



Environment Act 1995

1995 CHAPTER 25

PART I

THE ENVIRONMENT AGENCY AND THE SCOTTISH ENVIRONMENT PROTECTION AGENCY

CHAPTER I

THE ENVIRONMENT AGENCY

Transfer of functions, property etc. to the Agency

2 Transfer of functions to the Agency

- (1) On the transfer date there shall by virtue of this section be transferred to the Agency—
- (a) the functions of the National Rivers Authority, that is to say—
 - (i) its functions under or by virtue of Part II (water resources management) of the Water Resources Act 1991 (in this Part referred to as “the 1991 Act”);
 - (ii) its functions under or by virtue of Part III of that Act (control of pollution of water resources);
 - (iii) its functions under or by virtue of Part IV of that Act (flood defence) and the Land Drainage Act 1991 and the functions transferred to the Authority by virtue of section 136(8) of the Water Act 1989 and paragraph 1(3) of Schedule 15 to that Act (transfer of land drainage functions under local statutory provisions and subordinate legislation);
 - (iv) its functions under or by virtue of Part VII of the 1991 Act (land and works powers);
 - (v) its functions under or by virtue of the Diseases of Fish Act 1937, the Sea Fisheries Regulation Act 1966, the Salmon and Freshwater Fisheries Act 1975, Part V of the 1991 Act or any other enactment relating to fisheries;

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- (vi) the functions as a navigation authority, harbour authority or conservancy authority which were transferred to the Authority by virtue of Chapter V of Part III of the Water Act 1989 or paragraph 23(3) of Schedule 13 to that Act or which have been transferred to the Authority by any order or agreement under Schedule 2 to the 1991 Act;
 - (vii) its functions under Schedule 2 to the 1991 Act;
 - (viii) the functions assigned to the Authority by or under any other enactment, apart from this Act;
 - (b) the functions of waste regulation authorities, that is to say, the functions conferred or imposed on them by or under—
 - (i) the Control of Pollution (Amendment) Act 1989, or
 - (ii) Part II of the Environmental Protection Act 1990 (in this Part referred to as “the 1990 Act”),
 or assigned to them by or under any other enactment, apart from this Act;
 - (c) the functions of disposal authorities under or by virtue of the waste regulation provisions of the Control of Pollution Act 1974;
 - (d) the functions of the chief inspector for England and Wales constituted under section 16(3) of the 1990 Act, that is to say, the functions conferred or imposed on him by or under Part I of that Act or assigned to him by or under any other enactment, apart from this Act;
 - (e) the functions of the chief inspector for England and Wales appointed under section 4(2)(a) of the Radioactive Substances Act 1993, that is to say, the functions conferred or imposed on him by or under that Act or assigned to him by or under any other enactment, apart from this Act;
 - (f) the functions conferred or imposed by or under the Alkali, &c, Works Regulation Act 1906 (in this section referred to as “the 1906 Act”) on the chief, or any other, inspector (within the meaning of that Act), so far as exercisable in relation to England and Wales;
 - (g) so far as exercisable in relation to England and Wales, the functions in relation to improvement notices and prohibition notices under Part I of the Health and Safety at Work etc. Act 1974 (in this section referred to as “the 1974 Act”) of inspectors appointed under section 19 of that Act by the Secretary of State in his capacity as the enforcing authority responsible in relation to England and Wales for the enforcement of the 1906 Act and section 5 of the 1974 Act; and
 - (h) the functions of the Secretary of State specified in subsection (2) below.
- (2) The functions of the Secretary of State mentioned in subsection (1)(h) above are the following, that is to say—
- (a) so far as exercisable in relation to England and Wales, his functions under section 30(1) of the Radioactive Substances Act 1993 (power to dispose of radioactive waste);
 - (b) his functions under Chapter III of Part IV of the Water Industry Act 1991 in relation to special category effluent, within the meaning of that Chapter, other than any function of making regulations or of making orders under section 139 of that Act;
 - (c) so far as exercisable in relation to England and Wales, the functions conferred or imposed on him by virtue of his being, for the purposes of Part I of the 1974 Act, the authority which is by any of the relevant statutory provisions made responsible for the enforcement of the 1906 Act and section 5 of the 1974 Act;

- (d) so far as exercisable in relation to England and Wales, his functions under, or under regulations made by virtue of, section 9 of the 1906 Act (registration of works), other than any functions of his as an appellate authority or any function of making regulations;
 - (e) so far as exercisable in relation to England and Wales, his functions under regulations 7(1) and 8(2) of, and paragraph 2(2)(c) of Schedule 2 to, the Sludge (Use in Agriculture) Regulations 1989 (which relate to the provision of information and the testing of soil).
- (3) The National Rivers Authority and the London Waste Regulation Authority are hereby abolished.

3 Transfer of property, rights and liabilities to the Agency

- (1) On the transfer date—
- (a) the property, rights and liabilities—
 - (i) of the National Rivers Authority, and
 - (ii) of the London Waste Regulation Authority,
 shall, by virtue of this paragraph, be transferred to and vested in the Agency;
 - (b) any property, rights or liabilities which are the subject of—
 - (i) a scheme made under the following provisions of this section by the Secretary of State, or
 - (ii) a scheme made under those provisions by a body which is a waste regulation authority and approved (with or without modifications) under those provisions by the Secretary of State,
 shall be transferred to and vested in the Agency by and in accordance with the scheme.
- (2) The Secretary of State may, before the transfer date, make a scheme for the transfer to the Agency of such of—
- (a) his property, rights and liabilities, or
 - (b) the property, rights and liabilities of any of the inspectors or chief inspectors mentioned in subsection (1) of section 2 above,
- as appear to the Secretary of State appropriate to be so transferred in consequence of the transfer of any functions to the Agency by virtue of any of paragraphs (d) to (h) of that subsection.
- (3) It shall be the duty of every body which is a waste regulation authority, other than the London Waste Regulation Authority—
- (a) to make a scheme, after consultation with the Agency, for the transfer to the Agency of such of the body's property, rights and liabilities as appear to the body appropriate to be so transferred in consequence of the transfer of any functions to the Agency by virtue of section 2(1)(b) or (c) above; and
 - (b) to submit that scheme to the Secretary of State for his approval before such date as he may direct.
- (4) Any body preparing a scheme in pursuance of subsection (3) above shall take into account any guidance given by the Secretary of State as to the provisions which he regards as appropriate for inclusion in the scheme.
- (5) Where a scheme under subsection (3) above is submitted to the Secretary of State, he may—

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- (a) approve the scheme;
- (b) approve the scheme subject to such modifications as he considers appropriate;
or
- (c) reject the scheme;

but the power conferred on the Secretary of State by paragraph (b) above shall only be exercisable after consultation with the body which submitted the scheme to him and with the Agency.

- (6) The Secretary of State may, in the case of any body which is required to make a scheme under subsection (3) above, himself make a scheme for the transfer to the Agency of such of the body's property, rights or liabilities as appear to him appropriate to be so transferred in consequence of the transfer of any functions to the Agency by virtue of section 2(1)(b) or (c) above, if—
 - (a) the body fails to submit a scheme under subsection (3) above to him for approval before the due date; or
 - (b) the Secretary of State rejects a scheme under that subsection submitted to him by that body;

but nothing in this subsection shall prevent the Secretary of State from approving any scheme which may be submitted to him after the due date.

- (7) The Secretary of State may, at any time before the transfer date, modify any scheme made or approved by him under this section but only after consultation with the Agency and, in the case of a scheme which was approved by him (with or without modifications), after consultation with the body which submitted the scheme to him for approval.
- (8) Schedule 2 to this Act shall have effect in relation to transfers by or under this section.

4 Principal aim and objectives of the Agency

- (1) It shall be the principal aim of the Agency (subject to and in accordance with the provisions of this Act or any other enactment and taking into account any likely costs) in discharging its functions so to protect or enhance the environment, taken as a whole, as to make the contribution towards attaining the objective of achieving sustainable development mentioned in subsection (3) below.
- (2) The Ministers shall from time to time give guidance to the Agency with respect to objectives which they consider it appropriate for the Agency to pursue in the discharge of its functions.
- (3) The guidance given under subsection (2) above must include guidance with respect to the contribution which, having regard to the Agency's responsibilities and resources, the Ministers consider it appropriate for the Agency to make, by the discharge of its functions, towards attaining the objective of achieving sustainable development.
- (4) In discharging its functions, the Agency shall have regard to guidance given under this section.
- (5) The power to give guidance to the Agency under this section shall only be exercisable after consultation with the Agency and such other bodies or persons as the Ministers consider it appropriate to consult in relation to the guidance in question.
- (6) A draft of any guidance proposed to be given under this section shall be laid before each House of Parliament and the guidance shall not be given 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.

- (7) If, within the period mentioned in subsection (6) above, either House resolves that the guidance, the draft of which was laid before it, should not be given, the Ministers shall not give that guidance.
- (8) In reckoning any period of 40 days for the purposes of subsection (6) or (7) 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.
- (9) The Ministers shall arrange for any guidance given under this section to be published in such manner as they consider appropriate.

5 General functions with respect to pollution control

- (1) The Agency's pollution control powers shall be exercisable for the purpose of preventing or minimising, or remedying or mitigating the effects of, pollution of the environment.
- (2) The Agency shall, for the purpose—
 - (a) of facilitating the carrying out of its pollution control functions, or
 - (b) of enabling it to form an opinion of the general state of pollution of the environment,compile information relating to such pollution (whether the information is acquired by the Agency carrying out observations or is obtained in any other way).
- (3) If required by either of the Ministers to do so, the Agency shall—
 - (a) carry out assessments (whether generally or for such particular purpose as may be specified in the requirement) of the effect, or likely effect, on the environment of existing or potential levels of pollution of the environment and report its findings to that Minister; or
 - (b) prepare and send to that Minister a report identifying—
 - (i) the options which the Agency considers to be available for preventing or minimising, or remedying or mitigating the effects of, pollution of the environment, whether generally or in cases or circumstances specified in the requirement; and
 - (ii) the costs and benefits of such options as are identified by the Agency pursuant to sub-paragraph (i) above.
- (4) The Agency shall follow developments in technology and techniques for preventing or minimising, or remedying or mitigating the effects of, pollution of the environment.
- (5) In this section, “pollution control powers” and “pollution control functions”, in relation to the Agency, mean respectively its powers or its functions under or by virtue of the following enactments, that is to say—
 - (a) the Alkali, &c, Works Regulation Act 1906;
 - (b) Part I of the Health and Safety at Work etc. Act 1974;
 - (c) Part I of the Control of Pollution Act 1974;
 - (d) the Control of Pollution (Amendment) Act 1989;
 - (e) Parts I, II and IIA of the 1990 Act (integrated pollution control etc, waste on land and contaminated land);

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- (f) Chapter III of Part IV of the Water Industry Act 1991 (special category effluent);
- (g) Part III and sections 161 to 161D of the 1991 Act (control of pollution of water resources);
- (h) the Radioactive Substances Act 1993;
- (j) regulations made by virtue of section 2(2) of the European Communities Act 1972, to the extent that the regulations relate to pollution.

6 General provisions with respect to water

- (1) It shall be the duty of the Agency, to such extent as it considers desirable, generally to promote—
 - (a) the conservation and enhancement of the natural beauty and amenity of inland and coastal waters and of land associated with such waters;
 - (b) the conservation of flora and fauna which are dependent on an aquatic environment; and
 - (c) the use of such waters and land for recreational purposes;
 and it shall be the duty of the Agency, in determining what steps to take in performance of the duty imposed by virtue of paragraph (c) above, to take into account the needs of persons who are chronically sick or disabled. This subsection is without prejudice to the duties of the Agency under section 7 below.
- (2) It shall be the duty of the Agency to take all such action as it may from time to time consider, in accordance with any directions given under section 40 below, to be necessary or expedient for the purpose—
 - (a) of conserving, redistributing or otherwise augmenting water resources in England and Wales; and
 - (b) of securing the proper use of water resources in England and Wales;
 but nothing in this subsection shall be construed as relieving any water undertaker of the obligation to develop water resources for the purpose of performing any duty imposed on it by virtue of section 37 of the Water Industry Act 1991 (general duty to maintain water supply system).
- (3) The provisions of the 1991 Act relating to the functions of the Agency under Chapter II of Part II of that Act and the related water resources provisions so far as they relate to other functions of the Agency shall not apply to so much of any inland waters as—
 - (a) are part of the River Tweed;
 - (b) are part of the River Esk or River Sark at a point where either of the banks of the river is in Scotland; or
 - (c) are part of any tributary stream of the River Esk or the River Sark at a point where either of the banks of the tributary stream is in Scotland.
- (4) Subject to section 106 of the 1991 Act (obligation to carry out flood defence functions through committees), the Agency shall in relation to England and Wales exercise a general supervision over all matters relating to flood defence.
- (5) The Agency's flood defence functions shall extend to the territorial sea adjacent to England and Wales in so far as—
 - (a) the area of any regional flood defence committee includes any area of that territorial sea; or

- (b) section 165(2) or (3) of the 1991 Act (drainage works for the purpose of defence against sea water or tidal water, and works etc to secure an adequate outfall for a main river) provides for the exercise of any power in the territorial sea.
- (6) It shall be the duty of the Agency to maintain, improve and develop salmon fisheries, trout fisheries, freshwater fisheries and eel fisheries.
- (7) The area in respect of which the Agency shall carry out its functions relating to fisheries shall be the whole of England and Wales, together with—
 - (a) such part of the territorial sea adjacent to England and Wales as extends for six miles from the baselines from which the breadth of that sea is measured,
 - (b) in the case of—
 - (i) the Diseases of Fish Act 1937,
 - (ii) the Salmon and Freshwater Fisheries Act 1975,
 - (iii) Part V of the 1991 Act (general control of fisheries), and
 - (iv) subsection (6) above,
 so much of the River Esk, with its banks and tributary streams up to their source, as is situated in Scotland, and
 - (c) in the case of sections 31 to 34 and 36(2) of the Salmon and Freshwater Fisheries Act 1975 as applied by section 39(1B) of that Act, so much of the catchment area of the River Esk as is situated in Scotland,
 but, in the case of the enactments specified in paragraph (b) above, excluding the River Tweed.
- (8) In this section—
 - “miles” means international nautical miles of 1,852 metres;
 - “the related water resources provisions” has the same meaning as it has in the 1991 Act;
 - “the River Tweed” means “the river” within the meaning of the Tweed Fisheries Amendment Act 1859 as amended by byelaws.

7 General environmental and recreational duties

- (1) It shall be the duty of each of the Ministers and of the Agency, in formulating or considering—
 - (a) any proposals relating to any functions of the Agency other than its pollution control functions, so far as may be consistent—
 - (i) with the purposes of any enactment relating to the functions of the Agency,
 - (ii) in the case of each of the Ministers, with the objective of achieving sustainable development,
 - (iii) in the case of the Agency, with any guidance under section 4 above,
 - (iv) in the case of the Secretary of State, with his duties under section 2 of the Water Industry Act 1991,
 so to exercise any power conferred on him or it with respect to the proposals as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest;

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- (b) any proposals relating to pollution control functions of the Agency, to have regard to the desirability of conserving and enhancing natural beauty and of conserving flora, fauna and geological or physiographical features of special interest;
 - (c) any proposal relating to any functions of the Agency—
 - (i) to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural, engineering or historic interest;
 - (ii) to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects; and
 - (iii) to have regard to any effect which the proposals would have on the economic and social well-being of local communities in rural areas.
- (2) Subject to subsection (1) above, it shall be the duty of each of the Ministers and of the Agency, in formulating or considering any proposals relating to any functions of the Agency—
- (a) to have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountains, moor, heath, down, cliff or foreshore and other places of natural beauty;
 - (b) to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural, engineering or historic interest; and
 - (c) to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility.
- (3) Subsections (1) and (2) above shall apply so as to impose duties on the Agency in relation to—
- (a) any proposals relating to the functions of a water undertaker or sewerage undertaker,
 - (b) any proposals relating to the management, by the company holding an appointment as such an undertaker, of any land for the time being held by that company for any purpose whatever (whether or not connected with the carrying out of the functions of a water undertaker or sewerage undertaker), and
 - (c) any proposal which by virtue of section 156(7) of the Water Industry Act 1991 (disposals of protected land) falls to be treated for the purposes of section 3 of that Act as a proposal relating to the functions of a water undertaker or sewerage undertaker,
- as they apply in relation to proposals relating to the Agency's own functions, other than its pollution control functions.
- (4) Subject to obtaining the consent of any navigation authority, harbour authority or conservancy authority before doing anything which causes obstruction of, or other interference with, navigation which is subject to the control of that authority, it shall be the duty of the Agency to take such steps as are—
- (a) reasonably practicable, and
 - (b) consistent with the purposes of the enactments relating to the functions of the Agency,

for securing, so long as the Agency has rights to the use of water or land associated with water, that those rights are exercised so as to ensure that the water or land is made available for recreational purposes and is so made available in the best manner.

- (5) It shall be the duty of the Agency, in determining what steps to take in performance of any duty imposed by virtue of subsection (4) above, to take into account the needs of persons who are chronically sick or disabled.
- (6) Nothing in this section, the following provisions of this Act or the 1991 Act shall require recreational facilities made available by the Agency to be made available free of charge.
- (7) In this section—
 - “building” includes structure;
 - “pollution control functions”, in relation to the Agency, has the same meaning as in section 5 above.

8 Environmental duties with respect to sites of special interest

- (1) Where the Nature Conservancy Council for England or the Countryside Council for Wales is of the opinion that any area of land in England or, as the case may be, in Wales—
 - (a) is of special interest by reason of its flora, fauna or geological or physiographical features, and
 - (b) may at any time be affected by schemes, works, operations or activities of the Agency or by an authorisation given by the Agency,that Council shall notify the fact that the land is of special interest for that reason to the Agency.
- (2) Where a National Park authority or the Broads Authority is of the opinion that any area of land in a National Park or in the Broads—
 - (a) is land in relation to which the matters for the purposes of which sections 6(1) and 7 above (other than section 7(1)(c)(iii) above) have effect are of particular importance, and
 - (b) may at any time be affected by schemes, works, operations or activities of the Agency or by an authorisation given by the Agency,the National Park authority or Broads Authority shall notify the Agency of the fact that the land is such land, and of the reasons why those matters are of particular importance in relation to the land.
- (3) Where the Agency has received a notification under subsection (1) or (2) above with respect to any land, it shall consult the notifying body before carrying out or authorising any works, operations or activities which appear to the Agency to be likely—
 - (a) to destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; or
 - (b) significantly to prejudice anything the importance of which is one of the reasons why the matters mentioned in subsection (2) above are of particular importance in relation to that land.
- (4) Subsection (3) above shall not apply in relation to anything done in an emergency where particulars of what is done and of the emergency are notified to the Nature Conservancy Council for England, the Countryside Council for Wales, the National

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Park authority in question or, as the case may be, the Broads Authority as soon as practicable after that thing is done.

(5) In this section—

“authorisation” includes any consent or licence;

“the Broads” has the same meaning as in the Norfolk and Suffolk Broads Act 1988; and

“National Park authority”, subject to subsection (6) below, means a National Park authority established under section 63 below which has become the local planning authority for the National Park in question.

(6) As respects any period before a National Park authority established under section 63 below in relation to a National Park becomes the local planning authority for that National Park, any reference in subsections (1) to (4) above to a National Park authority shall be taken as a reference to the National Park Committee or joint or special planning board for that National Park.

9 Codes of practice with respect to environmental and recreational duties

(1) Each of the Ministers shall have power by order to approve any code of practice issued (whether by him or by another person) for the purpose of—

- (a) giving practical guidance to the Agency with respect to any of the matters for the purposes of which sections 6(1), 7 and 8 above have effect, and
- (b) promoting what appear to him to be desirable practices by the Agency with respect to those matters,

and may at any time by such an order approve a modification of such a code or withdraw his approval of such a code or modification.

(2) In discharging its duties under section 6(1), 7 or 8 above, the Agency shall have regard to any code of practice, and any modifications of a code of practice, for the time being approved under this section.

(3) Neither of the Ministers shall make an order under this section unless he has first consulted—

- (a) the Agency;
- (b) the Countryside Commission, the Nature Conservancy Council for England and the Countryside Council for Wales;
- (c) the Historic Buildings and Monuments Commission for England;
- (d) the Sports Council and the Sports Council for Wales; and
- (e) such other persons as he considers it appropriate to consult.

(4) The power of each of the Ministers to make an order under this section shall be exercisable by statutory instrument; and any statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

10 Incidental functions of the Agency

(1) This section has effect—

- (a) for the purposes of section 37(1) below, as it applies in relation to the Agency; and

- (b) for the construction of any other enactment which, by reference to the functions of the Agency, confers any power on or in relation to the Agency; and any reference in this section to “the relevant purposes” is a reference to the purposes described in paragraphs (a) and (b) above.
- (2) For the relevant purposes, the functions of the Agency shall be taken to include the protection against pollution of—
 - (a) any waters, whether on the surface or underground, which belong to the Agency or any water undertaker or from which the Agency or any water undertaker is authorised to take water;
 - (b) without prejudice to paragraph (a) above, any reservoir which belongs to or is operated by the Agency or any water undertaker or which the Agency or any water undertaker is proposing to acquire or construct for the purpose of being so operated; and
 - (c) any underground strata from which the Agency or any water undertaker is for the time being authorised to abstract water in pursuance of a licence under Chapter II of Part II of the 1991 Act (abstraction and impounding).
- (3) For the relevant purposes, the functions of the Agency shall be taken to include joining with or acting on behalf of one or more relevant undertakers for the purpose of carrying out any works or acquiring any land which at least one of the undertakers with which it joins, or on whose behalf it acts, is authorised to carry out or acquire for the purposes of—
 - (a) any function of that undertaker under any enactment; or
 - (b) any function which is taken to be a function of that undertaker for the purposes to which section 217 of the Water Industry Act 1991 applies.
- (4) For the relevant purposes, the functions of the Agency shall be taken to include the provision of supplies of water in bulk, whether or not such supplies are provided for the purposes of, or in connection with, the carrying out of any other function of the Agency.
- (5) For the relevant purposes, the functions of the Agency shall be taken to include the provision of houses and other buildings for the use of persons employed by the Agency and the provision of recreation grounds for persons so employed.
- (6) In this section—
 - “relevant undertaker” means a water undertaker or sewerage undertaker; and
 - “supply of water in bulk” means a supply of water for distribution by a water undertaker taking the supply.