



Environmental Protection Act 1990

1990 CHAPTER 43

PART IX

GENERAL

[^{F1}160A Regulations and orders

- (1) Regulations and orders under this Act are subject to the negative procedure, other than—
- regulations or orders subject to the affirmative procedure by virtue of subsection (2);
 - regulations made by a Northern Ireland department under section 156 (power to give effect to [^{F2}assimilated] obligations and international obligations);
 - an order under section 164(3) (commencement);
 - an order under paragraph 4 of Schedule 3 (statutory nuisance).
- (2) Regulations or orders made under a section listed in the first column of the following Table that are of the description specified in the second column are subject to the affirmative procedure—

| | <i>Section</i> | | <i>Description of regulations or orders</i> |
|--------------------------------|----------------|-------|---|
| [^{F3} 34CA tracking) | (electronic | waste | regulations that— <ol style="list-style-type: none">are the first set of regulations to be made by the relevant national authority (within the meaning given by section 34CA(12)) under section 34CA,provide for conduct to be a criminal offence which is not a criminal offence under existing regulations made by that authority under that section,increase the maximum penalty for a criminal offence under existing |

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| <i>Section</i> | <i>Description of regulations or orders</i> |
|---|---|
| | <p>regulations made by that authority under that section,</p> <p>(d) provide for conduct to be subject to a civil sanction (within the meaning given by section 34CB(4)) which is not subject to a civil sanction under existing regulations made by that authority under that section, or</p> <p>(e) amend, repeal or revoke a provision contained in primary legislation (within the meaning given by section 34CB(8)) ^{F4}]</p> |
| 34D (prohibition on disposal of food waste to sewer: Wales) | any regulations under that section. |
| 45AA(10) (separate collection of waste: Wales) | any regulations under that section. |
| ^{F5} 62ZA (regulation of hazardous waste in England and Wales) | <p>regulations that—</p> <p>(a) provide for conduct to be a criminal offence which is not a criminal offence under existing regulations made by the relevant national authority (within the meaning given by section 62ZA(11)) under section 62ZA,</p> <p>(b) increase the maximum penalty for a criminal offence under existing regulations made by that authority under that section, or</p> <p>(c) provide for conduct to be subject to a civil sanction (within the meaning given by section 62ZA(4)) which is not subject to a civil sanction under existing regulations made by that authority under that section.]</p> |
| 78M(4) (offences of not complying with a remediation notice) | any order under that section. |
| 79(1ZA) (statutory nuisance) | any regulations under that section. |
| 80ZA(11) (fixed penalty notices) | any regulations under that section. |
| 88A (litter from vehicles: England) | regulations that include provision falling within section 88A(3)(a) or (6). |
| ^{F6} section 141 (imports, exports and transit of waste) | <p>regulations that—</p> <p>(a) confer powers of entry, seizure or detention in circumstances where there is no such power under existing regulations under section 141,</p> <p>(b) provide for the charging of fees or charges that are not chargeable under existing regulations under that section,</p> |

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| <i>Section</i> | <i>Description of regulations or orders</i> |
|----------------|--|
| | <ul style="list-style-type: none"> (c) provide for conduct to be a criminal offence which is not a criminal offence under existing regulations under that section, (d) increase the maximum penalty for a criminal offence under existing regulations under that section, (e) provide for conduct to be subject to a civil sanction (within the meaning given by section 141(5B)) which is not subject to a civil sanction under existing regulations under that section, or (f) amend, repeal or revoke a provision contained in primary legislation (within the meaning given by section 141(6)) F7 ...] |
| (3) | Regulations and orders made under this Act by the Secretary of State or the Welsh Ministers are to be made by statutory instrument, other than an order under paragraph 4 of Schedule 3. |
| (4) | Where regulations or orders under this Act made or to be made by the Secretary of State— <ul style="list-style-type: none"> (a) are subject to the negative procedure, the statutory instrument containing them is subject to annulment in pursuance of a resolution of either House of Parliament; (b) are subject to the affirmative procedure, they may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament. |
| (5) | Where regulations or orders under this Act made or to be made by the Welsh Ministers— <ul style="list-style-type: none"> (a) are subject to the negative procedure, the statutory instrument containing them is subject to annulment in pursuance of a resolution of Senedd Cymru; (b) are subject to the affirmative procedure, they may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, Senedd Cymru. |
| (6) | See sections 28 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) for the meaning of “the negative procedure” and “the affirmative procedure” in relation to regulations or orders under this Act made or to be made by the Scottish Ministers. |
| (7) | Any provision that may be made by regulations or order under this Act subject to the negative procedure may be made subject to the affirmative procedure.] |

Textual Amendments

- F1** S. 160A inserted (9.11.2021) by Environment Act 2021 (c. 30), ss. 63(2), 147(1)(a) (with s. 144)
- F2** Word in s. 160A(1)(b) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (S.I. 2023/1424), reg. 1(2), Sch. para. 29(9)

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- F3** Words in s. 160A(2) inserted (9.1.2022) by Environment Act 2021 (c. 30), **ss. 58(3)**, 147(2)(g) (with s. 144)
- F4** Words in s. 160A(2) omitted (29.6.2023) by virtue of Retained EU Law (Revocation and Reform) Act 2023 (c. 28), s. 22(1)(d), **Sch. 3 para. 1(a)**
- F5** Words in s. 160A(2) inserted (24.1.2022 for E., 7.3.2022 for W.) by Environment Act 2021 (c. 30), **s. 60(4)** (with s. 144); S.I. 2022/48, reg. 2(j); S.I. 2022/223, regs. 1(2), 2(b)
- F6** Words in s. 160A(2) inserted (24.1.2022) by Environment Act 2021 (c. 30), **ss. 62(9)**, 147(3) (with s. 144); S.I. 2022/48, reg. 2(k)
- F7** Words in s. 160A(2) omitted (29.6.2023) by virtue of Retained EU Law (Revocation and Reform) Act 2023 (c. 28), s. 22(1)(d), **Sch. 3 para. 1(b)**

Changes to legislation:

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Changes and effects yet to be applied to :

- s. 160A(2) words inserted by [2021 c. 30 s. 57\(7\)](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 30(4A) inserted by [2021 c. 30 s. 57\(2\)](#)
- s. 33ZB(10A) inserted by [2021 c. 30 s. 69\(3\)\(b\)](#)
- s. 34ZB(8A) inserted by [2021 c. 30 s. 69\(5\)\(b\)](#)
- s. 45A-45AZG substituted for s. 45A by [2021 c. 30 s. 57\(4\)](#)
- s. 46(2)(a)(b) substituted for words by [2021 c. 30 s. 57\(5\)](#)
- s. 106A inserted by [2023 c. 6 s. 41\(2\)](#)
- s. 161(2AA)(2AB) inserted by [2016 anaw 3 s. 69\(4\)](#)