



Environment Act 1995

1995 CHAPTER 25

PART I

THE ENVIRONMENT AGENCY AND THE SCOTTISH ENVIRONMENT PROTECTION AGENCY

CHAPTER III

MISCELLANEOUS, GENERAL AND SUPPLEMENTAL PROVISIONS RELATING TO THE NEW AGENCIES

Additional general powers and duties

38 Delegation of functions by Ministers etc. to the new Agencies.

- (1) Agreements may be made between—
 - (a) any Minister of the Crown, and
 - (b) a new Agency,authorising the new Agency (or any of its employees) to exercise on behalf of that Minister, with or without payment, any eligible function of his.
- (2) An agreement under subsection (1) above shall not authorise the new Agency (or any of its employees) to exercise on behalf of a Minister of the Crown any function which consists of a power to make regulations or other instruments of a legislative character or a power to fix fees or charges.
- (3) An agreement under this section may provide for any eligible function to which it relates to be exercisable by the new Agency in question (or any of its employees)—
 - (a) either wholly or to such extent as may be specified in the agreement;
 - (b) either generally or in such cases or areas as may be so specified; or
 - (c) either unconditionally or subject to the fulfilment of such conditions as may be so specified.

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- (4) Subsection (5) below applies where, by virtue of an agreement under this section, a new Agency (or any of its employees) is authorised to exercise any function of a Minister of the Crown.
- (5) Subject to subsection (6) below, anything done or omitted to be done by the new Agency (or an employee of the new Agency) in, or in connection with, the exercise or purported exercise of the function shall be treated for all purposes as done or omitted to be done by that Minister in his capacity as such.
- (6) Subsection (5) above shall not apply—
- (a) for the purposes of so much of any agreement made between that Minister and the new Agency as relates to the exercise of the function; or
 - (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that subsection.
- (7) An agreement under this section shall not prevent a Minister of the Crown exercising any function to which the agreement relates.
- (8) Where a Minister of the Crown has power to include, in any arrangements which he makes in relation to the performance by him of an eligible function, provision for the making of payments to him—
- (a) by other parties to the arrangements, or
 - (b) by persons who use any facilities or services provided by him pursuant to the arrangements or in relation to whom the function is otherwise exercisable,
- he may include in any such arrangements provision for the making of such payments to him or a new Agency in cases where the new Agency (or any of its employees) acts on his behalf by virtue of an agreement under this section.
- (9) The power conferred on a Minister of the Crown by subsection (1) above is in addition to any other power by virtue of which functions of his may be exercised by other persons on his behalf.
- (10) In this section—
- “eligible function” means any function of a Minister of the Crown which the Secretary of State, having regard to the functions conferred or imposed upon the new Agency in question under or by virtue of this Act or any other enactment, considers can appropriately be exercised by that new Agency (or any of its employees) on behalf of that Minister;
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975.

Annotations:

Modifications etc. (not altering text)

C1 S. 38 modified (30.6.1999) by S.I. 1999/1746, arts. 1(1), 5(1); S.I. 1998/3178, art. 3

Marginal Citations

M1 1975 c. 26.

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Changes and effects yet to be applied to :

- s. 38 functions cease to be exercisable by S.I. 2013/1821 art. 6
- s. 38(10) words inserted by 2014 asp 3 sch. 3 para. 43(5)

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

- Act modified by S.I. 2006/1379 reg. 18
- Act power to amend conferred by 2010 c. 29 s. 28
- Blanket amendment words substituted by S.I. 2011/1043 art. 3 4
- Blanket amendment words substituted by S.I. 2011/1043 art. 3 6

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

- Pt. 1 Ch. 1A heading inserted by S.I. 2013/755 Sch. 2 para. 363(1)
- Pt. 1 Ch. 1A s. 5-10 renumbered as Pt. 1 Ch. 1A by S.I. 2013/755 Sch. 2 para. 363(2)
- s. 56(1 words inserted by S.I. 2012/2788 reg. 7(b)
- s. 4(5)(c) words substituted by S.I. 2013/755 Sch. 2 para. 362(3)
- s. 5(6) inserted by S.I. 2013/755 Sch. 2 para. 364(6)
- s. 6(2A) inserted by S.I. 2013/755 Sch. 2 para. 365(4)
- s. 6(3A) inserted by 2003 c. 37 Sch. 7 para. 15(2)
- s. 6(5A) inserted by 2016 anaw 3 Sch. 2 para. 22(b)
- s. 6(7A) inserted by S.I. 2013/755 Sch. 2 para. 365(9)
- s. 6(9) inserted by S.I. 2013/755 Sch. 2 para. 365(10)
- s. 8(1A) inserted by S.I. 2013/755 Sch. 2 para. 366(3)
- s. 9(3A) inserted by S.I. 2013/755 Sch. 2 para. 367(5)
- s. 9(5) inserted by S.I. 2013/755 Sch. 2 para. 367(7)
- s. 9(5)(b)(ii) word omitted by 2016 anaw 3 Sch. 2 para. 6(2)
- s. 9A inserted by S.I. 2013/755 Sch. 2 para. 368
- s. 10(1)(aa) inserted by S.I. 2013/755 Sch. 2 para. 369(2)(b)
- s. 11A(1) words repealed by 2006 c. 16 s. 62 Sch. 12
- s. 16A(6) repealed by S.I. 2007/1388 Sch. 1 para. 46
- s. 20A inserted by 2014 asp 3 s. 51
- s. 27(4) added by 2014 asp 3 sch. 3 para. 43(2)
- s. 30(4) added by 2014 asp 3 sch. 3 para. 43(3)
- s. 31(2A) inserted by 2014 asp 3 sch. 3 para. 14(2)
- s. 33(5)(i) and word inserted by S.S.I. 2006/181 Sch. Pt. 4 para. 8(2)(c)
- s. 37(8A) inserted by 2014 asp 3 sch. 3 para. 43(4)
- s. 40(9) added by 2014 asp 3 sch. 3 para. 43(6)
- s. 40(9)-(11) inserted by S.I. 2013/755 Sch. 2 para. 371
- s. 41(1)(d) and word inserted by S.I. 2007/1711 reg. 46(1)(b)
- s. 41(1)(d) word omitted by S.I. 2008/3087 reg. 17(1)(a)
- s. 41(1)(d) words substituted by S.I. 2014/861 reg. 22
- s. 41(1)(e) and word inserted by S.I. 2007/3106 reg. 9(1)(b)
- s. 41(1)(e) words substituted by S.I. 2013/755 Sch. 2 para. 372(2)(d)
- s. 41(1)(f) inserted by 2009 asp 12 sch. 2 para. 2
- s. 41(1)(f) inserted by S.I. 2008/3087 reg. 17(1)(b)
- s. 41(1)(f) words substituted by S.I. 2013/755 Sch. 2 para. 372(2)(e)
- s. 41(1)(g) inserted by S.I. 2009/890 Sch. 8 para. 1(2)
- s. 41(1)(g) word substituted by S.I. 2011/2911 Sch. para. 22(a)
- s. 41(1)(g) word substituted by S.I. 2013/755 Sch. 2 para. 372(2)(f)
- s. 41(1)(h) inserted by S.I. 2011/2911 Sch. para. 22(a)
- s. 41(1)(i)(j) omitted by S.I. 2012/2788 reg. 4(a)

- s. 41(1)(k) inserted by S.I. 2017/1200 reg. 48
- s. 41(1)(ba) inserted by 2010 c. 29 Sch. 4 para. 39
- s. 41(1)(ba) words substituted by S.I. 2013/755 Sch. 2 para. 372(2)(c)
- s. 41(2A) inserted by S.I. 2006/937 reg. 3(2)
- s. 41(2A) omitted by S.I. 2009/3381 reg. 13(2)(a)
- s. 41(9A) inserted by S.I. 2013/755 Sch. 2 para. 372(4)
- s. 41(10A) inserted by S.I. 2013/1821 art. 16(3)
- s. 41A heading words substituted by S.I. 2011/2911 Sch. para. 23(a)
- s. 41A heading words substituted by S.I. 2012/2788 reg. 5(2)
- s. 41A(1)-(1C) s. 41A(1)-(1C) substituted for s. 41A(1) by S.I. 2012/2788 reg. 5(3)
- s. 41A(1) words omitted by S.I. 2011/2911 Sch. para. 23(b)
- s. 41A(1) words substituted by S.I. 2013/1821 art. 17(2)(a)
- s. 41A(1) words substituted by S.I. 2013/1821 art. 17(2)(b)
- s. 41A(1)(b)(i) words substituted by S.I. 2013/3135 reg. 13(2)
- s. 41A(1C) words inserted by S.I. 2013/1821 art. 17(3)(b)
- s. 41A(1C) words substituted by S.I. 2013/1821 art. 17(3)(a)
- s. 41A(2) words inserted by S.I. 2013/1821 art. 17(4)(b)(ii)
- s. 41A(2) words substituted by S.I. 2012/2788 reg. 5(4)(a)
- s. 41A(2) words substituted by S.I. 2012/2788 reg. 5(4)(b)
- s. 41A(2) words substituted by S.I. 2013/1821 art. 17(4)(b)(i)
- s. 41A(2)(a) words inserted by S.I. 2011/2911 Sch. para. 23(c)
- s. 41A(2)(b) words substituted by S.I. 2013/1821 art. 17(4)(a)
- s. 41A(3) words substituted by S.I. 2013/1821 art. 17(5)
- s. 41A(5) words inserted by S.I. 2011/2911 Sch. para. 23(d)
- s. 41A(5) words inserted by S.I. 2013/1821 art. 17(6)(a)
- s. 41A(5) words substituted by S.I. 2012/2788 reg. 5(5)
- s. 41A(5) words substituted by S.I. 2013/1821 art. 17(6)(b)
- s. 41A(6)(a) substituted by S.I. 2012/2788 reg. 5(6)
- s. 41A(6)(a) words inserted by S.I. 2011/2911 Sch. para. 23(e)
- s. 41A(6)(a) words substituted by S.I. 2013/3135 reg. 13(2)
- s. 41A(7) substituted by S.I. 2011/2911 Sch. para. 23(f)
- s. 41A(7) substituted by S.I. 2012/2788 reg. 5(7)
- s. 41A(7) substituted by S.I. 2013/3135 reg. 13(3)
- s. 41A(7) words inserted by S.I. 2013/1821 art. 17(7)
- s. 41B-41C inserted by S.I. 2013/1821 art. 19
- s. 42(3)(c)(d) inserted by S.I. 2013/1821 art. 20(2)
- s. 42(3A) inserted by S.I. 2012/2788 reg. 6(4)
- s. 42(3A) words inserted by S.I. 2013/1821 art. 18(3)
- s. 42(3A) words substituted by S.I. 2013/1821 art. 18(2)
- s. 42(9A)-(9D) inserted by S.I. 2013/1821 art. 20(4)
- s. 42(10A) inserted by S.I. 2013/1821 art. 20(5)
- s. 42(12) inserted by 2015 asp 1 sch. para. 6
- s. 43(1) s. 43 renumbered as s. 43(1) by 2014 asp 3 sch. 3 para. 43(7)(a)
- s. 43(2) added by 2014 asp 3 sch. 3 para. 43(7)(b)
- s. 51(1A) inserted by 2014 asp 16 sch. 4 para. 2(2)(a)
- s. 51(6) inserted by 2014 asp 16 sch. 4 para. 2(2)(b)
- s. 53(1A) inserted by S.I. 2013/755 Sch. 2 para. 374(2)
- s. 53(4) added by 2014 asp 3 sch. 3 para. 43(8)
- s. 53(4) inserted by S.I. 2013/755 Sch. 2 para. 374(4)
- s. 56(1)(j) substituted by S.S.I. 2006/541 reg. 10(2)
- s. 56(1)(ja) inserted by S.S.I. 2009/247 art. 5
- s. 65(6A) inserted by 2016 c. 1 Sch. 5 para. 14(3)
- s. 65A-65D inserted by 2016 c. 1 s. 22
- s. 66(7A) inserted by 2016 anaw 3 Sch. 2 para. 6(3)
- s. 66(10) inserted by 2015 anaw 4 Sch. 2 para. 20(3)
- s. 87(10) added by 2014 asp 3 sch. 3 para. 43(9)
- s. 97(6A) inserted by 2015 c. 20 Sch. 22 para. 12
- s. 108(1)(d) (e) inserted by 2014 asp 3 s. 46(2)(a)(ii)

- s. 108(1A) inserted by 2014 asp 3 s. 46(2)(b)
- s. 108(4)(h)(iv) inserted by 2014 asp 3 s. 46(2)(c)(i)
- s. 108(4)(j)(i) words in s. 108(4)(j) renumbered as s. 108(4)(j)(i) by 2014 asp 3 s. 46(2)(c)(ii)
- s. 108(4)(j)(ii) and word inserted by 2014 asp 3 s. 46(2)(c)(ii)
- s. 108(4)(ja) inserted by 2014 asp 3 s. 46(2)(c)(iii)
- s. 108(4)(ka) inserted by 2014 asp 3 s. 46(2)(c)(iv)
- s. 108(7A)-(7E) inserted by 2014 asp 3 s. 46(2)(f)
- s. 108A applied (with modifications) by S.I. 2017/1200 reg. 27(3)
- s. 108A inserted by 2014 asp 3 s. 46(3)
- s. 109A-109N inserted by S.I. 2018/369 Sch. 2 para. 3
- s. 110(3A)-(3C) inserted by S.I. 2018/369 Sch. 2 para. 4(a)
- s. 110(5A)-(5C) inserted by 2014 asp 3 sch. 3 para. 29(6)(c)
- s. 110(5D)-(5H) inserted by S.I. 2018/369 Sch. 2 para. 4(b)
- s. 111(2A) inserted by S.I. 2012/2788 reg. 8(2)
- s. 113(1)(d) and word inserted by S.I. 2013/755 Sch. 2 para. 384(2)(d)
- s. 113(1A) inserted by 2014 asp 16 sch. 4 para. 2(3)(a)
- s. 114(2)(a)(ix) inserted by S.S.I. 2006/181 Sch. Pt. 4 para. 8(5)(c)
- s. 114(2)(a)(ix) inserted by 2003 c. 37 s. 3(13)
- s. 122(6) inserted by 2014 asp 3 sch. 3 para. 43(12)
- Sch. 2 para. 4(4) excluded by S.I. 2011/1824 reg. 50(2)
- Sch. 6 para. 15(3) added by 2014 asp 3 sch. 3 para. 43(13)
- Sch. 7 para. 7(4A) (4B) inserted by 2007 c. 28 Sch. 14 para. 4(3)
- Sch. 7 para. 2(5A) (5B) substituted for Sch. 7 para. 2(6) by 2006 c. 16 s. 61(3)
- Sch. 7 para. 3(4A) (4B) substituted for Sch. 7 para. 3(4) by 2006 c. 16 s. 61(4)
- Sch. 7 para. 3(5A) (5B) substituted for Sch. 7 para. 3(6) by 2006 c. 16 s. 61(5)
- Sch. 7 para. 4(2A) words substituted by 2006 c. 16 s. 61(6)
- Sch. 8 para. 1(1A) inserted by 2010 nawm 6 s. 3(2)
- Sch. 8 para. 3(1A) inserted by 2015 c. 27 s. 2(3)
- Sch. 9 para. 4A inserted by 2013 anaw 6 Sch. 4 para. 8(3) (This amendment is to be treated as not having effect until 1.10.2014 by virtue of S.I. 2014/11, art. 3(2))
- Sch. 11 para. 5(7) added by 2014 asp 3 sch. 3 para. 43(14)
- Sch. 14 para. 2A 2B and cross-headings inserted by 2013 c. 27 Sch. 3 para. 5
- Sch. 14 para. 3(A1) inserted by 2013 c. 27 Sch. 3 para. 6(2)
- Sch. 14 para. 4(A1) inserted by 2013 c. 27 Sch. 3 para. 8(2)
- Sch. 14 para. 12(2)(c) and word inserted by 2013 c. 27 Sch. 3 para. 9(4)(b)
- Sch. 14 para. 12(A1)-(A4) inserted by 2013 c. 27 Sch. 3 para. 9(2)
- Sch. 14 para. A1 and cross-heading inserted by 2013 c. 27 Sch. 3 para. 2
- Sch. 14 para. 3A words substituted by 2013 c. 27 Sch. 3 para. 7
- Sch. 18 para. 2(5) added by 2014 asp 3 s. 46(4)(a)(iii)
- Sch. 18 para. 2(1A) inserted by 2014 asp 3 s. 46(4)(a)(i)
- Sch. 20 para. 4(3)(e) and word inserted by S.S.I. 2006/181 Sch. Pt. 4 para. 8(6)(b)

Commencement Orders yet to be applied to the Environment Act 1995
Commencement Orders bringing legislation that affects this Act into force:

- S.I. 2006/768 art. 2 commences (2005 c. 16)
- S.I. 2006/984 art. 2 commences (2003 c. 37)
- S.I. 2006/2541 art. 2 commences (2006 c. 16)
- S.I. 2006/3257 art. 2 commences (2000 c. 37)
- S.I. 2007/456 art. 2(a)(ii) commences (2006 c. 26)
- S.I. 2007/816 art. 2 3 commences (2006 c. 16)
- S.I. 2007/1021 art. 2 commences (2003 c. 37)
- S.I. 2007/2386 art. 2 3 commences (2006 c. 26)
- S.I. 2007/2584 art. 2 commences (2006 c. 26)
- S.I. 2007/3136 art. 2 commences (2007 c. 28)
- S.I. 2008/172 art. 2-9 commences (2007 c. 28)

- S.I. 2008/917 art. 2-5 commences (2007 c. 28)
- S.I. 2008/1960 art. 2 commences (2006 c. 26)
- S.I. 2009/803 art. 2-10 commences (2008 c. 17)
- S.I. 2009/3250 art. 2 commences (2007 c. 29)
- S.I. 2009/3318 art. 2-4 commences (2009 c. 20)
- S.I. 2009/3345 art. 2 Sch. commences (2009 c. 23)
- S.I. 2010/298 art. 2 Sch. commences (2009 c. 23)
- S.I. 2010/630 art. 3 commences (2009 c. 23)
- S.I. 2010/862 art. 2 3 commences (2008 c. 17)
- S.I. 2010/2169 art. 4 Sch. commences (2010 c. 29)
- S.I. 2011/556 art. 1-3 commences (2009 c. 23)
- S.I. 2011/694 art. 3 4 commences (2010 c. 29)
- S.I. 2011/2204 art. 3 4 commences (2010 c. 29)
- S.I. 2011/2460 art. 2(a)(ii) commences (2006 c. 26)
- S.I. 2011/2896 art. 2 commences (2011 c. 20)
- S.S.I. 2009/319 art. 2 Sch. 1 commences (2008 asp 5)
- S.S.I. 2009/341 art. 2 commences (2009 asp 12)
- S.S.I. 2009/393 art. 2 Sch. commences (2009 asp 6)
- S.S.I. 2010/221 art. 3 Sch. commences (2010 asp 8)