f)(2)-(13) in force 1.4.1991, s. 91(1)(g) in force 1.6.1991 see s. 164(3) and S.I. 1991/1042, **arts. 2**, 3

92 Summary proceedings by litter authorities. E+W+S

(1) Where a principal litter authority other than a county council, regional council or joint board are satisfied as respects—

(a) any relevant Crown land,

(b) any relevant land of a designated statutory undertaker,

(c) any relevant land of a designated educational institution, or

(d) any relevant land within a litter control area of a local authority,

that it is defaced by litter or refuse or that defacement of it by litter or refuse is likely to recur, the authority shall serve a notice (a "litter abatement notice") imposing either the requirement or the prohibition or both the requirement and the prohibition specified in subsection (2) below.

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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) The requirement and prohibition referred to in subsection (1) above are as follows, namely—

(a) a requirement that the litter or refuse be cleared within a time specified in the notice;

(b) a prohibition on permitting the land to become defaced by litter or refuse.

(3) The litter abatement notice shall be served—

(a) as respects relevant Crown land, on the appropriate Crown authority;

(b) as respects relevant land of a designated statutory undertaker, on the undertaker;

(c) as respects relevant land of a designated educational institution, on the governing body of the institution or in Scotland on such body or, as the case may be, on the education authority responsible for the management of the institution;

(d) in any other case, on the occupier of the land or, if it is unoccupied, on the owner of the land.

(4) The person served with the notice may appeal against the notice to a magistrates' court or, in Scotland, to the sheriff by way of summary application within the period of twenty-one days beginning with the date on which the notice was served.

(5) If, on any appeal under subsection (4) above, the appellant proves that, as respects the land in question, he has complied with his duty under section 89(1) above, the court shall allow the appeal.

(6) If a person on whom a litter abatement notice is served, without reasonable excuse, fails to comply with or contravenes the requirement or prohibition imposed by the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale together with a further fine of an amount equal to one-twentieth of that level for each day on which the offence continues after the conviction.

(7) In any proceedings for an offence under subsection (6) above it shall be a defence for the person charged to prove that he has complied, as respects the land in question, with his duty under section 89(1) above.

(8) A code of practice under section 89(7) above shall be admissible in evidence in any proceedings under this section and if any provision of such a code appears to the court to be relevant to any question in the proceedings it shall be taken into account in determining that question.

(9) If a person on whom a litter abatement notice is served fails to comply with the requirement imposed by the notice in respect of any land, the authority may, subject to subsection (10) below—

(a) enter on the land and clear the litter or refuse; and

(b) recover from that person the expenditure attributable to their having done so, except such of the expenditure as that person shows was unnecessary in the circumstances.

(10) Subsection (9) above does not apply in relation to relevant Crown land or relevant land of statutory undertakers.

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Commencement Information

I52 S. 92 in force: s. 92 not in force at Royal Assent see 164(2); s. 92(1)(a)-(c)(2)-(10) in force 1.4.1991 and s. 92(1)(d) in force 1.6.1991 see s. 164(3) and S.I. 1991/1042, **arts. 2**, 3

VALID FROM 16/03/2006

[F79 92A Litter clearing notices E+W

(1) A principal litter authority may in accordance with this section serve a notice (a "litter clearing notice") in relation to any land in its area which is open to the air.

(2) Before serving a litter clearing notice in relation to any land a principal litter authority must be satisfied that the land is defaced by litter or refuse so as to be detrimental to the amenity of the locality.

(3) A litter clearing notice is to require the person on whom it is served—

(a) to clear the land of the litter or refuse; and

(b) if the principal litter authority is satisfied that the land is likely to become defaced by litter or refuse again, to take reasonable steps to prevent it from becoming so defaced.

(4) A litter clearing notice must be served on—

(a) the occupier of the land to which it relates; or

(b) if the land is not occupied, the owner.

(5) A litter clearing notice imposing a requirement under subsection (3)(a) above may specify—

(a) a period within which the requirement must be complied with;

(b) standards of compliance.

(6) A period specified under subsection (5)(a) above may not be less than 28 days beginning with the day on which the notice is served.

(7) A principal litter authority must, in discharging its functions under this section, have regard to any guidance given to the authority by the appropriate person.

(8) The form and content of a litter clearing notice is to be such as the appropriate person may by order specify.

(9) Where a principal litter authority proposes to serve a litter clearing notice in respect of any land but is unable after reasonable enquiry to ascertain the name or proper address of the occupier of the land (or, if the land is unoccupied, the owner)—

(a) the authority may post the notice on the land (and may enter any land to the extent reasonably necessary for that purpose), and

(b) the notice is to be treated as having been served upon the occupier (or, if the land is unoccupied, the owner) at the time the notice is posted.

(10) Subsection (1) above does not apply to an English county council for an area for which there is a district council.

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(11) A litter clearing notice may not be served in relation to land of any of the following descriptions—

(a) a highway maintainable at the public expense;

(b) land under the direct control of a principal litter authority;

(c) Crown land;

(d) relevant land of a designated statutory undertaker;

(e) relevant land of a designated educational institution;

(f) land which is covered (but "open to the air" for the purposes of this Part by virtue of section 86(13) above) and to which the public are not entitled or permitted to have access, with or without payment.

Textual Amendments

F79 Ss. 92A-92C inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 20(2)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(g)**

VALID FROM 16/03/2006

92B Appeals against litter clearing notices E+W

(1) A person on whom a litter clearing notice is served under section 92A above may appeal against it to a magistrates' court in accordance with the provisions of this section.

(2) An appeal under this section must be made within a period of 21 days beginning with the day on which the notice is served.

(3) The grounds on which an appeal under this section may be made are that—

(a) there is a material defect or error in, or in connection with, the notice;

(b) the notice should have been served on another person;

(c) the land is not defaced by litter or refuse so as to be detrimental to the amenity of the locality;

(d) the action required is unfair or unduly onerous.

(4) A notice against which an appeal under this section is made is of no effect pending the final determination or withdrawal of the appeal.

(5) On the determination of an appeal under this section, the magistrates' court must—

(a) quash the notice;

(b) modify the notice (including modifying it by extending the period specified in it); or

(c) dismiss the appeal.

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Textual Amendments

F79 Ss. 92A-92C inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 20(2)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(g)**

VALID FROM 16/03/2006

92C Failure to comply with litter clearing notice E+W

(1) This section applies where the person on whom a litter clearing notice is served under section 92A above fails without reasonable excuse to comply with any requirement imposed by the notice.

(2) The person is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) The principal litter authority which served the notice or any person authorised by the authority may enter the land to which the notice relates and clear it of litter and refuse.

(4) Where a principal litter authority exercises the power in subsection (3) above, it may require the person on whom the notice was served to pay a reasonable charge in respect of the exercise of the power.

(5) A principal litter authority may for the purposes of subsection (4) above impose charges by reference to land of particular descriptions or categories (including categories determined by reference to surface area).**]**

Textual Amendments

F79 Ss. 92A-92C inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 20(2)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(g)**

93 Street litter control notices. E+W+S

(1) A principal litter authority other than a county council, regional council or a joint board may, with a view to the prevention of accumulations of litter or refuse in and around any street or open land adjacent to any street, issue notices ("street litter control notices") imposing requirements on occupiers of premises in relation to such litter or refuse, in accordance with this section and section 94 below.

(2) If the authority is satisfied, in respect of any premises which are of a description prescribed under section 94(1)(a) below and have a frontage on a street in their area, that—

(a) there is recurrent defacement by litter or refuse of any land, being part of the street or open land adjacent to the street, which is in the vicinity of the premises, or

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(b) the condition of any part of the premises which is open land in the vicinity of the frontage is, and if no notice is served is likely to continue to be, detrimental to the amenities of the locality by reason of the presence of litter or refuse, or

(c) there is produced, as a result of the activities carried on on the premises, quantities of litter or refuse of such nature and in such amounts as are likely to cause the defacement of any part of the street, or of open land adjacent to the street, which is in the vicinity of the premises,

the authority may serve a street litter control notice on the occupier or, if the premises are unoccupied, on the owner of the premises.

(3) A notice shall, subject to section 94(2), (3) and (4) below—

(a) identify the premises and state the grounds under subsection (2) above on which it is issued;

(b) specify an area of open land which adjoins or is in the vicinity of the frontage of the premises on the street;

(c) specify, in relation to that area or any part of it, such reasonable requirements as the authority considers appropriate in the circumstances;

and, for the purposes of paragraph (b) above, an area which includes land on both sides of the frontage of the premises shall be treated as an area adjoining that frontage.

(4) In this section and section 94 below—

"notice" means a street litter control notice;

"open land" means land in the open air;

"the premises", in relation to a notice, means the premises in respect of which the notice is issued;

"specified area" means the area specified in a notice under subsection (3)(b) above; and

"street" means a relevant highway, a relevant road or any other highway or road over which there is a right of way on foot.

Commencement Information

I53 S. 93 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

94 Street litter: supplementary provisions. E+W+S

(1) The Secretary of State may by order prescribe—

(a) the descriptions of commercial or retail premises in respect of which a street litter control notice may be issued;

(b) the descriptions of land which may be included in a specified area; and

(c) the maximum area of land which may be included in a specified area;

and different descriptions or maximum dimensions may be prescribed under paragraph (b) or (c) above for different cases or circumstances.

(2) The power to describe premises or land under subsection (1)(a) or (b) above includes power to describe the premises or land by reference to occupation or ownership or to the activities carried on there.

(3) The land comprised in a specified area—

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(a) shall include only land of one or more of the descriptions prescribed under subsection (1)(b) above;

(b) shall not include any land which is not—

(i) part of the premises,

(ii) part of a street,

(iii) relevant land of a principal litter authority, or

(iv) land under the direct control of any other local authority; and

(c) shall not exceed any applicable maximum area prescribed under subsection (1)(c) above;

but a specified area shall not include any part of the premises which is or is part of a litter control area.

(4) The requirements which may be imposed by a notice shall relate to the clearing of litter or refuse from the specified area and may in particular require—

(a) the provision or emptying of receptacles for litter or refuse;

(b) the doing within a period specified in the notice of any such thing as may be so specified; or

(c) the doing (while the notice remains in force) at such times or intervals, or within such periods, of any such thing as may be so specified;

but a notice may not require the clearing of litter or refuse from any carriageway, except at a time when the carriageway is closed to all vehicular traffic.

(5) In relation to so much of the specified area as is not part of the premises the authority shall take account, in determining what requirements to impose, of their own duties under this Part or otherwise, and of any similar duties of any other local authority, in relation to that land.

(6) An authority proposing to serve a notice shall—

(a) inform the person on whom the notice is to be served;

(b) give him the opportunity to make representations about the notice within the period of twenty-one days beginning with the day on which he is so informed; and

(c) take any representations so made into account in making their decision.

(7) A person on whom a notice is served may appeal against the notice to a magistrate's court or, in Scotland, to the sheriff by way of summary application; and the court may quash the notice or may quash, vary or add to any requirement imposed by the notice.

(8) If it appears to the authority that a person has failed or is failing to comply with any requirement imposed by a notice the authority may apply to a magistrate's court or, in Scotland, to the sheriff by way of summary application for an order requiring the person to comply with the requirement within such time as may be specified in the order.

(9) A person who, without reasonable excuse, fails to comply with an order under subsection (8) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
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Commencement Information

I54 S. 94 wholly in force; s. 94 not in force at Royal Assent see s. 164(2); s. 94(1)(2) in force at 14.1.1991 by S.I. 1991/96, **art. 2**; s. 94(3)-(9) in force at 1.4.1991 by S.I. 1991/1042, **art. 2**

VALID FROM 06/04/2006

[F80 94A Fixed penalty notices relating to sections 92C and 94 E+W+S

(1) This section applies where on any occasion it appears to an authorised officer of a principal litter authority that a person has committed an offence under section 92C(2) or 94(8) above in relation to a notice served by that authority.

(2) The authorised officer may give that person a notice offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the principal litter authority.

(3) Subsections (2) to (5) of section 88 above (fixed penalty notices for leaving litter) apply in relation to notices given under this section as they apply in relation to notices given under that section.

(4) The amount of a fixed penalty payable to a principal litter authority under this section is—

(a) the amount specified by the authority in relation to its area (and an authority may specify different amounts for the two different offences referred to in subsection (1) above); or

(b) if no amount is so specified, £100.

(5) The principal litter authority to which a fixed penalty is payable under this section may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the authority.

(6) In any proceedings a certificate which—

(a) purports to be signed by or on behalf of the chief finance officer of a principal litter authority; and

(b) states that payment of a fixed penalty was or was not received by the date specified in the certificate,

is evidence of the facts stated.

(7) In this section—

"authorised officer", in relation to a principal litter authority, means an officer of the authority who is authorised in writing by the authority for the purposes of giving notices under this section;

"chief finance officer", in relation to a principal litter authority, means the person having responsibility for the financial affairs of that authority.**]**

Textual Amendments

F80 S. 94A inserted (E.W.) (6.4.2006 for E. and 15.3.2007 in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 22**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(i)**

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 06/04/2006

[F81 94B Free distribution of printed matter E+W+S

Schedule 3A (distribution of printed matter on designated land) has effect.**]**

Textual Amendments

F81 S. 94B inserted (E.W.) (6.4.2006 for E. and 15.3.2007 in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 23(1)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(j)**

95 Public registers. E+W+S

(1) It shall be the duty of each principal litter authority other than a county council, regional council or joint board to maintain, in accordance with this section, a register containing copies of—

(a) all orders made by the authority under section 90(3) above; and

(b) all street litter control notices issued under section 93(1) above.

(2) Where the requirements of a street litter control notice are varied or added to on an appeal under section 94(7) above a copy of the order making the variation or addition shall be included in the register.

(3) Copies of the orders and notices required to be kept in the register shall be so kept for so long as the order or notice is in force.

(4) It shall be the duty of each authority maintaining a register under this section—

(a) to secure that the register is available, at all reasonable times, for inspection by the public free of charge; and

(b) to afford to members of the public facilities for obtaining copies of the documents kept in the register, on payment of reasonable charges.

(5) A register under this section need not be kept in documentary form.

Commencement Information

I55 S. 95 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

96 Application of Part II. E+W+S

(1) This section applies to litter and refuse collected—

(a) by any authority or person in pursuance of section 89(1) above;

(b) by a principal litter authority in pursuance of section 92(9) above; or

(c) by any person in pursuance of section 93 above.

(2) The Secretary of State may make regulations providing that prescribed provisions of Part II shall have effect, with such modifications (if any) as may be prescribed—

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(a) as if references to controlled waste or controlled waste of a prescribed description included references to litter and refuse to which this section applies or any description of such litter and refuse;

(b) as if references to controlled waste or controlled waste of a prescribed description collected under section 45 above included references to litter and refuse collected as mentioned in subsection (1) above or any description of such litter and refuse.

(3) The powers conferred by this section are exercisable in relation to litter and refuse to which it applies whether or not the circumstances are such that the litter or refuse would be treated as controlled waste apart from this section and this section is not to affect the interpretation of the expressions defined in section 75 above.

Commencement Information

I56 S. 96 wholly in force; s. 96 not in force at Royal Assent see s. 164(2); s. 96(2)(3) in force at 14.1.1991 by S.I. 1991/96, **art. 2**; s. 96(1) in force at 1.4.1991 by S.I. 1991/1042, **art. 2**

97 Transitional provision relating to section 89. E+W+S

(1) The Secretary of State may, for the purposes of the transition to the duties imposed by section 89 above on local authorities and educational bodies, by regulations, make provision—

(a) modifying that section, or

(b) modifying Part I of the Local Government Act 1988 (competition rules for functional work or works contracts).

(2) Regulations under this section may make different provision for different descriptions of authorities, different areas or other different circumstances or cases.

(3) In this section—

"educational bodies" means the governing bodies and education authorities mentioned in section 89(1)(f) above; and

"local authorities" means the local authorities mentioned in section 89(1)(a) and (c) and (2)(a) above.

VALID FROM 16/03/2006

[F82 97A Fixed penalty notices: supplementary E+W

(1) The appropriate person may by regulations make provision in connection with the powers conferred under—

(a) section 88(6A)(a) and (7) above;

(b) section 94A(4)(a) and (5) above;

(c) paragraph 7(4)(a) and (5) of Schedule 3A.

(2) Regulations under subsection (1) may (in particular)—

(a) require an amount specified under section 88(6A)(a), 94A(4)(a) or paragraph 7(4)(a) of Schedule 3A to fall within a range prescribed in the regulations;

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(b) restrict the extent to which, and the circumstances in which, an authority can make provision under section 88(7), 94A(5) or paragraph 7(5) of Schedule 3A.

(3) The appropriate person may by order substitute a different amount for the amount for the time being specified in section 88(6A)(b), 94A(4)(b) or paragraph 7(4)(b) of Schedule 3A.

(4) Regulations or an order under this section may make different provision for different purposes.**]**

Textual Amendments

F82 S. 97A inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 24**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(k)**

VALID FROM 06/04/2006

[F83 97B Exclusion of liability E+W

(1) None of the persons mentioned in subsection (2) below is to have any liability to an occupier or owner of land for damages or otherwise (whether at common law or otherwise) arising out of anything done or omitted to be done in the exercise or purported exercise of the power in section 92(9), 92A(9) or 92C(3) above.

(2) Those persons are—

(a) the principal litter authority and any employee of the authority; and

(b) in the case of the power in section 92C(3) above, any person authorised by the authority under that provision and the employer or any employee of that person.

(3) Subsection (1) above does not apply—

(a) if the act or omission is shown to be in bad faith;

(b) to liability arising out of a failure to exercise due care and attention;

(c) so as to prevent an award of damages in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 1998.

(4) This section does not affect any other exemption from liability (whether at common law or otherwise).**]**

Textual Amendments

F83 S. 97B inserted (E.W.) (6.4.2006 for E. and 15.3.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 25**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(l)**

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98 Definitions. E+W+S

(1) The following definitions apply for the interpretation of this Part.

(2) "Educational institution", in relation to England and Wales, means—

(a) any university (within the meaning of the [M86]Education Reform Act 1988) funded by the Universities Funding Council under section 131 of that Act;

(b) the Open University;

(c) any institution which provides higher education or further education (or both) which is full-time education being an institution which—

(i) is maintained by grants made by the Secretary of State under section 100(1)(b) of the [M87]Education Act 1944;

(ii) is designated by or under regulations under section 218 of the [M88]Education Reform Act 1988 as an institution dependent for its maintenance on assistance from local education authorities; or

(iii) is maintained by a local education authority;

(d) any higher education institution funded by the Polytechnics and Colleges Funding Council under section 132 of the Education Reform Act 1988;

(e) any city technology college or city college for the technology of the arts (within the meaning of section 105 of the Education Reform Act 1988);

(f) any county school, voluntary school or maintained special school;

(g) any grant-maintained school.

(3) "Educational institution", in relation to Scotland, means—

(a) any university within the meaning of the Education Reform Act 1988 funded by the Universities Funding Council under section 131 of that Act;

(b) the Open University;

(c) a college of further education—

(i) as defined in section 80(1) of the [M89]Self Governing Schools (Scotland) Act 1989 ("the 1989 Act"); or

(ii) managed by a company by virtue of section 65(1) of the 1989 Act;

(d) a grant-aided college within the meaning of section 77(5) of the [M90]Education (Scotland) Act 1980 ("the 1980 Act");

(e) a technology academy within the meaning of section 68(1) of the 1989 Act;

(f) a public school as defined in section 135(1) of the 1980 Act;

(g) a grant-aided school as defined in section 135(1) of the 1980 Act;

(h) a self-governing school within the meaning of section 1(3) of the 1989 Act.

(4) "Joint board", in relation to Scotland, has the meaning given by section 235(1) of the [M91]Local Government (Scotland) Act 1973.

(5) "Highway" (and "highway maintainable at the public expense"), "special road" and "trunk road", in relation to England and Wales, have the same meaning as in the [M92]Highways Act 1980 and "public road", "special road" and "trunk road", in relation to Scotland, have the same meaning as in the [M93]Roads (Scotland) Act 1984.

(6) "Statutory undertaker" means—

(a) any person authorised by any enactment to carry on any railway, light railway, tramway or road transport undertaking;

(b) any person authorised by any enactment to carry on any canal, inland navigation, dock, harbour or pier undertaking; or

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(c) any relevant airport operator (within the meaning of Part V of the [M94]Airports Act 1986).

Commencement Information

I57 S. 98 partly in force; s. 98 not in force at Royal Assent see s. 164(2); s. 98(1) (2) (5) (6) in force (E.W) 13.2.1991 by S.I. 1991/96, **art. 3**
S. 98(3)(4) in force 1.4.1991; s. 98(1)(5)(6) in force (S.) 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

Marginal Citations

M86 1988 c. 40.
M87 1944 c. 31.
M88 1988 c. 40.
M89 1989 c. 39.
M90 1980 c. 44.
M91 1973 c. 65.
M92 1980 c. 66.
M93 1984 c. 54.
M94 1986 c. 31.

Abandoned trolleys

99 Powers in relation to abandoned shopping and luggage trolleys. E+W+S

(1) A local authority may, subject to subsection (3) below, resolve that Schedule 4 to this Act is to apply in its area; and if a local authority does so resolve, that Schedule shall come into force in its area on the day specified in the resolution, which must not be before the expiration of the period of three months beginning with the day on which the resolution is passed.

(2) A local authority shall publish in at least one newspaper circulating in its area a notice that the authority has passed a resolution under this section and indicating the general effect of that Schedule.

(3) It shall be the duty of a local authority, before making any resolution for the application of Schedule 4 to this Act in its area, to consult with the persons or representatives of persons who appear to the authority to be persons who will be affected by the application of that Schedule.

(4) It shall be the duty of a local authority from time to time to consult about the operation of Schedule 4 to this Act with the persons or representatives of persons who appear to be affected by its operation.

(5) In this section "local authority" means—

(a) the council of a district;
(b) the council of a London borough;
(c) the Common Council of the City of London;
(d) the council of the Isles of Scilly; and
(e) in Scotland, an islands or district council.

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(6) In Schedule 4 to this Act "the local authority" means any local authority which has resolved that that Schedule is to apply in its area.

PART V U.K.

AMENDMENT OF THE RADIOACTIVE SUBSTANCES ACT 1960

Modifications etc. (not altering text)
C52 Pt. V (ss. 100–105) amended (transfer of functions) by S.I. 1990/2598, **art. 2**

100 Appointment of inspectors and chief inspector. U.K.

(1) After section 11 of the [M95]Radioactive Substances Act 1960 (referred to in this Part as "the 1960 Act") there shall be inserted the following section—

"**11A Appointment of inspectors and chief inspector.**

(1) The Secretary of State may appoint as inspectors, to assist him in the execution of this Act, such number of persons appearing to him to be qualified for the purpose as he may from time to time consider necessary or expedient.

(2) For the purposes of this Act the Secretary of State shall appoint one of those inspectors to be chief inspector.

(3) A person may be appointed both as an inspector or as chief inspector under the preceding subsections of this section and as an inspector or as chief inspector under section 16 of the Environmental Protection Act 1990.

(4) The chief inspector may, to any extent, delegate his functions under this Act to any other inspector appointed under this section.

(5) The Secretary of State may make to or in respect of any person appointed under this section such payments, whether by way of remuneration, allowances or otherwise as he may, with the approval of the Treasury, determine.".

(2) In section 1, 2(3) and (4), 3, 5, 8(1) to (3) and 9 of the 1960 Act (which concern functions to be exercisable by the chief inspector) for the word "Minister" wherever it appears (otherwise than when referring to the Minister of Agriculture, Fisheries and Food) there shall be substituted the words "chief inspector".

(3) In section 2(6), 4(2), 6(5), 10, 12(2) and (5), 13(3), 15 and 18(6) of the 1960 Act (which concern functions which will continue to be exercisable by the Secretary of State) for the word "Minister" wherever it appears there shall be substituted the words "Secretary of State".

Marginal Citations
M95 1960 c. 34.

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101 Fees and charges under 1960 Act. U.K.

After section 15 of the 1960 Act there shall be inserted the following section—

"**15A Fees and charges.**

(1) The Secretary of State may, with the approval of the Treasury, make and from time to time revise, a scheme prescribing—

(a) fees payable in respect of applications for registration under section one or section three of this Act or an authorisation under section six or section seven of this Act;

(b) fees payable in respect of the variation of the registration under section five of this Act or, as the case may be, in respect of the variation of the authorisation under section eight of this Act;

(c) charges payable by a person to whom such a registration relates or to whom such an authorisation has been granted in respect of the subsistence of that registration or authorisation;

and it shall be a condition of any such registration or authorisation that any applicable prescribed charge is paid in accordance with that scheme.

(2) The power to make and revise a scheme under this section, so far as it relates to, or to applications for, authorisations under section six of this Act which may only be granted by the chief inspector and the Minister of Agriculture, Fisheries and Food shall not be exercisable without the consent of the Minister of Agriculture, Fisheries and Food.

(3) A scheme under this section may, in particular—

(a) provide for different fees or charges to be payable in different cases or circumstances; and

(b) provide for the times at which and the manner in which payments are to be made;

and a scheme may make such incidental, supplementary and transitional provision as appears to the Secretary of State to be appropriate and different schemes may be made and revised for different areas.

(4) The Secretary of State shall so frame a scheme under this section as to secure, so far as practicable, that the amounts payable under it are sufficient, taking one financial year with another, to cover the expenditure of the chief inspector and the Minister of Agriculture, Fisheries and Food in exercising or performing their functions under this Act in relation to registrations and authorisations.

(5) The Secretary of State shall, on making or revising a scheme under this section, lay a copy of the scheme or of the revisions before each House of Parliament."

102 Enforcement powers of chief inspector. U.K.

After the section 11A of the 1960 Act inserted by section 100 above there shall be inserted the following sections—

"**11B Enforcement notices.**

(1) Subject to the provisions of this section, if the chief inspector is of the opinion that a person to whom a registration under section one or section three of this

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Act relates or to whom an authorisation was granted under section six or section seven of this Act—

(a) is failing to comply with any limitation or condition subject to which the registration or authorisation has effect, or

(b) is likely to fail to comply with any such limitation or condition,

he may serve a notice under this section on that person.

(2) A notice under this section shall—

(a) state that the chief inspector is of the said opinion;

(b) specify the matters constituting the failure to comply with the limitations or conditions in question or the matters making it likely that such a failure will occur, as the case may be; and

(c) specify the steps that must be taken to remedy those matters and the period within which those steps must be taken.

(3) Where a notice is served under this section the chief inspector shall—

(a) in the case of a registration, if a certificate relating to the registration was sent to a local authority under subsection (6) of section one or subsection (5) of section three of this Act, or

(b) in the case of an authorisation, if a copy of the authorisation was sent to a public or local authority under subsection (5)(b) of section eight of this Act,

send a copy of the notice to that authority.

(4) In the case of an authorisation granted by the chief inspector and the Minister of Agriculture, Fisheries and Food in accordance with subsection (1) of section eight of this Act, the power to issue notices under this section shall be exercisable by the chief inspector or by the Minister of Agriculture, Fisheries and Food as if references to the chief inspector were references to the chief inspector or that Minister.

11C Prohibition notices.

(1) Subject to the provisions of this section, if the chief inspector is of the opinion, as respects the keeping or use of radioactive material or of mobile radioactive apparatus, or the disposal or accumulation of radioactive waste, by a person in pursuance of a registration or authorisation under this Act, that the continuing to carry on that activity (or the continuing to do so in a particular manner) involves an imminent risk of pollution of the environment or of harm to human health he may serve a notice under this section on that person.

(2) A notice under this section may be served whether or not the manner of carrying on the activity in question complies with any limitations or conditions to which the registration or authorisation in question is subject.

(3) A notice under this section shall—

(a) state the chief inspector's opinion;

(b) specify the matters giving rise to the risk involved in the activity, the steps that must be taken to remove the risk and the period within which those steps must be taken; and

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(c) direct that the registration or authorisation shall, until the notice is withdrawn, wholly or to the extent specified in the notice cease to have effect.

(4) Where the registration or authorisation is not wholly suspended by the direction given under the preceding subsection, the direction may specify limitations or conditions to which the registration or authorisation is to be subject until the notice is withdrawn.

(5) Where a notice is served under this section the chief inspector shall—

(a) in the case of a registration, if a certificate relating to the registration was sent to a local authority under subsection (6) of section one or subsection (5) of section three of this Act, or

(b) in the case of an authorisation, if a copy of the authorisation was sent to a public or local authority under subsection (5)(b) of section eight of this Act,

send a copy of the notice to that authority.

(6) The chief inspector shall, by notice to the recipient, withdraw a notice under this section when he is satisfied that the risk specified in it has been removed; and on so doing the chief inspector shall send a copy of the withdrawal notice to any public or local authority to whom a copy of the notice under this section was sent.

(7) In the case of an authorisation granted by the chief inspector and the Minister of Agriculture, Fisheries and Food in accordance with subsection (1) of section eight of this Act, the power to issue and withdraw notices under this section shall be exercisable by the chief inspector or by the Minister of Agriculture, Fisheries and Food as if references to the chief inspector were references to the chief inspector or that Minister."

103 Withdrawal of UKAEA exemptions from requirements of 1960 Act. U.K.

Sections 2(1), 4(1) and 7(3)(a) of the 1960 Act (which exempt the United Kingdom Atomic Energy Authority from certain requirements of that Act relating to registrations and authorisations) shall cease to have effect.

104 Application to Crown of 1960 Act. U.K.

For section 14 of the 1960 Act there shall be substituted the following section—

"**14 Application of Act to Crown.**

(1) Subject to the provisions of this section, the provisions of this Act shall bind the Crown.

(2) The last preceding subsection does not apply in relation to premises—

(a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence; or

(b) occupied by or for the purposes of a visiting force.

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(3) No contravention by the Crown of any provision of this Act shall make the Crown criminally liable; but the High Court or, in Scotland, the Court of Session may, on the application of any authority charged with enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(4) Notwithstanding anything in subsection (3) of this section, the provisions of this Act shall apply to persons in the public service of the Crown as they apply to other persons.

(5) If the Secretary of State certifies that it appears to him requisite or expedient in the interests of national security that the powers of entry conferred by section twelve of this Act should not be exercisable in relation to any Crown premises specified in the certificate those powers shall not be exercisable in relation to those premises, and in this subsection "Crown premises" means premises held or used by or on behalf of the Crown.

(6) Where, in the case of any such premises as are mentioned in subsection (2) of this section—

(a) arrangements are made whereby radioactive waste is not to be disposed of from those premises except with the approval of the chief inspector, and

(b) in pursuance of those arrangements the chief inspector proposes to approve, or approves, the removal of radioactive waste from those premises to a place provided by a local authority as a place for the deposit of refuse,

the provisions of subsections (3) to (5) of section nine of this Act shall apply as if the proposal to approve the removal of the waste were an application for an authorisation under section six of this Act to remove it, or (as the case may be) the approval were such an authorisation.

(7) Nothing in this section shall be taken as in any way affecting Her Majesty in her private capacity; and this subsection shall be construed as if section 38(3) of the Crown Proceedings Act 1947 (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Act.

(8) In subsection (2) of this section "visiting force" means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952."

105 Consequential and further amendments of 1960 Act. U.K.

The 1960 Act shall be amended in accordance with the provisions of Schedule 5 to this Act (which contains amendments consequential on sections 100 to 103 above and further miscellaneous amendments, including amendments relating to the application of the 1960 Act in Scotland and in Northern Ireland).

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PART VI U.K.

GENETICALLY MODIFIED ORGANISMS

Extent Information

E8 Pt VI: for extent of this Part see s. 164(4) below.

Modifications etc. (not altering text)

C53 Pt. VI (ss. 106-127): transfer of functions (16.2.2000) by S.I. 2000/253, art. 2, **Sch. 1**

C54 Pt. VI (ss. 106-127) modified (E.) (temp. from 17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **5(3)**, 39
Pt. VI (ss. 106-127) modified (S.) (temp. from 5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 5(3)**
Pt. VI (ss. 106-127) modified (W.) (temp. from 31.12.2002) by Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 6(3)**

Preliminary

106 Purpose of Part VI and meaning of "genetically modified organisms" and related expressions. E+W+S

(1) This Part has effect for the purpose of preventing or minimising any damage to the environment which may arise from the escape or release from human control of genetically modified organisms.

(2) In this Part the term "organism" means any acellular, unicellular or multicellular entity (in any form), other than humans or human embryos; and, unless the context otherwise requires, the term also includes any article or substance consisting of or including biological matter.

(3) For the purpose of subsection (2) above "biological matter" means anything (other than an entity mentioned in that subsection) which consists of or includes—

(a) tissue or cells (including gametes or propagules) or subcellular entities, of any kind, capable of replication or of transferring genetic material, or

(b) genes or other genetic material, in any form, which are so capable,

and it is immaterial, in determining if something is or is not an organism or biological matter, whether it is the product of natural or artificial processes of reproduction and, in the case of biological matter, whether it has ever been part of a whole organism.

(4) For the purposes of this Part an organism is "genetically modified" if any of the genes or other genetic material in the organism—

(a) have been modified by means of an artificial technique prescribed in regulations by the Secretary of State; or

(b) are inherited or otherwise derived, through any number of replications, from genes or other genetic material (from any source) which were so modified.

(5) The techniques which may be prescribed for the purposes of subsection (4) above include—

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(a) any technique for the modification of any genes or other genetic material by the recombination, insertion or deletion of, or of any component parts of, that material from its previously occurring state, and

(b) any other technique for modifying genes or other genetic material which in the opinion of the Secretary of State would produce organisms which should for the purposes of this Part be treated as having been genetically modified,

but do not include techniques which involve no more than, or no more than the assistance of, naturally occurring processes of reproduction (including selective breeding techniques or *in vitro* fertilisation).

(6) It is immaterial for the purposes of subsections (4) and (5) above whether the modifications of genes or other genetic material effected by a prescribed technique are produced by direct operations on that genetic material or are induced by indirect means (including in particular the use of viruses, microbial plasmids or other vector systems or of mutation inducing agents).

(7) In this Part, where the context permits, a reference to "reproduction", in relation to an organism, includes a reference to its replication or its transferring genetic material.

Commencement Information

I58 S. 106 wholly in force at 1.2.1993; s. 106 not in force at Royal Assent see s. 164(2)(3); s. 106(4)(5) in force 1.4.1991 see S.I. 1991/1042, art. 2; s. 106(1)-(3)(6)(7) in force at 1.2.1993 see S.I. 1992/3253, art. 3.

107 Meaning of "damage to the environment", "control" and related expressions in Part VI. E+W+S

(1) The following provisions have effect for the interpretation of this Part.

(2) The "environment" consists of land, air and water or any of those media.

(3) "Damage to the environment" is caused by the presence in the environment of genetically modified organisms which have (or of a single such organism which has) escaped or been released from a person's control and are (or is) capable of causing harm to the living organisms supported by the environment.

(4) An organism shall be regarded as present in the environment notwithstanding that it is present in or on any human or other organism, or any other thing, which is itself present in the environment.

(5) Genetically modified organisms present in the environment are capable of causing harm if—

(a) they are individually capable, or are present in numbers such that together they are capable, of causing harm; or

(b) they are able to produce descendants which will be capable, or which will be present in numbers such that together they will be capable, of causing harm;

and a single organism is capable of causing harm either if it is itself capable of causing harm or if it is able to produce descendants which will be so capable.

(6) "Harm" means harm to the health of humans or other living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes offence caused to any of his senses or harm to his property.

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(7) "Harmful" and "harmless" mean respectively, in relation to genetically modified organisms, their being capable or their being incapable of causing harm.

(8) The Secretary of State may by regulations provide, in relation to genetically modified organisms of any description specified in the regulations, that—

(a) the capacity of those organisms for causing harm of any description so specified, or

(b) harm of any description so specified,

shall be disregarded for such purposes of this Part as may be so specified.

(9) Organisms of any description are under the "control" of a person where he keeps them contained by any system of physical, chemical or biological barriers (or combination of such barriers) used for either or both of the following purposes, namely—

(a) for ensuring that the organisms do not enter the environment or produce descendants which are not so contained; or

(b) for ensuring that any of the organisms which do enter the environment, or any descendants of the organisms which are not so contained, are harmless.

(10) An organism under a person's control is "released" if he deliberately causes or permits it to cease to be under his control or the control of any other person and to enter the environment; and such an organism "escapes" if, otherwise than by being released, it ceases to be under his control or that of any other person and enters the environment.

(11) Genetically modified organisms of any description are "marketed" when products consisting of or including such organisms are placed on the market.

Commencement Information

I59 S. 107 wholly in force at 1.2.1993; s. 107 not in force at Royal Assent see s. 164(2)(3); s. 107(8) in force 1.4.1991 see S.I. 1991/1042, art. 2; s. 107(1)-(7)(9)-(11) in force at 1.2.1993 see S.I. 1992/3253, art. 3.

General controls

108 Risk assessment and notification requirements. U.K.

(1) Subject to subsections (2) and (7) below, no person shall import or acquire, release or market any genetically modified organisms unless, before doing that act—

(a) he has carried out an assessment of any risks there are (by reference to the nature of the organisms and the manner in which he intends to keep them after their importation or acquisition or, as the case may be, to release or market them) of damage to the environment being caused as a result of doing that act; and

(b) in such cases and circumstances as may be prescribed, he has given the Secretary of State such notice of his intention of doing that act and such information as may be prescribed.

(2) Subsection (1) above does not apply to a person proposing to do an act mentioned in that subsection who is required under section 111(1)(a) below to have a consent before doing that act.

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(3) Subject to subsections (4) and (7) below, a person who is keeping genetically modified organisms shall, in such cases or circumstances and at such times or intervals as may be prescribed—

(a) carry out an assessment of any risks there are of damage to the environment being caused as a result of his continuing to keep them;

(b) give the Secretary of State notice of the fact that he is keeping the organisms and such information as may be prescribed.

(4) Subsection (3) above does not apply to a person who is keeping genetically modified organisms and is required under section 111(2) below to have a consent authorising him to continue to keep the organisms.

(5) It shall be the duty of a person who carries out an assessment under subsection (1)(a) or (3)(a) above to keep, for the prescribed period, such a record of the assessment as may be prescribed.

(6) A person required by subsection (1)(b) or (3)(b) above to give notice to the Secretary of State shall give the Secretary of State such further information as the Secretary of State may by notice in writing require.

(7) Regulations under this section may provide for exemptions, or for the granting by the Secretary of State of exemptions to particular persons or classes of person, from the requirements of subsection (1) or (3) above in such cases or circumstances, and to such extent, as may be prescribed.

(8) The Secretary of State may at any time—

(a) give directions to a person falling within subsection (1) above requiring that person to apply for a consent before doing the act in question; or

(b) give directions to a person falling within subsection (3) above requiring that person, before such date as may be specified in the direction, to apply for a consent authorising him to continue keeping the organisms in question;

and a person given directions under paragraph (a) above shall then, and a person given directions under paragraph (b) above shall from the specified date, be subject to section 111 below in place of the requirements of this section.

(9) Regulations under this section may—

(a) prescribe the manner in which assessments under subsection (1) or (3) above are to be carried out and the matters which must be investigated and assessed;

(b) prescribe minimum periods of notice between the giving of a notice under subsection (1)(b) above and the doing of the act in question;

(c) make provision allowing the Secretary of State to shorten or to extend any such period;

(d) prescribe maximum intervals at which assessments under subsection (3)(a) above must be carried out;

and the regulations may make different provision for different cases and different circumstances.

(10) In this section "prescribed" means prescribed by the Secretary of State in regulations under this section.

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Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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

I60 S. 108 partly in force; s. 108 not in force at Royal Assent see s. 164(2)(3); s. 108(1)(b)(3)(b)(5)(7)(9) in force 1.4.1991 see S.I. 1991/1042, art. 2; s. 108(10) in force at 1.1.1993 and s. 108(1) in force for certain purposes at 1.2.1993 see S.I. 1992/3253, arts. 2, 3.

VALID FROM 01/04/2000

109 General duties relating to importation, acquisition, keeping, release or marketing of organisms. U.K.

(1) A person who—

(a) is proposing to import or acquire any genetically modified organisms, or

(b) is keeping any such organisms, or

(c) is proposing to release or market any such organisms,

shall, subject to subsection (5) below, be subject to the duties specified in subsection (2), (3) or (4) below, as the case may be.

(2) A person who proposes to import or acquire genetically modified organisms—

(a) shall take all reasonable steps to identify, by reference to the nature of the organisms and the manner in which he intends to keep them (including any precautions to be taken against their escaping or causing damage to the environment), what risks there are of damage to the environment being caused as a result of their importation or acquisition; and

(b) shall not import or acquire the organisms if it appears that, despite any precautions which can be taken, there is a risk of damage to the environment being caused as a result of their importation or acquisition.

(3) A person who is keeping genetically modified organisms—

(a) shall take all reasonable steps to keep himself informed of any damage to the environment which may have been caused as a result of his keeping the organisms and to identify what risks there are of damage to the environment being caused as a result of his continuing to keep them;

(b) shall cease keeping the organisms if, despite any additional precautions which can be taken, it appears, at any time, that there is a risk of damage to the environment being caused as a result of his continuing to keep them; and

(c) shall use the best available techniques not entailing excessive cost for keeping the organisms under his control and for preventing any damage to the environment being caused as a result of his continuing to keep the organisms;

and where a person is required by paragraph (b) above to cease keeping the organisms he shall dispose of them as safely and as quickly as practicable and paragraph (c) above shall continue to apply until he has done so.

(4) A person who proposes to release genetically modified organisms—

(a) shall take all reasonable steps to keep himself informed, by reference to the nature of the organisms and the extent and manner of the release (including any precautions to be taken against their causing damage to the

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environment), what risks there are of damage to the environment being caused as a result of their being released;

(b) shall not release the organisms if it appears that, despite the precautions which can be taken, there is a risk of damage to the environment being caused as a result of their being released; and

(c) subject to paragraph (b) above, shall use the best available techniques not entailing excessive cost for preventing any damage to the environment being caused as a result of their being released;

and this subsection applies, with the necessary modifications, to a person proposing to market organisms as it applies to a person proposing to release organisms.

(5) This section does not apply—

(a) to persons proposing to import or acquire, to release or to market any genetically modified organisms, in cases or circumstances where, under section 108 above, they are not required to carry out a risk assessment before doing that act;

(b) to persons who are keeping any genetically modified organisms and who—

(i) were not required under section 108 above to carry out a risk assessment before importing or acquiring them;

(ii) have not been required under that section to carry out a risk assessment in respect of the keeping of those organisms since importing or acquiring them; or

(c) to holders of consents, in the case of acts authorised by those consents.

Modifications etc. (not altering text)

C55 Ss. 108-110 extended (Isles of Scilly) (with modifications) (4.8.2006) by The Environmental Protection Act 1990 (Isles of Scilly) Order 2006 (S.I. 2006/1381), **art. 3**

VALID FROM 01/02/1993

110 Prohibition notices. U.K.

(1) The Secretary of State may serve a notice under this section (a "prohibition notice") on any person he has reason to believe—

(a) is proposing to import or acquire, release or market any genetically modified organisms; or

(b) is keeping any such organisms;

if he is of the opinion that doing any such act in relation to those organisms or continuing to keep them, as the case may be, would involve a risk of causing damage to the environment.

(2) A prohibition notice may prohibit a person from doing an act mentioned in subsection (1)(a) above in relation to any genetically modified organisms or from continuing to keep them; and the prohibition may apply in all cases or circumstances or in such cases or circumstances as may be specified in the notice.

(3) A prohibition notice shall—

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(a) state that the Secretary of State is, in relation to the person on whom it is served, of the opinion mentioned in subsection (1) above;

(b) specify what is, or is to be, prohibited by the notice; and

(c) if the prohibition is not to be effective on being served, specify the date on which the prohibition is to take effect;

and a notice may be served on a person notwithstanding that he may have a consent authorising any act which is, or is to be, prohibited by the notice.

(4) Where a person is prohibited by a prohibition notice from continuing to keep any genetically modified organisms, he shall dispose of them as quickly and safely as practicable or, if the notice so provides, as may be specified in the notice.

(5) The Secretary of State may at any time withdraw a prohibition notice served on any person by notice given to that person.

Modifications etc. (not altering text)

C56 Ss. 108-110 extended (Isles of Scilly) (with modifications) (4.8.2006) by The Environmental Protection Act 1990 (Isles of Scilly) Order 2006 (S.I. 2006/1381), **art. 3**

Commencement Information

I61 S. 110 partly in force; s. 110 not in force at Royal Assent see s. 164; s. 110 in force for certain purposes at 1.2.1993 see s. 164(2)(3) and S.I. 1992/3253, **art. 3**.

Consents

111 Consents required by certain persons. U.K.

(1) Subject to subsection (7) below, no person shall import or acquire, release or market any genetically modified organisms—

(a) in such cases or circumstances as may be prescribed in relation to that act, or

(b) in any case where he has been given directions under section 108(8)(a) above,

except in pursuance of a consent granted by the Secretary of State and in accordance with any limitations and conditions to which the consent is subject.

(2) Subject to subsection (7) below, no person who has imported or acquired any genetically modified organisms (whether under a consent or not) shall continue to keep the organisms—

(a) in such cases or circumstances as may be prescribed, after the end of the prescribed period, or

(b) if he has been given directions under section 108(8)(b) above, after the date specified in the directions,

except in pursuance of a consent granted by the Secretary of State and in accordance with any limitations or conditions to which the consent is subject.

(3) A person who is required under subsection (2) above to cease keeping any genetically modified organisms shall dispose of them as quickly and safely as practicable.

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(4) An application for a consent must contain such information and be made and advertised in such manner as may be prescribed and shall be accompanied by the fee required under section 113 below.

(5) The applicant shall, in prescribed circumstances, give such notice of his application to such persons as may be prescribed.

(6) The Secretary of State may by notice to the applicant require him to furnish such further information specified in the notice, within such period as may be so specified, as he may require for the purpose of determining the application; and if the applicant fails to furnish the information within the specified period the Secretary of State may refuse to proceed with the application.

(7) Regulations under this section may provide for exemptions, or for the granting by the Secretary of State of exemptions to particular persons or classes of person, from—

(a) any requirement under subsection (1) or (2) above to have a consent, or

(b) any of the requirements to be fulfilled under the regulations by an applicant for a consent,

in such cases or circumstances as may be prescribed.

(8) Where an application for a consent is duly made to him, the Secretary of State may grant the consent subject to such limitations and conditions as may be imposed under section 112 below or he may refuse the application.

(9) The conditions attached to a consent may include conditions which are to continue to have effect notwithstanding that the holder has completed or ceased the act or acts authorised by the consent.

(10) The Secretary of State may at any time, by notice given to the holder of a consent, revoke the consent or vary the consent (whether by attaching new limitations and conditions or by revoking or varying any limitations and conditions to which it is at that time subject).

(11) Regulations under this section may make different provision for different cases and different circumstances; and in this section "prescribed" means prescribed in regulations under this section.

Commencement Information

I62 S. 111 partly in force; not in force at Royal Assent see s. 164(2); s. 111(1)(2)(4)(5)(7)(11) in force 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

112 Consents: limitations and conditions. E+W+S

(1) The Secretary of State may include in a consent such limitations and conditions as he may think fit; but no limitations or conditions shall be imposed for the purpose only of securing the health of persons at work (within the meaning of Part I of the [M96]Health and Safety at Work etc. Act 1974 or, in relation to Northern Ireland, Part II of the [M97]Health and Safety at Work (Northern Ireland) Order 1978).

(2) Without prejudice to the generality of subsection (1) above, the conditions included in a consent may—

(a) require the giving of notice of any fact to the Secretary of State; or

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(b) prohibit or restrict the keeping, releasing or marketing of genetically modified organisms under the consent in specified cases or circumstances;

and where, under any condition, the holder of a consent is required to cease keeping any genetically modified organisms, he shall dispose of them, if no manner is specified in the conditions, as quickly and safely as practicable.

(3) Subject to subsection (6) below, there is implied in every consent for the importation or acquisition of genetically modified organisms a general condition that the holder of the consent shall—

(a) take all reasonable steps to keep himself informed (by reference to the nature of the organisms and the manner in which he intends to keep them after their importation or acquisition) of any risks there are of damage to the environment being caused as a result of their importation or acquisition; and

(b) if at any time it appears that any such risks are more serious than were apparent when the consent was granted, notify the Secretary of State forthwith.

(4) Subject to subsection (6) below, there is implied in every consent for keeping genetically modified organisms a general condition that the holder of the consent shall—

(a) take all reasonable steps to keep himself informed of any damage to the environment which may have been caused as a result of his keeping the organisms and of any risks there are of such damage being caused as a result of his continuing to keep them;

(b) if at any time it appears that any such risks are more serious than were apparent when the consent was granted, notify the Secretary of State forthwith; and

(c) use the best available techniques not entailing excessive cost for keeping the organisms under his control and for preventing any damage to the environment being caused as a result of his continuing to keep them.

(5) Subject to subsection (6) below, there is implied in every consent for releasing or marketing genetically modified organisms a general condition that the holder of the consent shall—

(a) take all reasonable steps to keep himself informed (by reference to the nature of the organisms and the extent and manner of the release or marketing) of any risks there are of damage to the environment being caused as a result of their being released or, as the case may be, marketed;

(b) if any time it appears that any such risks are more serious than were apparent when the consent was granted, notify the Secretary of State forthwith; and

(c) use the best available techniques not entailing excessive cost for preventing any damage to the environment being caused as a result of their being released or, as the case may be, marketed.

(6) The general condition implied into a consent under subsection (3), (4) or (5) above has effect subject to any conditions imposed under subsection (1) above; and the obligations imposed by virtue of subsection (4)(c) or (5)(c) above shall not apply to any aspect of an act authorised by a consent which is regulated by such a condition.

(7) There shall be implied in every consent for keeping, releasing or marketing genetically modified organisms of any description a general condition that the holder of the consent—

(a) shall take all reasonable steps to keep himself informed of developments in the techniques which may be available in his case for preventing damage to

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the environment being caused as a result of the doing of the act authorised by the consent in relation to organisms of that description; and

(b) f it appears at any time that any better techniques are available to him than is required by any condition included in the consent under subsection (1) above, shall notify the Secretary of State of that fact forthwith.

But this general condition shall have effect subject to any conditions imposed under subsection (1) above.

Marginal Citations

M96 1974 c. 37.

M97 S.I. 1978/1039 (N.I. 9.).

113 Fees and charges. U.K.

(1) The Secretary of State may, with the approval of the Treasury, make and from time to time revise a scheme prescribing—

(a) fees payable in respect of applications for consents; and

(b) charges payable by persons holding consents in respect of the subsistence of their consents;

and it shall be a condition of any such consent that any applicable prescribed charge is paid in accordance with that scheme.

(2) A scheme under this section may, in particular—

(a) provide for different fees or charges to be payable in different cases or circumstances;

(b) provide for the times at which and the manner in which payments are to be made; and

(c) make such incidental, supplementary and transitional provision as appears to the Secretary of State to be appropriate.

(3) The Secretary of State shall so frame a scheme under this section as to secure, so far as practicable, that the amounts payable under it will be sufficient, taking one financial year with another, to cover the expenditure of the Secretary of State in discharging his functions under this Part in relation to consents.

(4) The Secretary of State shall, on making or revising a scheme under this section, lay a copy of the scheme or of the scheme as revised before each House of Parliament.

Commencement Information

I63 S. 113 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

Inspectors

114 Appointment etc of inspectors. U.K.

(1) The Secretary of State may appoint as inspectors, for carrying this Part into effect, such number of persons appearing to him to be qualified for the purpose as he may consider necessary.

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(2) The Secretary of State may make to or in respect of any person so appointed such payments by way of remuneration, allowances or otherwise as he may with the approval of the Treasury determine.

(3) An inspector shall not be personally liable in any civil or criminal proceedings for anything done in the purported exercise of any power under section 115 or 117 below if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(4) In England and Wales an inspector, if authorised to do so by the Secretary of State, may, although not of counsel or a solicitor, prosecute before a magistrates' court proceedings for an offence under section 118(1) below.

(5) In this Part "inspector" means, subject to section 125 below, a person appointed as an inspector under subsection (1) above.

Commencement Information

I64 S. 114 wholly in force; s. 114 not in force at Royal Assent see s. 164(2)(3); s. 114(1)-(3) in force at 1.4.1991 see S.I. 1991/1042, art. 2; s. 114(4)(5) in force at 1.2.1993 see S.I. 1992/3253, art. 3.

115 Rights of entry and inspection. U.K.

(1) An inspector may, on production (if so required) of his authority, exercise any of the powers specified in subsection (3) below for the purposes of the discharge of the functions of the Secretary of State under this Part.

(2) Those powers are exercisable—

(a) in relation to premises—

(i) on which the inspector has reason to believe a person is keeping or has kept any genetically modified organisms, or

(ii) from which he has reason to believe any such organisms have been released or have escaped; and

(b) in relation to premises on which the inspector has reason to believe there may be harmful genetically modified organisms or evidence of damage to the environment caused by genetically modified organisms;

but they are not exercisable in relation to premises used wholly or mainly for domestic purposes.

(3) The powers of an inspector are—

(a) at any reasonable time (or, in a situation in which in his opinion there is an immediate risk of damage to the environment, at any time)—

(i) to enter premises which he has reason to believe it is necessary for him to enter and to take with him any person duly authorised by the Secretary of State and, if the inspector has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and

(ii) to take with him any equipment or materials required for any purpose for which the power of entry is being exercised;

(b) to carry out such tests and inspections (and to make such recordings), as may in any circumstances be necessary;

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(c) to direct that any, or any part of, premises which he has power to enter, or anything in or on such premises, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any test or inspection;

(d) to take samples of any organisms, articles or substances found in or on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;

(e) in the case of anything found in or on any premises which he has power to enter, which appears to him to contain or to have contained genetically modified organisms which have caused or are likely to cause damage to the environment, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is necessary);

(f) in the case of anything mentioned in paragraph (e) above or anything found on premises which he has power to enter which appears to be a genetically modified organism or to consist of or include genetically modified organisms, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—

(i) to examine it and do to it anything which he has power to do under that paragraph;

(ii) to ensure that it is not tampered with before his examination of it is completed; and

(iii) to ensure that it is available for use as evidence in any proceedings for an offence under section 118 below;

(g) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any test or inspection under this subsection to answer (in the absence of persons other than a person nominated to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers;

(h) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which are required to be kept under this Part or it is necessary for him to see for the purposes of any test or inspection under this subsection and to inspect, and take copies of, or of any entry in, the records;

(i) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by this section;

(j) any other power for the purpose mentioned in subsection (1) above which is conferred by regulations made by the Secretary of State.

(4) The Secretary of State may by regulations make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under subsection (3)(d) above.

(5) Where an inspector proposes to exercise the power conferred by subsection (3)(e) above, he shall, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(6) Before exercising the power conferred by subsection (3)(e) above, an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what

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dangers, if any, there may be in doing anything which he proposes to do under the power.

(7) Where under the power conferred by subsection (3)(f) above an inspector takes possession of anything found on any premises, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars sufficient to identify what he has seized and stating that he has taken possession of it under that power; and before taking possession under that power of—

(a) any thing that forms part of a batch of similar things, or

(b) any substance,

an inspector shall, if it is practical and safe for him to do so, take a sample of it and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

(8) No answer given by a person in pursuance of a requirement imposed under subsection (3)(g) above shall be admissible in evidence—

(a) in any proceedings in England and Wales against that person; or

(b) in any criminal proceedings in Scotland against that person.

(9) The powers conferred by subsection (3)(a), (b), (c), (d), (e) and (h) above shall also be exercisable (subject to subsections (4), (5) and (6) above) by any person authorised for the purpose in writing by the Secretary of State.

(10) Nothing in this section shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court or, in relation to Scotland, on an order for the production of documents in an action in the Court of Session.

Commencement Information

I65 S. 115 wholly in force; not in force at Royal Assent see s. 164(2); s. 115(4) in force 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**; s. 115(1)-(3)(5)-(10) in force at 1.2.1993 see S.I. 1992/3253, art. 3.

Enforcement powers and offences

VALID FROM 01/02/1993

116 Obtaining of information from persons. U.K.

(1) For the purposes of the discharge of his functions under this Part, the Secretary of State may, by notice in writing served on any person who appears to him—

(a) to be involved in the importation, acquisition, keeping, release or marketing of genetically modified organisms; or

(b) to be about to become, or to have been, involved in any of those activities;

require that person to furnish such relevant information available to him as is specified in the notice, in such form and within such period following service of the notice as is so specified.

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(2) For the purposes of this section "relevant information" means information concerning any aspects of the activities in question, including any damage to the environment which may be or have been caused thereby; and the discharge by the Secretary of State of an obligation of the United Kingdom under the Community Treaties or any international agreement concerning the protection of the environment from harm caused by genetically modified organisms shall be treated as a function of his under this Part.

Commencement Information

I66 S. 116 partly in force; s. 116 in force for certain purposes at 1.2.1993 see s. 164(2)(3) and S.I. 1992/3253, **art. 3**

VALID FROM 01/02/1993

117 Power to deal with cause of imminent danger of damage to the environment. U.K.

(1) Where, in the case of anything found by him on any premises which he has power to enter, an inspector has reason to believe that it is a genetically modified organism or that it consists of or includes genetically modified organisms and that, in the circumstances in which he finds it, it is a cause of imminent danger of damage to the environment, he may seize it and cause it to be rendered harmless (whether by destruction, by bringing it under proper control or otherwise).

(2) Before there is rendered harmless under this section—

(a) any thing that forms part of a batch of similar things, or

(b) any substance,

the inspector shall, if it is practicable and safe for him to do so, take a sample of it and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

(3) As soon as may be after anything has been seized and rendered harmless under this section, the inspector shall prepare and sign a written report giving particulars of the circumstances in which it was seized and so dealt with by him, and shall—

(a) give a signed copy of the report to a responsible person at the premises where it was found by him; and

(b) unless that person is the owner of it, also serve a signed copy of the report on the owner;

and if, where paragraph (b) above applies, the inspector cannot after reasonable inquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under paragraph (a) above.

Commencement Information

I67 S. 117 wholly in force at 1.2.1993 see s. 164(2)(3) and S.I. 192/3253, art. 3.

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118 Offences. U.K.

(1) It is an offence for a person—

(a) to do anything in contravention of section 108(1) above in relation to something which is, and which he knows or has reason to believe is, a genetically modified organism;

(b) to fail to comply with section 108(3) above when keeping something which is, and which he knows or has reason to believe is, a genetically modified organism;

(c) to do anything in contravention of section 111(1) or (2) above in relation to something which is, and which he knows or has reason to believe is, a genetically modified organism;

(d) to fail to comply with any requirement of subsection (2), (3)(a), (b) or (c) or (4) of section 109 above in relation to something which is, and which he knows or has reason to believe is, a genetically modified organism;

(e) to fail, without reasonable excuse, to comply with section 108(5) or (6) above;

(f) to contravene any prohibition imposed on him by a prohibition notice;

(g) without reasonable excuse, to fail to comply with any requirement imposed under section 115 above;

(h) to prevent any other person from appearing before or from answering any question to which an inspector may, by virtue of section 115(3) above, require an answer;

(i) intentionally to obstruct an inspector in the exercise or performance of his powers or duties, other than his powers or duties under section 117 above;

(j) intentionally to obstruct an inspector in the exercise of his powers or duties under section 117 above;

(k) to fail, without reasonable excuse, to comply with any requirement imposed by a notice under section 116 above;

(l) to make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made—

(i) in purported compliance with a requirement to furnish any information imposed by or under any provision of this Part; or

(ii) for the purpose of obtaining the grant of a consent to himself or any other person or the variation of a consent;

(m) intentionally to make a false entry in any record required to be kept under section 108 or 111 above;

(n) with intent to deceive, to forge or use a document purporting to be issued under section 111 above or required for any purpose thereunder or to make or have in his possession a document so closely resembling any such document as to be likely to deceive;

(o) falsely to pretend to be an inspector.

(2) It shall be a defence for a person charged with an offence under paragraph (a), (b), (c), (d) or (f) of subsection (1) above to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(3) A person guilty of an offence under paragraph (c) or (d) of subsection (1) above shall be liable—

(a) on summary conviction, to a fine not exceeding £20,000 or to imprisonment for a term not exceeding six months, or to both;

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(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding five years, or to both.

(4) A person guilty of an offence under paragraph (f) of subsection (1) above shall be liable—

(a) on summary conviction, to a fine not exceeding £20,000 or to imprisonment for a term not exceeding six months, or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

(5) A person guilty of an offence under paragraph (a) or (b) of subsection (1) above shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding five years, or to both.

(6) A person guilty of an offence under paragraph (e), (j), (k), (l), (m) or (n) of subsection (1) above shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

(7) A person guilty of an offence under paragraph (g), (h) or (i) of subsection (1) above shall be liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both.

(8) A person guilty of an offence under paragraph (o) of subsection (1) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(9) Where a person is convicted of an offence under paragraph (b) of subsection (1) above in respect of his keeping any genetically modified organism, then, if the contravention in respect of which he was convicted is continued after he was convicted he shall be guilty of a further offence and liable on summary conviction to a fine of one-fifth of level 5 on the standard scale for each day on which the contravention is so continued.

(10) Proceedings in respect of an offence under this section shall not be instituted in England and Wales except by the Secretary of State or with the consent of the Director of Public Prosecutions or in Northern Ireland except with the consent of the Director of Public Prosecutions for Northern Ireland.

VALID FROM 01/02/1993

119 Onus of proof as regards techniques and evidence. **E+W+S**

(1) In any proceedings for either of the following offences, that is to say—

(a) an offence under section 118(1)(c) above consisting in a failure to comply with the general condition implied by section 112(4)(c) or (5)(c) above; or

(b) an offence under section 118(1)(d) above consisting in a failure to comply with section 109(3)(c) or (4)(c) above;

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it shall be for the accused to prove that there was no better available technique not entailing excessive cost than was in fact used to satisfy the condition or to comply with that section.

(2) Where an entry is required by a condition in a consent to be made in any record as to the observance of any other condition and the entry has not been made, that fact shall be admissible as evidence that that other condition has not been observed.

Commencement Information

I68 S. 119 wholly in force at 1.2.1993 see s. 164(2)(3) and S.I. 1992/3253, **art. 3**.

VALID FROM 01/02/1993

120 Power of court to order cause of offence to be remedied. U.K.

(1) Where a person is convicted of an offence under section 118(1)(a), (b), (c), (d), (e) or (f) above in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying those matters.

(2) The time fixed by an order under subsection (1) above may be extended or further extended by order of the court on an application made before the end of the time as originally fixed or as extended under this subsection, as the case may be.

(3) Where a person is ordered under subsection (1) above to remedy any matters, that person shall not be liable under section 118 above in respect of those matters, in so far as they continue during the time fixed by the order or any further time allowed under subsection (2) above.

Commencement Information

I69 S. 120 wholly in force at 1.2.1993 see. s. 1674(2)(3) and S.I. 1992/3253, **art. 3**

VALID FROM 01/02/1993

121 Power of Secretary of State to remedy harm. U.K.

(1) Where the commission of an offence under section 118(1)(a), (b), (c), (d), (e) or (f) above causes any harm which it is possible to remedy, the Secretary of State may, subject to subsection (2) below—

(a) arrange for any reasonable steps to be taken towards remedying the harm; and

(b) recover the cost of taking those steps from any person convicted of that offence.

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(2) The Secretary of State shall not exercise his powers under this section, where any of the steps are to be taken on or will affect land in the occupation of any person other than a person convicted of the offence in question, except with the permission of that person.

Commencement Information

I70 S. 121 wholly in force at 1.2.1993 see s. 164(2)(3) and S.I. 1992/3253, **art. 3**.

Publicity

122 Public register of information. E+W+S

(1) The Secretary of State shall maintain a register ("the register") containing prescribed particulars of or relating to—

(a) notices given or other information furnished under section 108 above;

(b) directions given under section 108(8) above;

(c) prohibition notices;

(d) applications for consents (and any further information furnished in connection with them) and any advice given by the committee appointed under section 124 below in relation to such applications;

(e) consents granted by the Secretary of State and any information furnished to him in pursuance of consent conditions;

(f) any other information obtained or furnished under any provision of this Part;

(g) convictions for such offences under section 118 above as may be prescribed;

(h) such other matters relating to this Part as may be prescribed;

but that duty is subject to section 123 below.

(2) It shall be the duty of the Secretary of State—

(a) to secure that the register is open to inspection by members of the public free of charge at all reasonable hours; and

(b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges.

(3) The register may be kept in any form.

(4) The Secretary of State may make regulations with respect to the keeping of the register; and in this section "prescribed" means prescribed in regulations made by the Secretary of State.

Modifications etc. (not altering text)

C57 S. 122(1)(2): functions of the Scottish Ministers specified (3.5.2002) by The Scotland Act 1998 (Agency Arrangements) (Specification) (No. 2) Order 2002 (S.I. 2002/800), art. 2, **Sch.**

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Commencement Information

I71 S. 122 partly in force; s. 122 not in force at Royal Assent, see s. 164(2)(3); s. 122(1) in force for certain purposes at 1.4.1991 and s. 122(4) in force at 1.4.1991, see S.I. 1991/1042, art. 2; s. 122(1)(c)-(h)(2)(3) in force at 1.2.1993, see S.I. 1992/3253, art. 3

123 Exclusion from register of certain information. E+W+S

(1) No information shall be included in the register under section 122 above if and so long as, in the opinion of the Secretary of State, the inclusion of the information would be contrary to the interests of national security.

(2) No information shall be included in the register if and so long as, in the opinion of the Secretary of State, it ought to be excluded on the ground that its inclusion might result in damage to the environment.

(3) No information relating to the affairs of any individual or business shall be included in the register without the consent of that individual or the person for the time being carrying on that business, if the Secretary of State has determined that the information—

(a) is, in relation to him, commercially confidential; and

(b) is not information of a description to which subsection (7) below applies;

unless the Secretary of State is of the opinion that the information is no longer commercially confidential in relation to him.

(4) Nothing in subsection (3) above requires the Secretary of State to determine whether any information is or is not commercially confidential except where the person furnishing the information applies to have it excluded on the ground that it is (in relation to himself or another person) commercially confidential.

(5) Where an application has been made for information to be excluded under subsection (3) above, the Secretary of State shall make a determination and inform the applicant of it as soon as is practicable.

(6) Where it appears to the Secretary of State that any information (other than information furnished by the person to whom it relates) which has been obtained under or by virtue of any provision of this Part might be commercially confidential, the Secretary of State shall—

(a) give to the person to whom or to whose business it relates notice that the information is required to be included in the register unless excluded under subsection (3) above; and

(b) give him a reasonable opportunity—

(i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and

(ii) of making representations to the Secretary of State for the purpose of justifying any such objection;

and the Secretary of State shall take any representations into account before determining whether the information is or is not commercially confidential.

(7) The prescribed particulars of or relating to the matters mentioned in section 122(1)(a), (d) and (e) above shall be included in the register notwithstanding that they may be commercially confidential if and so far as they are of any of the following descriptions, namely—

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(a) the name and address of the person giving the notice or furnishing the information;

(b) the description of any genetically modified organisms to which the notice or other information relates;

(c) the location at any time of those organisms;

(d) the purpose for which those organisms are being imported, acquired, kept, released or marketed (according to whichever of those acts the notice or other information relates);

(e) results of any assessment of the risks of damage to the environment being caused by the doing of any of those acts;

(f) notices under section 112(3), (4), (5) or (7) above;

and the Secretary of State may by regulations prescribe any other description of information as information which the public interest requires to be included in the register notwithstanding that it may be commercially confidential.

(8) Information excluded from the register under subsection (3) above shall be treated as ceasing to be commercially confidential for the purposes of that subsection at the expiry of a period of four years beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it or to whom or to whose business it relates may apply to the Secretary of State for the information to remain excluded on the ground that it is still commercially confidential.

(9) The Secretary of State may by order substitute for the period for the time being specified in subsection (8) above such other period as he considers appropriate.

Modifications etc. (not altering text)

C58 S. 123(3)-(6)(8): functions of the Scottish Ministers specified (3.5.2002) by The Scotland Act 1998 (Agency Arrangements) (Specification) (No. 2) Order 2002 (S.I. 2002/800), art. 2, **Sch.**

Commencement Information

I72 S. 123 wholly in force; s. 123 not in force at Royal Assent, see s. 164(2)(3); s. 123(7)(9) in force at 1.4.1991, see S.I. 1991/1042, art. 2; s. 123(1)-(6)(8) in force at 1.2.1993, see S.I. 1992/3253, art. 3

Supplementary

124 Advisory committee for purposes of Part VI. U.K.

(1) The Secretary of State shall appoint a committee to provide him with advice—

(a) on the exercise of his powers under sections 111, 112 and 113 above;

(b) on the exercise of any power under this Part to make regulations;

and on such other matters concerning his functions under this Part as he may from time to time direct.

(2) The chairman and other members of the committee shall hold and vacate office in accordance with the terms of their appointment.

(3) The Secretary of State shall pay to the members of the committee such remuneration (if any) and such allowances as he may, with the consent of the Treasury, determine.

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Modifications etc. (not altering text)

C59 S. 124 extended (Isles of Scilly) (with modifications) (4.8.2006) by The Environmental Protection Act 1990 (Isles of Scilly) Order 2006 (S.I. 2006/1381), **art. 3**

Commencement Information

I73 S. 124 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

125 Delegation of enforcement functions. U.K.

(1) The Secretary of State may, by an agreement made with any public authority, delegate to that authority or to any officer appointed by an authority exercising functions on behalf of that authority any of his enforcement functions under this Part, subject to such restrictions and conditions as may be specified in the agreement.

(2) For the purposes of this section the following are "enforcement functions" of the Secretary of State, that is to say, his functions under—

section 110;

section 114(1) and (4);

section 116;

section 118(10); and

section 121;

and "inspector" in sections 115 and 117 includes, to the extent of the delegation, any inspector appointed by an authority other than the Secretary of State by virtue of an agreement under this section.

(3) The Secretary of State shall, if and so far as an agreement under this section so provides, make payments to the authority to reimburse the authority the expenses incurred in the performance of functions delegated under this section; but no such agreement shall be made without the approval of the Treasury.

Commencement Information

I74 S. 125 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

126 Exercise of certain functions jointly by Secretary of State and Minister of Agriculture, Fisheries and Food. U.K.

(1) Subject to subsection (2) below, any reference in this Part to a function exercisable by the Secretary of State shall, in any case where the function is to be exercised in relation to a matter with which the Minister of Agriculture, Fisheries and Food is concerned, be exercisable by the Secretary of State and that Minister acting jointly.

(2) The validity of anything purporting to be done in pursuance of the exercise of any such function shall not be affected by any question whether that thing fell, by virtue of this section, to be done by the Secretary of State and the Minister of Agriculture, Fisheries and Food.

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Commencement Information
I75 S. 126 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

VALID FROM 01/02/1993

127 Definitions. U.K.

(1) In this Part—

"acquire", in relation to genetically modified organisms, includes any method by which such organisms may come to be in a person's possession, other than by their being imported;

"consent" means a consent granted under section 111 above, and a reference to the limitations or conditions to which a consent is subject is a reference to the limitations or conditions subject to which the consent for the time being has effect;

"descendant", in relation to a genetically modified organism, means any other organism whose genes or other genetic material is derived, through any number of generations, from that organism by any process of reproduction;

"import" means import into the United Kingdom;

"premises" includes any land;

"prohibition notice" means a notice under section 110 above.

(2) This Part, except in so far as it relates to importations of genetically modified organisms, applies to the territorial sea adjacent to Great Britain, and to any area for the time being designated under section 1(7) of the [M98]Continental Shelf Act 1964, as it applies in Great Britain.

Commencement Information
I76 S. 127 wholly in force at 1.2.1993 see s. 164(2)(3) and S.I. 1992/3253, **art. 3**.

Marginal Citations
M98 1964 c. 29.

PART VII E+W+S

NATURE CONSERVATION IN GREAT BRITAIN AND COUNTRYSIDE MATTERS IN WALES

New Councils for England, Scotland and Wales

128 Creation and constitution of new Councils. E+W+S

(1) There shall be three councils, to be called the Nature Conservancy Council for England, the Nature Conservancy Council for Scotland, and the Countryside Council for Wales (in this Part referred to as "the Councils").

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(2) The Councils shall have the following membership, that is to say—

(a) the Nature Conservancy Council for England shall have not less than 10 nor more than 14 members;

(b) the Nature Conservancy Council for Scotland shall have not less than 8 nor more than 12 members; and

(c) the Countryside Council for Wales shall have not less than 8 nor more than 12 members;

and those members shall be appointed by the Secretary of State.

(3) The Secretary of State may by order amend paragraph (a), (b) or (c) of subsection (2) above so as to substitute for the number for the time being specified as the maximum membership of a Council such other number as he thinks appropriate.

(4) The Councils shall establish a committee to be called the Joint Nature Conservation Committee (in this Part referred to as "the joint committee").

(5) Schedules 6 and 7 to this Act shall have effect with respect to the constitution and proceedings of the Councils and of the joint committee and related matters.

Commencement Information

I77 S. 128 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/685, **art. 3**

129 Grants by Secretary of State to new Councils. E+W+S

(1) The Secretary of State may with the approval of the Treasury make to the Councils grants of such amounts as the Secretary of State thinks fit.

(2) A grant under this section may be made subject to such conditions (including in particular conditions as to the use of the money for purposes of the joint committee) as the Secretary of State may with the approval of the Treasury think fit.

Countryside matters

130 Countryside functions of Welsh Council. E+W+S

(1) The Countryside Council for Wales shall, in place of the Commission established under section 1 of the National Parks and Access to the [M99]Countryside Act 1949 (so far as concerns Wales), have such of the functions under the Acts amended by Schedule 8 to this Act (which relates to countryside matters) as are assigned to them in accordance with the amendments effected by that Schedule.

(2) The Countryside Council for Wales shall discharge those functions—

(a) for the conservation and enhancement of natural beauty in Wales and of the natural beauty and amenity of the countryside in Wales, both in the areas designated under the National Parks and Access to the Countryside Act 1949 as National Parks or as areas of outstanding natural beauty and elsewhere;

(b) for encouraging the provision or improvement, for persons resorting to the countryside in Wales, of facilities for the enjoyment thereof and for the enjoyment of the opportunities for open-air recreation and the study of nature afforded thereby;

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and shall have regard to the social and economic interests of rural areas in Wales.

(3) The reference in subsection (2) above to the conservation of the natural beauty of the countryside includes the conservation of its flora, fauna and geological and physiographical features.

(4) The Countryside Council for Wales and the Countryside Commission shall discharge their respective functions under those Acts (as amended by Schedule 8) on and after a day to be appointed by an order made by the Secretary of State.

Subordinate Legislation Made

P1 S. 130(4): s. 130(4)(with ss. 131(3) and 164(3)) power fully exercised: 1.4.1991 appointed by S.I. 1991/685, **art.4**

Commencement Information

I78 S. 130 in force at 1.4.1991 see s. 164(3) and S.I. 1991/685, **art. 3**

Marginal Citations

M99 1949 c. 97.

Nature conservation in Great Britain

131 Nature conservation functions: preliminary. E+W+S

(1) For the purposes of nature conservation, and fostering the understanding thereof, the Councils shall, in place of the Nature Conservancy Council established under the [M100]Nature Conservancy Council Act 1973, have the functions conferred on them by sections 132 to 134 below (which are in this Part referred to as "nature conservation functions").

(2) It shall be the duty of the Councils in discharging their nature conservation functions to take appropriate account of actual or possible ecological changes.

(3) The Councils shall discharge their nature conservation functions on and after a day to be appointed by an order made by the Secretary of State.

(4) The Secretary of State may give the Councils, or any of them, directions of a general or specific character with regard to the discharge of any of their nature conservation functions other than those conferred on them by section 132(1)(a) below.

(5) Any reference in this section to the Councils includes a reference to the joint committee and, accordingly, directions under subsection (4) above may be given to the joint committee as respects any of the functions dischargeable by them (other than under section 133(2)(a)).

(6) In this Part "nature conservation" means the conservation of flora, fauna or geological or physiographical features.

Subordinate Legislation Made

P2 S. 131(3): S. 130(4)(with ss. 131(3) and 164(3)) power exercised: 1.4.1991 appointed by S.I. 1991/685, **art.4**

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Commencement Information
I79 S. 131(3): Appointed day for specified provisions is 1.4.1991 see S.I. 1991/685, art. 4(2)

Marginal Citations
M100 1973 c. 54.

132 General functions of the Councils. E+W+S

(1) The Councils shall each have the following functions, namely—

(a) such of the functions previously discharged by the Nature Conservancy Council under the Acts amended by Schedule 9 to this Act as are assigned to them in accordance with the amendments effected by that Schedule;

(b) the establishment, maintenance and management of nature reserves (within the meaning of section 15 of the National Parks and Access to the [M101]Countryside Act 1949) in their area;

(c) the provision of advice for the Secretary of State or any other Minister on the development and implementation of policies for or affecting nature conservation in their area;

(d) the provision of advice and the dissemination of knowledge to any persons about nature conservation in their area or about matters arising from the discharge of their functions under this section or section 134 below;

(e) the commissioning or support (whether by financial means or otherwise) of research which in their opinion is relevant to any of their functions under this section or section 134 below;

and the Councils shall, in discharging their functions under this section, have regard to any advice given to them by the joint committee under section 133(3) below.

(2) The Councils shall each have power—

(a) to accept any gift or contribution made to them for the purposes of any of the functions conferred on them by subsection (1) above or section 134 below and, subject to the terms of the gift or contribution, to apply it to those purposes;

(b) to initiate and carry out such research directly related to those functions as it is appropriate that they should carry out instead of commissioning or supporting other persons under paragraph (e) of that subsection;

and they may do all such other things as are incidental or conducive to those functions including (without prejudice to the generality of this provision) making charges and holding land or any interest in or right over land.

(3) Nothing in this section shall be taken as preventing any of the Councils—

(a) if consulted by another of the Councils about a matter relating to the functions of that other Council, from giving that other Council any advice or information which they are able to give; or

(b) from giving advice or information to the joint committee about any matter relating to any of the functions conferred by section 133(2) and (3) below.

Commencement Information
I80 S. 132 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/685, **art. 3**

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Marginal Citations
M101 1949 c. 97.

133 Special functions of Councils. E+W+S

(1) The Councils shall jointly have the following functions which may, however, be discharged only through the joint committee; and in this section the functions so dischargeable are referred to as "special functions".

(2) The special functions of the Councils are—

(a) such of the functions previously discharged by the Nature Conservancy Council under the [M102]Wildlife and Countryside Act 1981 as are assigned to the Councils jointly as special functions in accordance with the amendments to that Act effected by Schedule 9 to this Act;

(b) the provision of advice for the Secretary of State or any other Minister on the development and implementation of policies for or affecting nature conservation for Great Britain as a whole or nature conservation outside Great Britain;

(c) the provision of advice and the dissemination of knowledge to any persons about nature conservation for Great Britain as a whole or nature conservation outside Great Britain;

(d) the establishment of common standards throughout Great Britain for the monitoring of nature conservation and for research into nature conservation and the analysis of the resulting information;

(e) the commissioning or support (whether by financial means or otherwise) of research which in the opinion of the joint committee is relevant to any matter mentioned in paragraphs (a) to (d) above;

and section 132(2) above shall apply to the special functions as it applies to the functions conferred by subsection (1) of that section.

(3) The joint committee may give advice or information to any of the Councils on any matter arising in connection with the functions of that Council under section 132 above which, in the opinion of the committee, concerns nature conservation for Great Britain as a whole or nature conservation outside Great Britain.

(4) For the purposes of this section, references to nature conservation for Great Britain as a whole are references to—

(a) any nature conservation matter of national or international importance or which otherwise affects the interests of Great Britain as a whole; or

(b) any nature conservation matter which arises throughout Great Britain and raises issues common to England, Scotland and Wales,

and it is immaterial for the purposes of paragraph (a) above that a matter arises only in relation to England, to Scotland or to Wales.

(5) The Secretary of State may, as respects any matter arising in connection with—

(a) any special function of the Councils, or

(b) the function of the joint committee under subsection (3) above,

give directions to any of the Councils requiring that Council (instead of the joint committee) to discharge that function in relation to that matter.

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Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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)*

Marginal Citations
M102 1981 c. 61.

134 Grants and loans by the Councils. E+W+S

(1) The Councils may each, with the consent of or in accordance with a general authorisation given by the Secretary of State, give financial assistance by way of grant or loan (or partly in one way and partly in the other) to any person in respect of expenditure incurred or to be incurred by him in doing anything which in their opinion is conducive to nature conservation or fostering the understanding of nature conservation.

(2) No consent or general authorisation shall be given by the Secretary of State under subsection (1) above without the approval of the Treasury.

(3) On making a grant or loan a Council may impose such conditions as they think fit, including (in the case of a grant) conditions for repayment in specified circumstances.

(4) The Councils shall exercise their powers under subsection (3) above so as to ensure that any person receiving a grant or loan under this section in respect of premises to which the public are to be admitted (on payment or otherwise) shall, in the means of access both to and within the premises, and in the parking facilities and sanitary conveniences to be available (if any), make provision, so far as it is in the circumstances both practicable and reasonable, for the needs of members of the public visiting the premises who are disabled.

Transfer of property, rights and liabilities to new Councils

135 Schemes for the transfer of property etc. of the Nature Conservancy Council. E+W+S

(1) The Nature Conservancy Council shall make one or more schemes ("transfer schemes") for the division of all their property, rights and liabilities (other than rights and liabilities under the contracts of employment of their staff and in respect of the provision of pensions, allowances or gratuities) between the Councils.

(2) On the date appointed by a transfer scheme, the property, rights and liabilities of the Nature Conservancy Council which are the subject of the scheme shall, by virtue of this subsection, become property, rights and liabilities of the Councils to which they are allocated by the scheme.

(3) Part I of Schedule 10 to this Act shall have effect in relation to transfer schemes under this section.

(4) The rights and liabilities of the Nature Conservancy Council in respect of the provision of pensions, allowances and gratuities for or in respect of their members and employees or their former members or employees shall, on the date appointed under section 131(3) above, by virtue of this subsection, become rights and liabilities of the Secretary of State.

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136 Transfer to Welsh Council of certain property etc. of Countryside Commission. E+W+S

(1) The Countryside Commission shall make one or more schemes ("transfer schemes") for allocating to the Countryside Council for Wales so much of their property, rights and liabilities (other than rights and liabilities under the contracts of employment of their staff) as the Commission consider appropriate having regard to the countryside functions conferred on the Council by section 130 above.

(2) On the date appointed by a transfer scheme, the property, rights and liabilities of the Countryside Commission which are the subject of the scheme shall, by virtue of this subsection, become property, rights and liabilities of the Countryside Council for Wales.

(3) Part II of Schedule 10 to this Act shall have effect in relation to transfer schemes under this section.

Employment by new Councils of staff of existing bodies

137 Offers of employment to employees of Nature Conservancy Council and certain employees of Countryside Commission. E+W+S

(1) Any person who immediately before the date appointed under section 131(3) above is employed by the Nature Conservancy Council shall be entitled to receive an offer of employment from one of the Councils (to be determined in accordance with proposals made by the Nature Conservancy Council).

(2) Subsection (1) above does not apply to a person whose contract of employment with the Nature Conservancy Council terminates on the day immediately preceding the date appointed under section 131(3) above.

(3) The Countryside Council for Wales shall also make an offer of employment to any person who—

(a) is, immediately before the date appointed under section 130(4) above, employed by the Countryside Commission; and

(b) is a person the Commission has proposed should receive such an offer.

(4) Part III of Schedule 10 to this Act shall have effect with respect to offers and proposals under this section.

Dissolution of Nature Conservancy Council

138 Winding up and dissolution of Nature Conservancy Council. E+W+S

(1) On the date appointed under section 131(3) above the chairman and other members of the Nature Conservancy Council shall cease to hold office and after that date—

(a) the Council shall consist only of a chairman appointed by the Secretary of State and such one or more other persons as may be so appointed; and

(b) the Council shall have only the following functions, namely—

(i) anything which falls to be done by the Council under any transfer scheme under section 135 above;

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(ii) the preparation of such accounts and reports as the Secretary of State may direct;

and such other functions as are necessary for winding up their affairs.

(2) The Secretary of State may, by order, after consultation with the Nature Conservancy Council and the Councils, dissolve the Nature Conservancy Council on a day specified in the order as soon as he is satisfied that nothing remains to be done by that Council.

(3) The Secretary of State may pay to persons who cease to hold office by virtue of subsection (1) above such sums by way of compensation for loss of office, or loss or diminution of pension rights, as the Secretary of State may, with the approval of the Treasury, determine.

Subordinate Legislation Made

P3 S. 138: s. 138(2) power exercised (20.12.1991) 21.12.1991 appointed by S.I.1991/2923.

Transitional provisions and savings

139 Transitional provisions and savings. E+W+S

Schedule 11 to this Act (which contains transitional provisions and savings relating to this Part) shall have effect.

PART VIII U.K.

MISCELLANEOUS

Other controls on substances, articles or waste

140 Power to prohibit or restrict the importation, use, supply or storage of injurious substances or articles. U.K.

(1) The Secretary of State may by regulations prohibit or restrict—

(a) the importation into and the landing and unloading in the United Kingdom,

(b) the use for any purpose,

(c) the supply for any purpose, and

(d) the storage,

of any specified substance or article if he considers it appropriate to do so for the purpose of preventing the substance or article from causing pollution of the environment or harm to human health or to the health of animals or plants.

(2) Any such prohibition or restriction may apply—

(a) in all, or only in specified, areas;

(b) in all, or only in specified, circumstances or if conditions imposed by the regulations are not complied with; and

(c) to all, or only to specified descriptions of, persons.

(3) Regulations under this section may—

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(a) confer on the Secretary of State power to direct that any substance or article whose use, supply or storage is prohibited or restricted is to be treated as waste or controlled waste of any description and in relation to any such substance or article—

(i) to apply, with or without modification, specified provisions of Part II; or

(ii) to direct that it be disposed of or treated in accordance with the direction;

(b) confer on the Secretary of State power, where a substance or article has been imported, landed or unloaded in contravention of a prohibition or restriction imposed under subsection (1)(a) above, to require that the substance or article be disposed of or treated in or removed from the United Kingdom;

(c) confer powers corresponding to those conferred by section 17 above on persons authorised for any purpose of the regulations by the Secretary of State or any local or other authority; and

(d) include such other incidental and supplemental, and such transitional provisions, as the Secretary of State considers appropriate.

(4) The Secretary of State may, by regulations under this section, direct that, for the purposes of any power conferred on him under subsection (3)(b) above, any prohibition or restriction on the importation into or the landing and unloading in the United Kingdom imposed—

(a) by or under any Community instrument, or

(b) by or under any enactment,

shall be treated as imposed under subsection (1)(a) above and any power conferred on him under subsection (3)(b) above shall be exercisable accordingly.

(5) The Secretary of State may by order establish a committee to give him advice in relation to the exercise of the power to make regulations under this section and Schedule 12 to this Act shall have effect in relation to it.

(6) Subject to subsection (7) below, it shall be the duty of the Secretary of State before he makes any regulations under this section other than regulations under subsection (4) above—

(a) to consult the committee constituted under subsection (5) above about the proposed regulations;

(b) having consulted the committee, to publish in the London Gazette and, if the regulations apply in Scotland or Northern Ireland, the Edinburgh Gazette or, as the case may be, Belfast Gazette and in any other publication which he considers appropriate, a notice indicating the effect of the proposed regulations and specifying—

(i) the date on which it is proposed that the regulations will come into force;

(ii) a place where a draft of the proposed regulations may be inspected free of charge by members of the public during office hours; and

(iii) a period of not less than fourteen days, beginning with the date on which the notice is first published, during which representations in writing may be made to the Secretary of State about the proposed regulations; and

(c) to consider any representations which are made to him in accordance with the notice.

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(7) The Secretary of State may make regulations under this section in relation to any substance or article without observing the requirements of subsection (6) above where it appears to him that there is an imminent risk, if those requirements are observed, that serious pollution of the environment will be caused.

(8) The Secretary of State may, after performing the duty imposed on him by subsection (6) above with respect to any proposed regulations, make the regulations either—

(a) in the form of the draft mentioned in subsection (6)(b) above, or

(b) in that form with such modifications as he considers appropriate;

but the Secretary of State shall not make any regulations incorporating modifications unless he is of opinion that it is appropriate for the requirements of subsection (6) above to be disregarded.

(9) Regulations under this section may provide that a person who contravenes or fails to comply with a specified provision of the regulations or causes or permits another person to contravene or fail to comply with a specified provision of the regulations commits an offence and may prescribe the maximum penalty for the offence.

(10) No offence under the regulations shall be made punishable with imprisonment for more than two years or punishable on summary conviction with a fine exceeding level 5 on the standard scale (if not calculated on a daily basis) or, in the case of a continuing offence, exceeding one-tenth of the level on the standard scale specified as the maximum penalty for the original offence.

(11) In this section—

"the environment" means the air, water and land, or any of those media, and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground;

"specified" means specified in the regulations; and

"substance" means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour and it includes mixtures of substances.

Modifications etc. (not altering text)
C60 S. 140 extended (with modifications) (19.2.1999) by S.I. 1999/396, **reg. 2**

141 Power to prohibit or restrict the importation or exportation of waste. U.K.

(1) The Secretary of State may, for the purpose of preventing any risk of pollution of the environment or of harm to human health arising from waste being imported or exported or of conserving the facilities or resources for dealing with waste, make regulations prohibiting or restricting, or providing for the prohibition or restriction of—

(a) the importation into and the landing and unloading in the United Kingdom, or

(b) the exportation, or the loading for exportation, from the United Kingdom,

of waste of any description.

(2) Regulations under this section may make different provision for different descriptions of waste or waste of any description in different circumstances.

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(3) Regulations under this section may, as respects any description of waste, confer or impose on waste regulation authorities or any of them such functions in relation to the importation of waste as appear to be appropriate to the Secretary of State, subject to such limitations and conditions as are specified in the regulations.

(4) Regulations under this section may confer or impose on waste regulation authorities or any of them functions of enforcing any of the regulations on behalf of the Secretary of State whether or not the functions fall within subsection (3) above.

(5) Regulations under this section may—

(a) as respects functions conferred or imposed on waste regulation authorities—

(i) make them exercisable in relation to individual consignments or consignments in a series by the same person but not in relation to consignments or descriptions of consignments generally; and

(ii) confer on the Secretary of State power, by direction to the authorities or any of them, to make the functions or any of them exercisable instead by him whether indefinitely or for any period;

(b) impose or provide for the imposition of prohibitions either absolutely or only if conditions or procedures prescribed in or under the regulations are not complied with;

(c) impose duties to be complied with before, on or after any importation or exportation of waste by persons who are, or are to be, consignors, consignees, carriers or holders of the waste or any waste derived from it;

(d) confer powers corresponding to those conferred by section 69(3) above;

(e) provide for appeals to the Secretary of State from determinations made by authorities under the regulations;

(f) provide for the keeping by the Secretary of State, waste regulation authorities and waste collection authorities of public registers of information relating to the importation and exportation of waste and for the transmission of such information between any of those persons;

(g) create offences, subject to the limitation that no offence shall be punishable with imprisonment for more than two years or punishable on summary conviction with imprisonment for more than six months or a fine exceeding level 5 on the standard scale (if not calculated on a daily basis) or, in the case of a continuing offence, exceeding one-tenth of the level on the standard scale specified as the maximum penalty for the original offence.

(6) In this section—

"the environment" means land, water and air or any of them;

"harm" includes offence to any of man's senses;

"waste", "waste collection authority", and "waste regulation authority" have the same meaning as in Part II; and

"the United Kingdom" includes its territorial sea.

(7) In the application of this section to Northern Ireland and the territorial sea of the United Kingdom adjacent to Northern Ireland "waste regulation authority" means a district council established under the [M103]Local Government Act (Northern Ireland) 1972.

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Marginal Citations
M103 1972 c. 9 (N.I.).

142 Powers to obtain information about potentially hazardous substances. U.K.

(1) The Secretary of State may, for the purpose of assessing their potential for causing pollution of the environment or harm to human health, by regulations make provision for and in connection with the obtaining of relevant information relating to substances which may be specified by him by order for the purposes of this section.

(2) The Secretary of State shall not make an order under subsection (1) above specifying any substance—

(a) which was first supplied in any member State on or after 18th September 1981; or

(b) in so far as it is a regulated substance for the purposes of any relevant enactment.

(3) The Secretary of State shall not make an order under subsection (1) above specifying any substance without consulting the committee established under section 140(5) except where it appears to him that information about the substance needs to be obtained urgently under this section.

(4) Regulations under this section may—

(a) prescribe the descriptions of relevant information which are to be furnished under this section in relation to specified substances;

(b) impose requirements on manufacturers, importers or suppliers generally to furnish information prescribed under paragraph (a) above;

(c) provide for the imposition of requirements on manufacturers, importers or suppliers generally to furnish relevant information relating to products or articles containing specified substances in relation to which information has been furnished in pursuance of paragraph (b) above;

(d) provide for the imposition of requirements on particular manufacturers, importers or suppliers to furnish further information relating to specified substances in relation to which information has been furnished in pursuance of paragraph (b) above;

(e) provide for the imposition of requirements on particular manufacturers or importers to carry out tests of specified substances and to furnish information of the results of the tests;

(f) authorise persons to comply with requirements to furnish information imposed on them by or under the regulations by means of representative persons or bodies;

(g) impose restrictions on the disclosure of information obtained under this section and provide for determining what information is, and what information is not, to be treated as furnished in confidence;

(h) create offences, subject to the limitation that no offence shall be punishable with imprisonment or punishable on summary conviction with a fine exceeding level 5 on the standard scale;

(i) make any public authority designated by the regulations responsible for the enforcement of the regulations to such extent as may be specified in the regulations;

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(j) include such other incidental and supplemental, and such transitional, provisions as the Secretary of State considers appropriate.

(5) The Secretary of State shall have regard, in imposing or providing for the imposition of any requirement under subsection (4)(b), (c), (d) or (e) above, to the cost likely to be involved in complying with the requirement.

(6) In this section—

"the environment" means the air, water and land or any of them;

"relevant information", in relation to substances, products or articles, means information relating to their properties, production, distribution, importation or use or intended use and, in relation to products or articles, to their disposal as waste;

"substance" means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour and it includes mixtures of substances.

(7) The enactments which are relevant for the purposes of subsection (2)(b) above are the following—

the [M104]Explosive Substances Act 1875;
the [M105]Radioactive Substances Act 1960;
Parts II, III and VIII of the [M106]Medicines Act 1968;
Part IV of the [M107]Agriculture Act 1970;
the [M108]Misuse of Drugs Act 1971;
Part III of the [M109]Food and Environment Protection Act 1985; and
the [M110]Food Safety Act 1990;

and a substance is a regulated substance for the purposes of any such enactment in so far as any prohibition, restriction or requirement is imposed in relation to it by or under the enactment for the purposes of that enactment.

Marginal Citations

M104 1875 c. 17.
M105 1960 c. 34.
M106 1968 c. 67.
M107 1970 c. 40.
M108 1971 c. 38.
M109 1985 c. 48.
M110 1990 c. 16.

VALID FROM 14/02/1992

143 Public registers of land which may be contaminated. E+W+S

(1) For the purposes of the registers to be maintained under this section, the Secretary of State may, by regulations—

(a) specify contaminative uses of land;
(b) prescribe the form of the registers and the particulars to be included in them; and

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(c) make such other provision as appears to him to be appropriate in connection with the maintenance of the registers.

(2) It shall be the duty of a local authority, as respects land in its area subject to contamination, to maintain, in accordance with the regulations, a register in the prescribed form and containing the prescribed particulars.

(3) The duty imposed by subsection (2) above on a local authority is a duty to compile and maintain the register from the information available to the authority from time to time.

(4) A local authority shall secure that the register is open to inspection at its principal office by members of the public free of charge at all reasonable hours and shall afford to members of the public reasonable facilities for obtaining, on payment of reasonable charges, copies of entries in the register.

(5) Regulations under subsection (1)(c) above may prescribe the measures to be taken by local authorities for informing persons whose land is the subject of entries in a register about the entries or for enabling them to inform themselves about them.

(6) In this section—

"contaminative use" means any use of land which may cause it to be contaminated with noxious substances;

"land subject to contamination" means land which is being or has been put to a contaminative use;

"local authority" means—

(a) in Greater London, a London borough council or the Common Council of the City of London;

(b) in England and Wales outside Greater London, a district council;

(c) in Scotland, a planning authority; and

(d) the Council of the Isles of Scilly; and

"substance" means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.

Commencement Information

I81 S. 143 partly in force; s. 143(1)(5)(6) in force at 14.2.1992 (in so far as they extend to England and Wales) see s. 164(3) and S.I. 1992/266, **art. 2**.

VALID FROM 01/01/1992

144 Amendments of hazardous substances legislation. E+W+S

Schedule 13 to this Act (which contains miscellaneous amendments to the legislation relating to hazardous substances) shall have effect.

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Commencement Information

I82 S. 144 partly in force; s. 144 not in force at Royal Assent see s.164(3); s. 144 in force for certain purposes at 1.1.1992 by S.I. 1991/2829 art. 3; s. 144 in force at 18.2.1993 (insofar as it relates to paras. 11 and 12 of Schedule 13, Part II) and 1.5.1993 (insofar as it relates to para. 13 of Schedule 13, Part II) by S.I. 1993/274, **arts. 2(1)**, 3

145 Penalties for offences of polluting controlled waters etc. E+W+S

F84(1) . . . . . .

(2) In sections 31(7)(a), 31A(2)(c)(i) and 32(7)(a) of the M111Control of Pollution Act 1974 (corresponding penalties for Scotland), for the words "the statutory maximum" there shall be substituted "£20,000".

Textual Amendments

F84 S. 145(1) repealed (1. 12. 1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3** (with Sch. 2 paras. 10, 14(1), 15)

Marginal Citations

M111 1974 c. 40.

Pollution at sea

146 Deposits of substances and articles in the sea, etc. U.K.

(1) Part II of the M112Food and Environment Protection Act 1985 (under which licences are required for deposits by British vessels etc at sea anywhere or by foreign vessels etc in United Kingdom waters or, in certain circumstances, within British fishery limits) shall be amended as follows.

(2) In section 5 (licences for depositing at sea)—

(a) in paragraph (a), after the words "United Kingdom waters" there shall be inserted the words "or United Kingdom controlled waters";

(b) paragraphs (c) and (d) shall be omitted;

(c) in paragraph (e)—

(i) in sub-paragraph (i), after the words "United Kingdom waters" there shall be inserted the words "or United Kingdom controlled waters" and at the end there shall be inserted the word "or"; and

(ii) sub-paragraph (iii) shall be omitted.

(3) In section 6 (licences for incineration at sea), in subsection (1)(a)—

(a) in sub-paragraph (i), after the words "United Kingdom waters" there shall be inserted the words "or United Kingdom controlled waters" and at the end there shall be inserted the word "or"; and

(b) sub-paragraph (iii) shall be omitted.

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(4) In section 9(5) (Convention State defence to offence of acting without or in contravention of a licence), in paragraph (b), for the word "waters" there shall be substituted the words "controlled waters (and not within United Kingdom waters)".

(5) In section 11 (powers of officers)—

(a) in subsection (2)(b), for the words "British fishery limits" there shall be substituted the words "United Kingdom waters or United Kingdom controlled waters;"; and

(b) in subsection (3)(a), for the words "British fishery limits" there shall be substituted the words "United Kingdom waters or United Kingdom controlled waters;".

(6) In section 21 (penalties for offences)—

(a) in subsection (2), for the words "2(4) and 9(1)" there shall be substituted the words "and 2(4)"; and

(b) after that subsection, there shall be inserted the following subsection—

"(2A) A person guilty of an offence under section 9(1) shall be liable—

(a) on summary conviction, to a fine of an amount not exceeding £50,000; and

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both."

(7) In section 24(1) (definitions) at the end of the definition of "United Kingdom waters" there shall be inserted the words "and "United Kingdom controlled waters" means any part of the sea within the limits of an area designated under section 1(7) of the [M113]Continental Shelf Act 1964".

(8) In Schedule 2 (powers in relation to vessels, aircraft, etc. for the purposes of Part I or Part II or both Parts of the Act), in paragraph 3(3) (removal to United Kingdom), after the words "Part I" there shall be inserted the words "or II".

Marginal Citations

M112 1985 c. 48.

M113 1964 c. 29.

147 Public registers relating to deposits in the sea and incineration at sea. U.K.

In Part II of the [M114]Food and Environment Protection Act 1985, for section 14 (registers of licences) there shall be substituted the following section—

"**14 Duty of licensing authority to keep public registers of information.**

(1) It shall be the duty of each licensing authority, as respects licences for which it is the licensing authority, to maintain, in accordance with regulations, a register containing prescribed particulars of or relating to—

(a) applications for licences made to that authority;

(b) the licences issued by that authority;

(c) variations of licences effected by that authority;

(d) revocations of licences effected by that authority;

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(e) convictions for any offences under section 9 above;

(f) information obtained or furnished in pursuance of section 8(3), (4) or (5) above;

(g) the occasions on which either of the Ministers has carried out any operation under section 10 above; and

(h) such other matters relating to operations for which licences are needed under this Part of this Act as may be prescribed.

(2) No information shall be included in any register which, in the opinion of either of the Ministers, is such that its disclosure on the register—

(a) would be contrary to the interests of national security, or

(b) would prejudice to an unreasonable degree some person's commercial interests.

(3) Information excluded from a register by virtue of subsection (2)(b) above shall be treated as ceasing to prejudice a person's commercial interests at the expiry of the period of four years beginning with the date on which the Minister made his decision under that subsection; but, on the application of any person to whom it relates, the Minister shall decide whether the information should be included or continue to be excluded from the register.

(4) Where information of any description is excluded from a register by virtue of subsection (2)(b) above, a statement shall be entered in the register indicating the existence of information of that description.

(5) It shall be the duty of each licensing authority—

(a) to secure that the register maintained by the authority under this section is available, at all reasonable times, for inspection by the public free of charge; and

(b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges.

(6) Registers under this section may be kept in any form.

(7) In this section "prescribed" means prescribed in regulations.

(8) Either of the Ministers may exercise any power to make regulations under this section and any such power shall be exercisable by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament."

Commencement Information
I83 S. 147 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**

Marginal Citations
M114 1985 c. 48.

148 Oil pollution from ships. U.K.

(1) Schedule 14 to this Act (which amends the provisions of the [M115]Prevention of Oil Pollution Act 1971) shall have effect.

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 19 April 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) Without prejudice to the generality of subsections (1), (3) and (4) of section 20 of the [M116]Merchant Shipping Act 1979, an Order under subsection (1) of that section may make in connection with offences created by or under any such Order provision corresponding to that made in connection with offences under section 2(2A) of the Prevention of Oil Pollution Act 1971 by any provision of—

(a) section 19(4A) of that Act, and

(b) sections 19A and 20 of that Act,

and may do so whether by applying (or making provision for the application of) any of those provisions, subject to such modifications as may be specified by or under the Order, or otherwise.

(3) This section (and Schedule 14) shall not apply in relation to any offence committed before this section comes into force.

Marginal Citations

M115 1971 c. 60.

M116 1979 c. 39.

VALID FROM 14/02/1992

Control of Dogs

149 Seizure of stray dogs. E+W+S

(1) Every local authority shall appoint an officer (under whatever title the authority may determine) for the purpose of discharging the functions imposed or conferred by this section for dealing with stray dogs found in the area of the authority.

(2) The officer may delegate the discharge of his functions to another person but he shall remain responsible for securing that the functions are properly discharged.

(3) Where the officer has reason to believe that any dog found in a public place or on any other land or premises is a stray dog, he shall (if practicable) seize the dog and detain it, but, where he finds it on land or premises which is not a public place, only with the consent of the owner or occupier of the land or premises.

(4) Where any dog seized under this section wears a collar having inscribed thereon or attached thereto the address of any person, or the owner of the dog is known, the officer shall serve on the person whose address is given on the collar, or on the owner, a notice in writing stating that the dog has been seized and where it is being kept and stating that the dog will be liable to be disposed of if it is not claimed within seven clear days after the service of the notice and the amounts for which he would be liable under subsection (5) below are not paid.

(5) A person claiming to be the owner of a dog seized under this section shall not be entitled to have the dog returned to him unless he pays all the expenses incurred by reason of its detention and such further amount as is for the time being prescribed.

(6) Where any dog seized under this section has been detained for seven clear days after the seizure or, where a notice has been served under subsection (4) above, the service

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of the notice and the owner has not claimed the dog and paid the amounts due under subsection (5) above the officer may dispose of the dog—

(a) by selling it or giving it to a person who will, in his opinion, care properly for the dog;

(b) by selling it or giving it to an establishment for the reception of stray dogs; or

(c) by destroying it in a manner to cause as little pain as possible;

but no dog seized under this section shall be sold or given for the purposes of vivisection.

(7) Where a dog is disposed of under subsection (6)(a) or (b) above to a person acting in good faith, the ownership of the dog shall be vested in the recipient.

(8) The officer shall keep a register containing the prescribed particulars of or relating to dogs seized under this section and the register shall be available, at all reasonable times, for inspection by the public free of charge.

(9) The officer shall cause any dog detained under this section to be properly fed and maintained.

(10) Notwithstanding anything in this section, the officer may cause a dog detained under this section to be destroyed before the expiration of the period mentioned in subsection (6) above where he is of the opinion that this should be done to avoid suffering.

(11) In this section—

"local authority", in relation to England and Wales, means a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly and, in relation to Scotland, means an islands or district council;

"officer" means an officer appointed under subsection (1) above;

"prescribed" means prescribed in regulations made by the Secretary of State; and

"public place" means—

(i) as respects England and Wales, any highway and any other place to which the public are entitled or permitted to have access;

(ii) as respects Scotland, any road (within the meaning of the [M117]Roads (Scotland) Act 1984) and any other place to which the public are entitled or permitted to have access;

and, for the purposes of section 160 below in its application to this section, the proper address of the owner of a dog which wears a collar includes the address given on the collar.

Modifications etc. (not altering text)

C61 S. 149 extended (1.4.1992) by S.I. 1992/901, **art.4**.

Commencement Information

I84 S. 149 wholly in force; s. 149 not in force at Royal Assent see. s. 164(3); s. 149 in force for certain purposes at 14.2.1992 see S.I. 1992/266, art. 2; s. 149 in force in so far as not then already in force at 1.4.1992 see s. 164(3) and S.I. 1992/266, **art. 3**.

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Marginal Citations

M117 1984 c. 54.

150 Delivery of stray dogs to police or local authority officer. E+W+S

(1) Any person (in this section referred to as "the finder") who takes possession of a stray dog shall forthwith either—

(a) return the dog to its owner; or

(b) take the dog—

(i) to the officer of the local authority for the area in which the dog was found; or

(ii) to the police station which is nearest to the place where the dog was found;

and shall inform the officer of the local authority or the police officer in charge of the police station, as the case may be, where the dog was found.

(2) Where a dog has been taken under subsection (1) above to the officer of a local authority, then—

(a) if the finder desires to keep the dog, he shall inform the officer of this fact and shall furnish his name and address and the officer shall, having complied with the procedure (if any) prescribed under subsection (6) below, allow the finder to remove the dog;

(b) if the finder does not desire to keep the dog, the officer shall, unless he has reason to believe it is not a stray, treat it as if it had been seized by him under section 149 above.

(3) Where the finder of a dog keeps the dog by virtue of this section he must keep it for not less than one month.

(4) In Scotland a person who keeps a dog by virtue of this section for a period of two months without its being claimed by the person who has right to it shall at the end of that period become the owner of the dog.

(5) If the finder of a dog fails to comply with the requirements of subsection (1) or (3) above he shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(6) The Secretary of State may, by regulations, prescribe the procedure to be followed under subsection (2)(a) above.

(7) In this section "local authority" and "officer" have the same meaning as in section 149 above.

Commencement Information

I85 S. 150 wholly in force; s. 150 not in force at Royal Assent see s. 164(3); s. 150 in force for certain purposes at 14.2.1992 see s. 164(3) and S.I. 1992/266, **art. 2**; s. 150 in force in so far as not then already in force at 1.4.1992 see s. 164(3) and S.I. 1992/266, **art. 3**.

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
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151 Enforcement of orders about collars and tags for dogs. E+W+S

(1) Section 13 of the Animal Health Act 1981 (orders for control, etc. of dogs) shall be amended by the insertion, after subsection (2), of the following subsections—

"(3) An order under subsection (2)(a) above may include provision for the execution and enforcement of the order by the officers of local authorities (and not by the police force for any area).

(4) In subsection (3) above "local authority" and "officer" have the same meaning as in section 149 of the Environmental Protection Act 1990."

(2) In section 50(1) of that Act (meaning of "local authority") at the end there shall be inserted the words "and to section 13(3) above".

(3) In section 60(1) of that Act (enforcement), at the end, there shall be inserted the words "but subject, in the case of orders under section 13, to any provision made under subsection (3) of that section."

Commencement Information

I86 S. 151 wholly in force; s. 151 not in force at Royal Assent see s. 164(3); s. 151 in force for certain purposes at 14.2.1992 see s. 164(3) and S.I. 1992/266, **art. 2**; s. 151 in force in so far as not then aleardy in force at 1.4.1992 see s. 164(3) and S.I. 1992/266, **art. 3**.

Straw and stubble burning

152 Burning of straw and stubble etc. E+W+S

(1) The appropriate Minister may by regulations prohibit or restrict the burning of crop residues on agricultural land by persons engaged in agriculture and he may (by the same or other regulations) provide exemptions from any prohibition or restriction so imposed.

(2) Regulations providing an exemption from any prohibition or restriction may make the exemption applicable—

(a) in all, or only in specified, areas;

(b) to all, or only to specified, crop residues; or

(c) in all, or only in specified, circumstances.

(3) Any power to make regulations under this section includes power—

(a) to make different provision for different areas or circumstances;

(b) where burning of a crop residue is restricted, to impose requirements to be complied with before or after the burning;

(c) to create offences subject to the limitation that no offence shall be made punishable otherwise than on summary conviction and the fine prescribed for the offence shall not exceed level 5 on the standard scale; and

(d) to make such incidental, supplemental and transitional provision as the appropriate Minister considers appropriate.

(4) Where it appears to the appropriate Minister appropriate to do so in consequence of any regulations made under the foregoing provisions of this section, the appropriate

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Minister may, by order, repeal any byelaws of local authorities dealing with the burning of crop residues on agricultural land.

(5) In this section—

"agriculture" and "agricultural land" have, as respects England or as respects Wales, the same meaning as in the [M118]Agriculture Act 1947 and, as respects Scotland, the same meaning as in the [M119]Agriculture (Scotland) Act 1948;

"crop residue" means straw or stubble or any other crop residue;

"the appropriate Minister" means the Minister of Agriculture, Fisheries and Food or the Secretary of State or both of them.

Commencement Information

I87 S. 152 wholly in force at 10.7.1991 see s. 164(3) and S.I. 1991/1577, **art. 2**

Marginal Citations

M118 1947 c. 48.

M119 1948 c. 45.

Environmental expenditure

153 Financial assistance for environmental purposes. E+W+N.I.

(1) The Secretary of State may, with the consent of the Treasury, give financial assistance to, or for the purposes of, any of the following—

(a) the United Nations Environment Programme;

(b) the European Environmental Bureau;

(c) the chemicals programme of the Organisation for Economic Co-operation and Development;

(d) the joint inter-Governmental panel on Climate Change of the United Nations Environment Programme and the World Meteorological Organisation;

(e) the International Union for the Conservation of Nature and Natural Resources;

(f) the Convention on International Trade in Endangered Species of Wild Fauna and Flora;

(g) the Convention on Wetlands of International Importance Especially as Waterfowl Habitat;

(h) the Convention on Long-range Transboundary Air Pollution and any protocol to that Convention;

(i) the Convention and Protocol for the Protection of the Ozone Layer;

(j) the Convention on the Conservation of Migratory Species of Wild Animals;

(k) the Groundwork Foundation and Trusts;

(l) the environmental protection technology scheme for research and development in the United Kingdom in relation to such technology;

(m) the programme known as the special grants programme so far as it relates to the protection, improvement or better understanding of the environment of, or of any part of, Great Britain.

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[[F85](n) the Royal Society for the Encouragement of Arts, Manufactures and Commerce so far as its activities relate to the protection, improvement or better understanding of the environment.**]**

(2) Financial assistance may be given in respect of particular activities or generally in respect of all or some part of the activities carried on or supported by the recipient.

(3) Financial assistance shall be given in such form and on such terms as the Secretary of State may think fit and, in particular, assistance may be given by making grants (whether or not repayable), loans or guarantees to, or by incurring expenditure, or providing services, staff or equipment for the benefit of, the recipient.

(4) The Secretary of State may, by order, vary subsection (1) above by adding to or deleting from it any description of organisation, scheme, programme or international agreement whose purposes relate to the protection, improvement or better understanding of the environment.

(5) Subject to any Order made after the passing of this Act by virtue of subsection (1)(a) of section 3 of the [M120]Northern Ireland Constitution Act 1973, the environmental protection technology scheme for research and development in the United Kingdom in relation to such technology shall not be a transferred matter for the purposes of that Act but shall for the purposes of subsection (2) of that section be treated as specified in Schedule 3 to that Act.

Extent Information

E9 This version of this provision extends to England and Wales and Northern Ireland only; a separate version has been created for Scotland only.

Textual Amendments

F85 S. 153(1)(n): by S.I. 1991/682, **art.2** it is provided that para.(n) is added to s. 153(1)

Marginal Citations

M120 1973 c. 36.

153 Financial assistance for environmental purposes. S

(1) The Secretary of State may, with the consent of the Treasury, give financial assistance to, or for the purposes of, any of the following—

(a) the United Nations Environment Programme;

(b) the European Environmental Bureau;

(c) the chemicals programme of the Organisation for Economic Co-operation and Development;

(d) the joint inter-Governmental panel on Climate Change of the United Nations Environment Programme and the World Meteorological Organisation;

(e) the International Union for the Conservation of Nature and Natural Resources;

(f) the Convention on International Trade in Endangered Species of Wild Fauna and Flora;

(g) the Convention on Wetlands of International Importance Especially as Waterfowl Habitat;

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(h) the Convention on Long-range Transboundary Air Pollution and any protocol to that Convention;

(i) the Convention and Protocol for the Protection of the Ozone Layer;

(j) the Convention on the Conservation of Migratory Species of Wild Animals;

(k) the Groundwork Foundation and Trusts;

(l) the environmental protection technology scheme for research and development in the United Kingdom in relation to such technology;

(m) the programme known as the special grants programme so far as it relates to the protection, improvement or better understanding of the environment of, or of any part of, Great Britain.

[F113(n) the programmes of regional and islands councils in Scotland, as local authorities exercising functions under the Sewerage (Scotland) Act M150 1968, for the carrying out of works to improve the quality of inland, coastal and relevant territorial waters, as defined in section 30A of the Control of Pollution Act M151 1974, or otherwise to benefit the environment.**]**

[F114(n) the Royal Society for the Encouragement of Arts, Manufactures and Commerce so far as its activities relate to the protection, improvement or better understanding of the environment.**]**

[F115(o) UK 2000 Scotland.**]**

(2) Financial assistance may be given in respect of particular activities or generally in respect of all or some part of the activities carried on or supported by the recipient.

(3) Financial assistance shall be given in such form and on such terms as the Secretary of State may think fit and, in particular, assistance may be given by making grants (whether or not repayable), loans or guarantees to, or by incurring expenditure, or providing services, staff or equipment for the benefit of, the recipient.

(4) The Secretary of State may, by order, vary subsection (1) above by adding to or deleting from it any description of organisation, scheme, programme or international agreement whose purposes relate to the protection, improvement or better understanding of the environment.

(5) Subject to any Order made after the passing of this Act by virtue of subsection (1)(a) of section 3 of the M152 Northern Ireland Constitution Act 1973, the environmental protection technology scheme for research and development in the United Kingdom in relation to such technology shall not be a transferred matter for the purposes of that Act but shall for the purposes of subsection (2) of that section be treated as specified in Schedule 3 to that Act.

Textual Amendments

F113 S. 153(1) varied (S.) by the addition of s. 153(1)(n) (beginning "the programmes") by S.I. 1991/146, **art. 2** (made 26.1.1991 and coming into force 1.3.1991)

F114 S. 153(1)(n) (beginning "the Royal Society") added (15.4.1991) by S.I. 1991/682, **art. 2**.

F115 S. 153(1) varied (S.) by the addition of s. 153(1)(o) by S.I. 1991/1179, **art. 2**

Marginal Citations

M150 1968 c.47 (**100:2**).

M151 1974 c.40 (**46:4**).

M152 1973 c. 36.

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154 The Groundwork Foundation: superannuation. E+W+S

Employment with the Groundwork Foundation shall be and shall be deemed always to have been included among the kinds of employment to which a superannuation scheme under section 1 of the [M121]Superannuation Act 1972 can apply, and accordingly in Schedule 1 to that Act (in which those kinds of employment are listed) the words "Groundwork Foundation" shall be inserted after the words "Gaming Board for Great Britain".

Marginal Citations
M121 1972 c. 11.

155 Remuneration of chairman of Inland Waterways Amenity Advisory Council. E+W+S

In section 110 of the [M122]Transport Act [M123]1968 (Inland Waterways Amenity Advisory Council) at the end there shall be inserted—

"(7) The Secretary of State may, with the consent of the Treasury, pay the chairman of the Council out of money provided by Parliament such remuneration as the Secretary of State may determine; and where the chairman is in receipt of such remuneration he shall not be paid any allowance under subsection (6) of this section in respect of loss of remunerative time."

Marginal Citations
M122 1968 c. 78.
M123 1968 c. 73.

PART IX U.K.

GENERAL

156 Power to give effect to Community and other international obligations etc. U.K.

(1) The Secretary of State may by regulations provide that the provisions to which this section applies shall have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty's Government in the United Kingdom—

(a) to give effect to any Community obligation or exercise any related right; or

(b) to give effect to any obligation or exercise any related right under any international agreement to which the United Kingdom is for the time being a party.

(2) This section applies to the following provisions of this Act—

(a) Part I;

(b) Part II;

(c) Part VI; and

(d) in Part VIII, sections 140, 141 or 142;

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and the provisions of the [M124]Radioactive Substances Act 1960.

(3) In this section—

"modifications" includes additions, alterations and omissions;

"prescribed" means prescribed in regulations under this section; and

"related right", in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.

(4) This section, in its application to Northern Ireland, has effect subject to the following modifications, that is to say—

(a) in its application in relation to Part VI and sections 140, 141, and 142, the reference to Her Majesty's Government in the United Kingdom includes a reference to Her Majesty's Government in Northern Ireland; and

(b) in its application in relation to the Radioactive Substances Act 1960, the reference to the Secretary of State shall be construed as a reference to the Department of the Environment for Northern Ireland and the reference to Her Majesty's Government in the United Kingdom shall be construed as a reference to Her Majesty's Government in Northern Ireland;

and regulations under it made by that Department shall be a statutory rule for the purposes of the [M125]Statutory Rules (Northern Ireland) Order 1979 and shall be subject to negative resolution within the meaning of section 41(6) of the [M126]Interpretation Act (Northern Ireland) 1954.

Commencement Information

I88 S. 156 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

Marginal Citations

M124 1960 c. 34.

M125 S.I. 1979/1573 (N.I. 12).

M126 1954 c. 33 (N.I.).

157 Offences by bodies corporate. E+W+S

(1) Where an offence under any provision of this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Modifications etc. (not altering text)

C62 S. 157 applied (1.5.1994) by S.I. 1994/1056, **regs. 1(1)**, 20(6)
S. 157: powers to make corresponding provisions conferred (27.7.1999) by 1999 c. 24, s. 2, **Sch. 1 Pt. I para. 20(1)(a)**

Status: *Point in time view as at 01/12/1991. This version of this Act contains provisions that are not valid for this point in time.*
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158 Offences under Parts I, II, IV, VI, etc. due to fault of others. U.K.

Where the commission by any person of an offence under Part I, II, IV, or VI, or section 140, 141 or 142 above is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this section whether or not proceedings for the offence are taken against the first-mentioned person.

Modifications etc. (not altering text)

C63 S. 158: power to make corresponding provisions conferred (27.7.1999) by 1999 c. 24, s. 2, **Sch. 1 Pt. I para. 20(1)(a)**

Commencement Information

I89 S. 158 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

159 Application to Crown. E+W+S

(1) Subject to the provisions of this section, the provisions of this Act and of regulations and orders made under it shall bind the Crown.

(2) No contravention by the Crown of any provision of this Act or of any regulations or order made under it shall make the Crown criminally liable; but the High Court or, in Scotland, the Court of Session may, on the application of any public or local authority charged with enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in subsection (2) above, the provisions of this Act and of regulations and orders made under it shall apply to persons in the public service of the Crown as they apply to other persons.

(4) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any powers of entry exercisable in relation to them specified in the certificate that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to the premises, those powers shall not be exercisable in relation to those premises; and in this subsection "Crown premises" means premises held or used by or on behalf of the Crown.

(5) Nothing in this section shall be taken as in any way affecting Her Majesty in her private capacity; and this subsection shall be construed as if section 38(3) of the [M127]Crown Proceedings Act 1947 (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Act.

(6) References in this section to regulations or orders are references to regulations or orders made by statutory instrument.

(7) For the purposes of this section in its application to Part II and Part IV the authority charged with enforcing the provisions of those Parts in its area is—

(a) in the case of Part II, any waste regulation authority, and

(b) in the case of Part IV, any principal litter authority.

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Modifications etc. (not altering text)

C64 S. 159(4): functions excercisable concurrently (1.7.1999) by the Scottish Ministers and Ministers of the Crown after consultation with the Secretary of State by S.I. 1999/1750, art. 3, **Sch. 2**

Marginal Citations

M127 1947 c. 44.

160 Service of notices. E+W+S

(1) Any notice required or authorised by or under this Act to be served on or given to an inspector may be served or given by delivering it to him or by leaving it at, or sending it by post to, his office.

(2) Any such notice required or authorised to be served on or given to a person other than an inspector may be served or given by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.

(3) Any such notice may—

(a) in the case of a body corporate, be served on or given to the secretary or clerk of that body;

(b) in the case of a partnership, be served on or given to a partner or a person having the control or management of the partnership business.

(4) For the purposes of this section and of section 7 of the [M128]Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person on or to whom any such notice is to be served or given shall be his last known address, except that—

(a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body;

(b) in the case of a partnership or person having the control or the management of the partnership business, it shall be the principal office of the partnership;

and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be their principal office within the United Kingdom.

(5) If the person to be served with or given any such notice has specified an address in the United Kingdom other than his proper address within the meaning of subsection (4) above as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address shall also be treated for the purposes of this section and section 7 of the Interpretation Act 1978 as his proper address.

(6) The preceding provisions of this section shall apply to the sending or giving of a document as they apply to the giving of a notice.

Modifications etc. (not altering text)

C65 S. 160: power to make corresponding provisions conferred (27.7.1999) by 1999 c. 24, s. 2, **Sch. 1 Pt. I para. 20(1)(a)**

C66 S. 160 modified (E.W.) (31.3.2004 for E. for certain purposes, 31.3.2004 for W. and 6.4.2006 otherwise for E.) by Anti-social Behaviour Act 2003 (c. 38), **ss. 49(3)**, 93; S.I. 2004/690, **art. 4**; S.I. 2004/999, **art. 2**; S.I. 2006/393, **art. 2**

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C67 S. 160(2)-(5) applied (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 60**, **61**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

Marginal Citations
M128 1978 c. 30.

161 Regulations, orders and directions. E+W+S

(1) Any power of the Secretary of State or the Minister of Agriculture, Fisheries and Food under this Act to make regulations or orders shall be exercisable by statutory instrument; but this subsection does not apply to orders under section 72 above or paragraph 4 of Schedule 3.

(2) A statutory instrument containing regulations under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Except in the cases specified in subsection (4) below, a statutory instrument containing an order under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Subsection (3) above does not apply to an order under section 130(4), 131(3) or 138(2) above or section 164(3) below.

(5) Any power conferred by this Act to give a direction shall include power to vary or revoke the direction.

(6) Any direction given under this Act shall be in writing.

162 Consequential and minor amendments and repeals. E+W+S

(1) The enactments specified in Schedule 15 to this Act shall have effect subject to the amendments specified in that Schedule.

(2) The enactments specified in Schedule 16 to this Act are hereby repealed subject to section 77 above, Schedule 11 to this Act and any provision made by way of a note in Schedule 16.

(3) The repeal of section 124 of the [M129]Civic Government (Scotland) Act 1982 shall not affect a compulsory purchase order made for the purposes of that section under the [M130]Local Government (Scotland) Act 1973 before the coming into force of the repeal and such compulsory purchase order may be proceeded with and shall have effect as if the said section 124 had not been repealed.

(4) The Secretary of State may by order repeal or amend any provision of any local Act passed before this Act (including an Act confirming a provisional order) or of any order or other instrument made under an Act so passed if it appears to him that the provision is inconsistent with, or has become unnecessary or requires alteration in consequence of, any provision of this Act or corresponds to any provision repealed by this Act.

(5) Any regulations made under section 100 of the [M131]Control of Pollution Act 1974 shall have effect after the repeal of that section by subsection (2) above as if made under section 140 of this Act.

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Commencement Information

I90 S. 162 partly in force; s. 162 partly in force at Royal Assent, see s. 164(2); s. 162 partly in force at: 1.1.1991 by S.I. 1990/2635, **art. 3**; 14.1.1991 by S.I. 1991/96, **art. 2**; 1.4.1991 by S.I. 1991/685, **art. 3**; 1.4.1991 by S.I. 1991/1042, **art. 2**; 31.5.1991 by S.I. 1991/1319, **art. 2**; 1.1.1992 and 1.4.1992 by S.I. 1991/2829, **arts. 3**, 4; 1.4.1992 by S.I. 1992/266, **art. 3**; s. 162(3) in force 1.4.1992 by S.I. 1992/266, **art. 3**; s. 162(1) in force for certain purposes at 18.2.1993 by S.I. 1993/274, **art. 2(1)**; s. 162(2) in force at 18.2.1993 and 1.5.1993 for certain purposes by S.I. 1993/274, **arts. 2(1)**, 3; s. 162(1)(2) in force at 1.5.1994 and other ascertainable dates for limited purposes by S.I. 1994/1096, **arts. 2(1)(2)(3)**, 3; s. 162(2) in force at 1.12.1994, or certain later ascertainable dates, for limited purposes by S.I. 1994/2854, **art. 2**; s. 162(2) in force at 16.12.1996 for certain purposes by S.I. 1996/3056, **art. 2**

Marginal Citations

M129 1982 c. 45.
M130 1973 c. 65.
M131 1974 c. 40.

163 Financial provisions. E+W+S

(1) There shall be paid out of money provided by Parliament—

(a) any administrative or other expenses incurred by any Minister of the Crown in consequence of the provisions of this Act; and

(b) any increase attributable to this Act in the sums payable out of money so provided under any other Act.

(2) Any fees or other sums received by any Minister of the Crown by virtue of any provisions of this Act shall be paid into the Consolidated Fund.

VALID FROM 17/10/2002

[F86 163A Application of Part VI: England and Wales E+W

(1) The amendments made to the provisions of Part VI by the 2002 Regulations, other than the amendment of section 127(2) as it relates to the continental shelf, have effect in relation to England only, and accordingly, in the application of that Part in relation to Wales, the provisions listed in subsection (2) below continue to have effect without the amendments made by the 2002 Regulations.

(2) The provisions referred to in subsection (1) above are—

(a) section 106(1) and (4) to (6);

(b) section 107(2), (3), (6), (9) and (11);

(c) section 111(6);

(d) section 112(1) and (5);

(e) section 119(1);

(f) section 123(7);

(g) section 127(2) in so far as it relates to the territorial sea.

(3) In this section "the 2002 Regulations" means the Genetically Modified Organisms (Deliberate Release) Regulations 2002.]

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Textual Amendments

F86 S. 163A inserted (E.W.) (17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **39**

164 Short title, commencement and extent. U.K.

(1) This Act may be cited as the Environmental Protection Act 1990.

(2) The following provisions of the Act shall come into force at the end of the period of two months beginning with the day on which it is passed, namely—

sections 79 to 85;

section 97;

section 99;

section 105 in so far as it relates to paragraphs 7, 13, 14 and 15 of Schedule 5;

section 140;

section 141;

section 142;

section 145;

section 146;

section 148;

section 153;

section 154;

section 155;

section 157;

section 160;

section 161;

section 162(1) in so far as it relates to paragraphs 4, 5, 7, 8, 9, 18, 22, 24 and 31(4)(b) of Schedule 15; but, in the case of paragraph 22, in so far only as that paragraph inserts a paragraph (m) into section 7(4) of the Act of 1984;

section 162(2) in so far as it relates to Part III of Schedule 16 and, in Part IX of that Schedule, the repeal of section 100 of the [M132]Control of Pollution Act 1974;

section 162(5);

section 163.

(3) The remainder of this Act (except this section) shall come into force on such day as the Secretary of State may by order appoint and different days may be appointed for different provisions or different purposes.

(4) Only the following provisions of this Act (together with this section) extend to Northern Ireland, namely—

section 3(5) to (8);

section 62(2)(e) in so far as it relates to importation;

Part V;

Part VI in so far as it relates to importation and, without that restriction, section 127(2) in so far as it relates to the continental shelf;

section 140 in so far as it relates to importation;

section 141;

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section 142 in so far as it relates to importation;
section 146;
section 147;
section 148;
section 153 except subsection (1)(k) and (m);
section 156 in so far as it relates to Part VI and sections 140, 141 and 142 in so far as they extend to Northern Ireland and in so far as it relates to the [M133]Radioactive Substances Act 1960;
section 158 in so far as it relates to Part VI and sections 140, 141 and 142 in so far as they extend to Northern Ireland.

(5) Where any enactment amended or repealed by this Act extends to any part of the United Kingdom, the amendment or repeal extends to that part, subject, however, to any express provision in Schedule 15 or 16.

Subordinate Legislation Made

P4 S. 164(3) power partly exercised by: S.I. 1990/2226, 1990/2243, 1990/2565, 1990/2635, 1991/96
S. 164(3): s. 130(4) (with ss. 131(3) and 164(3)) power partly exercised: 1.4.1991 appointed for specified provisions by S.I. 1991/685, **art. 3**
S. 164(3) power partly exercised : 1.4.1991 and 1.6.1991 appointed for specified provisions by S.I. 1991/1042, **art. 2** and art. 3
S. 164(3) power partly exercised: 31.5.1991 appointed for specified provisions by S.I. 1991/1319, **art. 2**
S. 164(3) power partly exercised: 10.7.1991 and 1.8.1991 appointed for specified provisions by S.I. 1991/1577, **arts. 2**, 3
S. 164(3) power partly exercised: 13.12.1991, 1.1.1992 and 1.4.1992 appointed for specified provisions by S.I. 1991/2829, **arts. 2**, 3, 4
S. 164(3) power partly exercised (13.2.1992): different dates appointed for specified provisions by S.I. 1992/266, **arts. 2**, 3
S. 164(3) power partly exercised (18.12.1992): different dates appointed for specified provisions by S.I. 1992/3253, **arts. 2**, 3
S. 164(3) power partly exercised (15.2.1993): different dates appointed for specified provisions by S.I. 1993/274, **arts. 2**, 3
S. 164(3) power partly exercised (15.3.1994): 16.3.1994 appointed for s. 41 by S.I. 1994/780, **art. 2**
S. 164(3) power partly exercised (14.4.1994): 1.5.1994 (and other ascertainable dates for limited purposes) appointed for specified provisions by S.I. 1994/1096, **arts. 2**, 3 (amended by S.I. 1994/2487, 1994/3234)

Marginal Citations

M132 1974 c. 40.
M133 1960 c. 34.

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