Environmental Protection Act 1990

1990 CHAPTER 43

PART II

WASTE ON LAND

Modifications etc. (not altering text)

C1 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**

C2 Pt. 2 modified (S.) (27.3.2011) by The Waste Management Licensing (Scotland) Regulations 2011 (S.S.I. 2011/228), reg. 1(1), **sch. 4 para. 11** (with regs. 31-33)

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.

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

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

[[F1](1A) "Appropriate person" means—

(a) in relation to England, the Secretary of State;

(b) in relation to Wales, the National Assembly for Wales.**]**

(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 **[**[F2]or extractive waste**]** is treated,

(b) the land on which controlled waste **[**[F2]or extractive waste**]** is kept,

(c) the land in or on which controlled waste **[**[F2]or extractive waste**]** is deposited,

(d) fixed plant by means of which controlled waste **[**[F2]or extractive 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 **[**[F3]or extractive waste**]** is treated or disposed of as it applies to plant on land by means of which controlled waste **[**[F3]or extractive 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.

[[F4](5A) In relation to controlled waste—

(a) a reference to the management of such waste is a reference to the collection, transport, recovery and disposal of such waste and includes—

(i) the supervision of such operations;

(ii) the after-care of disposal sites; and

(iii) actions taken as a broker or dealer;

(b) "collection" means the gathering of such waste, including the preliminary sorting and preliminary storage of such waste for the purposes of transport to a waste treatment facility; and

(c) "recovery" refers to any of the operations listed in Part III of Schedule 4 to the Waste Management Licensing (Scotland) Regulations 2011, and any other operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in a plant or in the wider economy,

and cognate expressions shall be construed accordingly.**]**

(6) The "disposal" of waste **[**[F5]includes its disposal by way of deposit in or on land**]****[**[F5]has the meaning given by regulation 2(1) of the Waste Management Licensing (Scotland) Regulations 2011**]** 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 **[**[F6]or extractive 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, **[**[F7]subject to subsection (10) below,**]** plant which is designed to move or be moved whether on roads or other land.

(10) **[**[F8]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.

[[F9]**[**[F10](12) "The Environmental Permitting Regulations" means the Environmental Permitting (England and Wales) Regulations 2010.**]**

(13) The following expressions have the same meaning as in **[**[F11]the Environmental Permitting Regulations**]**—

"environmental permit";
"exempt waste operation";
[[F12]"extractive waste";
"mining waste operation";
"the Mining Waste Directive";
"waste operation".**]]**

Textual Amendments

F1 S. 29(1A) inserted (E.W.) (7.4.2005) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **s. 51**

F2 Words in s. 29(3) inserted (E.W.) (7.7.2009) by The Environmental Permitting (England and Wales) (Amendment) Regulations (S.I. 2009/1799), reg. 28, {Sch. 2 para. 1(2)(a)}

F3 Words in s. 29(4) inserted (E.W.) (7.7.2009) by The Environmental Permitting (England and Wales) (Amendment) Regulations (S.I. 2009/1799), reg. 28, {Sch. 2 para. 1(2)(b)}

F4 S. 29(5A) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(2)(a)**

F5 Words in s. 29(6) substituted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(2)(b)**

F6 Words in s. 29(8) inserted (E.W.) (7.7.2009) by The Environmental Permitting (England and Wales) (Amendment) Regulations (S.I. 2009/1799), reg. 28, {Sch. 2 para. 1(2)(c)}

F7 Words in s. 29(9) repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 3(2), **Sch. 23** (with reg. 72, Sch. 4)

F8 S. 29(10) repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 3(3), **Sch. 23** (with reg. 72, Sch. 4)

F9 S. 29(12)(13) added (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 3(4)** (with reg. 72, Sch. 4)

F10 S. 29(12) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), 107, **Sch. 26 para. 5(3)** (with Sch. 4)

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

F11 Words in s. 29(13) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), 107, **Sch. 26 para. 5(4)(a)** (with Sch. 4)

F12 Words in s. 29(13) inserted (E.W.) (7.7.2009) by The Environmental Permitting (England and Wales) (Amendment) Regulations (S.I. 2009/1799), reg. 28, {Sch. 2 para. 1(2)(d)}

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.

[[F13](1) Any reference in this Part to a waste regulation authority—

(a) in relation to England and Wales, is a reference to the Environment Agency; and

(b) in relation to Scotland, is a reference to the Scottish Environment Protection Agency;

and any reference in this Part to the area of a waste regulation authority shall accordingly be taken as a reference to the area over which the Environment Agency or the Scottish Environment Protection Agency, as the case may be, exercises its functions or, in the case of any particular function, the function in question.**]**

(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;

[[F14](f) for any county or county borough in Wales, the council of the county or county borough;**]**

(g) in Scotland, **[**[F15]a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**]**.

(3) For the purposes of this Part the following authorities are waste collection authorities—

(a) for any district in England [F16]. . . 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;

[[F17](bb) for any county or county borough in Wales, the council of the county or county borough;**]**

(c) in Scotland, **[**[F18]a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**]**.

(4) In this section references to particular authorities having been constituted as waste disposal [F19]. . . are references to their having been so constituted by the [M1]Waste Regulation and Disposal (Authorities) Order 1985 made by the Secretary of State under section 10 of the [M2]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 [F20]. . ..

(5) **[**[F21]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"**[**[F22]means a company as defined in section 1(1) of the Companies Act 2006**]** and "formed", in relation to a company formed by other persons, includes the **[**[F23]alteration of the company's articles so as to add, remove or alter a statement of the company's objects**]**.**]**

[F24](6) . . . . . .

[F24](7) . . . . . .

[F24](8) . . . . . .

Textual Amendments

F13 S. 30(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 62(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F14 S. 30(2)(f) substituted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(2)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

F15 Words in s. 30(2)(g) substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 167(3)** (with s. 128(8)); S.I. 1996/323, **art.4(1)(c)**

F16 Words in s. 30(3)(a) repealed (1.4.1996) by 1994 c. 19, ss. 22(3), 66(8), Sch. 9 para. 17(3), **Sch. 18** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

F17 S. 30(3)(bb) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(3)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**

F18 Words in s. 30(3)(c) substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 167(3)** (with s. 128(8)); S.I. 1996/323, **art.4(1)(c)**

F19 In s. 30(4) words "or regulation" cease to have effect (1.4.1996) by virtue of 1995 c. 25, s. 120(1), **Sch. 22 para. 62(3)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** and by s. 120(3), Sch. 24 of that 1995 Act commenced by S.I. 1996/186, **art. 3** words "or regulation authorities" are repealed (1.4.1996)

F20 Words in s. 30(4) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 62(3)(b), **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F21 S. 30(5) repealed (E.W.) (18.10.2005 for E. and 16.3.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 47, 107, 108, **Sch. 5 Pt. 4**; S.I. 2005/2896, **art. 3(g)(k)** (with art. 6

(as amended (1.4.2006) by S.I. 2006/1002, art. 2)); S.I. 2006/768, **art. 2(a)(d)** (with art. 5 (as amended (17.10.2006) by S.I. 2006/2797, art. 11))

F22 Words in s. 30(5) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order (S.I. 2009/1941), art. 2(1), {Sch. 1 para. 120(a)} (with art. 10)

F23 Words in s. 30(5) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order (S.I. 2009/1941), art. 2(1), {Sch. 1 para. 120(b)} (with art. 10)

F24 S. 30(6)(7)(8) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 62(4), **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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

M1 S.I. 1985/1884.

M2 1985 c. 51.

[F25]31 . . . . . .

Textual Amendments

F25 S. 31 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 63, **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

32 Transition to waste disposal companies etc.

[F26] . . . . . .

Textual Amendments

F26 S. 32 repealed (18.10.2005 for E. and 16.3.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 47, 107, 108, **Sch. 5 Pt. 4**; S.I. 2005/2896, **art. 3(g)(k)** (with art. 6 (as amended (1.4.2006) by S.I. 2006/1002, art. 2)); S.I. 2006/768, **art. 2(a)(d)** (with art. 5 (as amended (17.10.2006) by S.I. 2006/2797, art. 11))

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

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

(1) Subject to **[**[F27]subsections (1A), (1B), (2) and (3) below**]** and, in relation to Scotland, to section 54 below, a person shall not—

(a) deposit controlled waste **[**[F28]or extractive waste**]**, or knowingly cause or knowingly permit controlled waste **[**[F28]or extractive waste**]** to be deposited in or on any land unless **[**[F29]an environmental permit**]** authorising the deposit is in force and the deposit is in accordance with the licence;

Status: *Point in time view as at 22/04/2011.*
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[[F30](b) submit controlled waste, or knowingly cause or knowingly permit controlled waste to be submitted, to any listed operation (other than an operation within subsection (1)(a)) that—

(i) is carried out in or on any land, or by means of any mobile plant, and

(ii) is not carried out under and in accordance with an environmental permit.**]**

(c) treat, keep or dispose of controlled waste **[**[F31]or extractive waste**]** in a manner likely to cause pollution of the environment or harm to human health.

[[F32](1A) Paragraphs (a) and (b) of subsection (1) above do not apply in relation to a waste operation that is an exempt waste operation.

[[F33](1B) Subsection (1) does not apply in relation to the carrying on of any waste operation which is or forms part of an operation which—

(a) is the subject of a licence under Part 2 of the Food and Environment Protection Act 1985; or

(b) by virtue of an order under section 7 of that Act, does not require such a licence;**]]**

[[F34](2) Subject to subsection (2A) below, paragraphs (a) and (b) of subsection (1) above do not apply in relation to household waste from a domestic property which is treated, kept or disposed of within the curtilage of the property.

(2A) Subsection (2) above does not apply to the treatment, keeping or disposal of household waste by an establishment or undertaking.**]**

(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 **[**[F35]the prohibitions in subsection (1)**]**—

(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.

(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 [F36]. . . 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) [F37]. . . . . .

[F38]**[**(c) that the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to human health in a case where—

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Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

(i) he took all such steps as were reasonably practicable in the circumstances for minimising pollution of the environment and harm to human health; and

(ii) particulars of the acts were furnished to the waste regulation authority as soon as reasonably practicable after they were done.**]**

[[F39](8) A person who commits an offence under this section is liable—

(a) **[**[F40]Subject to subsection (9) below,**]** on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £50,000 or both;

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

[F41]**[**[F42](9) A person (other than an establishment or undertaking) who commits a relevant offence shall be liable—

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

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

(10) In this section, "relevant offence" means an offence under this section in respect of a contravention of subsection (1)(c) above consisting of the treatment, keeping or disposal within the curtillage of a domestic property of household waste from that property.

[For the purposes of subsection (1)(a) above, the deposit of waste in or on land includes [F43](11) any listed operation involving such a deposit.

(12) For the purposes of subsection (1)(c) above, treating, keeping or disposing of controlled waste includes submitting it to any listed operation.

(13) For the purposes of this section, a "listed operation" is an operation listed in **[**[F44]Annex I or II of Directive 2008/98/EC of the European Parliament and of the Council on waste**]]]**

Extent Information

E1 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F27 Words in s. 33(1) substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 4(2)(a)** (with reg. 72, Sch. 4)

F28 Words in s. 33(1) inserted (E.W.) (7.7.2009) by The Environmental Permitting (England and Wales (Amendment) Regulations (S.I. 2009/1799), reg. 28(1), Sch. 2 para. 1(3) (with reg. 28(2))

F29 Words in s. 33(1)(a) substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 4(2)(b)** (with reg. 72, Sch. 4)

F30 S. 33(1)(b) substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 4(2)(c)** (with reg. 72, Sch. 4)

F31 Words in s. 33(1) inserted (E.W.) (7.7.2009) by The Environmental Permitting (England and Wales) (Amendment) Regulations (S.I. 2009/1799), reg. 28(1), {Sch. 2 para. 1(3)}

F32 S. 33(1A)(1B) inserted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 4(3)** (with reg. 72, Sch. 4)

F33 S. 33(1B) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), 107, **Sch. 26 para. 5(5)** (with Sch. 4)

F34 S. 33(2)(2A) substituted (E.W.) (15.5.2006) for s. 33(2) by The Waste Management (England and Wales) Regulations 2006 (S.I. 2006/937), **reg. 2(2)(a)**

F35 Words in s. 33(4) substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 4(4)** (with reg. 72, Sch. 4)

F36 Words in s. 33(6) repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 4(5), **Sch. 23** (with reg. 72, Sch. 4)

F37 S. 33(7)(b) repealed (E.W.) (7.6.2005) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 40(1), 108(4)(f), **Sch. 5 Pt. 4** (with s. 40(2))

F38 S. 33(7)(c) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 64** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F39 S. 33(8) substituted (E.W.) (7.6.2005) for s. 33(8)(9) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 41(1)**, 108(4)(g) (with s. 41(2)(3))

F40 Words in s. 33(8)(a) inserted (E.W.) (15.5.2006) by The Waste Management (England and Wales) Regulations 2006 (S.I. 2006/937), **reg. 2(2)(b)**

F41 By The Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005/894), regs. 1, **71** (with reg. 75), it is provided that in s. 33(9) the words "hazardous waste" shall be substituted (E.W.) (16.7.2005) for the words "special waste"

F42 S. 33(9)(10) inserted (E.W.) (15.5.2006) by The Waste Management (England and Wales) Regulations 2006 (S.I. 2006/937), **reg. 2(2)(c)**

F43 S. 33(11)-(13) added (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, **Sch. 21 para. 4(6)** (with reg. 72, Sch. 4)

F44 Words in s. 33(13) substituted (E.W.) (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), reg. 1(2), **Sch. 4 para. 3(2)** (with regs. 2, 47(2))

Modifications etc. (not altering text)

C3 S. 33 restricted (E.) (13.4.2001) by S.I. 2001/1478, **reg. 3(b)**

C4 Ss. 33-34C applied (E.W.) (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), regs. 1(2), **47(3)** (with regs. 2, 47(2))

C5 S. 33(1)(a) excluded (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), **reg. 68**, Sch. 3 Pt. 2 (with reg. 72, Sch. 4)

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**
S. 33(1)(a)(b) modified (27.7.1999) by 1999 c. 24, **s. 4(6)(8)**
S. 33(1)(a)(b) excluded (E.W.) (15.5.2006) by The Waste Management (England and Wales) Regulations 2006 (S.I. 2006/937), **reg. 13**

C8 S. 33(1)(a) excluded (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), **68** (with Sch. 4)

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

C10 S. 33(6) restricted (27.7.1999) by 1999 c. 24, **s. 4(7)(8)**

Commencement Information

I4 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**)

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

33 Prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste. S

(1) Subject to subsection (2) **[**[F277], (2B)**]** 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) **[**[F278]keep or manage**]** controlled waste in a manner likely to cause pollution of the environment or harm to human health.

[[F279](2) Subject to subsection (2A) below, paragraphs (a) and (b) of subsection (1) above do not apply in relation to household waste from a domestic property which is treated, kept or disposed of within the curtilage of the dwelling.

(2A) Subsection (2) above does not extend to the treatment, keeping or disposal of household waste by an establishment or undertaking.**]**

[[F280](2B) Paragraphs (a) and (b) of subsection (1) above do not apply to the deposit or keeping of a waste portable battery or accumulator at a collection point set up to comply with Article 8(1)(a) of Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators (in this section, “the Batteries Directive”).

(2C) In subsection (2B) above, “portable battery or accumulator” has the meaning given by Article 3(3) of the Batteries Directive, but does not include any battery or accumulator excluded from the scope of that Directive by Article 2(2).**]**

(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.

(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.

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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) 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

[F281][(c) that the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to human health in a case where—

(i) he took all such steps as were reasonably practicable in the circumstances for minimising pollution of the environment and harm to human health; and

(ii) particulars of the acts were furnished to the waste regulation authority as soon as reasonably practicable after they were done.]

(8) Except in a case falling within subsection (9) [[F282]or (10)] 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 [[F283]£40,000] 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 [[F284](other than household waste of the description specified in subsection (10) below)] shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [[F283]£40,000] or both;

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

[[F285](10) A person who commits an offence under subsection (1)(c) above in relation to household waste from a domestic property within the curtilage of the dwelling shall be liable–

(a) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum or both;

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

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

F277 Words in s. 33(1) inserted (S.) (6.7.2009) by The Waste Batteries (Scotland) Regulations (S.S.I. 2009/247), {reg. 3(2)}

F278 Words in s. 33(1)(c) substituted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(3)**

F279 S. 33(2)(2A) substituted (S.) (21.1.2005) for s. 33(2) by The Waste (Scotland) Regulations 2005 (S.S.I. 2005/22), regs. 1(1), **3(2)(a)**

F280 S. 33(2B)(2C) inserted (S.) (6.7.2009) by The Waste Batteries (Scotland) Regulations (S.S.I. 2009/247), {reg. 3(3)}

F281 S. 33(7)(c) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 64** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F282 Words in s. 33(8) inserted (S.) (21.1.2005) by The Waste (Scotland) Regulations 2005 (S.S.I. 2005/22), regs. 1(1), **3(2)(b)**

F283 Words in s. 33(8)(a)(9)(a) substituted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), ss. 66, 145(2), **Sch. 2 Pt. 1 para. 4(3)**; S.S.I. 2004/420, **art. 3**, Sch. 1

F284 Words in s. 33(9) inserted (S.) (21.1.2005) by The Waste (Scotland) Regulations 2005 (S.S.I. 2005/22), regs. 1(1), **3(2)(c)**

F285 S. 33(10) added (S.) (21.1.2005) by The Waste (Scotland) Regulations 2005 (S.S.I. 2005/22), regs. 1(1), **3(2)(d)**

Modifications etc. (not altering text)

C47 S. 33 restricted (E.) (13.4.2001) by S.I. 2001/1478, **reg. 3(b)**

C48 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**

C49 S. 33(1)(a)(b) excluded (1.5.1994) by S.I. 1994/1056, **reg. 17**
S. 33(1)(a)(b) modified (27.7.1999) by 1999 c. 24, **s. 4(6)(8)**

C50 S. 33(5) amended (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 Pt. I para. 9(3)**

C51 S. 33(6) restricted (27.7.1999) by 1999 c. 24, **s. 4(7)(8)**

Commencement Information

I35 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**)

[F45 33A Section 33 offences: investigation and enforcement costs E+W

[F46 (1) This section applies where a person is convicted of an offence—

(a) under section 33 above, in respect of a contravention of subsection (1) of that section;

(b) under [F47 regulation 38(1) of the Environmental Permitting Regulations], in respect of a waste operation[F48 or a mining waste operation].]

(2) The court by or before which the offender is convicted may make an order requiring him to pay to an enforcement authority a sum which appears to the court not to exceed the costs arising from—

(a) investigations of the enforcement authority which resulted in the conviction; and

(b) the seizure by the enforcement authority under section 34B below of a vehicle involved in the offence.

(3) The costs arising from the seizure of a vehicle as specified in subsection (2)(b) above may include the cost of disposing of the contents of the vehicle.

(4) The power of a court to make an order under this section is in addition to its power to make an order under section 18 of the Prosecution of Offences Act 1985 (award of costs against accused).

(5) In this section "enforcement authority" means the Environment Agency or a waste collection authority.]

Textual Amendments

F45 S. 33A inserted (E.W.) (18.10.2005) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 42(1)**, 108 (with s. 42(2)); S.I. 2005/2896, **art. 2(a)**

F46 S. 33A(1) substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 5** (with reg. 72, Sch. 4)

F47 Words in s. 33A(1)(b) substituted (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), 107, **Sch. 26 para. 5(6)(a)** (with Sch. 4)

F48 Words in s. 33A(1) inserted (E.W.) (7.7.2009) by The Environmental Permitting (England and Wales) (Amendment) Regulations (S.I. 2009/1799), reg. 28, {Sch. 2 para. 1(4)}

Modifications etc. (not altering text)

C4 Ss. 33-34C applied (E.W.) (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), regs. 1(2), **47(3)** (with regs. 2, 47(2))

[F286 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.

(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 **[**[F287]accrue to that authority**]** .

(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

F286 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

F287 Words in s. 33A(12) substituted (S) (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 80, 84, **Sch. para. 8(a)**; S.S.I. 2008/42, **art. 3(1)**, Sch.

Modifications etc. (not altering text)

C4 Ss. 33-34C applied (E.W.) (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), regs. 1(2), **47(3)** (with regs. 2, 47(2))

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

[F49 33B Section 33 offences: clean-up costs

[F50 (1) This section applies where a person is convicted of an offence—

(a) under section 33 above, in respect of a contravention of subsection (1) of that section consisting of the deposit or disposal of controlled waste [F51 or extractive waste];

(b) under [F52 regulation 38(1) of the Environmental Permitting Regulations], in respect of a contravention of regulation 12 of those Regulations consisting of the disposal of 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—

(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) [F53 Subject to subsection (6) below,] 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).

F54 [(6) Subsection (5) above does not apply where a person (other than an establishment or undertaking) is convicted of a relevant offence within the meaning of section 33 above.]]

Textual Amendments

F49 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)**

F50 S. 33B(1) substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 6** (with reg. 72, Sch. 4)

F51 Words in s. 33B inserted (E.W.) (7.7.2009) by The Environmental Permitting (England and Wales) (Amendment) Regulations (S.I. 2009/1799), reg. 28, {Sch. 2 para. 1(5)}

F52 Words in s. 33B(1)(b) substituted (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), 107, **Sch. 26 para. 5(6)(b)** (with Sch. 4)

F53 Words in s. 33B(5) inserted (15.5.2006) by The Waste Management (England and Wales) Regulations 2006 (S.I. 2006/937), **reg. 2(3)(a)**

F54 S. 33B(6) inserted (15.5.2006) by The Waste Management (England and Wales) Regulations 2006 (S.I. 2006/937), **reg. 2(3)(b)**

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)

C4 Ss. 33-34C applied (E.W.) (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), regs. 1(2), **47(3)** (with regs. 2, 47(2))

[F55 33C Section 33 offences: forfeiture of vehicles

[F56(1) This section applies where—

(a) subject to subsection (1A) below, 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;

(b) a person is convicted of an offence under [F57regulation 38(1) of the Environmental Permitting Regulations] in respect of a contravention of regulation 12 of those Regulations consisting of the disposal of waste.]

F58(1A) [This section does not apply where a person (other than an establishment or undertaking) is convicted of a relevant offence within the meaning of section 33 above.]

(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;

(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, [F59or [F60regulation 38(1) or (2) of the Environmental Permitting Regulations],] 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

F55 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)**

F56 S. 33C(1) substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 7(1)** (with reg. 72, Sch. 4)

F57 Words in s. 33C(1)(b) substituted (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), 107, **Sch. 26 para. 5(6)(c)** (with Sch. 4)

F58 S. 33C(1A) inserted (15.5.2006) by The Waste Management (England and Wales) Regulations 2006 (S.I. 2006/937), **reg. 2(4)(b)**

F59 Words in s. 33C(7)(d) inserted (E.W) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 7(2)** (with reg. 72, Sch. 4)

F60 Words in s. 33C(7)(d) substituted (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), 107, **Sch. 26 para. 5(7)** (with Sch. 4)

Modifications etc. (not altering text)

C4 Ss. 33-34C applied (E.W.) (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), regs. 1(2), **47(3)** (with regs. 2, 47(2))

Duty of care etc. as respects waste

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

(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, **[**[F61]as a dealer or 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;

[[F62]**[**[F63](aa) to prevent any contravention by any other person of regulation 12 of **[**[F64]the Environmental Permitting Regulations**]** or of a condition of an environmental permit;**]]**

(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—

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(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 **[**[F65]or regulation 12 of **[**[F66]the Environmental Permitting Regulations**]**, or a contravention of a condition of an environmental permit,**]** and to comply with the duty under this subsection as respects the escape of waste.

[[F67](1A) It shall be the duty of any person who is responsible for the management of extractive 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 any contravention by another person of regulation 12 of **[**[F68]the Environmental Permitting Regulations**]** or of a condition of an environmental permit; and

(c) to prevent the escape of the waste from his control or that of any other person.**]**

(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.

[[F69](2A) It shall be the duty of the occupier of any domestic property in England **[**[F70]or Wales**]** to take all such measures available to him as are reasonable in the circumstances to secure that any transfer by him of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes.**]**

(3) The following are authorised persons for the **[**[F71]purposes of subsections (1)(c) and (2A)**]** 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 or of a disposal licence under section 5 of the Control [M3]of 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 **[**[F72]or by virtue of regulations under section 2 of the Pollution Prevention and Control Act 1999**]** ;

(d) any person registered as a carrier of controlled waste under section 2 of [M4] 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.

[F73]**[**(3A) The Secretary of State may by regulations amend subsection (3) above so as to add, whether generally or in such circumstances as may be prescribed in the regulations, any person specified in the regulations, or any description of person so specified, to the persons who are authorised persons for the purposes of **[**[F74]subsections (1)(c) and (2A)**]** above.**]**

(4) The following are authorised transport purposes for the purposes of **[**[F75]subsections (1)(c) and (2A)**]** 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.

[F76][(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) [[F77], (1A)][[F78]or (2A)] 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.

(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) [[F79]A] code of practice prepared in pursuance of subsection (7) above shall be laid [[F80](a)] before both Houses of Parliament [[F81]; or

(b) if it relates only to Scotland before the Scottish 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.

Extent Information

E2 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F61 Words in s. 34(1) substituted (E.W.) (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), reg. 1(2), **Sch. 4 para. 3(3)** (with regs. 2, 47(2))

F62 S. 34(1)(aa) inserted (E.W.) (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 Pt. 1 para. 4(a)**

F63 S. 34(1)(aa) substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), **reg. 73**, Sch. 21, para. 8(2) (with reg. 72, Sch. 4)

F64 Words in s. 34(1)(aa) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), 107, **Sch. 26 para. 5(4)(b)** (with Sch. 4)

F65 Words in s. 34(1)(c)(ii) substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), **reg. 73**, Sch. 21, para. 8(3) (with reg. 72, Sch. 4)

F66 Words in s. 34(1)(c)(ii) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), 107, **Sch. 26 para. 5(4)(b)** (with Sch. 4)

F67 S. 34(1A) inserted (E.W.) (7.7.2009) by The Environmental Permitting (England and Wales) (Amendment) Regulations (S.I. 2009/1799), reg. 28, Sch. 2 para. 1(6)(a)

F68 Words in s. 34(1A)(b) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), 107, **Sch. 26 para. 5(4)(b)** (with Sch. 4)

F69 S. 34(2A) inserted (E.W.) (21.11.2005) by The Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005 (S.I. 2005/2900), **reg. 2(2)**

F70 Words in s. 34(2A) inserted (26.1.2006) by The Waste (Household Waste Duty of Care) (Wales) Regulations 2006 (S.I. 2006/123), **reg. 2(1)**

F71 Words in s. 34(3) substituted (E.W.) (21.11.2005) by The Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005 (S.I. 2005/2900), **reg. 2(3)**

F72 Words in s. 34(3)(c) inserted (E.W.) (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), reg. 1(2), **Sch. 4 para. 3(4)** (with regs. 2, 47(2))

F73 S. 34(3A) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 65** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F74 Words in s. 34(3A) substituted (E.W.) (21.11.2005) by The Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005 (S.I. 2005/2900), **reg. 2(4)**

F75 Words in s. 34(4) substituted (E.W.) (21.11.2005) by The Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005 (S.I. 2005/2900), **reg. 2(5)**

F76 S. 34(4A) inserted (*retrospectively*) by 1994 c. 40, **s. 33(1)** (with s. 33(2))

F77 Words in s. 34(6) inserted (E.W.) (7.7.2009) by The Environmental Permitting (England and Wales) (Amendment) Regulations (S.I. 2009/1799), reg. 28, Sch. 2 para. 1(6)(b)

F78 Words in s. 34(6) inserted (E.W.) (21.11.2005) by The Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005 (S.I. 2005/2900), **reg. 2(6)**

F79 Word in s. 34(9) substituted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 102(2)(a)**

F80 S. 34(9): "(a)" inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 102(2)(b)**

F81 S. 34(9)(b) and the word "or" immediately preceding it inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 102(2)(c)**

Modifications etc. (not altering text)

C4 Ss. 33-34C applied (E.W.) (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), regs. 1(2), **47(3)** (with regs. 2, 47(2))

C11 S. 34 restricted (E.) (13.4.2001) by S.I. 2001/1478, **reg. 3(b)**

C12 S. 34(1)(c) extended (27.7.1999) by 1999 c. 24, **s. 4(6)(e)(8)**

Commencement Information

I5 S. 34 wholly in force at 1.4.1992; s.34 not in force at Royal Assent see s. 164(3); s. 34(5)(7)-(9)(11) in force at 13.12.1991; s. 34(1)-(4)(6)(10) in force at 1.4.1992 by S.I. 1991/2829, **arts. 2**, 4

Marginal Citations

M3 1974 c. 40.

M4 1989 c. 14.

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

34 Duty of care etc. as respects waste. 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 **[**[F288]or dealer**]** , 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;

[[F289]**[**[F62](aa) to prevent any contravention by any other person of regulation 6 of the Pollution Prevention and Control (Scotland) Regulations 2000 or of a condition of a permit granted under regulation 7 of those Regulations;**]]**

(b) to prevent the escape of the waste from his control or that of any other person; [F290]…

[[F291](ba) on the transfer of any waste oil, to ensure that this is separately collected where technically feasible; 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 **[**[F292]or any condition of a permit granted under regulation 7 of those Regulations**]**and to comply with the duty under this subsection as respects the escape of waste.

[[F293](2) An occupier of domestic property–

(a) shall, as respects the household waste produced on the property, take reasonable steps to secure that any transfer of waste is only to an authorised person or to a person for authorised transport purposes; and

(b) shall not otherwise be subject to the duty imposed by subsection (1) above.**]**

[[F294](2A) It shall be the duty of any person who produces, keeps or manages controlled waste, or as a broker or dealer has control of such waste, to take all such measures available to that person as are reasonable in the circumstances to apply the waste hierarchy set out in Article 4(1) of the Waste Directive.

(2B) The duty in subsection (2A)—

(a) may be departed from where this is justified having regard to the overall impacts of the generation and management of such waste; and

(b) does not apply to an occupier of domestic property as respects the household waste produced on the property.

(2C) The Scottish Ministers may give guidance on the discharge of the duty in subsection (2A), including the circumstances in which that duty may be departed from under subsection (2B)(a).

(2D) A person seeking to discharge the duty in subsection (2A) must, in doing so, have regard to any guidance given under subsection (2C).**]**

(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 or of a disposal licence under section 5 of the Control [M3]of Pollution Act 1974;

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

(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 [M4] 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.

[F73][(3A) The Secretary of State may by regulations amend subsection (3) above so as to add, whether generally or in such circumstances as may be prescribed in the regulations, any person specified in the regulations, or any description of person so specified, to the persons who are authorised persons for the purposes of subsection (1)(c) above.]

(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.

[F76][(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.]

[[F295](4B) In this section—

"separately collected" means collected separately from other types of waste so as to facilitate a specific treatment;

"waste oil" means any mineral or synthetic lubrication or industrial oil which has become unfit for the use for which it was originally intended, such as used combustion engine oil and gearbox oil, lubricating oil, oil for turbines and hydraulic oil.]

(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 [[F296]duties imposed by subsections (1) or (2A)] 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.

(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) **[**[F79]A**]** code of practice prepared in pursuance of subsection (7) above shall be laid
[[F80](a)**]** before both Houses of Parliament **[**[F81]; or
(b) if it relates only to Scotland before the Scottish 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.

Extent Information

E12 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F62 S. 34(1)(aa) inserted (E.W.) (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 Pt. 1 para. 4(a)**

F73 S. 34(3A) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 65** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F76 S. 34(4A) inserted (*retrospectively*) by 1994 c. 40, **s. 33(1)** (with s. 33(2))

F79 Word in s. 34(9) substituted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 102(2)(a)**

F80 S. 34(9): "(a)" inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 102(2)(b)**

F81 S. 34(9)(b) and the word "or" immediately preceding it inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 102(2)(c)**

F288 Words in s. 34(1) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(4)(a)(i)**

F289 S. 34(1)(aa) inserted after paragraph (a) (S.) (28.9.2000) by S.S.I. 2000/323, reg. 36, **Sch. 10 Pt. 1 para. 3(3)(a)**

F290 Word in s. 34(1) omitted (S.) (27.3.2011) by virtue of The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(4)(a)(ii)**

F291 S. 34(1)(ba) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(4)(a)(ii)**

F292 Words in s. 34(1)(c)(ii) inserted after the words "that section" (S.) (28.9.2000) by S.S.I. 2000/323, reg. 36, **Sch. 10 Pt. 1 para. 3(3)(b)**

F293 S. 34(2) substituted (S.) (21.1.2005) by The Waste (Scotland) Regulations 2005 (S.S.I. 2005/22), regs. 1, **3(3)**

F294 S. 34(2A)-(2D) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(4)(b)**

F295 S. 34(4B) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(4)(c)**

F296 Words in s. 34(6) substituted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(4)(d)**

Modifications etc. (not altering text)

C12 S. 34(1)(c) extended (27.7.1999) by 1999 c. 24, **s. 4(6)(e)(8)**

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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

I5 S. 34 wholly in force at 1.4.1992; s.34 not in force at Royal Assent see s. 164(3); s. 34(5)(7)-(9)(11) in force at 13.12.1991; s. 34(1)-(4)(6)(10) in force at 1.4.1992 by S.I. 1991/2829, **arts. 2**, 4

Marginal Citations

M3 1974 c. 40.

M4 1989 c. 14.

[F82 34A Fixed penalty notices for certain offences under section 34

(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—

(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

F82 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**

Modifications etc. (not altering text)

C4 Ss. 33-34C applied (E.W.) (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), regs. 1(2), **47(3)** (with regs. 2, 47(2))

[F83 Offences under sections 33 and 34: powers of seizure etc

Textual Amendments

F83 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

(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) **[**F84a relevant offence**]** has been committed **[**F85, or an offence under **[**F86regulation 38(1) or (2) of the Environmental Permitting Regulations**]** has been committed in relation to a waste operation**]**

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

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

(3) The grounds in this subsection are that—

(a) **[**[F87]a relevant offence**]** is being or is about to be committed, **[**[F88]or an offence under **[**[F86]regulation 38(1) or (2) of the Environmental Permitting Regulations**]** is being or is about to be committed in relation to a waste operation,**]**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.

(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;

[[F89]"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

F84 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)**

F85 Words in s. 34B(2)(a) inserted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 9(a)** (with reg. 72, Sch. 4)

F86 Words in s. 34B(2)(a)(3)(a) substituted (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), 107, **Sch. 26 para. 5(8)** (with Sch. 4)

F87 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)**

F88 Words in s. 34B(3)(a) inserted (E.W.) (6.4.2008) byThe Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 9(b)** (with reg. 72, Sch. 4)

F89 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)**

Modifications etc. (not altering text)

C4 Ss. 33-34C applied (E.W.) (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), regs. 1(2), **47(3)** (with regs. 2, 47(2))

34C Seizure of vehicles etc: supplementary

(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—
(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.**]**

Modifications etc. (not altering text)

C4 Ss. 33-34C applied (E.W.) (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), regs. 1(2), **47(3)** (with regs. 2, 47(2))

Waste Management Licences

35 Waste management licences: general.

[[F90](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, **[**[F91]and**]**

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

[[F92](c) to the location of the boundaries of the specified land;**]**

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.

[F93][(7A) In any case where—

(a) an entry is required under this section to be made in any record as to the observance of any condition of a licence, and

(b) the entry has not been made,

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

[F93](7B) Any person who—

(a) intentionally makes a false entry in any record required to be kept under any condition of a licence, or

(b) with intent to deceive, forges or uses a licence or makes or has in his possession a document so closely resembling a licence as to be likely to deceive,

shall be guilty of an offence.

[F93](7C) A person guilty of an offence under subsection (7B) 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.]

(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 [[F94]it ceases to have effect under subsection (11A) below,] 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.

[[F95](11A) A licence shall cease to have effect if and to the extent that the treatment, keeping or disposal of waste authorised by the license is authorised by a permit granted under regulations under section 2 of the Pollution Prevention and Control Act 1999.]

(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.**]**

Textual Amendments

F90 S. 35 repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)

F91 Word in s. 35(3) omitted (S.) (27.3.2011) by virtue of The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(5)**

F92 S. 35(3)(c) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(5)**

F93 S. 35(7A)-(7C) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 66(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F94 Words in s. 35(11) inserted (E.W.) (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 Pt. 1 para. 5(a)** and inserted (S.) (28.9.2000) by S.S.I. 2000/323, reg. 36, **Sch. 10 Pt. 1 para. 3(4)(a)**

F95 S. 35(11A) inserted (E.W.) (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 Pt. 1 para. 5(b)** and inserted (S.) (28.9.2000) by S.S.I. 2000/323, reg. 36, **Sch. 10 Pt. 1 para. 3(4)(b)**

Modifications etc. (not altering text)

C13 S. 35 amended (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 Pt. I para. 9(5)**

C14 S. 35(11) extended (27.7.1999) by 1999 c. 24, **s.4(1)(3)(4)(5)(8)**

Commencement Information

I6 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**)

[F96][35A Compensation where rights granted pursuant to section 35(4) or 38(9A).

[[F97](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.

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

(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;

(h) make provision similar to any provision made by paragraph 8 of Schedule 19 to the [M5]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

F96 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**

F97 S. 35A repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)

Modifications etc. (not altering text)

C15 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

M5 1991 c. 28.

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

36 Grant of licences. E+W

[F98] . . . . . .

Extent Information

E3 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F98 S. 36 repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)

36 Grant of licences. 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;

[[F297]and 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.

[F297](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 [M28]Town and Country Planning Act 1990 or the [M29]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 **[**[F298]the appropriate planning authority**]** and the Health and Safety Executive; and

(b) consider any representations about the proposal which the **[**[F298]authority**]** or the Executive makes to it during the allowed period.

[F299](5) . . . . . .

[F299](6) . . . . . .

(7) Where any part of the land to be used is **[**[F300]within a site of special scientific interest or any area in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6) has effect**]** 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 **[**[F301]Natural England**]**, **[**[F302]Scottish 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.

[F303]**[**(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.**]**

[F304]**[**(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 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 [M30]Local Government etc. (Scotland) Act 1994 for the area in which the land is situated;

"the Broads" has the same meaning as in the [M31]Norfolk and Suffolk Broads Act 1988;

"National Park authority", [F305]. . . 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.

[F306](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

E13 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F297 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**.

F298 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**

F299 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**

F300 Words in s. 36(7) substituted (S.) (29.11.2004) by Nature Conservation (Scotland) Act 2004 (asp 6), ss. 57, 59(2), **Sch. 7 para. 7** (with s. 55); S.S.I. 2004/495, **art. 2**

F301 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**

F302 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**

F303 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**.

F304 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)

F305 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.**

F306 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)

C52 S. 36(2)(a) extended (S.) (27.5.1997) by 1997 c. 8, **ss. 150(7)(c)**, 278(2)

C53 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

I36 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

M28 1990 c. 8.

M29 1972 c. 52.

M30 1994 c. 39.

M31 1988 c. 4.

[F99][36A Consultation before the grant of certain licences.

[[F100](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

(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

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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.

(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

F99 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**

F100 S. 36A repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)

37 Variation of licences.

[[F101](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 **[**[F102]subsection (3)**][**[F102]subsections (2A) and (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 **[**[F103]the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995,**]** 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.

[[F104](2A) The conditions of a site licence may not be modified under subsection (1) so as to remove any of the specified land referred to in section 35(1) from the licence.**]**

(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), [F105]. . . (7), [F105]. . .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.

[F106]**[**(7) This section shall have effect subject to section 37A below.**]]**

Textual Amendments

F101 S. 37 repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)

F102 Words in s. 37(1) substituted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(6)(a)**

F103 Words in s. 37(1)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 70(1)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F104 S. 37(2A) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(6)(b)**

F105 Words in s. 37(5) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 70(2), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F106 S. 37(7) added (1.4.1999) by 1995 c. 25, s. 120(1), **Sch. 22 para. 70(3)** (with ss. 7(6), 115, 117); S.I. 1999/803, **art. 3**

Modifications etc. (not altering text)

C16 S. 37 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)**

C17 S. 37 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)

C18 S. 37(4) modified (27.7.1999) by 1999 c. 24, **s. 4(6)(b)(8)**

Commencement Information

I7 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**)

[F107 37A Consultation before certain variations.

[F108 (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

(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

F107 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**

F108 S. 37A repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)

Modifications etc. (not altering text)

C19 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)**

C20 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)

38 Revocation and suspension of licences. E+W

F109 . . . . . .

Extent Information

E4 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

Textual Amendments

F109 S. 38 repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)

38 Revocation and suspension of licences. S

(1) Where a licence granted by a waste regulation authority is in force and it appears to the authority—

(a) that the hold er 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 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.

[[F307](3A) In the case of a site licence, a revocation under subsection (3) may extend to the whole of the land to which the licence extends or to any part of it.**]**

(4) The authority may, under this subsection, revoke the licence entirely.

(5) **[**[F308]Subject to subsection (3A),**]** 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.

[[F309](6A) In the case of a site licence, the suspension may extend to the whole of the land to which the licence extends or to any part of it.**]**

(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) **[**[F310]Subject to subsection (6A),**]** 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.

[F311]**[**(9A) A requirement imposed under subsection (9) above 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 under that subsection.

(9B) Subsections (2) to (8) of section 36A above shall, with the necessary modifications, apply where the authority proposes to impose a requirement under subsection (9) above which may require the holder of a licence to carry out any such works or do any such thing as is mentioned in subsection (9A) above as they apply where the authority proposes to issue a licence subject to any such condition as is mentioned in subsection (1) of that section, but as if—

(a) the reference in subsection (3) of that section to section 35(4) above were a reference to subsection (9A) above; and

(b) any reference in those subsections—

(i) to the condition, or the condition in question, were a reference to the requirement; and

(ii) to issuing a licence were a reference to serving a notice, under subsection (12) below, effecting the requirement.

(9C) The authority may postpone the service of any notice or the consideration of any representations required under section 36A above, as applied by subsection (9B) above, so far as the authority considers that by reason of an emergency it is appropriate to do so.**]**

(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.

(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.

[[F312](12A) If, in the case of a partial revocation referred to in subsection (3A), the authority is of the opinion that it is necessary to modify the conditions of the licence to take account of the revocation, it shall specify the necessary modifications in the notice served under subsection (12) and the modifications specified in the notice shall take effect on the date specified in the notice.**]**

[F313]**[**(13) If a waste regulation authority is of the opinion that proceedings for an offence under subsection (10) or (11) above would afford an ineffectual remedy against a person who has failed to comply with any requirement imposed under subsection (9) above, 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 requirement.**]**

Extent Information

E14 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F307 S. 38(3A) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(7)(a)**

F308 Words in s. 38(5) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(7)(b)**

F309 S. 38(6A) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(7)(c)**

F310 Words in s. 38(8) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(7)(d)**

F311 S. 38(9A)-(9C) 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. 72(1)** (with ss. 7(6), 115, 117); S.I. 1998/604, **art.2**; S.I. 1999/803, **art. 3**

F312 S. 38(12A) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(7)(e)**

F313 S. 38(13) added (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 72(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C54 S. 38 excluded (E.W.) (15.6.2002) by The Landfill (England and Wales) Regulations 2002 (S.I. 2002/1559), regs. 15(6), 17(1), 18, **Sch. 4 para. 1(8)(iii)** (with regs. 3, 4)

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

S. 38 excluded (S.) (11.4.2003) by The Landfill (Scotland) Regulations 2003 (S.S.I. 2003/235), regs. 1(1), 17(6), 20, **Sch. 5 para. 1(5)(a)(iii)** (with regs. 3, 4)

C55 S. 38(10)(11) restricted (27.7.1999) by 1999 c. 24, **s. 4(7)(8)**

C56 S. 38(12) modified (27.7.1999) by 1999 c. 24, **s. 4(6)(b)(8)**

Commencement Information

I37 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.

[[F110](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.

[[F111](2A) A surrender of a site licence may extend to the whole of the land to which the licence extends or to any part of it.**]**

(3) The holder of a site licence who desires to surrender it shall make an application for that purpose to the authority **[**[F112]on a form provided by the authority for the purpose, giving such information and accompanied by such evidence as the authority reasonably requires and accompanied by the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995.**]**

(4) An authority which receives an application for the surrender of a site licence—

(a) shall inspect the land to which the **[**[F113]licence**][**[F113]application**]** 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 **[**[F114]the appropriate planning authority**]**; and

(b) consider any representations about the proposal which **[**[F114]the appropriate planning authority**]** makes to it during the allowed period;

[F115] . . .

[F116](8) . . . . . .

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

(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 **[**[F117]or, in the case of a partial surrender referred to in subsection (2A), the licence shall cease to have effect in relation to the land to which the surrender extends**]** .

[[F118](9A) If, in the case of a partial surrender referred to in subsection (2A), the authority is of the opinion that it is necessary to modify the conditions of the licence to take account of the surrender, it shall specify the necessary modifications in the notice of its determination issued under subsection (9) and the modifications specified in the notice shall take effect on the date specified in the notice.**]**

(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 **[**[F119]subsection (7) above**]**.

[F120]**[**(12) 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 [M6]Local Government etc. (Scotland) Act 1994 for the area in which the land is situated;

"the Broads" has the same meaning as in the [M7]Norfolk and Suffolk Broads Act 1988;

"National Park authority", [F121]. . . 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", in the case of any site licence, means the land to which the licence relates.

[F122](13) . . . . . .

[F120](14) The Secretary of State may by regulations amend the definition of "appropriate planning authority" in subsection (12) above.**]]**

Textual Amendments

F110 S. 39 repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)

F111 S. 39(2A) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(8)(a)**

F112 Words in s. 39(3) substituted (1.4.1996 for limited purposes and 1.4.1998 so far as not already in force) by 1995 c. 25, s. 120(1), **Sch. 22 para. 73(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**; S.I. 1998/604, **art.2**.

F113 Word in s. 39(4)(a) substituted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(8)(b)**

F114 Words in s. 39(7)(a)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 73(3)(a)** (with ss. 7(6), 115, 117); S.I. 1996/1286, **art. 3**

F115 In s. 39(7) words following para. (b) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 73(3)(b), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F116 S. 39(8) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 73(4), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F117 Words in s. 39(9) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(8)(c)**

F118 S. 39(9A) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(8)(d)**

F119 Words in s. 39(11) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 73(5)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F120 S. 39(12)-(14) added (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 73(6)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F121 In s. 39(12) in the definition of "National Park authority" words 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.

F122 S. 39(13) 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)

C21 S. 39 excluded (E.W.) (15.6.2002) by The Landfill (England and Wales) Regulations 2002 (S.I. 2002/1559), regs. 15(6), 17(1), 18, **Sch. 4 para. 1(8)(iii)** (with regs. 3, 4)
S. 39 excluded (S.) (11.4.2003) by The Landfill (Scotland) Regulations 2003 (S.S.I. 2003/235), regs. 1(1), 17(6), 20, **Sch. 5 para. 1(5)(a)(iii)** (with regs. 3, 4)

Commencement Information

I8 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)**; s. 39 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

M6 1994 c. 39.

M7 1988 c. 4.

40 Transfer of licences.

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

[[F123](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.

[[F124](1A) In the case of a site licence, a transfer under subsection (1) may extend to the whole of the land to which the licence extends or to any part of it, and in this Part "transfer" and cognate expressions used in relation to a site licence include such a partial transfer.**]**

(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 **[**[F125]on a form provided by the authority for the purpose, accompanied by such information as the authority may reasonably require, the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995**]** 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) **[**[F126]Subject to subsections (5A) to (5C),**]** 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.

[[F127](5A) The authority shall effect a partial transfer of a licence by—

(a) issuing a new licence to the transferee as respects the land to which the transfer relates; and

(b) returning the original licence to the holder endorsed to record that there has been a transfer, the particulars of the land transferred and the land to which the original licence now relates.

(5B) In the case of a partial transfer, the conditions included in the new licence and original licence after the transfer shall be the same as the conditions included in the original licence immediately before the transfer in so far as they are relevant to the sites covered by the new licence and the original licence respectively, but subject to such modifications as, in the opinion of the authority, are necessary to take account of the transfer.

(5C) A partial transfer shall take effect from such date as may be agreed with the applicants and specified in the endorsement and new licence.**]**

(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.**]**

Textual Amendments

F123 S. 40 repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)

F124 S. 40(1A) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(9)(a)**

F125 Words in s. 40(3) substituted (1.4.1996 for limited purposes and 1.4.1998 so far as not already in force) by 1995 c. 25, s. 120(1), **Sch. 22 para.74** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**; S.I. 1998/604, **art.2**.

F126 Words in s. 40(5) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(9)(b)**

F127 S. 40(5A)-(5C) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(9)(c)**

Commencement Information

I9 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**)

[F128]41 . . . . . .

Textual Amendments

F128 S. 41 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 75, **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

42 Supervision of licensed activities.

[[F129](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—

(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.

[F130](2) . . . . . .

(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 **[**[F131]the holder,

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

or (as the case may be) the former holder, of the licence**]**, 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 **[**[F132]or is likely not to be complied with,**]** then, without prejudice to any proceedings under section 33(6) above, the authority may—

[F133]**[**(a) serve on the holder of the licence a notice—

(i) stating that the authority is of the opinion that a condition of the licence is not being complied with or, as the case may be, is likely not to be complied with;

(ii) specifying the matters which constitute the non-compliance or, as the case may be, which make the anticipated non-compliance likely;

(iii) specifying the steps which must be taken to remedy the non-compliance or, as the case may be, to prevent the anticipated non-compliance from occurring; and

(iv) specifying the period within which those steps must be taken; and**]**

(b) if in the opinion of the authority the licence holder **[**[F134]has not taken the steps specified in the notice within the period so specified,**]** 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.

[[F135](6ZA) In the case of a site licence, a revocation under subsection (6)(a) or a suspension under subsection (6)(c) may relate to the whole of the land to which the licence relates or to any part of it.**]**

[F136]**[**(6A) If a waste regulation authority is of the opinion that revocation or suspension of the licence, whether entirely or to any extent, under subsection (6) above would afford an ineffectual remedy against a person who has failed to comply with any requirement imposed under subsection (5)(a) above, 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 requirement.**]**

(7) Where a licence is revoked or suspended under subsection (6) above, **[**[F137]**[**[F138](3A), (5), (12) and (12A)**]** or, as the case may be, subsections (8) to (12) of section 38**]** above shall apply with the necessary modifications as they respectively apply to revocations or suspensions of licences under that section; [F139]. . .

(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.**]**

Textual Amendments

F129 S. 42 repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)

F130 S. 42(2) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 76(2), **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F131 Words in s. 42(4) substituted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 76(3)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

F132 Words in s. 42(5) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 76(4)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F133 S. 42(5)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 76(5)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F134 Words in s. 42(5)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 76(6)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F135 S. 42(6ZA) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(11)(a)**

F136 S. 42(6A) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 76(7)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F137 Words in s. 42(7) substituted (19.7.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 76(8)(a)** (with ss. 7(6), 115, 117)

F138 Words in s. 42(7) substituted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(11)(b)**

F139 Words in s. 42(7) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 76(8)(b), **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

Modifications etc. (not altering text)

C22 S. 42 modified (27.7.1999) by 1999 c. 24, **s. 4(6)(c)(8)**

C23 S. 42 excluded (E.W.) (15.6.2002) by The Landfill (England and Wales) Regulations 2002 (S.I. 2002/1559), regs. 15(6), 17(1), 18, **Sch. 4 para. 1(8)(iii)** (with regs. 3, 4)
S. 42 excluded (S.) (11.4.2003) by The Landfill (Scotland) Regulations 2003 (S.S.I. 2003/235), regs. 1(1), 17(6), 20, **Sch. 5 para. 1(5)(a)(iii)** (with regs. 3, 4)

Commencement Information

I10 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**)

43 Appeals to Secretary of State from decisions with respect to licences.

[F140(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;

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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—

[F141](a) . . . . . .

[F141](b) . . . . . .

(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).

[F142]**[**(2A) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).**]**

(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 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.**]**

Textual Amendments

F140 S. 43 repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 10, **Sch. 23** (with reg. 72, Sch. 4)

F141 S. 43(2)(a)(b) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para.77, **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F142 S. 43(2A) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 77** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C24 S. 43: power to delegate functions conferred (1.4.1996) by 1995 c. 25, **s. 114(2)(a)(iii)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

Commencement Information

I11 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**)

[F143 44 Offences of making false or misleading statements or false entries.

(1) A person who—

(a) in purported compliance with a requirement to furnish any information imposed by or under any provision of this Part, **[F144** or**]** will need corrections

(b) **[F145** for the purpose of obtaining for himself or another any grant of a licence, any modification of the conditions of a licence, any acceptance of the surrender of a licence or any transfer of a licence,**]**

makes a statement which he knows to be false or misleading in a material particular, or recklessly makes any statement which is false or misleading in a material particular, commits an offence.

(2) **[F146** A person who intentionally makes a false entry in any record required to be kept by virtue of a licence commits an offence.**]**

(3) A person who commits an offence 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.**]**

Textual Amendments

F143 S. 44 substituted (1.4.1996) by 1995 c. 25, s. 112, **Sch. 19 para. 4(1)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F144 Word in s. 44(1)(a) repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 11(a), **Sch. 23** (with reg. 72, Sch. 4)

F145 S. 44(1)(b) repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 11(b), **Sch. 23** (with reg. 72, Sch. 4)

F146 S. 44(2) repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 11(b), **Sch. 23** (with reg. 72, Sch. 4)

Commencement Information

I12 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**)

[F147 Integrated waste management plans: Scotland

Textual Amendments

F147 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

(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 **[F148** national waste management plan**]** , 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.

(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);

[[F149]"national waste management plan" means the plan mentioned in regulation 3(1) of the National Waste Management Plan for Scotland Regulations 2007 (S.S.I. 2007/251), however constituted at the time and as modified from time to time.

"SEPA" means the Scottish Environment Protection Agency.**]**

Textual Amendments

F148 Words in s. 44ZA(2)(a) substituted (S.) (23.3.2007) by The National Waste Management Plan for Scotland Regulations 2007 (S.S.I. 2007/251), **reg. 8(1)(b)(i)**

F149 Words in s. 44ZA(6) substituted (S.) (23.3.2007) by The National Waste Management Plan for Scotland Regulations 2007 (S.S.I. 2007/251), {reg. (8)(1)(b)(ii)}

44ZB Approval of integrated waste management plan

(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—

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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) 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.

44ZC Implementation of integrated waste management plan

(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

(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

[[F150]44A National waste strategy: England and Wales.

[[F151](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—

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(a) a statement of the Secretary of State'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.

(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.

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

[[F152](8A) The Environment Agency shall publicise any direction given to it under subsection (6) above in such manner as it considers appropriate.**]**

(9) In this section—

"local planning authority" has the same meaning as in the [M8]Town and Country Planning Act 1990;

"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 [M9]directive of the Council of the **[**[F153]European Union**]**, dated 15th July 1975, on waste, as amended by—

(a) the [M10]directive of that Council, dated 18th March 1991, amending directive 75/442/EEC on waste; and

(b) the [M11]directive of that Council, dated 23rd December 1991, standardising and rationalising reports on the implementation of certain Directives relating to the environment.**]]**

Textual Amendments

F150 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**

F151 S. 44A omitted (E.W.) (29.3.2011) by virtue of The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), reg. 1(2), **Sch. 4 para. 3(5)** (with regs. 2, 47(2))

F152 S. 44A(8A) inserted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 12** (with reg. 72, Sch. 4)

F153 Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 4 (with art. 3(2)(3), 4(2), 6(4)(5))

Modifications etc. (not altering text)

C25 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

M8 1990 c. 8.

M9 91/692/EEC.

M10 91/156/EEC.

M11 75/442/EEC.

[F154]44B National waste strategy: Scotland.

[[F155](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;

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Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

(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.

(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 [M12]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 [M13]directive of the Council of the **[**[F153]European Union**]** dated 15th July 1975 on waste, as amended by—

(a) the [M14]directive of that Council dated 18th March 1991 amending directive 75/442/EEC on waste; and

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(b) the [M15]directive of that Council dated 23rd December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment.**]**

Textual Amendments

F153 Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 4 (with art. 3(2)(3), 4(2), 6(4)(5))

F154 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**

F155 S. 44B repealed (S.) (23.3.2007) by The National Waste Management Plan for Scotland Regulations 2007 (S.S.I. 2007/251), {reg. (8)(1)(a)}

Modifications etc. (not altering text)

C26 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

M12 1973 c. 65.

M13 91/692/EEC.

M14 91/156/EEC.

M15 75/442/EEC.

45 Collection of controlled waste.

(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.

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(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 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 [M16]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—

[[F156](a) the said section 2 conferred a power on a waste collection authority rather than a duty on **[**[F157]Scottish Water**]** ;

(b) in the said section 3—

(i) references to **[**[F157]Scottish Water**]** were references to a waste collection authority; and

(ii) in references to public sewers and public sewage works the word "public" were omitted;

(c) in the said section 4, the reference to **[**[F157]Scottish Water**]** were a reference to a waste collection authority and the words from "by virtue" to the end were omitted; and

(d) in the said section 41, the reference to **[**[F157]Scottish Water**]** were a reference to a waste collection authority,**]**

and the [M17]Pipe-lines Act 1962 shall not apply to pipes and associated works provided or to be provided under the said subsection (7)(a).

[[F158](10A) Where a waste collection authority, in the exercise of its powers under subsection (7)(a) above, proposes to execute works outside its area, it shall, in addition to any notice served under section 3(2) of the Sewerage (Scotland) Act 1968 as applied by virtue of

subsection (10) above, serve notice of its intention on the waste collection authority within whose area it is proposed to execute the works together with a description of the proposed works and if, within two months after the service of the notice, the waste collection authority on whom it was served objects to the proposed works, and that objection is not withdrawn, the first-mentioned authority shall not proceed to execute the works without consent aftermentioned but may refer the matter for the determination of the Scottish Ministers who may grant consent to the proposed works either unconditionally or subject to such terms and conditions as they think just, or who may withhold their consent, and their decision on the matter shall be final.**]**

(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.

Textual Amendments

F156 S. 45(10)(a)(b) substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 167(6)**; S.I. 1996/323, **art. 4(1)(c)**

F157 Words in s. 45(10) substituted (S.) (1.4.2002) by Water Industry (Scotland) Act 2002 (asp 3), s. 71, **Sch. 7 para. 20(2)(a)**; S.S.I. 2002/118, **art. 2(3)**

F158 S. 45(10A) inserted (S.) (1.4.2002) by Water Industry (Scotland) Act 2002 (asp 3), s. 71, **Sch. 7 para. 20(2)(b)**; S.S.I. 2002/118, **art. 2(3)**

Commencement Information

I13 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

M16 1968 c. 47.

M17 1962 c. 58.

[[F159]45A Arrangements for separate collection of recyclable waste

(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

F159 S. 45A inserted (E.W.) (30.12.2003) by Household Waste Recycling Act 2003 (c. 29), **ss. 1**, 5(2)

[F160 45B Power to apply section 45A to Welsh waste collection authorities

(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.**]**

Textual Amendments

F160 S. 45B inserted (E.W.) (30.12.2003) by Household Waste Recycling Act 2003 (c. 29), **ss. 2**, 5(2)

46 Receptacles for household waste.

(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.

[F161(1A) Where—

(a) subsection (1) applies to a waste collection authority, and

(b) a waste reduction scheme under Schedule 2AA to this Act is in operation in the authority's area,

the authority may require the occupier to place the waste for collection in receptacles identified by such means as may be specified.

(1B) A requirement under subsection (1A)—

(a) must be imposed by notice served on the occupier;

(b) may be imposed instead of, or in addition to, any requirement imposed on the occupier under subsection (1).**]**

(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

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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.

(6) A person who fails, without reasonable excuse, to comply with any requirements imposed under subsection (1), **[**[F162](1A),**]**(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) **[**[F163]or (1A)**]**above.

[[F164](11) A waste collection authority is not obliged to collect household waste that is placed for collection in contravention of a requirement under this section.**]**

Textual Amendments

F161 S. 46(1A)(1B) inserted (E.W.) by Climate Change Act 2008 (c. 27), ss. 71, 100, **Sch. 5 para. 3(2)** (the amendment coming into force in accordance with ss. 72-75 of the amending Act, see s. 100(2)(5))

F162 Words in s. 46(6) inserted (E.W.) by Climate Change Act 2008 (c. 27), ss. 71, 100, **Sch. 5 para. 3(3)** (the amendment coming into force in accordance with ss. 72-75 of the amending Act, see s. 100(2)(5))

F163 Words in s. 46(10) inserted (E.W.) by Climate Change Act 2008 (c. 27), ss. 71, 100, **Sch. 5 para. 3(4)** (the amendment coming into force in accordance with ss. 72-75 of the amending Act, see s. 100(2)(5))

F164 S. 46(11) inserted (E.W.) (26.1.2009) by Climate Change Act 2008 (c. 27), **ss. 76**, 100

Modifications etc. (not altering text)

C27 S. 46 applied (with modifications) (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), **19**

C28 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

I14 S. 46 wholly in force at 1.4.1992 see s. 164(3) and S.I. 1992/266, **art. 3**.

47 Receptacles for commercial or industrial waste.

(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 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.

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(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
- (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)

C29 S. 47 applied (with modifications) (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), **21**

C30 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

I15 S. 47 wholly in force at 1.4.1992 see s. 164(3) and S.I. 1992/266, **art. 3**.

[F165 47ZA Fixed penalty notices for offences under sections 46 and 47

(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.

(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

F165 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**

47ZB Amount of fixed penalty under section 47ZA

(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.

(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

F165 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**

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[F166 47A Recycling and composting: duty to report to Parliament

(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

F166 S. 47A inserted (E.W.) (30.12.2003) by Household Waste Recycling Act 2003 (c. 29), **ss. 3**, 5(2)

48 Duties of waste collection authorities as respects disposal of waste collected.

(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.

[F167(1A) A waste collection authority in England which is not also a waste disposal authority must discharge its duty under subsection (1) above in accordance with any directions about separation of waste given by the waste disposal authority for its area.**]**

(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 F168. . . arrangements, as respects household waste or commercial waste in its area or any part of its area, F168. . . 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 [F169]. . . provide plant and equipment for the sorting and baling of waste retained by the authority under subsection (2) above.

(7) [F170] . . . . . .

(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.

Textual Amendments

F167 S. 48(1A) inserted (1.1.2005) by Waste and Emissions Trading Act 2003 (c. 33), **ss. 31(2)**, 40(1); S.I. 2004/3319, **art. 2**

F168 Words in s. 48(4) repealed (18.10.2005 for E. and 16.3.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 107, 108, **Sch. 5 Pt. 4**; S.I. 2005/2896, **art. 3(k)**; S.I. 2006/768, **art. 2(d)**

F169 Words in s. 48(6) repealed (18.10.2005 for E. and 16.3.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 107, 108, **Sch. 5 Pt. 4**; S.I. 2005/2896, **art. 3(k)**; S.I. 2006/768, **art. 2(d)**

F170 S. 48(7) repealed (18.10.2005 for E. and 16.3.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 107, 108, **Sch. 5 Pt. 4**; S.I. 2005/2896, **art. 3(k)**; S.I. 2006/768, **art. 2(d)**

Commencement Information

I16 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.

[F171] . . . . . .

Textual Amendments

F171 S. 49 repealed (S.) (1.4.2003) by Local Government in Scotland Act 2003 (asp 1), **ss. 34(2)**, 62(2); S.S.I. 2003/134, **art. 2(1)**, Sch.; s. 49 otherwise repealed (25.6.2004 for W. and 1.1.2005 for E.) by Waste and Emissions Trading Act 2003 (c. 33), **ss. 35(a)**, 40(7); S.I. 2004/1488, **art. 2(2)**; S.I. 2004/3321, **art. 2**

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

[F172]50 . . . . . .

Textual Amendments

F172 S. 50 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 78, **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

51 Functions of waste disposal authorities.

(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;

[F173] . . . .

(2) The arrangements made by a waste disposal authority under subsection (1)(b) above shall be such as to secure that—

(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) [F174] . . . . . .

(c) [F174] . . . . . .

(d) [F174] . . . . . .

(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.

[[F175](4A) A waste disposal authority in England which is not also a waste collection authority may in directions under subsection (4)(a) above include requirements about separation that relate to waste as delivered, but may do so only if it considers it necessary for assisting it to comply with any obligation imposed on it by or under any enactment.

(4B) Before exercising its power to include requirements about separation in directions under subsection (4)(a) above, a waste disposal authority shall consult the waste collection authorities within its area.

(4C) In exercising its power to include requirements about separation in directions under subsection (4)(a) above, a waste disposal authority shall have regard to any guidance given by the Secretary of State as to the exercise of that power.

(4D) A waste disposal authority which includes requirements about separation in directions given under subsection (4)(a) above shall notify the waste collection authorities to which the directions are given of its reasons for including the requirements.**]**

(5) [F174]. . . . . .

(6) [F174]. . . . . .

(7) Subsection (1) above is subject to section 77.

(8) This section shall not apply to Scotland.

Textual Amendments

F173 Words in s. 51(1) repealed (18.10.2005 for E. and 16.3.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 107, 108, **Sch. 5 Pt. 4**; S.I. 2005/2896, **art. 3(k)**; S.I. 2006/768, **art. 2(d)**

F174 S. 51(4)(b)-(d)(5)(6) repealed (18.10.2005 for E. and 16.3.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 107, 108, **Sch. 5 Pt. 4**; S.I. 2005/2896, **art. 3(k)**; S.I. 2006/768, **art. 2(d)**

F175 S. 51(4A)-(4D) inserted (1.1.2005) by Waste and Emissions Trading Act 2003 (c. 33), **ss. 31(3)**, 40(1); S.I. 2004/3319, **art. 2**

Commencement Information

I17 S. 51 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**

52 Payments for recycling and disposal etc. of waste. E+W

(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

[[F176](a) in the case of a waste disposal authority in England, of such amounts as may be determined in accordance with regulations made by the Secretary of State; and

(b) in the case of a waste disposal authority in Wales**]**,

of such amounts representing its net saving of expenditure on the disposal of the waste as the authority determines.

[[F177](1A) The Secretary of State may by order disapply subsection (1) above in relation to any waste disposal authority constituted under section 10 of the Local Government Act 1985 (joint arrangements for waste disposal in London and metropolitan counties) **[**[F178]or any authority established for an area in England by an order under section 207 of the Local Government and Public Involvement in Health Act 2007 (joint waste authorities)**]**.**]**

[[F179](1B) A waste disposal authority is not required to make payments to a waste collection authority under subsection (1) above where, on the basis of arrangements involving the two authorities, the waste collection authority has agreed that such payments need not be made.**]**

(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

[[F180](a) in the case of a waste disposal authority in England, of such amounts as may be determined in accordance with regulations made by the Secretary of State; and

(b) in the case of a waste disposal authority in Wales**]**,

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.

[[F181](4A) The Secretary of State may by regulations impose on waste disposal authorities in England a duty to make payments corresponding to the payments which are authorised by subsection (3)(a) above to such persons in such circumstances and in respect of such descriptions or quantities of waste as are specified in the regulations.**]**

(5) The Secretary of State may, by regulations, impose on waste disposal authorities **[**[F182]in Wales**]** a duty to make payments corresponding to the payments which are authorised by **[**[F183]subsection (3)(b)**]** 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 **[**[F184]subsections (1)(b), (3)(b)**]** 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 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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 **[**[F185]subsections (1)(b), (2)(b), (3)(b), (4)(b)**]** and (5) above.

[[F186](8A) The Secretary of State may give guidance—

(a) to a waste disposal authority in England, for the purposes of determining whether to exercise the power in subsection (3) above;

(b) to a waste collection authority in England, for the purposes of determining whether to exercise the power in subsection (4) 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.

[[F187](12) In this section, references to recycling waste include re-using it (whether or not the waste is subjected to any process).**]**

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

F176 S. 52(1)(a)(b) inserted (E.W.) (7.3.2006 for certain purposes and 6.4.2006 otherwise) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 49(2)**, 108; S.I. 2006/656, **arts. 2**, **3**

F177 S. 52(1A) inserted (E.W.) (7.3.2006) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 49(3)**, 108; S.I. 2006/656, **art. 2**

F178 Words in s. 52(1A) inserted (E.W.) (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 209(2), 245(5), **Sch. 13 para. 49**; S.I. 2008/917, **art. 2(1)(p)**

F179 S. 52(1B) inserted (E.W.) (6.4.2006) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 49(4)**, 108; S.I. 2006/656, **art. 3**

F180 S. 52(3)(a)(b) inserted (E.W.) (7.3.2006 for certain purposes and 6.4.2006 otherwise) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 49(6)**, 108; S.I. 2006/656, **arts. 2**, **3**

F181 S. 52(4A) inserted (E.W.) (6.4.2006) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 106, 108, **Sch. 4 para. 3(2)**; S.I. 2006/656, **art. 3**

F182 Words in s. 52(5) inserted (E.W.) (6.4.2006) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 106, 108, **Sch. 4 para. 3(3)(a)**; S.I. 2006/656, **art. 3**

F183 Words in s. 52(5) substituted (E.W.) (6.4.2006) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 106, 108, **Sch. 4 para. 3(3)(b)**; S.I. 2006/656, **art. 3**

F184 Words in s. 52(6) substituted (E.W.) (6.4.2006) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 106, 108, **Sch. 4 para. 3(4)**; S.I. 2006/656, **art. 3**

F185 Words in s. 52(8) substituted (E.W.) (6.4.2006 for certain purposes and otherwise prosp.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 106, 108, **Sch. 4 para. 3(6)**; S.I. 2006/656, **art. 3**

F186 S. 52(8A) inserted (E.W.) (6.4.2006 for certain purposes and otherwise prosp.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 49(8)**, 108; S.I. 2006/656, **art. 3**

F187 S. 52(12) inserted (E.W.) (6.4.2006) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 49(9)**, 108; S.I. 2006/656, **art. 3**

Modifications etc. (not altering text)

C31 S. 52(1) disapplied (E.) (1.4.2006) by The Joint Waste Disposal Authorities (Recycling Payments) (Disapplication) (England) Order 2006 (S.I. 2006/651), **art. 2**

Commencement Information

I18 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.

52 Payments for recycling and disposal etc. of waste. 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.

(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.

Extent Information

E15 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Commencement Information

I18 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.

[F188 52A Payments for delivering waste pre-separated

(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.

(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

F188 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**

53 Duties of authorities as respects disposal of waste collected: Scotland.

(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) **[**[F189], (10) and (10A)**]** 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—

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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) 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 [F190]. . . by which matter is so removed—

(a) to deliver the matter, in accordance with any directions of **[**[F191]Scottish Water**]**, at a place specified in the directions (which must be in or within a reasonable distance from the waste collection authority's area), to **[**[F191]Scottish Water**]** or another person so specified;

(b) to give to **[**[F191]Scottish Water**]** 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 **[**[F191]Scottish Water**]** 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 **[**[F191]Scottish Water**]** 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 **[**[F192]Scottish Water**]** under that subsection shall belong to **[**[F191]Scottish Water**]** and may be dealt with accordingly.

(5A) [F193]. . . . . .

(6) This section applies to Scotland only.

Textual Amendments

F189 Words in s. 53(2) substituted (1.4.2002) by Water Industry (Scotland) Act 2002 (asp 3), s. 71, **Sch. 7 para. 20(3)(a)**; S.S.I. 2002/118, **art. 2(3)**

F190 Words in s. 53(4) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 167(8)(a)(i), **Sch.14**; S.I. 1996/323, art. 4(1)(c)(d), Sch.1, **Sch. 2**

F191 Words in s. 53(4)(5) substituted (1.4.2002) by Water Industry (Scotland) Act 2002 (asp 3), s. 71, **Sch. 7 para. 20(3)(b)**; S.S.I. 2002/118, **art. 2(3)**

F192 Words in s. 53(5) substituted (S.) (1.4.2002) by Water Industry (Scotland) Act 2002 (asp 3), s. 71, **Sch. 7 para. 20(3)(c)**; S.S.I. 2002/118, **art. 2(3)**

F193 S. 53(5A) repealed (1.4.2002) by Water Industry (Scotland) Act 2002 (asp 3), s. 71, **Sch. 7 para. 20(3)(d)**; S.S.I. 2002/118, **art. 2(3)**

Commencement Information

I19 S. 53 wholly in force at 1.4.1992 see s. 164(3) and S.I 1992/266, art. 3.

54 Special provisions for land occupied by disposal authorities: Scotland.

(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

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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 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—
  (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) to the river purification authority whose area includes any of the land in question;
    (ii) to 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 [M18]Local Government (Scotland) Act 1973), to the general planning authority (within the meaning of that section) whose area includes any of the land; and
    (iv) 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, the Health and Safety Executive or the general planning authority makes to it during the allowed period;
  (d) subject to subsection (7) of this section, to pass a resolution—

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

(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 [M19]Wildlife and Countryside Act 1981, to—

(i) refer the proposal and the statement to the appropriate nature conservation body, and

(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, **[**[F194]Scottish Natural Heritage**]**.

(5) In subsection (4) above, paragraphs (a) to (c), and in paragraph (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 an islands council.

(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 [M20]Control of Pollution Act 1974) in the area of the 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 [M21]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

F194 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**.

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)

C32 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

I20 S. 54 wholly in force at 1.5.1994; 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 in force at 1.5.1994 by S.I. 1994/1096, **art. 2(1)**

Marginal Citations

M18 1973 c. 65.
M19 1981 c. 69.
M20 1974 c. 40.
M21 1974 c. 40.

55 Powers for recycling waste.

(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 [F195]. . . 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 [F195]. . . 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.

Textual Amendments

F195 Words in s. 55(2)(a)(b) repealed (18.10.2005 for E. and 16.3.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 107, 108, **Sch. 5 Pt. 4**; S.I. 2005/2896, **art. 3(k)**; S.I. 2006/768, **art. 2(d)**

Commencement Information

I21 S. 55 wholly in force at 1.4.1992 see s. 164(3) and S.I. 1992/266, **art. 3**.

56 Powers for recycling waste: Scotland.

(1) Without prejudice to the powers of waste disposal authorities apart from this section, a waste disposal authority may—

(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

I22 S. 56 wholly in force at 1.4.1992 see s. 164(3) and S.I. 1992/266, **art. 3**.

57 Power of Secretary of State to require waste to be accepted, treated, disposed of or delivered. E+W

(1) The Secretary of State may, by notice in writing, direct the holder of any **[**[F196]environmental permit authorising a waste operation**]** to accept and keep, or accept and treat or dispose of, **[**[F197]waste**]** at specified places on specified terms.

(2) The Secretary of State may, by notice in writing, direct any person who is keeping **[**[F197]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.

[[F198](7A) [F199]. . . . . **]**

[[F200](8) In this section—

"specified" means specified in a direction under this section; and

[[F201]"waste" means anything that is waste within the meaning of Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council on waste including anything excluded from the scope of that Directive by Article

2(1)(f) or 2(2)(b) or (c), but not including anything excluded by the remainder of that Article**]]**

Textual Amendments

F196 Words in s. 57(1) substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 13(a)** (with reg. 72, Sch. 4)

F197 Words in s. 57(1)(2) substituted (E.W.) (22.11.2005) by The Environmental Protection Act 1990 (Amendment of Section 57) (England and Wales) Regulations 2005 (S.I. 2005/3026), **reg. 2(3)**

F198 S. 57(7A) inserted (E.W.) (22.11.2005) by The Environmental Protection Act 1990 (Amendment of Section 57) (England and Wales) Regulations 2005 (S.I. 2005/3026), **reg. 2(4)**

F199 S. 57(7A) repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 13(b), **Sch. 23** (with reg. 72, Sch. 4)

F200 S. 57(8) substituted (E.W.) (22.11.2005) by The Environmental Protection Act 1990 (Amendment of Section 57) (England and Wales) Regulations 2005 (S.I. 2005/3026), **reg. 2(5)**

F201 Words in s. 57(8) substituted (E.W.) (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), reg. 1(2), **Sch. 4 para. 3(6)** (with regs. 2, 47(2))

Modifications etc. (not altering text)

C33 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

I23 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**)

57 Power of Secretary of State to require waste to be accepted, treated, disposed of or delivered. 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.

Extent Information

E16 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Modifications etc. (not altering text)

C33 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

I23 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**)

58 Power of Secretary of State to require waste to be accepted, treated, disposed of or delivered: Scotland.

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.

59 Powers to require removal of waste unlawfully deposited.

(1) If any controlled waste **[**[F202]or extractive 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 **[**[F203]or regulation 12 of **[**[F204]the Environmental Permitting Regulations**]]** , 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—

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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) 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 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 **[**[F205]or regulation 12 of **[**[F204]the Environmental Permitting Regulations**]**,**]** 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 **[**[F206]or the occupier cannot be found without the authority incurring unreasonable expense**]**; 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.

[[F207](8A) An authority may not recover costs under subsection (8) above if a compensation order has been made under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 in favour of the authority in respect of any part of those costs.

(8B) Subsection (8A) does not apply if the order is set aside on appeal.**]**

(9) Any waste removed by an authority under subsection (7) above shall belong to that authority and may be dealt with accordingly.

Textual Amendments

F202 Words in s. 59(1) inserted (E.W.) (7.7.2009) by The Environmental Permitting (England and Wales) (Amendment) Regulations (S.I. 2009/1799), reg. 28, {Sch. 2 para. 1(7)}

F203 Words in s. 59(1) inserted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 14(a)** (with reg 72, Sch. 4)

F204 Words in s. 59(1)(7) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), 107, **Sch. 26 para. 5(4)(c)** (with Sch. 4)

F205 Words in s. 59(7) inserted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 14(b)** (with reg 72, Sch. 4)

F206 Words in s. 59(7)(b) 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(1)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 2(i)**

F207 S. 59(8A)(8B) inserted (E.W.) (18.10.2005) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 43(2)**, 108 (with s. 43(3)); S.I. 2005/2896, **art. 2(b)**

Modifications etc. (not altering text)

C34 S. 59 applied (with modifications) (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), **25**

[F208 59ZA Section 59: supplementary power in relation to owner of land

(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 **[**F209 or regulation 12 of **[**F210 the Environmental Permitting Regulations**]**,**]** and—

(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

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

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

F208 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)**

F209 Words in s. 59ZA(2) inserted (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 15** (with reg. 72, Sch. 4)

F210 Words in s. 59ZA(2) substituted (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), 107, **Sch. 26 para. 5(4)(d)** (with Sch. 4)

[F211 59A Directions in relation to exercise of powers under section 59

(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.

F212(4) **[** A waste regulation authority shall publicise any direction given to it under subsection (1) above in such manner as it considers appropriate.**]]**

Textual Amendments

F211 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**

F212 S. 59A(4) inserted (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 16** (with reg 72, Sch. 4)

60 Interference with waste sites and receptacles for waste. E+W

(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 **[**F213or under arrangements made with a waste disposal authority or by any other local authority or person**]** ;

(b) anything deposited in a receptacle for waste, whether for public or private use, provided by a waste collection authority, by **[**F214or under arrangements made with a waste disposal authority, by a parish or community council or by a holder of a waste management licence; 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 [F215]. . . 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 [F215]. . . 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.

Extent Information

E6 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F213 Words in s. 60(1)(a) substituted (E.W.) (18.10.2005 for E. and 16.3.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 106, 108, **Sch. 4 para. 4(a)**; S.I. 2005/2896, **art. 3(i)**; S.I. 2006/768, **art. 2(c)**

F214 Words in s. 60(1)(b) substituted (E.W.) (18.10.2005 for E. and 16.3.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 106, 108, **Sch. 4 para. 4(b)**; S.I. 2005/2896, **art. 3(i)**; S.I. 2006/768, **art. 2(c)**

F215 Words in s. 60(2)(a)(b) repealed (E.W.) (18.10.2005 for E. and 16.3.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 107, 108, **Sch. 5 Pt. 4**; S.I. 2005/2896, **art. 3(k)**; S.I. 2006/768, **art. 2(d)**

Commencement Information

I24 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)**

60 Interference with waste sites and receptacles for waste. 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.

Modifications etc. (not altering text)

C57 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Commencement Information

I24 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)**

[F216 61 . . . . . .

Textual Amendments

F216 S. 61 repealed (1.4.2000 for E., 14.7.2000 for S. and 15.9.2001 for W.) 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); S.I. 2001/3211, **art. 2(c)** (with saving in art. 3)

[F217 Waste reduction schemes

Textual Amendments

F217 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**

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

60A Waste reduction schemes

A waste collection authority whose area is in England may make a waste reduction scheme in accordance with Schedule 2AA to this Act.**]**

[F218Hazardous waste] and non-controlled waste

Textual Amendments

F218 Words in s. 62 cross-heading substituted (E.W.) (16.7.2005) by The Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005/894), regs. 1, **72(1)** (with reg. 75)

62 Special provision with respect to certain dangerous or intractable waste.

[F219(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—

[F220(a) for the supervision by waste regulation authorities—

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

(i) of activities authorised by virtue of the regulations or of activities by virtue of carrying on which persons are subject to provisions of the regulations, or

(ii) of persons who carry on activities authorised by virtue of the regulations or who are subject to provisions of the regulations,

and for the recovery from persons falling within sub-paragraph (ii) above of the costs incurred by waste regulation authorities in performing functions conferred upon those authorities by the regulations;**]**

(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.

[[F221](3A) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).**]**

(4) In the application of this section to Northern Ireland "waste regulation authority" means **[**[F222]the Department of the Environment for Northern Ireland**].]**

Extent Information

E7 S. 62: for extent of s. 62(2)(e) to Northern Ireland see s. 164(4)

Textual Amendments

F219 S. 62 omitted (E.W.) (16.7.2005) by virtue of The Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005/894), regs. 1, **72(2)** (with reg. 75)

F220 S. 62(3)(a) substituted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 80(2)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

F221 S. 62(3A) added (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 80(3)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F222 Words in s. 62(4) substituted (17.9.1998) by S.I. 1997/2778 (N.I. 19), art. 83(1), **Sch. 5 para. 4**; S.R. 1998/288, **art. 2**

Modifications etc. (not altering text)

C35 S. 62(3)(c): power to delegate functions conferred (1.4.1996) by 1995 c. 25, **s.114** (with ss. 7(6), 115, 117); S.I. 1995/186, **art.3**

[[F223]62A Lists of waste displaying hazardous properties

(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 **[**[F224]Directive 2008/98/EC**]** .

(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 **[**[F225]Directive 2008/98/EC**]** .

[[F226](3) In this section "the Hazardous Waste List" means the list of wastes established by Commission Decision 2000/532/EC.**]**

(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

F223 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)

F224 Words in s. 62A(1)(b) substituted (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), reg. 1(2), **Sch. 4 para. 3(7)(a)** (with regs. 2, 47(2))

F225 Words in s. 62A(2)(b) substituted (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), reg. 1(2), **Sch. 4 para. 3(7)(a)** (with regs. 2, 47(2))

F226 S. 62A(3) substituted (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), reg. 1(2), **Sch. 4 para. 3(7)(b)** (with regs. 2, 47(2))

63 Waste other than controlled waste.

(1) **[**[F227]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) **[**[F228]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) **[**[F228]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) **[**[F227]Section 45(2) and section 47(1) above shall apply to waste other than controlled waste as they apply to controlled waste.**]**

Textual Amendments

F227 S. 63(1)(4) repealed (E.W.) (15.5.2006) by The Waste Management (England and Wales) Regulations 2006 (S.I. 2006/937), **reg. 2(5)**

F228 S. 63(2)(3) omitted (E.W.) (16.7.2005) by virtue of The Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005/894), regs. 1, **73** (with reg. 75)

Modifications etc. (not altering text)

C36 S. 63(1) applied (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), **20(7)** (with s. 20(10))

C37 S. 63(1) applied (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), **22(7)** (with s. 22(10))

Commencement Information

I25 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)**

[F229 Powers of waste collection authority or waste disposal authority in relation to generation of controlled waste

Textual Amendments

F229 S. 63A and cross-heading inserted (19.11.1998) by 1998 c. 44, **s. 1**

F230 63A Power to take steps to minimise generation of controlled waste.

(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.

(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

F230 S. 63A and cross-heading inserted (19.11.1998) by 1998 c. 44, **s. 1**

Publicity

64 Public registers.

[F231(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;

[F232](l) . . . . . .

(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.

(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.

[[F233](2A) The Secretary of State may give to a waste regulation authority directions requiring the removal from any register of its of any specified information not prescribed for inclusion under subsection (1) above or which, by virtue of section 65 or 66 below, ought to be excluded from the register.**]**

(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 **[**[F234]or Wales**]**. . . 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.

[[F235](5) The waste regulation authority in relation to England and Wales shall furnish any waste collection authorities in its area with the particulars necessary to enable them to discharge their duty under subsection (4) above.**]**

(6) Each waste regulation authority and waste collection authority

[[F236](a)**]**shall secure that any register maintained under this section is open to inspection [F237]. . . by members of the public free of charge at all reasonable hours and

[[F236](b)**]**shall afford to members of the public reasonable facilities for obtaining, on payment of reasonable charges, copies of entries in the register

[[F236]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.**]**

(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.**]**

Textual Amendments

F231 S. 64 repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 17, **Sch. 23** (with reg. 72, Sch. 4).

F232 S. 64(1)(l) repealed (1.4.1996) by 1995 c. 25, s. 120(3), **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F233 S. 64(2A) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 82(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F234 Words in s. 64(4) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 82(3)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F235 S. 64(5) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 82(5)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F236 Words in s. 64(6) inserted (21.9.1995 for limited purposes, 1.4.1996 for all other purposes) by 1995 c. 25, s. 120(1), **Sch. 22 para. 82(5)(a)(b)(c)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

F237 Words in s. 64(6)(a) omitted (1.4.1996) by virtue of S.I. 1996/593, reg. 3, **Sch. 2 para.6**

Commencement Information

I26 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.

[[F238](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;

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.**]**

Textual Amendments

F238 S. 65 repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 17, **Sch. 23** (with reg. 72, Sch. 4).

Modifications etc. (not altering text)

C38 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

I27 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.

[[F239](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.

(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.

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

(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 **[**[F240]until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn**]**.

[[F241](6) Subsections (2) and (8) of section 43 above shall apply in relation to appeals under subsection (5) above as they apply in relation to appeals under that section; but

(a) subsection (2)(c) of that section shall have effect for the purposes of this subsection with the substitution for the words from "(which may" onwards of the words "(which must be held in private)"; and

(b) subsection (5) 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 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.

(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.]

Textual Amendments

F239 S. 66 repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 17, **Sch. 23** (with reg. 72, Sch. 4).

F240 Words in s. 66(5) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 83(1)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F241 S. 66(6) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 83(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

Modifications etc. (not altering text)

C39 S. 66(5): power to delegate functions conferred (1.4.1996) by 1995 c. 25, **s.114** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

Commencement Information

I28 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)**

[F242]67 . . . . . .

Textual Amendments

F242 S. 67 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 84, **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

Supervision and enforcement

[F243]68 . . . . . .

Textual Amendments

F243 Ss.68-70 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 85, **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

[F244]69 . . . . . .

Textual Amendments

F244 Ss. 68-70 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 85, **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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)*

[F245]70 . . . . . .

Textual Amendments

F245 Ss. 68-70 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 85, **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

71 Obtaining of information from persons and authorities.

[F246](1) . . . . . .

(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 **[**[F247], or at such time,**]** as is so specified.

[[F248](2A) A waste collection authority has the power referred to in subsection (2) for the purpose of the discharge of its functions under sections 34B and 34C above.**]**

(3) A person who—

(a) fails, without reasonable excuse, to comply with a requirement imposed under subsection (2) **[**[F249]or (2A)**]** above; [F250]. . .

[F251](b) . . . . . .

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.

[[F252](4) The Secretary of State may, by notice in writing, require a waste regulation authority or waste collection authority in England and Wales to supply to him, or to such other person as may be specified in the notice, such information as may be so specified in respect of—

(a) cases where the authority has exercised any powers under section 59 above, and

(b) cases where the authority has taken action under any other enactment in respect of any deposit or other disposal of controlled waste in contravention of section 33(1) above.**]**

Textual Amendments

F246 S. 71(1) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 86(1), **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

F247 Words in s. 71(2) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 86(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

F248 S. 71(2A) 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(2)(a)**, 108; S.I. 2006/768, **art. 3**

F249 Words in s. 71(3) 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(2)(b)**, 108; S.I. 2006/768, **art. 3**

F250 Word immediately preceding s. 71(3)(b) repealed (1.4.1996) by 1995 c. 25, s. 120(3), **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F251 S. 71(3)(b) repealed (1.4.1996) by 1995 c. 25, ss. 112, 120(3), Sch. 19 para. 4(2), **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

F252 S. 71(4) inserted (E.W.) (31.3.2004) by Anti-social Behaviour Act 2003 (c. 38), **ss. 55(5)**, 93; S.I. 2004/690, **art. 3**; S.I. 2004/999, **art. 2**

Modifications etc. (not altering text)

C40 S. 71 applied (with modifications) (1.4.1999) by S.I. 1998/2746, **reg.15**.

C41 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)**.

C42 S. 71(2)(3) modified (S.) (27.3.2011) by The Waste Management Licensing (Scotland) Regulations 2011 (S.S.I. 2011/228), reg. 1(1), **sch. 4 para. 13(2)** (with regs. 31-33)

C43 S. 71(2)(3) modified (S.) (27.3.2011) by The Waste Management Licensing (Scotland) Regulations 2011 (S.S.I. 2011/228), regs. 1(1), **30(7)** (with regs. 31-33)

Commencement Information

I29 S. 71 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**

F253 72 . . . . . .

Textual Amendments

F253 S. 72 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 87, **Sch.24**(with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**.

Supplemental

73 Appeals and other provisions relating to legal proceedings and civil liability.

(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

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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 [M22]Law Reform (Contributory Negligence) Act 1945.

(9) For the purposes of the following enactments—

(a) the [M23]Fatal Accidents Act 1976;

(b) the Law Reform (Contributory Negligence) Act 1945; and

(c) the [M24]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

E8 For extent see s. 164(4)(5).

Commencement Information

I30 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

M22 1945 c. 28.

M23 1976 c. 30.

M24 1980 c. 58.

[[F254]73A Use of fixed penalty receipts

(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;
  (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

F254 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**

74 Meaning of "fit and proper person".

[[F255](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

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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.

(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.**]**

Textual Amendments

F255 S. 74 repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, Sch. 21 para. 17, **Sch. 23** (with reg. 72, Sch. 4)

Status: *Point in time view as at 22/04/2011.*
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Commencement Information

I31 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 [[F256]hazardous waste]. E+W

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

[[F257](2) "Waste" means anything that is waste within the meaning of Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council on waste.**]**

[F258](3) . . . . . .

(4) "Controlled waste" means household, industrial and commercial waste or any such waste.

(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 [M25]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 [M26]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; [F259]. . .

(d) any premises used for the purposes of, or in connection with, the provision to the public of postal or telecommunications services**[**[F260]; or

(e) any mine or quarry or any premises used for agriculture within the meaning of the Agriculture Act 1947**]**

(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; **[**[F261]and**]**

(c) [F262]. . . . . .

(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; [F263]. . . 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.

[[F264](8A) "Hazardous waste"—

(a) in the application of this Part to England, means any waste which is a hazardous waste for the purposes of the Hazardous Waste (England and Wales) Regulations 2005;

[[F265](b) in the application of this Part to Wales, means any waste which is a hazardous waste for the purposes of the Hazardous Waste (Wales) Regulations 2005.**]**

(8B) **[**[F266]In subsection (8A) "Hazardous Waste List" means the list referred to in the first indent of Article 1(4) of Council Directive 91/689/EEC.**]]**

[F267](9) . . . . . .

[F268](10) . . . . . .

[F268](11) . . . . . .

[F268](12) . . . . . .

Extent Information

E9 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only.

Textual Amendments

F256 Words in s. 75 heading substituted (E.W.) (16.7.2005) by The Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005/894), regs. 1(1), **74(a)** (with reg. 75)

F257 S. 75(2) substituted (E.W.) (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), reg. 1(2), **Sch. 4 para. 3(8)(a)** (with regs. 2, 47(2))

F258 S. 75(3) repealed (1.4.2003 for S. for certain purposes, 1.1.2005 otherwise for S. and 15.5.2006 for E.W.) by 1995 c. 25, ss. 120(1)(3), 125(3), Sch. 22 para. 88(3), Sch. 24 (with ss. 7(6), 115, 117); S.S.I. 2003/206, **art. 2**; S.S.I. 2004/541, **art. 2**; S.I. 2006/934, **art. 2**

F259 Word in s. 75(6)(c) omitted (E.W.) (15.5.2006) by virtue of The Waste Management (England and Wales) Regulations 2006 (S.I. 2006/937), **reg. 2(6)(a)**

F260 S. 75(6)(e) and preceding word added (E.W.) (15.5.2006) by The Waste Management (England and Wales) Regulations 2006 (S.I. 2006/937), **reg. 2(6)(b)**

F261 Word in s. 75(7)(b) added (E.W.) (15.5.2006) by The Waste Management (England and Wales) Regulations 2006 (S.I. 2006/937), **reg. 2(6)(c)**

F262 S. 75(7)(c) repealed (E.W.) (15.5.2006) by The Waste Management (England and Wales) Regulations 2006 (S.I. 2006/937), **reg. 2(6)(d)**

F263 Words in s. 75(8) omitted (E.W.) (15.5.2006) by virtue of The Waste Management (England and Wales) Regulations 2006 (S.I. 2006/937), **reg. 2(6)(e)**

F264 S. 75(8A)(8B) inserted (E.W.) (16.7.2005) by The Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005/894), regs. 1(1), **74(b)** (with reg. 75)

F265 S. 75(8A)(b) substituted (W.) (16.7.2005) by The Hazardous Waste (Wales) Regulations 2005 (S.I. 2005/1806), regs. 1(2), 73, **Sch. 11 para. 2(a)** (with reg. 71)

F266 S. 75(8B) omitted (W.) (16.7.2005) by virtue of The Hazardous Waste (Wales) Regulations 2005 (S.I. 2005/1806), regs. 1(2), 73, **Sch. 11 para. 2(b)** (with reg. 71)

F267 S. 75(9) omitted (E.W.) (16.7.2005) by virtue of The Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005/894), regs. 1(1), **74(c)** (with reg. 75)

F268 S. 75(10)-(12) omitted (E.W.) (29.3.2011) by virtue of The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), reg. 1(2), **Sch. 4 para. 3(8)(b)** (with regs. 2, 47(2))

Commencement Information

I32 S. 75 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**

Marginal Citations

M25 1960 c. 62.

M26 1961 c. 34.

75 Meaning of "waste" and household, commercial and industrial waste and special waste. S

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

[[F314](2) "Waste" means—

(a) anything that is waste within the meaning of Article 3(1) of the Waste Directive, as read with Articles 5 and 6, and which is not excluded from the scope of that Directive by Article 2(1), (2) or (3);

(b) radioactive waste within the meaning of section 1A of the Radioactive Substances Act 1993 which is exempt from the requirement for authorisation under section 13 or 14 of that Act by virtue of an order made, or having effect as if made, under section 15(2) of that Act;

(c) where land is undergoing on-site remediation of contamination, that land including unexcavated contaminated soil and any contaminated buildings permanently connected with that land.**]**

[[F315](2A) "Broker" means any undertaking arranging the recovery or disposal of waste on behalf of others, whether or not such arrangements involve the broker taking physical possession of the waste; and "dealer" means any undertaking which acts in the role of principal to purchase and subsequently sell waste, whether or not this involves the dealer taking physical possession of the waste.**]**

(3) [F258] . . . . . .

(4) "Controlled waste" means household, industrial and commercial waste or any such waste.

(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 [M32]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 **[**[F316]which are used to provide a care home service (as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8))**]**.

(6) Subject to subsection (8) below, "industrial waste" means waste from any of the following premises—

(a) any factory (within the meaning of the [M33]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; [F317]. . .

(d) any premises used for the purposes of, or in connection with, the provision to the public of postal or telecommunications services **[**[F318]; or

(e) any mine or quarry.**]**

(7) Subject to subsection (8) below, "commercial waste" means waste from premises **[**[F319](including premises used for agriculture within the meaning of the Agriculture (Scotland) Act 1948)**]** 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; **[**[F320]and**]**

(c) [F321]. . . . . .

(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; [F322]. . . 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.

[F323](10) . . . . . .

[[F324](12) In this Part, "the Waste Directive" means Directive 2008/98/EC of the European Parliament and of the Council on waste.**]**

Extent Information

E17 This version of this provision has been created for Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F258 S. 75(3) repealed (1.4.2003 for S. for certain purposes, 1.1.2005 otherwise for S. and 15.5.2006 for E.W.) by 1995 c. 25, ss. 120(1)(3), 125(3), Sch. 22 para. 88(3), Sch. 24 (with ss. 7(6), 115, 117); S.S.I. 2003/206, **art. 2**; S.S.I. 2004/541, **art. 2**; S.I. 2006/934, **art. 2**

F314 S. 75(2) substituted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(12)(a)**

F315 S. 75(2A) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(12)(b)**

F316 Words in s. 75(5)(e) substituted (S.) (1.4.2002) by 2001 asp 8, s. 79, Sch. 3 para. 17; S.S.I. 2002/162, **art. 2(f)(h)** (with arts. 3-13)

F317 Word in s. 75(6) omitted (S.) (21.1.2005) by virtue of The Waste (Scotland) Regulations 2005 (S.S.I. 2005/22), regs. 1, **3(4)(a)**

F318 S. 75(6)(e) and preceding word added (S.) (21.1.2005) by The Waste (Scotland) Regulations 2005 (S.S.I. 2005/22), regs. 1, **3(4)(b)**

F319 Words in s. 75(7) inserted (S.) (21.1.2005) by The Waste (Scotland) Regulations 2005 (S.S.I. 2005/22), regs. 1, **3(4)(c)**

F320 Word in s. 75(7)(b) added (S.) (21.1.2005) by The Waste (Scotland) Regulations 2005 (S.S.I. 2005/22), regs. 1, **3(4)(d)**

F321 S. 75(7)(c) repealed (S.) (21.1.2005) by The Waste (Scotland) Regulations 2005 (S.S.I. 2005/22), regs. 1, **3(4)(e)**

F322 Words in s. 75(8) omitted (S.) (21.1.2005) by virtue of The Waste (Scotland) Regulations 2005 (S.S.I. 2005/22), regs. 1, **3(4)(f)**

F323 S. 75(10) repealed (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(12)(c)**

F324 S. 75(12) substituted for s. 75(11)(12) (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(12)(d)**

Commencement Information

I38 S. 75 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**

Marginal Citations

M32 1960 c. 62.

M33 1961 c. 34.

[F269 76 Application to the Isles of Scilly.

(1) Subject to the provisions of any order under this section, this Part shall not apply in relation to the Isles of Scilly.

(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

F269 S. 76 substituted (1.2.1996) by 1995 c. 25, **s. 118(3)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 2**.

77 Transition from Control of Pollution Act 1974 to this Part.

[F270(1) This section has effect for the purposes of the transition from the provisions of Part I of the M27Control of Pollution Act 1974 ("the 1974 Act") to the corresponding provisions of this Part of this Act and in this section—

[F271 "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

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repeal of sections 3 to 10 of the 1974 Act and "relevant appointed day for licences" shall be construed accordingly;

[[F271] "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;**]**

[[F271] "relevant part of its undertaking", in relation to an existing disposal authority, has the same meaning as in section 32 above; and**]**

[[F271] "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) **[**[F272]Subject to section 4 of the Pollution Prevention and Control Act 1999,**]** 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) [F273]. . . . . .

(4) **[**[F274]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 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) **[**[F274]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) **[**[F274]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) **[**[F274]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) **[**[F274]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.**]]**

Textual Amendments

F270 S. 77 repealed (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regs. 73, 74(2), Sch. 21 para. 17, **Sch. 23** (with reg. 72, Sch. 4).

F271 In s. 77(1) definitions repealed (E.W.) (18.10.2005 for E. and 16.3.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 107, 108, **Sch. 5 Pt. 4**; S.I. 2005/2896, **art. 3(k)**; S.I. 2006/768, **art. 2(d)**

F272 Words in s. 77(2) inserted (21.3.2000 for E.W. and 29.9.2000 for S.) by 1999 c. 24, s. 6, **Sch. 2 para. 5**; S.I. 2000/800, **art. 2**; S.S.I. 2000/322, **art. 2**

F273 S. 77(3) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), **Sch. 1 Pt. 13**

F274 S. 77(4)(6)-(9) repealed (E.W.) (18.10.2005 for E. and 16.3.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 107, 108, **Sch. 5 Pt. 4**; S.I. 2005/2896, **art. 3(k)**; S.I. 2006/768, **art. 2(d)**

Modifications etc. (not altering text)

C44 S. 77(2) extended (27.7.1999) by 1999 c. 24, **s. 4(3)(5)(8)**

Commencement Information

I33 S. 77 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**

Marginal Citations

M27 1974 c. 40.

78 This Part and radioactive substances. E+W

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 **[**[F275]Schedule 23 to the Environmental Permitting Regulations (radioactive substances activities)**]**; 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 **[**[F276]the Environmental Permitting Regulations in relation to such radioactive waste, and any Act or other enactment,**]** as the Secretary of State considers appropriate.

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

F275 Words in s. 78 substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), 107, **Sch. 26 para. 5(9)(a)** (with Sch. 4)

F276 Words in s. 78(b) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), 107, **Sch. 26 para. 5(9)(b)** (with Sch. 4)

Modifications etc. (not altering text)

C45 S. 78 applied (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), **22(7)** (with s. 22(10))

C46 S. 78 applied (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), **20(7)** (with s. 20(10))

Commencement Information

I34 S. 78 wholly in force at 13.12.1991 see s. 164(3) and S.I. 1991/2829, **art. 2**.

78 This Part and radioactive substances. 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 [M34]**[**[F325]Radioactive Substances Act 1993**]**; 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 **[**[F325]Radioactive Substances Act 1993**]** and any other Act as the Secretary of State considers appropriate.

Extent Information

E18 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F325 Words in s. 78 substituted (27.8.1993) by 1993 c. 12, s. 49(1), **Sch. 4 para.7** (with ss. 42, 46)

Modifications etc. (not altering text)

C45 S. 78 applied (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), **22(7)** (with s. 22(10))

C46 S. 78 applied (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), **20(7)** (with s. 20(10))

Commencement Information

I34 S. 78 wholly in force at 13.12.1991 see s. 164(3) and S.I. 1991/2829, **art. 2**.

Status: *Point in time view as at 22/04/2011.*
Changes to legislation: *Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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

M34 1993 c. 12

Status:
Point in time view as at 22/04/2011.

Changes to legislation:
Environmental Protection Act 1990, Part II is up to date with all changes known to be in force on or before 12 October 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.