Environmental Protection Act 1990

1990 CHAPTER 43

An Act to make provision for the improved control of pollution arising from certain industrial and other processes; to re-enact the provisions of the Control of Pollution Act 1974 relating to waste on land with modifications as respects the functions of the regulatory and other authorities concerned in the collection and disposal of waste and to make further provision in relation to such waste; to restate the law defining statutory nuisances and improve the summary procedures for dealing with them, to provide for the termination of the existing controls over offensive trades or businesses and to provide for the extension of the Clean Air Acts to prescribed gases; to amend the law relating to litter and make further provision imposing or conferring powers to impose duties to keep public places clear of litter and clean; to make provision conferring powers in relation to trolleys abandoned on land in the open air; to amend the Radioactive Substances Act 1960; to make provision for the control of genetically modified organisms; to make provision for the abolition of the Nature Conservancy Council and for the creation of councils to replace it and discharge the functions of that Council and, as respects Wales, of the Countryside Commission; to make further provision for the control of the importation, exportation, use, supply or storage of prescribed substances and articles and the importation or exportation of prescribed descriptions of waste; to confer powers to obtain information about potentially hazardous substances; to amend the law relating to the control of hazardous substances on, over or under land; to amend section 107(6) of the Water Act 1989 and sections 31(7)(a), 31A(2)(c)(i) and 32(7)(a) of the Control of Pollution Act 1974; to amend the provisions of the Food and Environment Protection Act 1985 as regards the dumping of waste at sea; to make further provision as respects the prevention of oil pollution from ships; to make provision for and in connection with the identification and control of dogs; to confer powers to control the burning of crop residues; to make provision in relation to financial or other assistance for purposes connected with the environment; to make provision as respects superannuation of employees of the Groundwork Foundation and for remunerating the chairman of the Inland Waterways Amenity Advisory Council; and for purposes connected with those purposes. [1st November 1990]

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Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

C1 Act modified (13.4.1998) by S.I. 1998/767, **reg. 3(4)**

C2 Act (with exceptions specified in the affecting S.I.): functions transferred (1.7.1999) by virtue of S.I. 1999/672, art. 2, Sch. 1 (as amended (1.10.2004 for specified purposes) by 2003 c. 37, **ss. 100(6)(7)**, 105(3); S.I. 2004/2528, **art. 2(s)** and (15.12.2006) by S.I. 2006/3334, art. 2, **Sch.**)

C3 Act applied (with modifications) (13.7.2004) by London Local Authorities Act 2004 (c. i), ss. 1(1), **28(3)**

C4 Act modified (31.5.2007) (temp.) by The St. Mary's (Isles of Scilly) Harbour Revision Order 2007 (S.I. 2007/1554), **art. 17(1)**

PART I

INTEGRATED POLLUTION CONTROL AND AIR POLLUTION CONTROL BY LOCAL AUTHORITIES

Modifications etc. (not altering text)

C5 Pt. I (ss. 1-28) modified (1.5.1994) by S.I. 1994/1056, reg. 1(3), 19, **Sch. 4 Pt. I para.8**
Pt. I (ss. 1-24): functions of River Purification Authorities tranferred (12.10.1995) to SEPA by 1995 c. 25, **s. 21(1)(a)(iii)**(with ss. 7(6), 115, 117); S.I. 1995/2649, **art.2**
Pt. I (ss. 1-24): functions of Chief Inspector for Scotland transferred (12.10.1995) to SEPA by 1995 c. 25, **s. 21(1)(d)**(with ss. 7(6), 115, 117); S.I. 1995/2649, **art.2**
Pt. I (ss. 1-24): functions of Local Authorities transferred (12.10.1995) to SEPA by 1995 c. 25, **s. 21(1)(h)**(with ss. 7(6), 115, 117); S.I. 1995/2649, **art.2**
Pt. I (ss. 1-28): functions of the Chief Inspector for England and Wales transferred (1.4.1996) to The Environment Agency by 1995 c. 25, **s. 2(1)(d)**(with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**
Pt. I (ss. 1-28) modified (1.2.1996) by 1995 c. 25, **s. 5(5)(e)**(with s. 115, 117); S.I. 1996/186, **art.2**
Pt. I (ss. 1-28) modified (1.4.1996) by 1995 c. 25, **s. 33(5)(e)**(with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**
Pt. I (ss. 1-28): power to make corresponding provisions conferred (27.7.1999) by 1999 c. 24, s. 2, **Sch. 1 Pt. I para. 20(1)(a)**

Preliminary

1 Preliminary.

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

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

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

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

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

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

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

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

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

(7) The "enforcing authority", in relation to England and Wales, is **[**F2the Environment Agency or the local authority by which**]**, under section 4 below, the functions conferred or imposed by this Part otherwise than on the Secretary of State are for the time being exercisable in relation respectively to releases of substances into the environment or into the air; and "local enforcing authority" means any such local authority.

[F3(8) In relation to Scotland, references to the "enforcing authority" and a "local enforcing authority" are references to the Scottish Environment Protection Agency (in this Part referred to as "SEPA").**]**

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

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

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

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

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

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

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

(a) any release into—

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

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

(iii) ground waters,

is a release into water;

(b) any release into—

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

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

is a release into land; and

(c) any release into a sewer (within the meaning of [F4the Water Industry Act 1991] or, in relation to Scotland, of the M2Sewerage (Scotland) Act 1968) shall be treated as a release into water;

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

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

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

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

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

[F5(14) In this Part "the appropriate Agency" means—

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

(b) in relation to Scotland, SEPA.**]**

Textual Amendments

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

F2 Words in s. 1(7) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 45(2)**(with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F3 S. 1(8) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 45(3)**(with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F4 Words in s. 1(11)(c) substituted (1. 12. 1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2, 4(2), **Sch. 1 para. 56(1)(b)**

F5 S. 1(14) added (1.4.1996) by virtue of 1995 c. 25, s. 120(1), **Sch. 22 para. 45(4)**(with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

Modifications etc. (not altering text)

C6 Definitions in s. 1 applied (E.W.) (1. 12. 1991) by Water Industry Act 1991 (c. 56, SIF 130), **ss. 138(4)(a)**, 223 (with ss. 82(3), 186(1), 222(1), Sch. 14 para. 6)
S. 1 applied (1.3.1996) by 1986 c. 44, **s. 4** (as substituted (1.3.1996) by 1995 c. 45, **s. 1**; S.I. 1996/218, **art. 2**)

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Marginal Citations

M1 1974 c. 40.

M2 1968 c. 47.

2 Prescribed processes and prescribed substances.

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

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

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

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

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

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

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

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

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

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

3 Emission etc. limits and quality objectives.

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

(2) Regulations under this subsection may—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F6(8) . . . . . .

Textual Amendments

F6 S. 3(8) repealed (2.12.1999) by 1998 c. 47, s. 100(2), **Sch. 15** (with s. 95); S.I. 1999/3209, art. 2, **Sch.**

4 Discharge and scope of functions.

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

(2) Those functions, in their application to prescribed processes designated for central control, shall be functions of **[**F7the appropriate Agency**]**, and shall be exercisable

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for the purpose of preventing or minimising pollution of the environment due to the release of substances into any environmental medium.

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

[F8(a) in the case of a prescribed process carried on (or to be carried on) by means of a mobile plant, where the person carrying on the process has his principal place of business—

(i) in England and Wales, the local authority in whose area that place of business is;

(ii) in Scotland, SEPA;

(b) in any other cases, where the prescribed processes are (or are to be) carried on—

(i) in England and Wales, the local authority in whose area they are (or are to be) carried on;

(ii) in Scotland, SEPA;**]**

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

(4) The Secretary of State may, as respects the functions under this Part being exercised by a local authority specified in the direction, direct that those functions shall be exercised instead by **[**F9the Environment Agency**]** while the direction remains in force or during a period specified in the direction.

[F10(4A) In England and Wales, a local authority, in exercising the functions conferred or imposed on it under this Part by virtue of subsection (3) above, shall have regard to the strategy for the time being published pursuant to section 80 of the Environment Act 1995.**]**

(5) A transfer of functions under subsection (4) above to **[**F11the Environment Agency**]** does not make them exercisable by **[**F11that Agency**]** for the purpose of preventing or minimising pollution of the environment due to releases of substances into any other environmental medium than the air.

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

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

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

(a) in the case of a general direction—

(i) forthwith serve notice of it on **[**F12the Environment Agency**]** and on the local enforcing authorities affected by the direction; and

(ii) cause notice of it to be published as soon as practicable in the London Gazette F13. . . and in at least one newspaper circulating in the area of each authority affected by the direction;

(b) in the case of a specific direction—

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(i) forthwith serve notice of it on **[**F12the Environment Agency**]**, the local enforcing authority and the person carrying on or appearing to the Secretary of State to be carrying on the process affected, and

(ii) cause notice of it to be published as soon as practicable in the London Gazette F13. . . and in at least one newspaper circulating in the authority's area;

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

[F14(8A) The requirements of sub-paragraph (ii) of paragraph (a) or, as the case may be, of paragraph (b) of subsection (8) above shall not apply in any case where, in the opinion of the Secretary of State, the publication of notice in accordance with that sub-paragraph would be contrary to the interests of national security.

(8B) Subsections (4) to (8A) above shall not apply to Scotland.**]**

[F15(9) It shall be the duty of local authorities to follow such developments in technology and techniques for preventing or reducing pollution of the environment due to releases of substances from prescribed processes as concern releases into the air of substances from prescribed processes designated for local control.**]**

(10) It shall be the duty of **[**F16the Environment Agency, SEPA**]** and the local enforcing authorities to give effect to any directions given to them under any provision of this Part.

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

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

(b) **[**F17in England F17. . .,**]**outside Greater London, a district council and the Council of the Isles of Scilly; F18. . .

[F19(bb) in Wales, a county council or county borough council;**]**

F18(c) . . . . . .

(12) Where, by an order under section 2 of the M3Public Health (Control of Disease) Act 1984, a port health authority has been constituted for any port health district, the port health authority shall have by virtue of this subsection, as respects its district, the functions conferred or imposed by this Part and no such order shall be made assigning those functions; and "local authority" and "area" shall be construed accordingly.

Textual Amendments

F7 Words in s. 4(2) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 46(2)**(with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F8 S. 4(3)(a)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 46(3)**(with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F9 Words in s. 4(4) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 46(4)**(with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F10 S. 4(4A) inserted (23.12.1997) by 1995 c. 25, s. 120(1), **Sch. 22 para. 46(5)** (with ss. 7(6), 115); S.I. 1997/3044, **art.2**

F11 Words in s. 4(5) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 46(6)(a)(b)**(with ss. 7(6), 115); S.I. 1996/186, **art. 3**

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F12 Words in s. 4(8) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 46(7)(a)**(with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F13 Words in s. 4(8) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 46(7)(b), **Sch. 24** (with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F14 S. 4(8A)(8B) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 46(8)**(with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F15 S. 4(9) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 46(9)**(with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F16 Words in s. 4(10) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 46(10)**(with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F17 S. 4(11)(b): words 'In England and Wales' inserted and words 'and Wales' repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 46(11)(a), **Sch. 24** (with ss. 7(6), 115); S.I. 1996/186, **art. 3** words 'In England' expressed to be inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(1)** (with s. 54(7), Sch. 17 paras. 22, 23(2)); S.I. 1996/396,art. 3, Sch. 1 (which insertion by 1994 c. 19 falls (*prosp.*) by reason of the repeal of 1994 c. 19, **Sch. 9 para. 17(1)** by 1999 c. 24, s. 6(2), **Sch. 3**)

F18 S. 4(11)(c) and the word immediately preceding it repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 46(11)(b), **Sch. 24** (with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F19 S. 4(11)(bb) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 19 para. 17(1)** (with s. 54(7), Sch. 17 paras. 22, 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

Marginal Citations

M3 1984 c. 22.

F20 5 . . . . . .

Textual Amendments

F20 S. 5 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 47, **Sch.24**; S.I. 1996/186, **art.3**

Authorisations

6 Authorisations: general provisions.

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

(2) An application for an authorisation shall be made to the enforcing authority in accordance with Part I of Schedule 1 to this Act and shall be accompanied by

[F21(a) in a case where, by virtue of section 41 of the Environment Act 1995, a charge prescribed by a charging scheme under that section is required to be paid to the appropriate Agency in respect of the application, the charge so prescribed; or

(b) in any other case,**]** the fee prescribed under section 8(2)(a) below.

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

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

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

(6) **[**F22Subject to subsection (6A) below,**]** the enforcing authority shall, as respects each authorisation in respect of which it has functions under this Part, from time to time but not less frequently than once in every period of four years, carry out a review of the conditions of the authorisation.

[F23(6A) Subsection (6) above shall not require a review of the conditions of an authorisation to be carried out if–

(a) the prescribed process covered by the authorisation is carried on in a new Part A installation or by means of a new Part A mobile plant;

(b) the prescribed process covered by the authorisation is carried on in an existing Part A installation or by means of an existing Part A mobile plant and the review would be carried out within the period of two years ending at the beginning of the relevant period for that installation or mobile plant;

(c) the prescribed process covered by the authorisation is carried on in an existing Part B installation or by means of an existing Part B mobile plant and the review would be carried out within the two year period ending on the relevant date for that installation or mobile plant.

(6B) In subsection (6A) above, "new Part A installation", "existing Part A installation", "new Part A mobile plant", "existing Part A mobile plant", "relevant period", "existing Part B installation", "existing Part B mobile plant" and "relevant date" have the meanings given in Schedule 3 to the Pollution Prevention and Control (Scotland) Regulations 2000.**]**

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

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

Textual Amendments

F21 Words in s. 6(2) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 48** (with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F22 Words in s. 6(6) inserted (E.W.) (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 Pt. 1 para. 3(a)** and inserted (S.) (28.9.2000) by S.S.I. 2000/323, reg. 36, **Sch. 10 Pt. 1 para. 3(2)(a)**

F23 S. 6(6A)(6B) inserted (E.W.) (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 Pt. 1 para. 3(b)** and inserted (S.) (28.9.2000) by S.S.I. 2000/323, reg. 36, **Sch. 10 Pt. 1 para. 3(2)(b)**

Modifications etc. (not altering text)

C7 S. 6(1) amended (13.4.1998) by S.I. 1998/767, **reg. 3(1)(2)**.

7 Conditions of authorisations.

(1) There shall be included in an authorisation—

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

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

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

but no conditions shall be imposed for the purpose only of securing the health of persons at work (within the meaning of Part I of the [M4]Health and Safety at Work etc. Act 1974).

(2) Those objectives are—

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) is one designated for central control; and

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

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

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

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

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

(9) This section has effect subject to section 28 below [F24]. . .

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

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

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

(a) section 2 of the [M5]Clean Air Act 1968;

(b) section 2 of the [M6]European Communities Act 1972;

(c) Part I of the [M7]Health and Safety at Work etc. Act 1974;

(d) Parts II, III or IV of the [M8]Control of Pollution Act 1974;

[[F25](e) the Water Resources Act 1991; **[**[F26]and**]]**

(f) section 3 of this Act **[**[F27]; **[**[F26]and**]**

(g) section 87 of the Environment Act 1995.**[**[F28] and

(h) Part 1 of the Water Environment and Water Services (Scotland) Act 2003 (asp 3).**]]**

Textual Amendments

F24 Words in s. 7(9) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 49(1), **Sch.24** (with ss. 7(6), 115); S.I. 1996/186, **art.3**

F25 S. 7(12)(e) substituted (1. 12. 1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2, 4(2), **Sch. 1 para. 56(2)**

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F26 Words in s. 7(12) omitted (S.) (1.4.2006) by virtue of The Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 (S.S.I. 2006/181), art. 2, **Sch. Pt. IV para. 5(2)(a)**

F27 S. 7(12)(g) and the word immediately preceding it added (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 49(2)**(with ss. 7(6), 115); S.I. 1996/186, **art.3**

F28 S. 7(12)(h) and preceding word inserted (S.) (1.4.2006) by The Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 (S.S.I. 2006/181), art. 2, **Sch. Pt. IV para. 5(2)(b)**

Marginal Citations

M4 1974 c. 37.
M5 1968 c. 62.
M6 1972 c. 68.
M7 1974 c. 37.
M8 1974 c. 40.

8 Fees and charges for authorisations.

(1) There shall be charged by and paid to the **[**F29local enforcing authority**]** such fees and charges as may be prescribed from time to time by a scheme under subsection (2) below (whether by being specified in or made calculable under the scheme).

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

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

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

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

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

F30(4) . . . . . .

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

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

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

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

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

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

(7) The "relevant expenditure attributable to authorisations" is the expenditure incurred by the **[**F31local enforcing authorities**]** in exercising their functions under this Part in relation to authorisations F32. . . **[**F33together with the expenditure incurred by the Environment Agency in exercising, in relation to authorisations granted by local

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enforcing authorities or the prescribed processes to which such authorisations relate, such of its functions as are specified in the scheme.**]**

(8) If it appears to the **[**F34local enforcing authority**]** that the holder of an authorisation has failed to pay a charge due in consideration of the subsistence of the authorisation, it may, by notice in writing served on the holder, revoke the authorisation.

F35(9) . . . . . .

[F36(10) The foregoing provisions of this section shall not apply to Scotland.**]**

Textual Amendments

F29 Words in s. 8(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 50(2)**(with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F30 S. 8(4) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 50(3), **Sch. 4**; S.I. 1996/186, **art. 3**

F31 Words in s. 8(7) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 50(4)** (with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F32 Words in s. 8(7) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 50(4)(b), **Sch. 24** (with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F33 Words in s. 8(7) inserted (21.3.2000) by 1999 c. 24, s. 6, **Sch. 2 para. 4**; S.I. 2000/800, **art. 2**

F34 Words in s. 8(8) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 50(5)** (with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F35 S. 8(9) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 50(6), **Sch. 24** (with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F36 S. 8(10) substituted (1.4.1996) for S. 8(10)(11) by 1995 c. 25, s. 120(1), **Sch. 22 para. 50(7)** (with ss. 7(6), 115); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C8 S. 8 applied (27.6.2000) by S.I. 2000/1460, reg. 3, **Sch. 1 para. 8**

C9 S. 8 applied (E.W.) (16.2.2007) by The Sulphur Content of Liquid Fuels (England and Wales) Regulations 2007 (S.I. 2007/79), reg. 4(5), **Sch. 1 para. 9** (with reg. 8)

9 Transfer of authorisations.

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

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

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

10 Variation of authorisations by enforcing authority.

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

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time that that section requires conditions to be included which are different from the subsisting conditions.

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

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

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

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

and, unless the notice is withdrawn **[**F37or is varied under subsection (3A) below**]**, the variations specified in a variation notice shall take effect on the date or dates so specified.

[F38(3A) An enforcing authority which has served a variation notice may vary that notice by serving on the holder of the authorisation in question a further notice—

(a) specifying the variations which the enforcing authority has decided to make to the variation notice; and

(b) specifying the date or dates on which the variations specified in the variation notice, as varied by the further notice, are to take effect;

and any reference in this Part to a variation notice, or to a variation notice served under subsection (2) above, includes a reference to such a notice as varied by a further notice served under this subsection.**]**

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

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

[F39(b) require the holder to pay, within such period as may be specified in the notice, —

(i) in a case where the enforcing authority is the Environment Agency or SEPA, the charge (if any) prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995; or

(ii) in any other case, the fee (if any) prescribed by a scheme under section 8 above.**]**

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

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

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

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

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

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

(8) In this section and section 11 below—

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

"vary"

(a) F40, in relation to the subsisting conditions or other provisions of an authorisation, means adding to them or varying or rescinding any of them;**[**F41 and

(b) in relation to a variation notice, means adding to, or varying or rescinding the notice or any of its contents;**]**

and "variation" shall be construed accordingly.

Textual Amendments

F37 Words in s. 10(3) inserted (12.10.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 51(2)** (with ss. 7(6), 115); S.I. 1995/2649, **art. 2**

F38 S. 10(3A) inserted (12.10.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 51(3)**(with ss. 7(6), 115); S.I. 1995/2649, **art. 2**

F39 S. 10(4)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 51(4)** (with ss. 7(6), 115); S.I. 1996/186, **art.3**

F40 In s. 10(8) in definition of "vary" "(a)" inserted (12.10.1995) by 1995 c. 25, s. 102(1), **Sch. 22 para. 51(5)** (with ss. 7(6), 115); S.I. 1995/2649, **art. 2**

F41 In s. 10(8) in definition of "vary" paragraph (b) and preceding word inserted (12.10.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 51(5)** (with ss. 7(6), 115); S.I. 1995/2649, **art. 2**

11 Variation of conditions etc: applications by holders of authorisations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[F42(9) Any application to the enforcing authority under this section shall be accompanied—

(a) in a case where the enforcing authority is the Environment Agency or SEPA, by the charge (if any) prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995; or

(b) in any other case, by the fee (if any) prescribed by a scheme under section 8 above.**]**

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

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

Textual Amendments

F42 S. 11(9) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para.52** (with ss. 7(6), 115); S.I. 1996/186, **art.3**

12 Revocation of authorisation.

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

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

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

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

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

Enforcement

13 Enforcement notices.

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

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(2) An enforcement notice shall—

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

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

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

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

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

[F43(4) The enforcing authority may, as respects any enforcement notice it has issued to any person, by notice in writing served on that person, withdraw the notice.**]**

Textual Amendments

F43 S. 13(4) added (12.10.1995) by virtue of 1995 c. 25, s. 120(1), **Sch. 22 para.53** (with ss. 7(6), 115); S.I. 1995/2649, **art.2**

14 Prohibition notices.

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

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

(3) A prohibition notice shall—

(a) state the authority's opinion;

(b) specify the risk involved in the process;

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

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

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

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

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

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

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

15 Appeals as respects authorisations and against variation, enforcement and prohibition notices.

(1) The following persons, namely—

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

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

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

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

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

(2) A person on whom a variation notice, an enforcement notice or a prohibition notice is served may appeal against the notice to the Secretary of State **[**F44(except where the notice implements a direction of his).**]**.

[F45(3) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).**]**

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

[F46(5) Before determining an appeal under this section, the Secretary of State may, if he thinks fit—

(a) cause the appeal to take 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); or

(b) cause a local inquiry to be held;

and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by either party to the appeal to be heard with respect to the appeal.**]**

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

(a) may affirm the decision;

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

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

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

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

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

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

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

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

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

(b) as to the manner in which appeals are to be considered.**[**F47and any such regulations may make different provision for different cases or different circumstances.**]**

Textual Amendments

F44 Words in s. 15(2) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 54(2)** (with ss. 7(6), 115): S.I. 1996/186, **art.3**

F45 S. 15(3) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 54(3)** (with ss. 7(6), 115); S.I. 1996/186, **art.3**

F46 S. 15(5) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 54(4)** (with ss. 7(6), 115); S.I. 1996/186, **art.3**

F47 Words in s. 15(10) added (1.4.1996) by virtue of 1995 c. 25, s. 120(1), **Sch. 22 para. 54(5)** (with ss. 7(6), 115); S.I. 1996/186, **art.3**

Modifications etc. (not altering text)

C10 S. 15: Power to delegate functions conferred (1.4.1996) by 1995 c. 25, **s. 114(2)(a)(iii)**(with ss. 7(6), 115); S.I. 1996/186, **art.3**
S. 15 applied (12.4.1999) by S.I. 1999/743, reg. 21(4), **Sch. 8 para. 14**

F48 16 . . . . . .

Textual Amendments

F48 S. 16 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 55, **Sch.24** (with ss. 7(2), 115); S.I. 1996/186, **art.3**

F49 17 . . . . . .

Textual Amendments

F49 S. 17 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 55, **Sch.24** (with ss. 7(6), 115); S.I. 1996/186, **art.3**

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F50 18 . . . . . .

Textual Amendments

F50 S. 18 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 55, **Sch.24**(with ss. 7(6), 115); S.I. 1996/186, **art.3**

19 Obtaining of information from persons and authorities.

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

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

(a) the Secretary of State,

(b) a local enforcing authority,

[F51(c) the Environment Agency, and

(d) SEPA,**]**

may, by notice in writing served on any person, require that person to furnish to the authority such information which the authority reasonably considers that it needs as is specified in the notice, in such form and within such period following service of the notice **[**F52, or at such time,**]** as is so specified.

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

Textual Amendments

F51 S. 19(2)(c)(d) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 56(a)** (with ss. 7(6), 115); S.I. 1996/186, **art.3**

F52 Words in s. 19(2) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 56(b)** (with ss. 7(6), 115); S.I. 1996/186, **art.3**

Publicity

20 Public registers of information.

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

(a) applications for authorisations made to that authority;

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

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

(d) revocations of authorisations effected by that authority;

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(e) appeals under section 15 above;

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

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

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

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

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

(2) Subject to subsection (4) below, the register maintained by a local enforcing authority **[**F53in England and Wales**]** shall also contain prescribed particulars of such information contained in any register maintained by **[**F54the Environment Agency**]** as relates to the carrying on in the area of the authority of prescribed processes in relation to which **[**F54the Environment Agency**]** has functions under this Part; and **[**F54the Environment Agency**]** shall furnish each authority with the particulars which are necessary to enable it to discharge its duty under this subsection.

F55(3) . . . . . .

(4) Subsection (2) above does not apply to port health authorities but each local enforcing authority **[**F56in England and Wales**]** whose area adjoins that of a port health authority shall include corresponding information in the register maintained by it; and **[**F57the Environment Agency**]** shall furnish each such local enforcing authority with the particulars which are necessary to enable it to discharge its duty under this subsection.

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

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

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

(a) to secure that the registers maintained by them under this section are available, at all reasonable times, for inspection by the public free of charge; and (b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges.**[**F58and, 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.**]**

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

F59(9) . . . . . .

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

Textual Amendments

F53 Words in s. 20(2) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 57(2)**(with ss. 7(6), 115); S.I. 1996/186, **art.3**

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F54 Words in s. 20(2) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 57(2)**(with ss. 7(6), 115); S.I. 1996/186, **art.3**

F55 S. 20(3) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 57(3), **Sch.24**(with ss. 7(6), 115); S.I. 1996/186, **art.3**

F56 Words in s. 20(4) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 57(4)**(with ss. 7(6), 115); S.I. 1996/186, **art.3**

F57 Words in s. 20(4) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 57(4)**(with ss. 7(6), 115); S.I. 1996/186, **art.3**

F58 Words in s. 20(7) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 57(5)**(with ss. 7(6), 115); S.I. 1996/186, **art.3**

F59 S. 20(9) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 57(6), **Sch.24**(with ss. 7(6), 115); S.I. 1996/186, **art.3**

21 Exclusion from registers of information affecting national security.

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

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

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

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

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

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

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

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

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

Modifications etc. (not altering text)

C11 S. 21(1)(2)(4): functions exercisable concurrently (1.7.1999) by the Scottish Ministers and Ministers of the Crown after consultation with the Secretary of State by S.I. 1999/1750, art. 3, **Sch. 2**

22 Exclusion from registers of certain confidential information.

(1) No information relating to the affairs of any individual or business shall be included in a register maintained under section 20 above, without the consent of that individual

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or the person for the time being carrying on that business, if and so long as the information—

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

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

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

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

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

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

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

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

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

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

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

(b) give him a reasonable opportunity—

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

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

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

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

(a) the information shall not be entered **[**F60in 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 **[**F61in the register until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn**]**.

[F62(6) Subsections (5) and (10) of section 15 above shall apply in relation to an appeal under subsection (5) above as they apply in relation to an appeal under that section, but—

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(a) subsection (5) 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 enforcing authorities directions as to specified information, or descriptions of information, which the public interest requires to be included in registers maintained under section 20 above notwithstanding that the information may be commercially confidential.

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

F60 Words in s. 22(5)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 58(2)(a)**(with ss. 7(6), 115); S.I. 1996/186, **art.3**

F61 Words in s. 22(5) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 58(2)**(with ss. 7(6), 115); S.I. 1996/186, **art.3**

F62 S. 22(6) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22**, para. 58(3)(with ss. 7(6), 115); S.I. 1996/186, **art.3**

Modifications etc. (not altering text)

C12 S. 22 applied (12.4.1999) by S.I. 1999/743, reg. 21(4), **Sch. 8 para. 14**

C13 S. 22(5) Power to delegate functions conferred (1.4.1996) by 1995 c. 25, **s. 114(2)(a)(iii)**(with ss. 7(6), 115); S.I. 1996/186, **art.3**

Provisions as to offences

23 Offences. E+W

(1) It is an offence for a person—

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

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

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

F63(d) . . . . . .

F63(e) . . . . . .

F63(f) . . . . . .

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

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

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

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

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

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

F63(k) . . . . . .

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

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

(a) on summary conviction, to a fine not exceeding £20,000 **[**F64or to imprisonment for a term not exceeding three months, or to both**]**;

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

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

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

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

F65(4) . . . . . .

F66(5) . . . . . .

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

F63 S. 23(1)(d)-(f)(k) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 59(2), **Sch. 24** (with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F64 Words in s. 23(2)(a) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 59(3)** (with ss. 7(6), 115); S.I. 1996/186, **art. 3**

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F65 S. 23(4) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 59(4), **Sch. 24** (with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F66 S. 23(5) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), **Sch. 22** par. 59(5), Sch. 24 (with ss. 7(6), 115); S.I. 1996/186, **art. 3**

23 Offences. S

(1) It is an offence for a person—

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

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

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

F63(d) . . . . . .

F63(e) . . . . . .

F63(f) . . . . . .

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

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

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

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

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

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

F63(k) . . . . . .

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

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

(a) on summary conviction, to a fine not exceeding **[**F788£40,000**][**F64or to imprisonment for a term not exceeding three months, or to both**]**;

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

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

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

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

F65(4) . . . . . .

F66(5) . . . . . .

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Extent Information

E41 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F63 S. 23(1)(d)-(f)(k) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 59(2), **Sch. 24** (with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F64 Words in s. 23(2)(a) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 59(3)** (with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F65 S. 23(4) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 59(4), **Sch. 24** (with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F66 S. 23(5) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), **Sch. 22** par. 59(5), Sch. 24 (with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F788 Words in s. 23(2)(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(2)**; S.S.I. 2004/420, **art. 3**, Sch. 1

24 Enforcement by High Court.

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

25 Onus of proof as regards techniques and evidence.

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

(2) Where—

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

(b) the entry has not been made;

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

[F67(3) Subsection (2) above shall not have effect in relation to any entry required to be made in any record by virtue of a condition of a relevant licence, within the meaning of section 111 of the Environment Act 1995 (which makes corresponding provision in relation to such licences).**]**

Textual Amendments

F67 S. 25(3) inserted (1.4.1996) by 1995 c. 25, **s. 111(6)**(with ss. 7(6), 115); S.I. 1996/186, **art. 3**

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26 Power of court to order cause of offence to be remedied.

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

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

(3) Where a person is ordered under subsection (1) above to remedy any matters, that person shall not be liable under section 23 above in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed under subsection (2) above.

27 Power of chief inspector to remedy harm.

(1) Where the commission of an offence under section 23(1)(a) or (c) above causes any harm which it is possible to remedy, **[**F68the appropriate Agency**]** may, subject to subsection (2) below—

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

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

(2) **[**F69The Environment Agency or SEPA, as the case may be, shall not exercise its**]** powers under this section except with the approval in writing of the Secretary of State and, where any of the steps are to be taken on or will affect land in the occupation of any person other than the person on whose land the prescribed process is being carried on, with the permission of that person.

Textual Amendments

F68 Words in s. 27(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 60(1)**(with ss. 7(6), 115); S.I. 1996/186, **art.3**

F69 Words in s. 27(2) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 60(2)**(with ss. 7(6), 115); S.I. 1996/186, **art. 3**

Authorisations and other statutory controls

28 Authorisations and other statutory controls.

(1) No condition shall at any time be attached to an authorisation so as to regulate the final disposal by deposit in or on land of controlled waste (within the meaning of Part II), nor shall any condition apply to such a disposal; F70. . .

(2) Where any of the activities comprising a prescribed process are regulated both by an authorisation granted by the enforcing authority under this Part and by a registration or authorisation under the M9**[**F71Radioactive Substances Act 1993**]**, then, if different obligations are imposed as respects the same matter by a condition attached to the authorisation under this Part and a condition attached to the registration or

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authorisation under that Act, the condition imposed by the authorisation under this Part shall be treated as not binding the person carrying on the process.

F72(3) . . . . . .

F72(4) . . . . . .

Textual Amendments

F70 Words in s. 28(1) repealed (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 61(1), **Sch. 24**(with ss. 7(6), 115); S.I. 1996/186, **art. 3**

F71 Words in s. 28(2) substituted (27.8.1993) by 1993 c. 12, s. 49(1), **Sch. 4 para. 6** (with ss. 42, 46)

F72 S. 28(3)(4) repealed (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 61(2), **Sch.24**(with ss. 7(6), 115); S.I. 1996/186, **art.3**

Marginal Citations

M9 1993 C. 12

PART II

WASTE ON LAND

Modifications etc. (not altering text)

C14 Pt. II (ss. 29-78) amended: (1.4.1992) by S.I. 1992/588, **reg. 8**; (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 para. 9** (as amended (E.W.) (15.5.3006) by S.I. 2006/937, **reg. 6(10)(a)**)
Pt. II (ss. 29-78) modified: (1.2.1996) by 1995 c. 25, **s. 5(5)(e)** (with ss. 7(6), 115, 117) and S.I. 1996/186, **art.2**; (1.4.1996) by 1995 c. 25, **s. 33(5)(e)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
Pt. II (ss. 29-78): certain functions transferred on transfer date (1.4.1996) by 1995 c. 25, **ss. 2(1)(b)(ii)**, 21(1)(b)(ii), 56(1) (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**, S.I. 1995/2649, art. 2 and S.I. 1995/1983, **art. 2** (by which respectively s. 56 is in force from 28.7.1995, s. 21 is in force from 12.10.1995 and s. 2 is in force from 1.4.1996); S.I. 1996/136, **art. 2**; S.I. 1996/234), art. 2 (specifying transfer date)
Pt. II (ss. 29-78) extended (1.4.1996) by 1995 c. 25, s. 120(2), **Sch. 23 para. 13** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Commencement Information

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

Preliminary

29 Preliminary.

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

[F73(1A) "Appropriate person" means—

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

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(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 is treated,

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

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

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

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

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

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

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

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

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

(9) "Mobile plant" means, **[**F74subject to subsection (10) below,**]** plant which is designed to move or be moved whether on roads or other land.

(10) **[**F75Regulations 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.

[F76(12) "The 2007 Regulations" means the Environmental Permitting (England and Wales) Regulations 2007.

(13) The following expressions have the same meaning as in the 2007 Regulations—

"environmental permit";

"exempt waste operation";

"waste operation".**]**

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Textual Amendments

F73 S. 29(1A) inserted (E.W.) (7.4.2005) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **s. 51**

F74 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)

F75 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)

F76 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)

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.

[[F77](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;

[[F78](f) for any county or county borough in Wales, the council of the county or county borough;**]**

(g) in Scotland, **[**[F79]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—

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(a) for any district in England [F80]. . . 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;

[[F81](bb) for any county or county borough in Wales, the council of the county or county borough;**]**

(c) in Scotland, **[**[F82]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 [F83]. . . are references to their having been so constituted by the [M10]Waste Regulation and Disposal (Authorities) Order 1985 made by the Secretary of State under section 10 of the [M11]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 [F84]. . ..

(5) **[**[F85]In this Part "waste disposal contractor" means a person who in the course of a business collects, keeps, treats or disposes of waste, being either—

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

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

and "company" has the same meaning as in the [M12]Companies Act 1985 and "formed", in relation to a company formed by other persons, includes the alteration of the objects of the company.**]**

[F86](6) . . . . . .

[F86](7) . . . . . .

[F86](8) . . . . . .

Textual Amendments

F77 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**

F78 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**

F79 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)**

F80 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**

F81 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**

F82 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)**

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F83 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)

F84 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**

F85 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))

F86 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

M10 S.I. 1985/1884.

M11 1985 c. 51.

M12 1985 c. 6.

F87 31 . . . . . .

Textual Amendments

F87 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.

F88 . . . . . .

Textual Amendments

F88 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 **[**F89subsections (1A), (1B), (2) and (3) below**]** and, in relation to Scotland, to section 54 below, a person shall not—

(a) deposit controlled waste, or knowingly cause or knowingly permit controlled waste to be deposited in or on any land unless **[**F90an environmental permit**]**

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authorising the deposit is in force and the deposit is in accordance with the licence;

[F91(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 in a manner likely to cause pollution of the environment or harm to human health.

[F92(1A) Paragraphs (a) and (b) of subsection (1) above do not apply in relation to a waste operation that is an exempt waste operation.

(1B) Subsection (1) does not apply in relation to the carrying on of any of the following activities—

(a) the disposal of liquid waste under a consent under Chapter 2 of Part 3 of the Water Resources Act 1991;

(b) a waste operation which is or forms part of an operation which—

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

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

(c) the disposal of agricultural waste in or on land under an authorisation under regulation 18 of the Groundwater Regulations 1998.**]**

[F93(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 **[**F94the 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 F95. . . commits an offence.

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(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) F96 . . . . . .

[F97(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.**]**

[F98(8) A person who commits an offence under this section is liable—

(a) **[**F99Subject 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.**]**

[F100F101(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.

[F102(11) For the purposes of subsection (1)(a) above, the deposit of waste in or on land includes 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 Annex IIA or IIB of Directive 2006/12/EC of the European Parliament and of the Council on waste**]]**

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

F89 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)

F90 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)

F91 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)

F92 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)

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F93 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)**

F94 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)

F95 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)

F96 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))

F97 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**

F98 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))

F99 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)**

F100 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)**

F101 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"

F102 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)

Modifications etc. (not altering text)

C15 S. 33 restricted (E.) (13.4.2001) by S.I. 2001/1478, **reg. 3(b)**

C16 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)

C17 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**

C18 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**

C19 S. 33(5) amended (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 Pt. I para. 9(3)**

C20 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**)

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

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

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

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Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

(i) in or on any land, or

(ii) by means of any mobile plant,

except under and in accordance with a waste management licence;

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

[F789(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.**]**

(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.

(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

[F790(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) **[**F791or (10)**]** below, a person who commits an offence under this section shall be liable—

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(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding **[**F792£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 **[**F793(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 **[**F792£40,000**]** or both;

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

[F794(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

E42 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F789 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)**

F790 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**

F791 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)**

F792 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

F793 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)**

F794 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)

C150 S. 33 restricted (E.) (13.4.2001) by S.I. 2001/1478, **reg. 3(b)**

C151 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**

C152 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)**

C153 S. 33(5) amended (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 Pt. I para. 9(3)**

C154 S. 33(6) restricted (27.7.1999) by 1999 c. 24, **s. 4(7)(8)**

Commencement Information

I97 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;

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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**)

[F103 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.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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(10) The Scottish Ministers may by order substitute a different amount (not exceeding level 2 on the standard scale) for the amount for the time being specified as the amount of the fixed penalty in subsection (9) above.

(11) In any proceedings a certificate which—

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

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

shall be evidence of the facts stated.

(12) A fixed penalty payable in pursuance of a notice under this section shall be payable to the local authority in whose area the offence was committed; and as respects the sums received by a local authority, those sums shall **[**F104accrue 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

F103 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

F104 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.

[F795**33A Section 33 offences: investigation and enforcement costs** E+W

[F796(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 regulation 38(1)(a) of the 2007 Regulations, in respect of a 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.

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(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

F795 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)**

F796 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)

[F105**33B Section 33 offences: clean-up costs**

[F106(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;

(b) under regulation 38(1)(a) of the 2007 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) **[**F107Subject 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).

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[Subsection (5) above does not apply where a person (other than an establishment F108(6) or undertaking) is convicted of a relevant offence within the meaning of section 33 above.**]]**

Textual Amendments

F105 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)**

F106 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)

F107 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)**

F108 S. 33B(6) inserted (15.5.2006) by The Waste Management (England and Wales) Regulations 2006 (S.I. 2006/937), **reg. 2(3)(b)**

[F109 33C Section 33 offences: forfeiture of vehicles

[F110 (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 regulation 38(1)(a) of the 2007 Regulations in respect of a contravention of regulation 12 of those Regulations consisting of the disposal of waste.**]**

[This section does not apply where a person (other than an establishment or F111(1A) 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;

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

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

(d) whether, in a case where it appears to the court that the offender is engaged in a business which consists wholly or partly in activities which are unlawful by virtue of section 33 above, **[**F112or regulation 38(1)(a) or 38(1)(b) of the 2007 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

F109 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)**

F110 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)

F111 S. 33C(1A) inserted (15.5.2006) by The Waste Management (England and Wales) Regulations 2006 (S.I. 2006/937), **reg. 2(4)(b)**

F112 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)

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, as a broker, has control of such waste, to take all such measures applicable to him in that capacity as are reasonable in the circumstances—

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

[F113**[**F114(aa) to prevent any contravention by any other person of regulation 12 of the 2007 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

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(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 **[**F115or regulation 12 of the 2007 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.

(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.

[F116(2A) It shall be the duty of the occupier of any domestic property in England **[**F117or 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 **[**F118purposes of subsections (1)(c) and (2A)**]** above—

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

[F119(b) any person who is the holder of an environmental permit in relation to a waste operation;**]**

[F120(ba) any person who is carrying on an exempt waste operation;**]**

(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 M13 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.

[F121(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 **[**F122subsections (1)(c) and (2A)**]** above.**]**

(4) The following are authorised transport purposes for the purposes of **[**F123subsections (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.

[F124(4A) For the purposes of subsection (1)(c)(ii) above—

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(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) **[**F125or (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) **[**F126A**]** code of practice prepared in pursuance of subsection (7) above shall be laid **[**F127(a)**]** before both Houses of Parliament **[**F128; 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

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

Textual Amendments

F113 S. 34(1)(aa) inserted (E.W.) (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 Pt. 1 para. 4(a)**

F114 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)

F115 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)

F116 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)**

F117 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)**

F118 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)**

F119 S. 34(3)(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. 8(4)} (with reg. 72, Sch. 4)

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F120 S. 34(3)(ba) inserted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), **reg. 73**, {Sch. 21, para. 8(5)} (with reg. 72, Sch. 4)
F121 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**
F122 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)**
F123 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)**
F124 S. 34(4A) inserted (*retrospectively*) by 1994 c. 40, **s. 33(1)** (with s. 33(2))
F125 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)**
F126 Word in s. 34(9) substituted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 102(2)(a)**
F127 S. 34(9): "(a)" inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 102(2)(b)**
F128 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)
C21 S. 34 restricted (E.) (13.4.2001) by S.I. 2001/1478, **reg. 3(b)**
C22 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
M13 1989 c. 14.

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, 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;

[[F797]**[**
[F113](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; 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 **[**[F798]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.

[[F799](2) An occupier of domestic property–

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(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.**]**

(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 **[**F800or of a disposal licence under section 5 of the Control M150of Pollution Act 1974;**]**

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

(d) any person registered as a carrier of controlled waste under section 2 of M13 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.

[F121(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.

[F124(4A) For the purposes of subsection (1)(c)(ii) above—

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

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

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

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

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

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

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(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) **[**[F126]A**]** code of practice prepared in pursuance of subsection (7) above shall be laid **[**[F127](a)**]** before both Houses of Parliament **[**[F128]; 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

E43 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F113 S. 34(1)(aa) inserted (E.W.) (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 Pt. 1 para. 4(a)**

F121 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**

F124 S. 34(4A) inserted (*retrospectively*) by 1994 c. 40, **s. 33(1)** (with s. 33(2))

F126 Word in s. 34(9) substituted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 102(2)(a)**

F127 S. 34(9): "(a)" inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 102(2)(b)**

F128 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)**

F797 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)**

F798 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)**

F799 S. 34(2) substituted (S.) (21.1.2005) by The Waste (Scotland) Regulations 2005 (S.S.I. 2005/22), regs. 1, **3(3)**

F800 Words repealed (*prosp.*) by Environmental Protection Act 1990 (c. 43, SIF 46:4), ss. 162(2), 164(3), **Sch. 16 Pt. II**

Modifications etc. (not altering text)

C22 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

M13 1989 c. 14.

M150 1974 c. 40.

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[F129 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

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(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

F129 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**

***[F130**Offences under sections 33 and 34: powers of seizure etc*

Textual Amendments

F130 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) **[**F131a relevant offence**]** has been committed **[**F132, or an offence under regulation 38(1)(a) or (b) of the 2007 Regulations has been committed in relation to a waste operation**]**

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

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

(3) The grounds in this subsection are that—

(a) **[**F131a relevant offence**]** is being or is about to be committed, **[**F133or an offence under regulation 38(1)(a) or (b) of the 2007 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);

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(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;

[[F134]"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.

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Textual Amendments

F131 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)**

F132 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)

F133 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)

F134 In s. 46(1) in the new s. 34B to be inserted in the 1990 Act definition of "relevant offence" inserted (21.11.2005) by The Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005 (S.I. 2005/2900), **reg. 3(3)**

34C Seizure of vehicles etc: supplementary

(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.**]**

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Waste Management Licences

35 Waste management licences: general.

[F135(1) A waste management licence is a licence granted by a waste regulation authority authorising the treatment, keeping or disposal of any specified description of controlled waste in or on specified land or the treatment or disposal of any specified description of controlled waste by means of specified mobile plant.

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

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

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

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

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

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

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.

[F136(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.

F136(7B) Any person who—

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

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(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.

F136(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 **[**F137it 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.

[F138(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

F135 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)

F136 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**

F137 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)**

F138 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)

C23 S. 35 amended (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 Pt. I para. 9(5)**

C24 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

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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**)

[F139 35A Compensation where rights granted pursuant to section 35(4) or 38(9A).

[F140 (1) This section applies in any case where—

(a) the holder of a licence is required—

(i) by the conditions of the licence; or

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

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

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

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

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

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

(4) The Secretary of State may by regulations—

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

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

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

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

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

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

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

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

is to be determined;

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

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

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

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(h) make provision similar to any provision made by paragraph 8 of Schedule 19 to the [M14]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

F139 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**

F140 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)

C25 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

M14 1991 c. 28.

36 Grant of licences. E+W

F141 . . . . . .

Extent Information

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

Textual Amendments

F141 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;

[[F801]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.

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F801(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 M151Town and Country Planning Act 1990 or the M152Town 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 **[**F802the appropriate planning authority**]** and the Health and Safety Executive; and

(b) consider any representations about the proposal which the **[**F802authority**]** or the Executive makes to it during the allowed period.

F803(5) . . . . . .

F803(6) . . . . . .

(7) Where any part of the land to be used is **[**F804within 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 **[**F805Natural England**]**, **[**F806Scottish 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

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applicant that the authority has rejected the application, the authority shall be deemed to have rejected the application.

F807[(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.]

F808[(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 M153Local Government etc. (Scotland) Act 1994 for the area in which the land is situated;

"the Broads" has the same meaning as in the M154Norfolk and Suffolk Broads Act 1988;

"National Park authority", F809. . . 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.

F810(12) . . . . . .

(13) The Secretary of State may by regulations amend the definition of "appropriate planning authority" in subsection (11) above.

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(14) This section shall have effect subject to section 36A below.**]**

Extent Information

E44 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F801 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**.

F802 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**

F803 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**

F804 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**

F805 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**

F806 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**

F807 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**.

F808 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)

F809 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.**

F810 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)

C155 S. 36(2)(a) extended (S.) (27.5.1997) by 1997 c. 8, **ss. 150(7)(c)**, 278(2)

C156 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

I98 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

M151 1990 c. 8.
M152 1972 c. 52.
M153 1994 c. 39.
M154 1988 c. 4.

[[F142]**36A Consultation before the grant of certain licences.**

[[F143](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

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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

(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

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public or municipal land includes the persons to whom the management of the land is entrusted.**]]**

Textual Amendments

F142 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**

F143 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.

[F144(1) While a licence issued by a waste regulation authority is in force, the authority may, subject to regulations under section 35(6) above and to subsection (3) below,—

(a) on its own initiative, modify the conditions of the licence to any extent which, in the opinion of the authority, is desirable and is unlikely to require unreasonable expense on the part of the holder; and

(b) on the application of the licence holder accompanied by **[**F145the 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.

(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), F146. . . (7), F146. . .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.

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(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.

[F147(7) This section shall have effect subject to section 37A below.**]]**

Textual Amendments

F144 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)

F145 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**

F146 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**

F147 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)

C26 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)**

C27 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)

C28 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**)

[F148**37A Consultation before certain variations.**

[F149(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.

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(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

F148 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**

F149 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)

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Modifications etc. (not altering text)

C29 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)**

C30 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

F150 . . . . . .

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

F150 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.

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

(5) A licence revoked under subsection (3) above shall cease to have effect to authorise the carrying on of the activities specified in the licence or, as the case may be, the activities specified by the authority in revoking the licence but shall not affect the requirements imposed by the licence which the authority, in revoking the licence, specify as requirements which are to continue to bind the licence holder.

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Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

(a) that the holder of the licence has ceased to be a fit and proper person by reason of the management of the activities authorised by the licence having ceased to be in the hands of a technically competent person; or

(b) that serious pollution of the environment or serious harm to human health has resulted from, or is about to be caused by, the activities to which the licence relates or the happening or threatened happening of an event affecting those activities; and

(c) that the continuing to carry on those activities, or any of those activities, in the circumstances will continue or, as the case may be, cause serious pollution of the environment or serious harm to human health;

the authority may suspend the licence so far as it authorises the carrying on of the activities specified in the licence or such of them as the authority specifies in suspending the licence.

(7) The Secretary of State may, if he thinks fit in relation to a licence granted by a waste regulation authority, give to the authority directions as to whether and in what manner the authority should exercise its powers under this section; and it shall be the duty of the authority to give effect to the directions.

(8) A licence suspended under subsection (6) above shall, while the suspension has effect, be of no effect to authorise the carrying on of the activities specified in the licence or, as the case may be, the activities specified by the authority in suspending the licence.

(9) Where a licence is suspended under subsection (6) above, the authority, in suspending it or at any time while it is suspended, may require the holder of the licence to take such measures to deal with or avert the pollution or harm as the authority considers necessary.

[[F811](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)

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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.

[F812(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

E45 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F811 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**

F812 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)

C157 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)
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)

C158 S. 38(10)(11) restricted (27.7.1999) by 1999 c. 24, **s. 4(7)(8)**

C159 S. 38(12) modified (27.7.1999) by 1999 c. 24, **s. 4(6)(b)(8)**

Commencement Information

I99 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

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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.

[F151(1) A licence may be surrendered by its holder to the authority which granted it but, in the case of a site licence, only if the authority accepts the surrender.

(2) The following provisions apply to the surrender and acceptance of the surrender of a site licence.

(3) The holder of a site licence who desires to surrender it shall make an application for that purpose to the authority **[**F152on 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 licence relates, and

(b) may require the holder of the licence to furnish to it further information or further evidence.

(5) The authority shall determine whether it is likely or unlikely that the condition of the land, so far as that condition is the result of the use of the land for the treatment, keeping or disposal of waste (whether or not in pursuance of the licence), will cause pollution of the environment or harm to human health.

(6) If the authority is satisfied that the condition of the land is unlikely to cause the pollution or harm mentioned in subsection (5) above, the authority shall, subject to subsection (7) below, accept the surrender of the licence; but otherwise the authority shall refuse to accept it.

(7) Where the authority proposes to accept the surrender of a site licence, the authority must, before it does so,—

(a) refer the proposal to **[**F153the appropriate planning authority**]**; and

(b) consider any representations about the proposal which **[**F153the appropriate planning authority**]** makes to it during the allowed period;

F154 . . .

F155(8) . . . . . .

(9) Where the surrender of a licence is accepted under this section the authority shall issue to the applicant, with the notice of its determination, a certificate (a "certificate of completion") stating that it is satisfied as mentioned in subsection (6) above and, on the issue of that certificate, the licence shall cease to have effect.

(10) If within the period of three months beginning with the date on which an authority receives an application to surrender a licence, or within such longer period as the authority and the applicant may at any time agree in writing, the authority has neither issued a certificate of completion nor given notice to the applicant that the authority has rejected the application, the authority shall be deemed to have rejected the application.

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(11) Section 36(10) above applies for the interpretation of the "allowed period" in **[**F156subsection (7) above**]**.

[F157(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 M15Local Government etc. (Scotland) Act 1994 for the area in which the land is situated;

"the Broads" has the same meaning as in the M16Norfolk and Suffolk Broads Act 1988;

"National Park authority", F158. . . 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.

F159(13) . . . . . .

F157(14) The Secretary of State may by regulations amend the definition of "appropriate planning authority" in subsection (12) above.**]]**

Textual Amendments

F151 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)

F152 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**.

F153 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**

F154 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**

F155 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**

F156 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**

F157 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**

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F158 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.

F159 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)

C31 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

M15 1994 c. 39.

M16 1988 c. 4.

40 Transfer of licences.

[F160(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.

(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 **[**F161on 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) The authority shall effect a transfer of a licence under the foregoing provisions of this section by causing the licence to be endorsed with the name and other particulars of the proposed transferee as the holder of the licence from such date specified in the endorsement as may be agreed with the applicants.

(6) If within the period of two months beginning with the date on which the authority receives an application for the transfer of a licence, or within such longer period as the authority and the applicants may at any time agree in writing, the authority has neither effected a transfer of the licence nor given notice to the applicants that the

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authority has rejected the application, the authority shall be deemed to have rejected the application.**]**

Textual Amendments

F160 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)

F161 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**.

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**)

F162 41 . . . . . .

Textual Amendments

F162 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.

[F163(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.

F164(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 **[**F165the holder, 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.

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(5) Where it appears to a waste regulation authority that a condition of a licence granted by it is not being complied with **[**F166or is likely not to be complied with,**]** then, without prejudice to any proceedings under section 33(6) above, the authority may—

[F167(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 **[**F168has 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.

[F169(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, **[**F170subsections (5) and (12) 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; F171. . .

(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

F163 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)

F164 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**

F165 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**

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F166 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**

F167 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**

F168 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**

F169 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**

F170 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)

F171 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)

C32 S. 42 modified (27.7.1999) by 1999 c. 24, **s. 4(6)(c)(8)**

C33 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.

[F172(1) Where, except in pursuance of a direction given by the Secretary of State,—

(a) an application for a licence or a modification of the conditions of a licence is rejected;

(b) a licence is granted subject to conditions;

(c) the conditions of a licence are modified;

(d) a licence is suspended;

(e) a licence is revoked under section 38 or 42 above;

(f) an application to surrender a licence is rejected; or

(g) an application for the transfer of a licence is rejected;

then, except in the case of an application for a transfer, the applicant for the licence or, as the case may be, the holder or former holder of it may appeal from the decision to the Secretary of State and, in the case of an application for a transfer, the proposed transferee may do so.

(2) Where an appeal is made to the Secretary of State—

F173(a) . . . . . .

F173(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).

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[[F174](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

F172 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)

F173 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**

F174 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**

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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Modifications etc. (not altering text)

C34 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**)

[F175 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, **[**F176 or**]** will need corrections

(b) **[**F177 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) **[**F178 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

F175 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**

F176 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)

F177 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)

F178 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**)

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[F179 Integrated waste management plans: Scotland

Textual Amendments

F179 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 **[**F180national 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);

[F181"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.**]**

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Textual Amendments

F180 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)**

F181 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—

(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

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(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

[F182 44A National waste strategy: England and Wales.

(1) The Secretary of State shall as soon as possible prepare a statement ("the strategy") containing his policies in relation to the recovery and disposal of waste in England and Wales.

(2) The strategy shall consist of or include—

(a) a statement which relates to the whole of England and Wales; or

(b) two or more statements which between them relate to the whole of England and Wales.

(3) The Secretary of State may from time to time modify the strategy.

(4) Without prejudice to the generality of what may be included in the strategy, the strategy must include—

(a) a statement of the Secretary of State's policies for attaining the objectives specified in Schedule 2A to this Act;

(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—

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(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.

[The Environment Agency shall publicise any direction given to it under subsection (6) [F183](8A) above in such manner as it considers appropriate.**]**

(9) In this section—

"local planning authority" has the same meaning as in the [M17]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 [M18]directive of the Council of the European Communities, dated 15th July 1975, on waste, as amended by—

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(a) the [M19]directive of that Council, dated 18th March 1991, amending directive 75/442/EEC on waste; and

(b) the [M20]directive of that Council, dated 23rd December 1991, standardising and rationalising reports on the implementation of certain Directives relating to the environment.**]**

Textual Amendments

F182 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**

F183 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)

Modifications etc. (not altering text)

C35 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

M17 1990 c. 8.

M18 91/692/EEC.

M19 91/156/EEC.

M20 75/442/EEC.

[F184]44B National waste strategy: Scotland.

[[F185](1) SEPA shall as soon as possible prepare a statement ("the strategy") containing its policies in relation to the recovery and disposal of waste in Scotland.

(2) SEPA may from time to time modify the strategy.

(3) Without prejudice to the generality of what may be included in the strategy, the strategy must include—

(a) a statement of SEPA's policies for attaining the objectives specified in Schedule 2A to this Act;

(b) provisions relating to each of the following, that is to say—

(i) the type, quantity and origin of waste to be recovered or disposed of;

(ii) general technical requirements; and

(iii) any special requirements for particular wastes.

(4) In preparing the strategy or any modification of it SEPA shall consult—

(a) such bodies or persons appearing to it to be representative of the interests of industry as it may consider appropriate;

(b) such local authorities as appear to it to be likely to be affected by the strategy or modification,

and may consult such other bodies or persons as it considers appropriate.

(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,

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(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 [M21]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 [M22]directive of the Council of the European Communities dated 15th July 1975 on waste, as amended by—

(a) the [M23]directive of that Council dated 18th March 1991 amending directive 75/442/EEC on waste; and

(b) the [M24]directive of that Council dated 23rd December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment.**]**

Textual Amendments

F184 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**

F185 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)

C36 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

M21 1973 c. 65.

M22 91/692/EEC.

M23 91/156/EEC.

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M24 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.

(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;

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(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 [M25]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—

[[F186](a) the said section 2 conferred a power on a waste collection authority rather than a duty on **[**[F187]Scottish Water**]** ;

(b) in the said section 3—

(i) references to **[**[F187]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 **[**[F187]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 **[**[F187]Scottish Water**]** were a reference to a waste collection authority,**]**

and the [M26]Pipe-lines Act 1962 shall not apply to pipes and associated works provided or to be provided under the said subsection (7)(a).

[[F188](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.

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Textual Amendments

F186 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)**

F187 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)**

F188 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

M25 1968 c. 47.

M26 1962 c. 58.

[F189 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

F189 S. 45A inserted (E.W.) (30.12.2003) by Household Waste Recycling Act 2003 (c. 29), **ss. 1**, 5(2)

[F190 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

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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

F190 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.

[F191(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 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;

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(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), **[**F192(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) **[**F193or (1A)**]**above.

[F194(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.**]**

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Textual Amendments

F191 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))

F192 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))

F193 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))

F194 S. 46(11) inserted (E.W.) (26.1.2009) by Climate Change Act 2008 (c. 27), **ss. 76**, 100

Modifications etc. (not altering text)

C37 S. 46 applied (with modifications) (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), **19**

C38 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.

(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—

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(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)

C39 S. 47 applied (with modifications) (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), **21**

C40 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**.

[F195 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—

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(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

F195 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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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

F195 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**

[F196 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.**]**

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Textual Amendments

F196 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.

[F197(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 F198. . . arrangements, as respects household waste or commercial waste in its area or any part of its area, F198. . . 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 F199. . . provide plant and equipment for the sorting and baling of waste retained by the authority under subsection (2) above.

(7) F200. . . . . .

(8) A waste collection authority may permit another person to use facilities provided by the authority under subsection (6) above and may provide for the use of another person any such facilities as the authority has power to provide under that subsection; and—

(a) subject to paragraph (b) below, it shall be the duty of the authority to make a reasonable charge in respect of the use by another person of the facilities, unless the authority considers it appropriate not to make a charge;

(b) no charge shall be made under this subsection in respect of household waste; and

(c) anything delivered to the authority by another person in the course of using the facilities shall belong to the authority and may be dealt with accordingly.

(9) This section shall not apply to Scotland.

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Textual Amendments

F197 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**

F198 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)**

F199 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)**

F200 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.

F201 . . . . . .

Textual Amendments

F201 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**

F202 50 . . . . . .

Textual Amendments

F202 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;

F203 . . . .

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

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(a) each place is situated either within the area of the authority or so as to be reasonably accessible to persons resident in its area;

(b) each place is available for the deposit of waste at all reasonable times (including at least one period on the Saturday or following day of each week except a week in which the Saturday is 25th December or 1st January);

(c) each place is available for the deposit of waste free of charge by persons resident in the area;

but the arrangements may restrict the availability of specified places to specified descriptions of waste.

(3) A waste disposal authority may include in arrangements made under subsection (1)(b) above arrangements for the places provided for its area for the deposit of household waste free of charge by residents in its area to be available for the deposit of household or other controlled waste by other persons on such terms as to payment (if any) as the authority determines.

(4) For the purpose of discharging its duty under subsection (1)(a) above as respects controlled waste collected as mentioned in that paragraph a waste disposal authority—

(a) shall give directions to the waste collection authorities within its area as to the persons to whom and places at which such waste is to be delivered;

(b) F204 . . . . . .

(c) F204 . . . . . .

(d) F204 . . . . . .

(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.

[F205(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) F204 . . . . . .

(6) F204 . . . . . .

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

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(8) This section shall not apply to Scotland.

Textual Amendments

F203 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)**

F204 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)**

F205 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

[F206(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.

[F207(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) **[**F208or 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)**].]**

[F209(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

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[F210(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.

[F211(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 **[**F212in Wales**]** a duty to make payments corresponding to the payments which are authorised by **[**F213subsection (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 **[**F214subsections (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.

(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 **[**F215subsections (1)(b), (2)(b), (3)(b), (4)(b)**]** and (5) above.

[F216(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.

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(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.

[[F217](12) In this section, references to recycling waste include re-using it (whether or not the waste is subjected to any process).**]**

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

F206 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**

F207 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**

F208 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)**

F209 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**

F210 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**

F211 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**

F212 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**

F213 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**

F214 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**

F215 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**

F216 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**

F217 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)

C41 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

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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.

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Extent Information

E46 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.

[F218 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.**]**

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Textual Amendments

F218 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) **[**F219, (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—

(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 F220. . . by which matter is so removed—

(a) to deliver the matter, in accordance with any directions of **[**F221Scottish 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 **[**F221Scottish Water**]** or another person so specified;

(b) to give to **[**F221Scottish 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 **[**F221Scottish 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 **[**F221Scottish 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;

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and anything delivered to **[**F222Scottish Water**]** under that subsection shall belong to **[**F221Scottish Water**]** and may be dealt with accordingly.

(5A) F223 . . . . . .

(6) This section applies to Scotland only.

Textual Amendments

F219 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)**

F220 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**

F221 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)**

F222 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)**

F223 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

(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;

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(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 [M27]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—

(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 [M28]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, **[**[F224]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

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(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 [M29]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

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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 [M30]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

F224 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**.

Modifications etc. (not altering text)

C42 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

M27 1973 c. 65.
M28 1981 c. 69.
M29 1974 c. 40.
M30 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 [F225]. . . 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 [F225]. . . to use waste for the purpose of producing from it heat or electricity or both;

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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

F225 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 **[**[F226]environmental permit authorising a waste operation**]** to accept and keep, or accept and treat or dispose of, **[**[F227]waste**]** at specified places on specified terms.

(2) The Secretary of State may, by notice in writing, direct any person who is keeping **[**[F227]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.

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(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.

[F228(7A) F229. . . . . .**]**

[F230(8) In this section—

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

"waste" means anything which is waste as defined in Article 1 of, and Annex 1 to, Directive 75/442/EEC (as amended by Directive 91/156/EEC) including anything which is excluded from the scope of that Directive by Article 2(1)(b)(iii) of that Directive, but not including anything excluded by the remainder of that Article.**]**

Textual Amendments

F226 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)

F227 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)**

F228 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)**

F229 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)

F230 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)**

Modifications etc. (not altering text)

C43 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**)

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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

E47 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)

C43 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

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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 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 **[**F231or regulation 12 of the 2007 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—

(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 **[**F232or regulation 12 of the 2007 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 **[**F233or 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;

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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.

[[F234](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

F231 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)

F232 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)

F233 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)**

F234 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)

C44 S. 59 applied (with modifications) (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), **25**

[[F235]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 **[**[F236]or regulation 12 of the 2007 Regulations,**]** and—

(a) there is no occupier of the land, or

(b) the occupier cannot be found without the authority incurring unreasonable expense.

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(3) The grounds in this subsection are that—

(a) the authority has served a notice under subsection (1) of section 59 above imposing a requirement on the occupier of the land,

(b) the occupier of the land is not the same person as the owner of the land, and

(c) the occupier has failed to comply with the requirement mentioned in paragraph (a) above within the period specified in the notice.

(4) The grounds in this subsection are that—

(a) the authority has served a notice under subsection (1) of section 59 above imposing a requirement on the occupier of the land,

(b) the occupier of the land is not the same person as the owner of the land, and

(c) the requirement mentioned in paragraph (a) above has been quashed on the ground specified in subsection (3)(a) of that section.

(5) Subsections (2) to (6) of section 59 above apply in relation to requirements imposed under this section on the owner of the land as they apply in relation to requirements imposed under that section on the occupier of the land but as if in subsection (3) there were inserted after paragraph (a)—

"(aa) in order to comply with the requirement the appellant would be required to enter the land unlawfully; or".

(6) In this section "owner" has the meaning given to it in section 78A(9) below.**]**

Textual Amendments

F235 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)**

F236 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)

[F237**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.

F238(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

F237 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**

F238 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)

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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 **[**F239or 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 **[**F240or 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 F241. . . 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 F241. . . 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

E7 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F239 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)**

F240 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)**

F241 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)**

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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)

C160 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)**

F242 61 . . . . . .

Textual Amendments

F242 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)

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[F243 Waste reduction schemes

Textual Amendments

F243 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**

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.**]**

[F244 Hazardous waste] and non-controlled waste

Textual Amendments

F244 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.

[F245(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;

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(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—

[F246(a) for the supervision by waste regulation authorities—

(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.

[F247(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 **[**F248the Department of the Environment for Northern Ireland**]**.**]**

Extent Information

E8 S. 62: for extent of s. 62(2)(e) to Northern Ireland see s. 164(4)

Textual Amendments

F245 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)

F246 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**

F247 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**

F248 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)

C45 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**

[F249**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

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(b) appears to him to display any of the properties listed in Annex III to Council Directive 91/689/EEC.

(2) The National Assembly for Wales shall by regulations list any controlled waste in Wales which—

(a) is not listed as a hazardous waste in the Hazardous Waste List; and

(b) appears to it to display any of the properties listed in Annex III to Council Directive 91/689/EEC.

(3) In this section çthe Hazardous Waste ListÇ means the list referred to in the first indent of Article 1(4) of Council Directive 91/689/EEC.

(4) Regulations under subsection (2) shall be made by statutory instrument but section 161(2) shall not apply to regulations under that subsection.**]**

Textual Amendments

F249 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)

63 Waste other than controlled waste.

(1) **[**F250The 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) **[**F251A 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) **[**F251No 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) **[**F250Section 45(2) and section 47(1) above shall apply to waste other than controlled waste as they apply to controlled waste.**]**

Textual Amendments

F250 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)**

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F251 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)

C46 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))

C47 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)**

[F252 Powers of waste collection authority or waste disposal authority in relation to generation of controlled waste

Textual Amendments

F252 S. 63A and cross-heading inserted (19.11.1998) by 1998 c. 44, **s. 1**

F253 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

F253 S. 63A and cross-heading inserted (19.11.1998) by 1998 c. 44, **s. 1**

Publicity

64 Public registers.

[F254(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;

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(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;

F255(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.

[F256(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 **[**F257or 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.

[F258(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

[F259(a)**]**shall secure that any register maintained under this section is open to inspection F260. . . by members of the public free of charge at all reasonable hours and

[F259(b)**]**shall afford to members of the public reasonable facilities for obtaining, on payment of reasonable charges, copies of entries in the register

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[F259and, 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

F254 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).

F255 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**

F256 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**

F257 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**

F258 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**

F259 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**

F260 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.

[F261(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.

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(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

F261 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)

C48 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.

[F262(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.

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(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 **[**F263until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn**]**.

[F264(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.

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

Textual Amendments

F262 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).

F263 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**

F264 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)

C49 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)**

F265 67 . . . . . .

Textual Amendments

F265 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

F266 68 . . . . . .

Textual Amendments

F266 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**.

F267 69 . . . . . .

Textual Amendments

F267 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**.

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F268 **70** . . . . . .

Textual Amendments

F268 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.

F269(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 **[**F270, or at such time,**]** as is so specified.

[F271(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) **[**F272or (2A)**]** above; F273. . .

F274(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.

[F275(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

F269 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**.

F270 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**.

F271 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**

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F272 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**

F273 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**

F274 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**.

F275 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)

C50 S. 71 applied (with modifications) (1.4.1999) by S.I. 1998/2746, **reg.15**.

C51 S. 71(2)(3) applied (1.5.1994) by S.I. 1994/1056, **reg. 20(8)**.
S. 71(2)(3) amended (1.5.1994) by S.I. 1994/1056, reg. 19, **Sch. 4 Pt. I para. 13(2)**.

Commencement Information

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

F276 72 . . . . . .

Textual Amendments

F276 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 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.

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(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 [M31]Law Reform (Contributory Negligence) Act 1945.

(9) For the purposes of the following enactments—

(a) the [M32]Fatal Accidents Act 1976;

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

(c) the [M33]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

E9 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

M31 1945 c. 28.

M32 1976 c. 30.

M33 1980 c. 58.

[F277]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—

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) 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

F277 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".

[F278(1) The following provisions apply for the purposes of the discharge by a waste regulation authority of any function under this Part which requires the authority to determine whether a person is or is not a fit and proper person to hold a waste management licence.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) 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

F278 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 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

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 [F279hazardous waste]. E+W

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

[F280F281(2) "Waste" means any substance or object in the categories set out in Schedule 2B to this Act which the holder discards or intends or is required to discard; and for the purposes of this definition—

"holder" means the producer of the waste or the person who is in possession of it; and

"producer" means any person whose activities produce waste or any person who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste.]

(3) F282. . . . . .

(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 M34Caravan 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 M35Factories 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; F283. . .

(d) any premises used for the purposes of, or in connection with, the provision to the public of postal or telecommunications services[F284; 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;

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) industrial waste; **[**F285and**]**

(c) F286. . . . . .

(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; F287. . . 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.

[F288(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;

[F289(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) **[**F290In subsection (8A) "Hazardous Waste List" means the list referred to in the first indent of Article 1(4) of Council Directive 91/689/EEC.**]]**

(9) F291. . . . . .

[F292(10) Schedule 2B to this Act (which reproduces Annex I to the Waste Directive) shall have effect.

(11) Subsection (2) above is substituted, and Schedule 2B to this Act is inserted, for the purpose of assigning to "waste" in this Part the meaning which it has in the Waste Directive by virtue of paragraphs (a) to (c) of Article 1 of, and Annex I to, that Directive, and those provisions shall be construed accordingly.

(12) In this section "the Waste Directive" means the M36directive of the Council of the European Communities, dated 15th July 1975, on waste, as amended by—

(a) the M37directive of that Council, dated 18th March 1991, amending directive 75/442/EEC on waste; F293. . .

(b) the M38directiveof that Council, dated 23rd December 1991, standardising and rationalising reports on the implementation of certain Directives relating to the environment.**][**F294;

(c) the decision of the European Commission, dated 24th May 1996, adapting Annexes IIA and IIB to directive 75/442/EEC on waste; and

(d) EC Regulation No. 1882/2003 of the European Parliament and the Council dated 29th September 2003**]**

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

F279 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)

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F280 S. 75(2) substituted (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), 125(3), Sch. 22 para. 88(2) (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**

F281 By The Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006 (S.R. 2006/425), arts. 1, 27(1), **Sch. 6 para. 14(2)** (with reg. 26) it is provided that for the words "Explosives Act 1875" in s. 75(2) there be substituted (N.I.) (1.12.2006) the words "Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006"

F282 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**

F283 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)**

F284 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)**

F285 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)**

F286 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)**

F287 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)**

F288 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)

F289 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)

F290 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)

F291 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)

F292 S. 75(10)-(12) added (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), 125(3), Sch. 22 para. 88(4) (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**

F293 Word in s. 75(12)(a) omitted (E.W.) (15.5.2006) by virtue of The Waste Management (England and Wales) Regulations 2006 (S.I. 2006/937), **reg. 2(6)(f)**

F294 S. 75(12)(c)(d) and preceding punctuation added (E.W.) (15.5.2006) by The Waste Management (England and Wales) Regulations 2006 (S.I. 2006/937), **reg. 2(6)(g)**

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

M34 1960 c. 62.

M35 1961 c. 34.

M36 75/442/EEC.

M37 91/156/EEC.

M38 91/692/EEC.

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.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F280F813F814(2) "Waste" means any substance or object in the categories set out in Schedule 2B to this Act which the holder discards or intends or is required to discard; and for the purposes of this definition—

"holder" means the producer of the waste or the person who is in possession of it; and

"producer" means any person whose activities produce waste or any person who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste.**]**

(3) F282. . . . . .

(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 M155Caravan 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 **[**F815which 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 M156Factories 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; F816. . .

(d) any premises used for the purposes of, or in connection with, the provision to the public of postal or telecommunications services **[**F817; or

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

(7) Subject to subsection (8) below, "commercial waste" means waste from premises **[**F818(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; **[**F819and**]**

(c) F820. . . . . .

(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

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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or commercial waste; [F821]. . . 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.

[[F292](10) Schedule 2B to this Act (which reproduces Annex I to the Waste Directive) shall have effect.

(11) Subsection (2) above is substituted, and Schedule 2B to this Act is inserted, for the purpose of assigning to "waste" in this Part the meaning which it has in the Waste Directive by virtue of paragraphs (a) to (c) of Article 1 of, and Annex I to, that Directive, and those provisions shall be construed accordingly.

(12) In this section "the Waste Directive" means the [M157]directive of the Council of the European Communities, dated 15th July 1975, on waste, as amended by—

(a) the [M158]directive of that Council, dated 18th March 1991, amending directive 75/442/EEC on waste; [F822]. . .

(b) the [M159]directive of that Council, dated 23rd December 1991, standardising and rationalising reports on the implementation of certain Directives relating to the environment **[**[F823]; and

(c) the decision of the European Commission, dated 24th May 1996, adapting Annexes IIA and IIB to Directive 75/442/EEC on waste.**]]**

Extent Information

E48 This version of this provision has been created for Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F280 S. 75(2) substituted (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), 125(3), Sch. 22 para. 88(2) (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**

F282 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**

F292 S. 75(10)-(12) added (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), 125(3), Sch. 22 para. 88(4) (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**

F813 By The Manufacture and Storage of Explosives Regulations 2005 (S.I. 2005/1082), regs. 1(1), 28(1), **Sch. 5 para. 19(2)** it is provided that for the words "the Explosives Act 1875" in s. 75(2)(b) there be substituted (26.4.2005 with application as mentioned in reg. 3 of the amending S.I.) the words "the Manufacture and Storage of Explosives Regulations 2005"

F814 By The Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006 (S.R. 2006/425), arts. 1, 27(1), **Sch. 6 para. 14(2)** (with reg. 26) it is provided that for the words "Explosives Act 1875" in s. 75(2) there be substituted (N.I.) (1.12.2006) the words "Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006"

F815 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)

F816 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)**

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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F817 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)**
F818 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)**
F819 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)**
F820 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)**
F821 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)**
F822 Word in s. 75(12)(a) omitted (S.) (21.1.2005) by virtue of The Waste (Scotland) Regulations 2005 (S.S.I. 2005/22), regs. 1, **3(4)(g)**
F823 S. 75(12)(c) and preceding word added (S.) (21.1.2005) by The Waste (Scotland) Regulations 2005 (S.S.I. 2005/22), regs. 1, **3(4)(h)**

Commencement Information
I100 S. 75 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**

Marginal Citations
M155 1960 c. 62.
M156 1961 c. 34.
M157 75/442/EEC.
M158 91/156/EEC.
M159 91/692/EEC.

[F295 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
F295 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.

[F296(1) This section has effect for the purposes of the transition from the provisions of Part I of the M39Control of Pollution Act 1974 ("the 1974 Act") to the corresponding provisions of this Part of this Act and in this section—

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[F297 "existing disposal authority" has the same meaning as in section 32 above;**]**

"existing disposal licence" means a disposal licence under section 5 of the 1974 Act subsisting on the day appointed under section 164(3) below for the repeal of sections 3 to 10 of the 1974 Act and "relevant appointed day for licences" shall be construed accordingly;

[F297 "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;**]**

[F297 "relevant part of its undertaking", in relation to an existing disposal authority, has the same meaning as in section 32 above; and**]**

[F297 "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) **[**F298Subject 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) F299. . . . . .

(4) **[**F300Any 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) **[**F300Subject 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) **[**F300The 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

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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) **[**F300In 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) **[**F300As 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

F296 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).

F297 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)**

F298 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**

F299 S. 77(3) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), **Sch. 1 Pt. 13**

F300 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)

C52 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

M39 1974 c. 40.

78 This Part and radioactive substances.

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 M40**[**F301Radioactive Substances Act 1993**]**; but regulations may—

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(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 **[**[F301]Radioactive Substances Act 1993**]** and any other Act as the Secretary of State considers appropriate.

Textual Amendments

F301 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)

C53 S. 78 applied (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), **22(7)** (with s. 22(10))

C54 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**.

Marginal Citations

M40 1993 c. 12

[[F302]PART IIA

CONTAMINATED LAND

Textual Amendments

F302 Pt. 2A (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57**, (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

Modifications etc. (not altering text)

C55 Pt. IIA (ss. 78A-78YC) applied (with modifications) (S.) (1.4.2007 for certain purposes, 30.10.2007 otherwise) by The Radioactive Contaminated Land (Scotland) Regulations (S.S.I. 2007/179), regs. 1(1)(2), 2-15 (as amended: (10.12.2007) by S.I. 2007/3240, **reg. 3** (with reg. 2); (26.6.2009) by S.S.I. 2009/202, **regs. 1**, 2; (30.9.2010) by S.I. 2010/2153, **regs. 1**, 2, 3; (coming into force in accordance with art. 1(2)-(5) of the amending S.I.) by The Nuclear Installations (Liability for Damage) Order 2016 (S.I. 2016/562), art. 1(2), **Sch. 2 para. 11** (with art. 40); (22.5.2019) by The Radiation (Emergency Preparedness and Public Information) Regulations 2019 (S.I. 2019/703), reg. 1(1), **Sch. 10 para. 8** (with reg. 3))

C56 Pt. IIA (ss. 78A-78YC) modified (1.2.1996) by 1995 c. 25, **s. 5(5)(e)**, (with ss. 115, 117); S.I. 1996/186, **art.2**.
Pt. IIA (ss. 78A-78YC) modified (1.4.1996) by 1995 c. 25, **s. 33(5)(e)**, (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**.

C57 Pt. IIA (ss. 78A-78YC) applied (with modifications) (E.) (20.1.2006) by The Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005 (S.I. 2005/3467), regs. 1(4), 2, 3, Schs. 1, **2** (as amended (29.9.2010) by S.I. 2010/2147, **regs. 1(2)**, 2(2) and (18.4.2018) by S.I. 2018/429, **regs. 1(2)**, 2(4))

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C58 Pt. IIA (ss. 78A-78YC) applied (with modifications) (E.) (4.8.2006) in so far as not already applied by S.I. 2005/3467 by The Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006 (S.I. 2006/1379), regs. 3-17, **Sch.** (as amended: (10.11.2007) by S.I. 2007/3245, **reg. 3**; (6.4.2008) by S.I. 2008/520, **regs. 1**, 2, 3; (23.8.2010 and 30.9.2010) by S.I. 2010/2147, **regs. 1(2)**, 3, 4; (coming into force in accordance with art. 1(2)-(5) of the amending S.I.) by The Nuclear Installations (Liability for Damage) Order 2016 (S.I. 2016/562), art. 1(2), **Sch. 2 para. 9** (with art. 40); (22.6.2018) by S.I. 2018/429, **regs. 1(3)**, 3; (22.5.2019) by The Radiation (Emergency Preparedness and Public Information) Regulations 2019 (S.I. 2019/703), reg. 1(1), **Sch. 10 para. 6** (with reg. 3))
Pt. IIA (ss. 78A-78YC) extended (Isles of Scilly) (with modifications) (4.8.2006) by The Environmental Protection Act 1990 (Isles of Scilly) Order 2006 (S.I. 2006/1381), **art. 2**

C59 Pt. IIA (ss. 78A-78YC) applied (with modifications) (W.) (16.11.2006 for certain purposes and otherwise 10.12.2006) by The Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006 (S.I. 2006/2988), regs. 1, 3-17, **Sch.** (as amended: (10.12.2007) by S.I. 2007/3250, **reg. 3** (with reg. 2); (6.4.2008) by S.I. 2008/521, **regs. 2(3)**, 3; (30.9.2010) by S.I. 2010/2146, **regs. 1**, 2, 3; (coming into force in accordance with art. 1(2)-(5) of the amending S.I.) by The Nuclear Installations (Liability for Damage) Order 2016 (S.I. 2016/562), art. 1(2), **Sch. 2 para. 10** (with art. 40); (4.7.2018) by S.I. 2018/725, **regs. 1(2)**, 3-5; (22.5.2019) by The Radiation (Emergency Preparedness and Public Information) Regulations 2019 (S.I. 2019/703), reg. 1(1), **Sch. 10 para. 7** (with reg. 3))

[F303]78A Preliminary. E+W

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

(2) "Contaminated land" is any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that—

(a) significant harm is being caused or there is a significant possibility of such harm being caused; or

(b) pollution of controlled waters is being, or is likely to be, caused;

and, in determining whether any land appears to be such land, a local authority shall, subject to subsection (5) below, act in accordance with guidance issued by the Secretary of State in accordance with section 78YA below with respect to the manner in which that determination is to be made.

(3) A "special site" is any contaminated land—

(a) which has been designated as such a site by virtue of section 78C(7) or 78D(6) below; and

(b) whose designation as such has not been terminated by the appropriate Agency under section 78Q(4) below.

(4) "Harm" means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property.

(5) The questions—

(a) what harm **[**[F304]or pollution of the water environment**]** is to be regarded as "significant",

(b) whether the possibility of significant harm **[**[F305]or of significant pollution of the water environment**]** being caused is "significant",

(c) **[**[F306]whether pollution of controlled waters is being, or is likely to be caused,**]**

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shall be determined in accordance with guidance issued for the purpose by the Secretary of State in accordance with section 78YA below.

(6) Without prejudice to the guidance that may be issued under subsection (5) above, guidance under paragraph (a) of that subsection may make provision for different degrees of importance to be assigned to, or for the disregard of,—

(a) different descriptions of living organisms or ecological systems **[**F307or substances which may give rise to pollution;**]** ;

(b) different descriptions of places **[**F308or of the water environment, or different degrees of pollution**]** ; or

(c) different descriptions of harm to health or property, or other interference;

and guidance under paragraph (b) of that subsection may make provision for different degrees of possibility to be regarded as "significant" (or as not being "significant") in relation to different descriptions of significant harm **[**F309or of significant pollution**]** .

(7) "Remediation" means—

(a) the doing of anything for the purpose of assessing the condition of—

(i) the contaminated land in question;

(ii) any controlled waters affected by that land; or

(iii) any land adjoining or adjacent to that land;

(b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose—

(i) of preventing or minimising, or remedying or mitigating the effects of, any significant harm, or any pollution of controlled waters, by reason of which the contaminated land is such land; or

(ii) of restoring the land or waters to their former state; or

(c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters;

and cognate expressions shall be construed accordingly.

(8) Controlled waters are "affected by" contaminated land if (and only if) it appears to the enforcing authority that the contaminated land in question is, for the purposes of subsection (2) above, in such a condition, by reason of substances in, on or under the land, that pollution of those waters is being, or is likely to be caused.

(9) The following expressions have the meaning respectively assigned to them—

"the appropriate Agency" means—

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

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

"appropriate person" means any person who is an appropriate person, determined in accordance with section 78F below, to bear responsibility for any thing which is to be done by way of remediation in any particular case;

"charging notice" has the meaning given by section 78P(3)(b) below;

"controlled waters"—

(a) in relation to England and Wales, has the same meaning as in Part III of the M41Water Resources Act 1991 **[**F310 except that "ground waters" does not include waters contained in underground strata but above the saturation zone**]** ; and

(b) in relation to Scotland, has the same meaning as in section 30A of the M42Control of Pollution Act 1974;

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"creditor" has the same meaning as in the [M43]Conveyancing and Feudal Reform (Scotland) Act 1970;

"enforcing authority" means—

(a) in relation to a special site, the appropriate Agency;

(b) in relation to contaminated land other than a special site, the local authority in whose area the land is situated;

"heritable security" has the same meaning as in the [M44]Conveyancing and Feudal Reform (Scotland) Act 1970;

"local authority" in relation to England and Wales means—

(a) any unitary authority;

(b) any district council, so far as it is not a unitary authority;

(c) the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;

and in relation to Scotland means a council for an area constituted under section 2 of the [M45]Local Government etc. (Scotland) Act 1994;

"notice" means notice in writing;

"notification" means notification in writing;

"owner", in relation to any land in England and Wales, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or, where the land is not let at a rack rent, would be so entitled if it were so let;

"owner", in relation to any land in Scotland, means a person (other than a creditor in a heritable security not in possession of the security subjects) for the time being entitled to receive or who would, if the land were let, be entitled to receive, the rents of the land in connection with which the word is used and includes a trustee, factor, guardian or curator and in the case of public or municipal land includes the persons to whom the management of the land is entrusted;

"pollution of controlled waters" means the entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter;

"prescribed" means prescribed by regulations;

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

"remediation declaration" has the meaning given by section 78H(6) below;

"remediation notice" has the meaning given by section 78E(1) below;

"remediation statement" has the meaning given by section 78H(7) below;

"required to be designated as a special site" shall be construed in accordance with section 78C(8) below;

"substance" means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

"unitary authority" means—

(a) the council of a county, so far as it is the council of an area for which there are no district councils;

(b) the council of any district comprised in an area for which there is no county council;

(c) the council of a London borough;

(d) the council of a county borough in Wales.

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Textual Amendments

F303 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F304 Words in s. 78A(5)(a) inserted (S.) (21.12.2005) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(d)(i)**

F305 Words in s. 78A(5)(b) inserted (S.) (21.12.2005) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(d)(ii)**

F306 S. 78A(5)(c) deleted (S.) (21.12.2005) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(d)(iii)**

F307 Words in s. 78A(6)(a) inserted (S.) (21.12.2005) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(e)(i)**

F308 Words in s. 78A(6)(b) inserted (S.) (21.12.2005) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(e)(ii)**

F309 Words in s. 78A(6) inserted (S.) (21.12.2005) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(e)(iii)**

F310 In s. 78A(9) in definition of "controlled waters" words inserted (1.10.2004 for E. and 11.11.2004 for W.) by Water Act 2003 (c. 37), **ss. 86(2)(f)**, 105; S.I. 2004/2528, **art. 2(q)** (with art. 4, Sch.); S.I. 2004/2916, **art. 2(e)**

Commencement Information

I35 This version of this provision extends to England and Wales only; a separate version has been created for Scotland

Marginal Citations

M41 1991 c. 57.
M42 1974 c. 40.
M43 1970 c. 35.
M44 1970 c. 35.
M45 1994 c. 39.

F303 78A Preliminary. S

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

(2) "Contaminated land" is any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that—

(a) significant harm is being caused or there is a significant possibility of such harm being caused; or

[F824(b) significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused.**]**

and, in determining whether any land appears to be such land, a local authority shall, subject to subsection (5) below, act in accordance with guidance issued by the Secretary of State in accordance with section 78YA below with respect to the manner in which that determination is to be made.

(3) A "special site" is any contaminated land—

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(a) which has been designated as such a site by virtue of section 78C(7) or 78D(6) below; and

(b) whose designation as such has not been terminated by the appropriate Agency under section 78Q(4) below.

(4) **[**F825Subject to sub section (4A), "harm"**]** means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property.

[F826(4A) "Harm", in relation to the water environment has the same meaning as in section 20(6) of the Water Environment and Water Services (Scotland) Act 2003.**]**

(5) The questions—

(a) what harm **[**F304or pollution of the water environment**]** is to be regarded as "significant",

(b) whether the possibility of significant harm **[**F305or of significant pollution of the water environment**]** being caused is "significant",

(c) F306. . . . . .

shall be determined in accordance with guidance issued for the purpose by the Secretary of State in accordance with section 78YA below.

(6) Without prejudice to the guidance that may be issued under subsection (5) above, guidance under paragraph (a) of that subsection may make provision for different degrees of importance to be assigned to, or for the disregard of,—

(a) different descriptions of living organisms or ecological systems **[**F307or substances which may give rise to pollution;**]**

(b) different descriptions of places **[**F308or of the water environment, or different degrees of pollution**]**; or

(c) different descriptions of harm to health or property, or other interference;

and guidance under paragraph (b) of that subsection may make provision for different degrees of possibility to be regarded as "significant" (or as not being "significant") in relation to different descriptions of significant harm **[**F309or of significant pollution**]**.

(7) "Remediation" means—

(a) the doing of anything for the purpose of assessing the condition of—

(i) the contaminated land in question;

(ii) **[**F827the water environment**]** affected by that land; or

(iii) any land adjoining or adjacent to that land;

(b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or **[**F828the water environment**]** for the purpose—

(i) of preventing or minimising, or remedying or mitigating the effects of, any significant harm, or any **[**F829significant**]** pollution of **[**F830the water environment**]**, by reason of which the contaminated land is such land; or

(ii) of restoring the land or **[**F831water environment to its**]** former state; or

(c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or **[**F832the water environment**]**;

and cognate expressions shall be construed accordingly.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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(8) **[**F833The water environment is**]**"affected by" contaminated land if (and only if) it appears to the enforcing authority that the contaminated land in question is, for the purposes of subsection (2) above, in such a condition, by reason of substances in, on or under the land, that **[**F834significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused**]**.

(9) The following expressions have the meaning respectively assigned to them—

"the appropriate Agency" means—

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

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

"appropriate person" means any person who is an appropriate person, determined in accordance with section 78F below, to bear responsibility for any thing which is to be done by way of remediation in any particular case;

"charging notice" has the meaning given by section 78P(3)(b) below;

F835. . . . . .

"creditor" has the same meaning as in the M43Conveyancing and Feudal Reform (Scotland) Act 1970;

"enforcing authority" means—

(a) in relation to a special site, the appropriate Agency;

(b) in relation to contaminated land other than a special site, the local authority in whose area the land is situated;

"heritable security" has the same meaning as in the M44Conveyancing and Feudal Reform (Scotland) Act 1970;

"local authority" in relation to England and Wales means—

(a) any unitary authority;

(b) any district council, so far as it is not a unitary authority;

(c) the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;

and in relation to Scotland means a council for an area constituted under section 2 of the M45Local Government etc. (Scotland) Act 1994;

"notice" means notice in writing;

"notification" means notification in writing;

"owner", in relation to any land in England and Wales, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or, where the land is not let at a rack rent, would be so entitled if it were so let;

"owner", in relation to any land in Scotland, means a person (other than a creditor in a heritable security not in possession of the security subjects) for the time being entitled to receive or who would, if the land were let, be entitled to receive, the rents of the land in connection with which the word is used and includes a trustee, factor, guardian or curator and in the case of public or municipal land includes the persons to whom the management of the land is entrusted;

[F836"pollution", in relation to the water environment, means the direct or indirect introduction, as a result of human activity, of substances into the water environment, or any part of it, which may give rise to any harm**]**

F837. . . . . .

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"prescribed" means prescribed by regulations;

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

"remediation declaration" has the meaning given by section 78H(6) below;

"remediation notice" has the meaning given by section 78E(1) below;

"remediation statement" has the meaning given by section 78H(7) below;

"required to be designated as a special site" shall be construed in accordance with section 78C(8) below;

"substance" means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

"unitary authority" means—

(a) the council of a county, so far as it is the council of an area for which there are no district councils;

(b) the council of any district comprised in an area for which there is no county council;

(c) the council of a London borough;

(d) the council of a county borough in Wales.

[[F838]"the water environment" has the same meaning as in section 3 of the Water Environment and Water Services (Scotland) Act 2003**]**

Textual Amendments

F303 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F304 Words in s. 78A(5)(a) inserted (S.) (21.12.2005) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(d)(i)**

F305 Words in s. 78A(5)(b) inserted (S.) (21.12.2005) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(d)(ii)**

F306 S. 78A(5)(c) deleted (S.) (21.12.2005) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(d)(iii)**

F307 Words in s. 78A(6)(a) inserted (S.) (21.12.2005) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(e)(i)**

F308 Words in s. 78A(6)(b) inserted (S.) (21.12.2005) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(e)(ii)**

F309 Words in s. 78A(6) inserted (S.) (21.12.2005) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(e)(iii)**

F824 S. 78A(2)(b) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(a)**

F825 Words in s. 78A(4) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(b)**

F826 S. 78A(4A) inserted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(c)**

F827 Words in s. 78A(7)(a)(ii) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(f)**

F828 Words in s. 78A(7)(b) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(g)**

F829 Word in s. 78A(7)(b)(i) inserted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(h)**

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F830 Words in s. 78A(7)(b)(i) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(2)**

F831 Words in s. 78A(7)(b)(ii) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(i)**

F832 Words in s. 78A(7)(c) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(j)**

F833 Words in s. 78A(8) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(k)(i)**

F834 Words in s. 78A(8) from "pollution" to the end deleted and substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(k)(ii)**

F835 In s. 78A(9) definition of "controlled waters" deleted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(l)(i)(aa)**

F836 In s. 78A(9) definition of "pollution" inserted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(l)(ii)**

F837 In s. 78A(9) definition of "pollution of controlled waters" deleted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(l)(i)(bb)**

F838 In s. 78A(9) definition of "the water environment" inserted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(3)(l)(ii)**

Commencement Information

I101 This version of this provision extends to Scotland only; a separate version has been created for England and Wales

Marginal Citations

M43 1970 c. 35.

M44 1970 c. 35.

M45 1994 c. 39.

F311 78B Identification of contaminated land.

(1) Every local authority shall cause its area to be inspected from time to time for the purpose—

(a) of identifying contaminated land; and

(b) of enabling the authority to decide whether any such land is land which is required to be designated as a special site.

(2) In performing its functions under subsection (1) above a local authority shall act in accordance with any guidance issued for the purpose by the Secretary of State in accordance with section 78YA below.

(3) If a local authority identifies any contaminated land in its area, it shall give notice of that fact to—

(a) the appropriate Agency;

(b) the owner of the land;

(c) any person who appears to the authority to be in occupation of the whole or any part of the land; and

(d) each person who appears to the authority to be an appropriate person;

and any notice given under this subsection shall state by virtue of which of paragraphs (a) to (d) above it is given.

(4) If, at any time after a local authority has given any person a notice pursuant to subsection (3)(d) above in respect of any land, it appears to the enforcing authority

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that another person is an appropriate person, the enforcing authority shall give notice to that other person—

(a) of the fact that the local authority has identified the land in question as contaminated land; and

(b) that he appears to the enforcing authority to be an appropriate person.

Textual Amendments

F311 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F312 78C Identification and designation of special sites. E+W

(1) If at any time it appears to a local authority that any contaminated land in its area might be land which is required to be designated as a special site, the authority—

(a) shall decide whether or not the land is land which is required to be so designated; and

(b) if the authority decides that the land is land which is required to be so designated, shall give notice of that decision to the relevant persons.

(2) For the purposes of this section, "the relevant persons" at any time in the case of any land are the persons who at that time fall within paragraphs (a) to (d) below, that is to say—

(a) the appropriate Agency;

(b) the owner of the land;

(c) any person who appears to the local authority concerned to be in occupation of the whole or any part of the land; and

(d) each person who appears to that authority to be an appropriate person.

(3) Before making a decision under paragraph (a) of subsection (1) above in any particular case, a local authority shall request the advice of the appropriate Agency, and in making its decision shall have regard to any advice given by that Agency in response to the request.

(4) If at any time the appropriate Agency considers that any contaminated land is land which is required to be designated as a special site, that Agency may give notice of that fact to the local authority in whose area the land is situated.

(5) Where notice under subsection (4) above is given to a local authority, the authority shall decide whether the land in question—

(a) is land which is required to be designated as a special site, or

(b) is not land which is required to be so designated,

and shall give notice of that decision to the relevant persons.

(6) Where a local authority makes a decision falling within subsection (1)(b) or (5)(a) above, the decision shall, subject to section 78D below, take effect on the day after whichever of the following events first occurs, that is to say—

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(a) the expiration of the period of twenty-one days beginning with the day on which the notice required by virtue of subsection (1)(b) or, as the case may be, (5)(a) above is given to the appropriate Agency; or

(b) if the appropriate Agency gives notification to the local authority in question that it agrees with the decision, the giving of that notification;

and where a decision takes effect by virtue of this subsection, the local authority shall give notice of that fact to the relevant persons.

(7) Where a decision that any land is land which is required to be designated as a special site takes effect in accordance with subsection (6) above, the notice given under subsection (1)(b) or, as the case may be, (5)(a) above shall have effect, as from the time when the decision takes effect, as the designation of that land as such a site.

(8) For the purposes of this Part, land is required to be designated as a special site if, and only if, it is land of a description prescribed for the purposes of this subsection.

(9) Regulations under subsection (8) above may make different provision for different cases or circumstances or different areas or localities and may, in particular, describe land by reference to the area or locality in which it is situated.

(10) Without prejudice to the generality of his power to prescribe any description of land for the purposes of subsection (8) above, the Secretary of State, in deciding whether to prescribe a particular description of contaminated land for those purposes, may, in particular, have regard to—

(a) whether land of the description in question appears to him to be land which is likely to be in such a condition, by reason of substances in, on or under the land that—

(i) serious harm would or might be caused, or

(ii) serious pollution of controlled waters would be, or would be likely to be, caused; or

(b) whether the appropriate Agency is likely to have expertise in dealing with the kind of significant harm, or pollution of controlled waters, by reason of which land of the description in question is contaminated land.

Textual Amendments

F312 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

Commencement Information

I36 This version of this provision extends to England and Wales only; a separate version has been created for Scotland

F312 78C Identification and designation of special sites. S

(1) If at any time it appears to a local authority that any contaminated land in its area might be land which is required to be designated as a special site, the authority—

(a) shall decide whether or not the land is land which is required to be so designated; and

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(b) if the authority decides that the land is land which is required to be so designated, shall give notice of that decision to the relevant persons.

(2) For the purposes of this section, "the relevant persons" at any time in the case of any land are the persons who at that time fall within paragraphs (a) to (d) below, that is to say—

(a) the appropriate Agency;

(b) the owner of the land;

(c) any person who appears to the local authority concerned to be in occupation of the whole or any part of the land; and

(d) each person who appears to that authority to be an appropriate person.

(3) Before making a decision under paragraph (a) of subsection (1) above in any particular case, a local authority shall request the advice of the appropriate Agency, and in making its decision shall have regard to any advice given by that Agency in response to the request.

(4) If at any time the appropriate Agency considers that any contaminated land is land which is required to be designated as a special site, that Agency may give notice of that fact to the local authority in whose area the land is situated.

(5) Where notice under subsection (4) above is given to a local authority, the authority shall decide whether the land in question—

(a) is land which is required to be designated as a special site, or

(b) is not land which is required to be so designated,

and shall give notice of that decision to the relevant persons.

(6) Where a local authority makes a decision falling within subsection (1)(b) or (5)(a) above, the decision shall, subject to section 78D below, take effect on the day after whichever of the following events first occurs, that is to say—

(a) the expiration of the period of twenty-one days beginning with the day on which the notice required by virtue of subsection (1)(b) or, as the case may be, (5)(a) above is given to the appropriate Agency; or

(b) if the appropriate Agency gives notification to the local authority in question that it agrees with the decision, the giving of that notification;

and where a decision takes effect by virtue of this subsection, the local authority shall give notice of that fact to the relevant persons.

(7) Where a decision that any land is land which is required to be designated as a special site takes effect in accordance with subsection (6) above, the notice given under subsection (1)(b) or, as the case may be, (5)(a) above shall have effect, as from the time when the decision takes effect, as the designation of that land as such a site.

(8) For the purposes of this Part, land is required to be designated as a special site if, and only if, it is land of a description prescribed for the purposes of this subsection.

(9) Regulations under subsection (8) above may make different provision for different cases or circumstances or different areas or localities and may, in particular, describe land by reference to the area or locality in which it is situated.

(10) Without prejudice to the generality of his power to prescribe any description of land for the purposes of subsection (8) above, the Secretary of State, in deciding whether to prescribe a particular description of contaminated land for those purposes, may, in particular, have regard to—

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(a) whether land of the description in question appears to him to be land which is likely to be in such a condition, by reason of substances in, on or under the land that—

(i) serious harm would or might be caused, or

[[F839](ii) serious pollution of the water environment would or might be caused;**]**

(b) whether the appropriate Agency is likely to have expertise in dealing with the kind of significant harm, or **[**[F840]significant**]** pollution of **[**[F841]the water environment**]**, by reason of which land of the description in question is contaminated land.

Textual Amendments

F312 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F839 S. 78C(10)(a)(ii) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(4)(a)**

F840 Word in s. 78C(10)(b) inserted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(4)(b)**

F841 Words in s. 78C(10)(b) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(2)**

Commencement Information

I102 This version of this provision extends to Scotland only; a separate version has been created for England and Wales

[F313]78D Referral of special site decisions to the Secretary of State.

(1) In any case where—

(a) a local authority gives notice of a decision to the appropriate Agency pursuant to subsection (1)(b) or (5)(b) of section 78C above, but

(b) before the expiration of the period of twenty-one days beginning with the day on which that notice is so given, that Agency gives the local authority notice that it disagrees with the decision, together with a statement of its reasons for disagreeing,

the authority shall refer the decision to the Secretary of State and shall send to him a statement of its reasons for reaching the decision.

(2) Where the appropriate Agency gives notice to a local authority under paragraph (b) of subsection (1) above, it shall also send to the Secretary of State a copy of the notice and of the statement given under that paragraph.

(3) Where a local authority refers a decision to the Secretary of State under subsection (1) above, it shall give notice of that fact to the relevant persons.

(4) Where a decision of a local authority is referred to the Secretary of State under subsection (1) above, he—

(a) may confirm or reverse the decision with respect to the whole or any part of the land to which it relates; and

(b) shall give notice of his decision on the referral—

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(i) to the relevant persons; and

(ii) to the local authority.

(5) Where a decision of a local authority is referred to the Secretary of State under subsection (1) above, the decision shall not take effect until the day after that on which the Secretary of State gives the notice required by subsection (4) above to the persons there mentioned and shall then take effect as confirmed or reversed by him.

(6) Where a decision which takes effect in accordance with subsection (5) above is to the effect that at least some land is land which is required to be designated as a special site, the notice given under subsection (4)(b) above shall have effect, as from the time when the decision takes effect, as the designation of that land as such a site.

(7) In this section "the relevant persons" has the same meaning as in section 78C above.

Textual Amendments

F313 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F314 78E Duty of enforcing authority to require remediation of contaminated land etc. E+W

(1) In any case where—

(a) any land has been designated as a special site by virtue of section 78C(7) or 78D(6) above, or

(b) a local authority has identified any contaminated land (other than a special site) in its area,

the enforcing authority shall, in accordance with such procedure as may be prescribed and subject to the following provisions of this Part, serve on each person who is an appropriate person a notice (in this Part referred to as a "remediation notice") specifying what that person is to do by way of remediation and the periods within which he is required to do each of the things so specified.

(2) Different remediation notices requiring the doing of different things by way of remediation may be served on different persons in consequence of the presence of different substances in, on or under any land or waters.

(3) Where two or more persons are appropriate persons in relation to any particular thing which is to be done by way of remediation, the remediation notice served on each of them shall state the proportion, determined under section 78F(7) below, of the cost of doing that thing which each of them respectively is liable to bear.

(4) The only things by way of remediation which the enforcing authority may do, or require to be done, under or by virtue of this Part are things which it considers reasonable, having regard to—

(a) the cost which is likely to be involved; and

(b) the seriousness of the harm, or pollution of controlled waters, in question.

(5) In determining for any purpose of this Part—

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(a) what is to be done (whether by an appropriate person, the enforcing authority or any other person) by way of remediation in any particular case,

(b) the standard to which any land is, or waters are, to be remediated pursuant to the notice, or

(c) what is, or is not, to be regarded as reasonable for the purposes of subsection (4) above,

the enforcing authority shall have regard to any guidance issued for the purpose by the Secretary of State.

(6) Regulations may make provision for or in connection with—

(a) the form or content of remediation notices; or

(b) any steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of a remediation notice.

Extent Information

E11 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F314 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F314 78E Duty of enforcing authority to require remediation of contaminated land etc. S

(1) In any case where—

(a) any land has been designated as a special site by virtue of section 78C(7) or 78D(6) above, or

(b) a local authority has identified any contaminated land (other than a special site) in its area,

the enforcing authority shall, in accordance with such procedure as may be prescribed and subject to the following provisions of this Part, serve on each person who is an appropriate person a notice (in this Part referred to as a "remediation notice") specifying what that person is to do by way of remediation and the periods within which he is required to do each of the things so specified.

(2) Different remediation notices requiring the doing of different things by way of remediation may be served on different persons in consequence of the presence of different substances in, on or under any land or **[**F842the water environment**]**.

(3) Where two or more persons are appropriate persons in relation to any particular thing which is to be done by way of remediation, the remediation notice served on each of them shall state the proportion, determined under section 78F(7) below, of the cost of doing that thing which each of them respectively is liable to bear.

(4) The only things by way of remediation which the enforcing authority may do, or require to be done, under or by virtue of this Part are things which it considers reasonable, having regard to—

(a) the cost which is likely to be involved; and

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(b) the seriousness of the harm, or **[**F843of the**]** pollution of **[**F844the water environment**]**, in question.

(5) In determining for any purpose of this Part—

(a) what is to be done (whether by an appropriate person, the enforcing authority or any other person) by way of remediation in any particular case,

(b) the standard to which any land is, or waters are **[**F845, or the water environment is**]**, to be remediated pursuant to the notice, or

(c) what is, or is not, to be regarded as reasonable for the purposes of subsection (4) above,

the enforcing authority shall have regard to any guidance issued for the purpose by the Secretary of State.

(6) Regulations may make provision for or in connection with—

(a) the form or content of remediation notices; or

(b) any steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of a remediation notice.

Extent Information

E49 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F314 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F842 Words in s. 78E(2) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(5)(a)**

F843 Words in s. 78E(4)(b) inserted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(5)(b)**

F844 Words in s. 78E(4)(b) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(2)**

F845 Words in s. 78E(5)(b) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(5)(c)**

F315 78F Determination of the appropriate person to bear responsibility for remediation.

(1) This section has effect for the purpose of determining who is the appropriate person to bear responsibility for any particular thing which the enforcing authority determines is to be done by way of remediation in any particular case.

(2) Subject to the following provisions of this section, any person, or any of the persons, who caused or knowingly permitted the substances, or any of the substances, by reason of which the contaminated land in question is such land to be in, on or under that land is an appropriate person.

(3) A person shall only be an appropriate person by virtue of subsection (2) above in relation to things which are to be done by way of remediation which are to any extent referable to substances which he caused or knowingly permitted to be present in, on or under the contaminated land in question.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) If no person has, after reasonable inquiry, been found who is by virtue of subsection (2) above an appropriate person to bear responsibility for the things which are to be done by way of remediation, the owner or occupier for the time being of the contaminated land in question is an appropriate person.

(5) If, in consequence of subsection (3) above, there are things which are to be done by way of remediation in relation to which no person has, after reasonable inquiry, been found who is an appropriate person by virtue of subsection (2) above, the owner or occupier for the time being of the contaminated land in question is an appropriate person in relation to those things.

(6) Where two or more persons would, apart from this subsection, be appropriate persons in relation to any particular thing which is to be done by way of remediation, the enforcing authority shall determine in accordance with guidance issued for the purpose by the Secretary of State whether any, and if so which, of them is to be treated as not being an appropriate person in relation to that thing.

(7) Where two or more persons are appropriate persons in relation to any particular thing which is to be done by way of remediation, they shall be liable to bear the cost of doing that thing in proportions determined by the enforcing authority in accordance with guidance issued for the purpose by the Secretary of State.

(8) Any guidance issued for the purposes of subsection (6) or (7) above shall be issued in accordance with section 78YA below.

(9) A person who has caused or knowingly permitted any substance ("substance A") to be in, on or under any land shall also be taken for the purposes of this section to have caused or knowingly permitted there to be in, on or under that land any substance which is there as a result of a chemical reaction or biological process affecting substance A.

(10) A thing which is to be done by way of remediation may be regarded for the purposes of this Part as referable to the presence of any substance notwithstanding that the thing in question would not have to be done—

(a) in consequence only of the presence of that substance in any quantity; or

(b) in consequence only of the quantity of that substance which any particular person caused or knowingly permitted to be present.

Textual Amendments

F315 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F316 78G Grant of, and compensation for, rights of entry etc. E+W

(1) A remediation notice may require an appropriate person to do things by way of remediation, notwithstanding that he is not entitled to do those things.

(2) Any person whose consent is required before any thing required by a remediation notice may be done shall grant, or join in granting, such rights in relation to any of

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the relevant land or waters as will enable the appropriate person to comply with any requirements imposed by the remediation notice.

(3) Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult every person who appears to the authority—

(a) to be the owner or occupier of any of the relevant land or waters, and

(b) to be a person who might be required by subsection (2) above to grant, or join in granting, any rights,

concerning the rights which that person may be so required to grant.

(4) Subsection (3) above shall not preclude the service of a remediation notice in any case where it appears to the enforcing authority that the contaminated land in question is in such a condition, by reason of substances in, on or under the land, that there is imminent danger of serious harm, or serious pollution of controlled waters, being caused.

(5) A person who grants, or joins in granting, any rights pursuant to subsection (2) above shall be entitled, on making an application within such period as may be prescribed and in such manner as may be prescribed to such person as may be prescribed, to be paid by the appropriate person compensation of such amount as may be determined in such manner as may be prescribed.

(6) Without prejudice to the generality of the regulations that may be made by virtue of subsection (5) above, regulations by virtue of that subsection may make such provision in relation to compensation under this section as may be made by regulations by virtue of subsection (4) of section 35A above in relation to compensation under that section.

(7) In this section, "relevant land or waters" means—

(a) the contaminated land in question;

(b) any controlled waters affected by that land; or

(c) any land adjoining or adjacent to that land or those waters.

Extent Information

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

Textual Amendments

F316 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F316[F302 78G Grant of, and compensation for, rights of entry etc. S

(1) A remediation notice may require an appropriate person to do things by way of remediation, notwithstanding that he is not entitled to do those things.

(2) Any person whose consent is required before any thing required by a remediation notice may be done shall grant, or join in granting, such rights in relation to any of the relevant land or **[**F846water environment**]** as will enable the appropriate person to comply with any requirements imposed by the remediation notice.

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Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult every person who appears to the authority—

(a) to be the owner or occupier of any of the relevant land or **[**F847water environment**]**, and

(b) to be a person who might be required by subsection (2) above to grant, or join in granting, any rights,

concerning the rights which that person may be so required to grant.

(4) Subsection (3) above shall not preclude the service of a remediation notice in any case where it appears to the enforcing authority that the contaminated land in question is in such a condition, by reason of substances in, on or under the land, that there is imminent danger of serious harm, or serious pollution of **[**F848the water environment**]**, being caused.

(5) A person who grants, or joins in granting, any rights pursuant to subsection (2) above shall be entitled, on making an application within such period as may be prescribed and in such manner as may be prescribed to such person as may be prescribed, to be paid by the appropriate person compensation of such amount as may be determined in such manner as may be prescribed.

(6) Without prejudice to the generality of the regulations that may be made by virtue of subsection (5) above, regulations by virtue of that subsection may make such provision in relation to compensation under this section as may be made by regulations by virtue of subsection (4) of section 35A above in relation to compensation under that section.

[F849(7) In this section, "relevant land or water environment" means–

(a) the contaminated land in question;

(b) the water environment affected by that land; or

(c) any land adjoining or adjacent to that land or water environment.**]]**

Extent Information

E50 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F316 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F846 Words in s. 78G(2) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(6)(a)**

F847 Words in s. 78G(3)(a) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(6)(b)**

F848 Words in s. 78G(4) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(2)**

F849 S. 78G(7) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(6)(c)**

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F317 78H Restrictions and prohibitions on serving remediation notices. E+W

(1) Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult—

(a) the person on whom the notice is to be served,

(b) the owner of any land to which the notice relates,

(c) any person who appears to that authority to be in occupation of the whole or any part of the land, and

(d) any person of such other description as may be prescribed,

concerning what is to be done by way of remediation.

(2) Regulations may make provision for, or in connection with, steps to be taken for the purposes of subsection (1) above.

(3) No remediation notice shall be served on any person by reference to any contaminated land during any of the following periods, that is to say—

(a) the period—

(i) beginning with the identification of the contaminated land in question pursuant to section 78B(1) above, and

(ii) ending with the expiration of the period of three months beginning with the day on which the notice required by subsection (3)(d) or, as the case may be, (4) of section 78B above is given to that person in respect of that land;

(b) if a decision falling within paragraph (b) of section 78C(1) above is made in relation to the contaminated land in question, the period beginning with the making of the decision and ending with the expiration of the period of three months beginning with—

(i) in a case where the decision is not referred to the Secretary of State under section 78D above, the day on which the notice required by section 78C(6) above is given, or

(ii) in a case where the decision is referred to the Secretary of State under section 78D above, the day on which he gives the notice required by subsection (4)(b) of that section;

(c) if the appropriate Agency gives a notice under subsection (4) of section 78C above to a local authority in relation to the contaminated land in question, the period beginning with the day on which that notice is given and ending with the expiration of the period of three months beginning with—

(i) in a case where notice is given under subsection (6) of that section, the day on which that notice is given;

(ii) in a case where the authority makes a decision falling within subsection (5)(b) of that section and the appropriate Agency fails to give notice under paragraph (b) of section 78D(1) above, the day following the expiration of the period of twenty-one days mentioned in that paragraph; or

(iii) in a case where the authority makes a decision falling within section 78C(5)(b) above which is referred to the Secretary of State under section 78D above, the day on which the Secretary of State gives the notice required by subsection (4)(b) of that section.

(4) Neither subsection (1) nor subsection (3) above shall preclude the service of a remediation notice in any case where it appears to the enforcing authority that the land in question is in such a condition, by reason of substances in, on or under the land, that

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there is imminent danger of serious harm, or serious pollution of controlled waters, being caused.

(5) The enforcing authority shall not serve a remediation notice on a person if and so long as any one or more of the following conditions is for the time being satisfied in the particular case, that is to say—

(a) the authority is satisfied, in consequence of section 78E(4) and (5) above, that there is nothing by way of remediation which could be specified in a remediation notice served on that person;

(b) the authority is satisfied that appropriate things are being, or will be, done by way of remediation without the service of a remediation notice on that person;

(c) it appears to the authority that the person on whom the notice would be served is the authority itself; or

(d) the authority is satisfied that the powers conferred on it by section 78N below to do what is appropriate by way of remediation are exercisable.

(6) Where the enforcing authority is precluded by virtue of section 78E(4) or (5) above from specifying in a remediation notice any particular thing by way of remediation which it would otherwise have specified in such a notice, the authority shall prepare and publish a document (in this Part referred to as a "remediation declaration") which shall record—

(a) the reasons why the authority would have specified that thing; and

(b) the grounds on which the authority is satisfied that it is precluded from specifying that thing in such a notice.

(7) In any case where the enforcing authority is precluded, by virtue of paragraph (b), (c) or (d) of subsection (5) above, from serving a remediation notice, the responsible person shall prepare and publish a document (in this Part referred to as a "remediation statement") which shall record—

(a) the things which are being, have been, or are expected to be, done by way of remediation in the particular case;

(b) the name and address of the person who is doing, has done, or is expected to do, each of those things; and

(c) the periods within which each of those things is being, or is expected to be, done.

(8) For the purposes of subsection (7) above, the "responsible person" is—

(a) in a case where the condition in paragraph (b) of subsection (5) above is satisfied, the person who is doing or has done, or who the enforcing authority is satisfied will do, the things there mentioned; or

(b) in a case where the condition in paragraph (c) or (d) of that subsection is satisfied, the enforcing authority.

(9) If a person who is required by virtue of subsection (8)(a) above to prepare and publish a remediation statement fails to do so within a reasonable time after the date on which a remediation notice specifying the things there mentioned could, apart from subsection (5) above, have been served, the enforcing authority may itself prepare and publish the statement and may recover its reasonable costs of doing so from that person.

(10) Where the enforcing authority has been precluded by virtue only of subsection (5) above from serving a remediation notice on an appropriate person but—

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(a) none of the conditions in that subsection is for the time being satisfied in the particular case, and

(b) the authority is not precluded by any other provision of this Part from serving a remediation notice on that appropriate person,

the authority shall serve a remediation notice on that person; and any such notice may be so served without any further endeavours by the authority to consult persons pursuant to subsection (1) above, if and to the extent that that person has been consulted pursuant to that subsection concerning the things which will be specified in the notice.

Extent Information

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

Textual Amendments

F317 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F317[F302 78H Restrictions and prohibitions on serving remediation notices. S

(1) Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult—

(a) the person on whom the notice is to be served,

(b) the owner of any land to which the notice relates,

(c) any person who appears to that authority to be in occupation of the whole or any part of the land, and

(d) any person of such other description as may be prescribed,

concerning what is to be done by way of remediation.

(2) Regulations may make provision for, or in connection with, steps to be taken for the purposes of subsection (1) above.

(3) No remediation notice shall be served on any person by reference to any contaminated land during any of the following periods, that is to say—

(a) the period—

(i) beginning with the identification of the contaminated land in question pursuant to section 78B(1) above, and

(ii) ending with the expiration of the period of three months beginning with the day on which the notice required by subsection (3)(d) or, as the case may be, (4) of section 78B above is given to that person in respect of that land;

(b) if a decision falling within paragraph (b) of section 78C(1) above is made in relation to the contaminated land in question, the period beginning with the making of the decision and ending with the expiration of the period of three months beginning with—

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(i) in a case where the decision is not referred to the Secretary of State under section 78D above, the day on which the notice required by section 78C(6) above is given, or

(ii) in a case where the decision is referred to the Secretary of State under section 78D above, the day on which he gives the notice required by subsection (4)(b) of that section;

(c) if the appropriate Agency gives a notice under subsection (4) of section 78C above to a local authority in relation to the contaminated land in question, the period beginning with the day on which that notice is given and ending with the expiration of the period of three months beginning with—

(i) in a case where notice is given under subsection (6) of that section, the day on which that notice is given;

(ii) in a case where the authority makes a decision falling within subsection (5)(b) of that section and the appropriate Agency fails to give notice under paragraph (b) of section 78D(1) above, the day following the expiration of the period of twenty-one days mentioned in that paragraph; or

(iii) in a case where the authority makes a decision falling within section 78C(5)(b) above which is referred to the Secretary of State under section 78D above, the day on which the Secretary of State gives the notice required by subsection (4)(b) of that section.

(4) Neither subsection (1) nor subsection (3) above shall preclude the service of a remediation notice in any case where it appears to the enforcing authority that the land in question is in such a condition, by reason of substances in, on or under the land, that there is imminent danger of serious harm, or serious pollution of **[**F850the water environment**]**, being caused.

(5) The enforcing authority shall not serve a remediation notice on a person if and so long as any one or more of the following conditions is for the time being satisfied in the particular case, that is to say—

(a) the authority is satisfied, in consequence of section 78E(4) and (5) above, that there is nothing by way of remediation which could be specified in a remediation notice served on that person;

(b) the authority is satisfied that appropriate things are being, or will be, done by way of remediation without the service of a remediation notice on that person;

(c) it appears to the authority that the person on whom the notice would be served is the authority itself; or

(d) the authority is satisfied that the powers conferred on it by section 78N below to do what is appropriate by way of remediation are exercisable.

(6) Where the enforcing authority is precluded by virtue of section 78E(4) or (5) above from specifying in a remediation notice any particular thing by way of remediation which it would otherwise have specified in such a notice, the authority shall prepare and publish a document (in this Part referred to as a "remediation declaration") which shall record—

(a) the reasons why the authority would have specified that thing; and

(b) the grounds on which the authority is satisfied that it is precluded from specifying that thing in such a notice.

(7) In any case where the enforcing authority is precluded, by virtue of paragraph (b), (c) or (d) of subsection (5) above, from serving a remediation notice, the responsible

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person shall prepare and publish a document (in this Part referred to as a "remediation statement") which shall record—

(a) the things which are being, have been, or are expected to be, done by way of remediation in the particular case;

(b) the name and address of the person who is doing, has done, or is expected to do, each of those things; and

(c) the periods within which each of those things is being, or is expected to be, done.

(8) For the purposes of subsection (7) above, the "responsible person" is—

(a) in a case where the condition in paragraph (b) of subsection (5) above is satisfied, the person who is doing or has done, or who the enforcing authority is satisfied will do, the things there mentioned; or

(b) in a case where the condition in paragraph (c) or (d) of that subsection is satisfied, the enforcing authority.

(9) If a person who is required by virtue of subsection (8)(a) above to prepare and publish a remediation statement fails to do so within a reasonable time after the date on which a remediation notice specifying the things there mentioned could, apart from subsection (5) above, have been served, the enforcing authority may itself prepare and publish the statement and may recover its reasonable costs of doing so from that person.

(10) Where the enforcing authority has been precluded by virtue only of subsection (5) above from serving a remediation notice on an appropriate person but—

(a) none of the conditions in that subsection is for the time being satisfied in the particular case, and

(b) the authority is not precluded by any other provision of this Part from serving a remediation notice on that appropriate person,

the authority shall serve a remediation notice on that person; and any such notice may be so served without any further endeavours by the authority to consult persons pursuant to subsection (1) above, if and to the extent that that person has been consulted pursuant to that subsection concerning the things which will be specified in the notice.**]**

Extent Information

E51 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F317 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F850 Words in s. 78H(4) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(2)**

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[F318]78J Restrictions on liability relating to the pollution of controlled waters. E+W

(1) This section applies where any land is contaminated land by virtue of paragraph (b) of subsection (2) of section 78A above (whether or not the land is also contaminated land by virtue of paragraph (a) of that subsection).

(2) Where this section applies, no remediation notice given in consequence of the land in question being contaminated land shall require a person who is an appropriate person by virtue of section 78F(4) or (5) above to do anything by way of remediation to that or any other land, or any waters, which he could not have been required to do by such a notice had paragraph (b) of section 78A(2) above (and all other references to pollution of controlled waters) been omitted from this Part.

(3) If, in a case where this section applies, a person permits, has permitted, or might permit, water from an abandoned mine or part of a mine—

(a) to enter any controlled waters, or

(b) to reach a place from which it is or, as the case may be, was likely, in the opinion of the enforcing authority, to enter such waters,

no remediation notice shall require him in consequence to do anything by way of remediation (whether to the contaminated land in question or to any other land or waters) which he could not have been required to do by such a notice had paragraph (b) of section 78A(2) above (and all other references to pollution of controlled waters) been omitted from this Part.

(4) Subsection (3) above shall not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.

(5) In determining for the purposes of subsection (4) above whether a mine or part of a mine became abandoned before, on or after 31st December 1999 in a case where the mine or part has become abandoned on two or more occasions, of which—

(a) at least one falls on or before that date, and

(b) at least one falls after that date,

the mine or part shall be regarded as becoming abandoned after that date (but without prejudice to the operation of subsection (3) above in relation to that mine or part at, or in relation to, any time before the first of those occasions which falls after that date).

(6) Where, immediately before a part of a mine becomes abandoned, that part is the only part of the mine not falling to be regarded as abandoned for the time being, the abandonment of that part shall not be regarded for the purposes of subsection (4) or (5) above as constituting the abandonment of the mine, but only of that part of it.

(7) Nothing in subsection (2) or (3) above prevents the enforcing authority from doing anything by way of remediation under section 78N below which it could have done apart from that subsection, but the authority shall not be entitled under section 78P below to recover from any person any part of the cost incurred by the authority in doing by way of remediation anything which it is precluded by subsection (2) or (3) above from requiring that person to do.

(8) In this section "mine" has the same meaning as in the [M46]Mines and Quarries Act 1954.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Extent Information

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

Textual Amendments

F318 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

Marginal Citations

M46 1954 c. 70.

F318[F302 78H Restrictions on liability relating to the pollution of controlled waters. S

(1) This section applies where any land is contaminated land by virtue of paragraph (b) of subsection (2) of section 78A above (whether or not the land is also contaminated land by virtue of paragraph (a) of that subsection).

(2) Where this section applies, no remediation notice given in consequence of the land in question being contaminated land shall require a person who is an appropriate person by virtue of section 78F(4) or (5) above to do anything by way of remediation to that or any other land, or **[**F851the water environment**]**, which he could not have been required to do by such a notice had paragraph (b) of section 78A(2) above (and all other references to pollution of **[**F852the water environment**]**) been omitted from this Part.

(3) If, in a case where this section applies, a person permits, has permitted, or might permit, water from an abandoned mine or part of a mine—

(a) to enter **[**F853the water environment**]**, or

(b) to reach a place from which it is or, as the case may be, was likely, in the opinion of the enforcing authority, to enter **[**F854the water environment**]**,

no remediation notice shall require him in consequence to do anything by way of remediation (whether to the contaminated land in question or to any other land **[**F855or the water environment**]**) which he could not have been required to do by such a notice had paragraph (b) of section 78A(2) above (and all other references to pollution of **[**F852the water environment**]**) been omitted from this Part.

(4) Subsection (3) above shall not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.

(5) In determining for the purposes of subsection (4) above whether a mine or part of a mine became abandoned before, on or after 31st December 1999 in a case where the mine or part has become abandoned on two or more occasions, of which—

(a) at least one falls on or before that date, and

(b) at least one falls after that date,

the mine or part shall be regarded as becoming abandoned after that date (but without prejudice to the operation of subsection (3) above in relation to that mine or part at, or in relation to, any time before the first of those occasions which falls after that date).

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(6) Where, immediately before a part of a mine becomes abandoned, that part is the only part of the mine not falling to be regarded as abandoned for the time being, the abandonment of that part shall not be regarded for the purposes of subsection (4) or (5) above as constituting the abandonment of the mine, but only of that part of it.

(7) Nothing in subsection (2) or (3) above prevents the enforcing authority from doing anything by way of remediation under section 78N below which it could have done apart from that subsection, but the authority shall not be entitled under section 78P below to recover from any person any part of the cost incurred by the authority in doing by way of remediation anything which it is precluded by subsection (2) or (3) above from requiring that person to do.

(8) In this section "mine" has the same meaning as in the [M46]Mines and Quarries Act 1954.**]**

Extent Information

E52 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F318 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F851 Words in s. 78J(2) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(7)(a)**

F852 Words in s. 78J(2)(3) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(2)**

F853 Words in s. 78J(3)(a) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(7)(b)**

F854 Words in s. 78J(3)(b) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(7)(c)**

F855 Words in s. 78J(3) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(7)(d)**

Marginal Citations

M46 1954 c. 70.

[F319]78K Liability in respect of contaminating substances which escape to other land. E+W

(1) A person who has caused or knowingly permitted any substances to be in, on or under any land shall also be taken for the purposes of this Part to have caused or, as the case may be, knowingly permitted those substances to be in, on or under any other land to which they appear to have escaped.

(2) Subsections (3) and (4) below apply in any case where it appears that any substances are or have been in, on or under any land (in this section referred to as "land A") as a result of their escape, whether directly or indirectly, from other land in, on or under which a person caused or knowingly permitted them to be.

(3) Where this subsection applies, no remediation notice shall require a person—

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(a) who is the owner or occupier of land A, and

(b) who has not caused or knowingly permitted the substances in question to be in, on or under that land,

to do anything by way of remediation to any land or waters (other than land or waters of which he is the owner or occupier) in consequence of land A appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of controlled waters is being, or is likely to be caused.

(4) Where this subsection applies, no remediation notice shall require a person—

(a) who is the owner or occupier of land A, and

(b) who has not caused or knowingly permitted the substances in question to be in, on or under that land,

to do anything by way of remediation in consequence of any further land in, on or under which those substances or any of them appear to be or to have been present as a result of their escape from land A ("land B") appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of controlled waters is being, or is likely to be caused, unless he is also the owner or occupier of land B.

(5) In any case where—

(a) a person ("person A") has caused or knowingly permitted any substances to be in, on, or under any land,

(b) another person ("person B") who has not caused or knowingly permitted those substances to be in, on or under that land becomes the owner or occupier of that land, and

(c) the substances, or any of the substances, mentioned in paragraph (a) above appear to have escaped to other land,

no remediation notice shall require person B to do anything by way of remediation to that other land in consequence of the apparent acts or omissions of person A, except to the extent that person B caused or knowingly permitted the escape.

(6) Nothing in subsection (3), (4) or (5) above prevents the enforcing authority from doing anything by way of remediation under section 78N below which it could have done apart from that subsection, but the authority shall not be entitled under section 78P below to recover from any person any part of the cost incurred by the authority in doing by way of remediation anything which it is precluded by subsection (3), (4) or (5) above from requiring that person to do.

(7) In this section, "appear" means appear to the enforcing authority, and cognate expressions shall be construed accordingly.

Extent Information

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

Textual Amendments

F319 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000)

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by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F319 78K Liability in respect of contaminating substances which escape to other land. S

(1) A person who has caused or knowingly permitted any substances to be in, on or under any land shall also be taken for the purposes of this Part to have caused or, as the case may be, knowingly permitted those substances to be in, on or under any other land to which they appear to have escaped.

(2) Subsections (3) and (4) below apply in any case where it appears that any substances are or have been in, on or under any land (in this section referred to as "land A") as a result of their escape, whether directly or indirectly, from other land in, on or under which a person caused or knowingly permitted them to be.

(3) Where this subsection applies, no remediation notice shall require a person—

(a) who is the owner or occupier of land A, and

(b) who has not caused or knowingly permitted the substances in question to be in, on or under that land,

to do anything by way of remediation to any land **[**F856or the water environment**]** (other than land **[**F856or the water environment**]** of which he is the owner or occupier) in consequence of land A appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that significant harm **[**F857, or significant pollution of the water environment, is being caused, or there is a significant possibility of such harm or pollution being caused**]**.

(4) Where this subsection applies, no remediation notice shall require a person—

(a) who is the owner or occupier of land A, and

(b) who has not caused or knowingly permitted the substances in question to be in, on or under that land,

to do anything by way of remediation in consequence of any further land in, on or under which those substances or any of them appear to be or to have been present as a result of their escape from land A ("land B") appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that significant harm **[**F858, or significant pollution of the water environment, is being caused, or there is a significant possibility of such harm or pollution being caused**]**, unless he is also the owner or occupier of land B.

(5) In any case where—

(a) a person ("person A") has caused or knowingly permitted any substances to be in, on, or under any land,

(b) another person ("person B") who has not caused or knowingly permitted those substances to be in, on or under that land becomes the owner or occupier of that land, and

(c) the substances, or any of the substances, mentioned in paragraph (a) above appear to have escaped to other land,

no remediation notice shall require person B to do anything by way of remediation to that other land in consequence of the apparent acts or omissions of person A, except to the extent that person B caused or knowingly permitted the escape.

(6) Nothing in subsection (3), (4) or (5) above prevents the enforcing authority from doing anything by way of remediation under section 78N below which it could have done

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apart from that subsection, but the authority shall not be entitled under section 78P below to recover from any person any part of the cost incurred by the authority in doing by way of remediation anything which it is precluded by subsection (3), (4) or (5) above from requiring that person to do.

(7) In this section, "appear" means appear to the enforcing authority, and cognate expressions shall be construed accordingly.

Extent Information

E53 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F319 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F856 Words in s. 78K(3) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(8)(a)(i)**

F857 Words in s. 78K(3) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(8)(a)(ii)**

F858 Words in s. 78K(4) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(8)(b)**

F320 78L Appeals against remediation notices. E+W

(1) A person on whom a remediation notice is served may, within the period of twenty-one days beginning with the day on which the notice is served, appeal against the notice—

[F321(a) if it was served by a local authority in England, or served by the Environment Agency in relation to land in England, to the Secretary of State;

(b) if it was served by a local authority in Wales, or served by the Environment Agency in relation to land in Wales, to the National Assembly for Wales;**]**

and in the following provisions of this section "the appellate authority" means **[**F322the Secretary of State or the National Assembly for Wales, as the case may be**]**.

(2) On any appeal under subsection (1) above the appellate authority—

(a) shall quash the notice, if it is satisfied that there is a material defect in the notice; but

(b) subject to that, may confirm the remediation notice, with or without modification, or quash it.

(3) Where an appellate authority confirms a remediation notice, with or without modification, it may extend the period specified in the notice for doing what the notice requires to be done.

(4) Regulations may make provision with respect to—

(a) the grounds on which appeals under subsection (1) above may be made;

(b) F323 . . . . . .

(c) the procedure on an appeal under subsection (1) above F324. . .

(5) Regulations under subsection (4) above may (among other things)—

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(a) include provisions comparable to those in section 290 of the [M47]Public Health Act 1936 (appeals against notices requiring the execution of works);

(b) prescribe the cases in which a remediation notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;

(c) prescribe the cases in which the decision on an appeal may in some respects be less favourable to the appellant than the remediation notice against which he is appealing;

(d) prescribe the cases in which the appellant may claim that a remediation notice should have been served on some other person and prescribe the procedure to be followed in those cases;

(e) make provision as respects—

(i) the particulars to be included in the notice of appeal;

(ii) the persons on whom notice of appeal is to be served and the particulars, if any, which are to accompany the notice; and

(iii) the abandonment of an appeal;

(f) make different provision for different cases or classes of case.

(6) This section, [F325]. . . , is subject to section 114 of the [M48]Environment Act 1995 (delegation or reference of appeals etc).

Extent Information

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

Textual Amendments

F320 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F321 S. 78L(1)(a)(b) substituted (E.W.) (16.3.2006 for certain purposes for W. and 10.12.2006 otherwise for W. and 4.8.2006 for certain purposes in relation to E.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 104(2)**, 108 (with s. 104(6)(7)); S.I. 2006/768, **arts. 3**, **4**; S.I. 2006/1361, **art. 2(1)** (subject to art. 2(2)); S.I. 2006/2989

F322 Words in s. 78L(1) substituted (E.W.) (16.3.2006 for certain purposes for W. and 10.12.2006 otherwise for W. and 4.8.2006 for certain purposes in relation to E.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 104(3)**, 108 (with s. 104(6)(7)); S.I. 2006/768, **arts. 3**, **4**; S.I. 2006/1361, **art. 2(1)** (subject to art. 2(2)); S.I. 2006/2989

F323 S. 78L(4)(b) repealed (E.W.) (16.3.2006 for certain purposes for W. and 10.12.2006 otherwise for W. and 4.8.2006 for certain purposes in relation to E.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 104(4)(a), 107, 108, **Sch. 5 Pt. 10** (with s. 104(6)(7)); S.I. 2006/768, **arts. 3**, **4**; S.I. 2006/1361, **art. 2(1)** (subject to art. 2(2)); S.I. 2006/2989

F324 Words in s. 78L(4)(c) repealed (E.W.) (16.3.2006 for certain purposes for W. and 10.12.2006 otherwise for W. and 4.8.2006 for certain purposes in relation to E.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 104(4)(b), 107, 108, **Sch. 5 Pt. 10** (with s. 104(6)(7)); S.I. 2006/768, **arts. 3**, **4**; S.I. 2006/1361, **art. 2(1)** (subject to art. 2(2)); S.I. 2006/2989

F325 Words in s. 78L(6) repealed (E.W.) (16.3.2006 for certain purposes for W. and 10.12.2006 otherwise for W. and 4.8.2006 for certain purposes in relation to E.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 104(5), 107, 108, **Sch. 5 Pt. 10** (with s. 104(6)(7)); S.I. 2006/768, **arts. 3**, **4**; S.I. 2006/1361, **art. 2(1)** (subject to art. 2(2)); S.I. 2006/2989

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Modifications etc. (not altering text)

C60 S. 78L: power to delegate certain functions conferred (1.4.1996) by 1995 c. 25, **s.114** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Marginal Citations

M47 1936 c. 49.

M48 1995 c. 25.

F320[78L Appeals against remediation notices. S

(1) A person on whom a remediation notice is served may, within the period of twenty-one days beginning with the day on which the notice is served, appeal against the notice—

(a) if it was served by a local authority, to a magistrates' court or, in Scotland, to the sheriff by way of summary application; or

(b) if it was served by the appropriate Agency, to the Secretary of State;

and in the following provisions of this section "the appellate authority" means the magistrates' court, the sheriff or the Secretary of State, as the case may be.

(2) On any appeal under subsection (1) above the appellate authority—

(a) shall quash the notice, if it is satisfied that there is a material defect in the notice; but

(b) subject to that, may confirm the remediation notice, with or without modification, or quash it.

(3) Where an appellate authority confirms a remediation notice, with or without modification, it may extend the period specified in the notice for doing what the notice requires to be done.

(4) Regulations may make provision with respect to—

(a) the grounds on which appeals under subsection (1) above may be made;

(b) the cases in which, grounds on which, court or tribunal to which, or person at whose instance, an appeal against a decision of a magistrates' court or sheriff court in pursuance of an appeal under subsection (1) above shall lie; or

(c) the procedure on an appeal under subsection (1) above or on an appeal by virtue of paragraph (b) above.

(5) Regulations under subsection (4) above may (among other things)—

(a) include provisions comparable to those in section 290 of the M47Public Health Act 1936 (appeals against notices requiring the execution of works);

(b) prescribe the cases in which a remediation notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;

(c) prescribe the cases in which the decision on an appeal may in some respects be less favourable to the appellant than the remediation notice against which he is appealing;

(d) prescribe the cases in which the appellant may claim that a remediation notice should have been served on some other person and prescribe the procedure to be followed in those cases;

(e) make provision as respects—

(i) the particulars to be included in the notice of appeal;

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(ii) the persons on whom notice of appeal is to be served and the particulars, if any, which are to accompany the notice; and

(iii) the abandonment of an appeal;

(f) make different provision for different cases or classes of case.

(6) This section, so far as relating to appeals to the Secretary of State, is subject to section 114 of the [M48]Environment Act 1995 (delegation or reference of appeals etc).**]**

Textual Amendments

F320 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

Modifications etc. (not altering text)

C60 S. 78L: power to delegate certain functions conferred (1.4.1996) by 1995 c. 25, **s.114** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

C161 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Marginal Citations

M47 1936 c. 49.

M48 1995 c. 25.

[F326]78M Offences of not complying with a remediation notice.

(1) If a person on whom an enforcing authority serves a remediation notice fails, without reasonable excuse, to comply with any of the requirements of the notice, he shall be guilty of an offence.

(2) Where the remediation notice in question is one which was required by section 78E(3) above to state, in relation to the requirement which has not been complied with, the proportion of the cost involved which the person charged with the offence is liable to bear, it shall be a defence for that person to prove that the only reason why he has not complied with the requirement is that one or more of the other persons who are liable to bear a proportion of that cost refused, or was not able, to comply with the requirement.

(3) Except in a case falling within subsection (4) below, a person who commits an offence under subsection (1) above shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale and to a further fine of an amount equal to one-tenth of level 5 on the standard scale for each day on which the failure continues after conviction of the offence and before the enforcing authority has begun to exercise its powers by virtue of section 78N(3)(c) below.

(4) A person who commits an offence under subsection (1) above in a case where the contaminated land to which the remediation notice relates is industrial, trade or business premises shall be liable on summary conviction to a fine not exceeding £20,000 or such greater sum as the Secretary of State may from time to time by order substitute and to a further fine of an amount equal to one-tenth of that sum for each day on which the failure continues after conviction of the offence and before the enforcing authority has begun to exercise its powers by virtue of section 78N(3)(c) below.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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(5) If the enforcing authority is of the opinion that proceedings for an offence under this section would afford an ineffectual remedy against a person who has failed to comply with any of the requirements of a remediation notice which that authority has served on him, that authority may take proceedings in the High Court or, in Scotland, in any court of competent jurisdiction, for the purpose of securing compliance with the remediation notice.

(6) In this section, "industrial, trade or business premises" means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purpose of manufacturing.

(7) No order shall be made under subsection (4) above unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

Textual Amendments

F326 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F327 78N Powers of the enforcing authority to carry out remediation. E+W

(1) Where this section applies, the enforcing authority shall itself have power, in a case falling within paragraph (a) or (b) of section 78E(1) above, to do what is appropriate by way of remediation to the relevant land or waters.

(2) Subsection (1) above shall not confer power on the enforcing authority to do anything by way of remediation if the authority would, in the particular case, be precluded by section 78YB below from serving a remediation notice requiring that thing to be done.

(3) This section applies in each of the following cases, that is to say—

(a) where the enforcing authority considers it necessary to do anything itself by way of remediation for the purpose of preventing the occurrence of any serious harm, or serious pollution of controlled waters, of which there is imminent danger;

(b) where an appropriate person has entered into a written agreement with the enforcing authority for that authority to do, at the cost of that person, that which he would otherwise be required to do under this Part by way of remediation;

(c) where a person on whom the enforcing authority serves a remediation notice fails to comply with any of the requirements of the notice;

(d) where the enforcing authority is precluded by section 78J or 78K above from including something by way of remediation in a remediation notice;

(e) where the enforcing authority considers that, were it to do some particular thing by way of remediation, it would decide, by virtue of subsection (2) of section 78P below or any guidance issued under that subsection,—

(i) not to seek to recover under subsection (1) of that section any of the reasonable cost incurred by it in doing that thing; or

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Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(ii) to seek so to recover only a portion of that cost;

(f) where no person has, after reasonable inquiry, been found who is an appropriate person in relation to any particular thing.

(4) Subject to section 78E(4) and (5) above, for the purposes of this section, the things which it is appropriate for the enforcing authority to do by way of remediation are—

(a) in a case falling within paragraph (a) of subsection (3) above, anything by way of remediation which the enforcing authority considers necessary for the purpose mentioned in that paragraph;

(b) in a case falling within paragraph (b) of that subsection, anything specified in, or determined under, the agreement mentioned in that paragraph;

(c) in a case falling within paragraph (c) of that subsection, anything which the person mentioned in that paragraph was required to do by virtue of the remediation notice;

(d) in a case falling within paragraph (d) of that subsection, anything by way of remediation which the enforcing authority is precluded by section 78J or 78K above from including in a remediation notice;

(e) in a case falling within paragraph (e) or (f) of that subsection, the particular thing mentioned in the paragraph in question.

(5) In this section "the relevant land or waters" means—

(a) the contaminated land in question;

(b) any controlled waters affected by that land; or

(c) any land adjoining or adjacent to that land or those waters.

Extent Information

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

Textual Amendments

F327 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F327[F302]78N Powers of the enforcing authority to carry out remediation. S

(1) Where this section applies, the enforcing authority shall itself have power, in a case falling within paragraph (a) or (b) of section 78E(1) above, to do what is appropriate by way of remediation to the relevant land or **[**F859the water environment**]**.

(2) Subsection (1) above shall not confer power on the enforcing authority to do anything by way of remediation if the authority would, in the particular case, be precluded by section 78YB below from serving a remediation notice requiring that thing to be done.

(3) This section applies in each of the following cases, that is to say—

(a) where the enforcing authority considers it necessary to do anything itself by way of remediation for the purpose of preventing the occurrence of any serious harm, or serious pollution of **[**F860the water environment**]**, of which there is imminent danger;

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(b) where an appropriate person has entered into a written agreement with the enforcing authority for that authority to do, at the cost of that person, that which he would otherwise be required to do under this Part by way of remediation;

(c) where a person on whom the enforcing authority serves a remediation notice fails to comply with any of the requirements of the notice;

(d) where the enforcing authority is precluded by section 78J or 78K above from including something by way of remediation in a remediation notice;

(e) where the enforcing authority considers that, were it to do some particular thing by way of remediation, it would decide, by virtue of subsection (2) of section 78P below or any guidance issued under that subsection,—

(i) not to seek to recover under subsection (1) of that section any of the reasonable cost incurred by it in doing that thing; or

(ii) to seek so to recover only a portion of that cost;

(f) where no person has, after reasonable inquiry, been found who is an appropriate person in relation to any particular thing.

(4) Subject to section 78E(4) and (5) above, for the purposes of this section, the things which it is appropriate for the enforcing authority to do by way of remediation are—

(a) in a case falling within paragraph (a) of subsection (3) above, anything by way of remediation which the enforcing authority considers necessary for the purpose mentioned in that paragraph;

(b) in a case falling within paragraph (b) of that subsection, anything specified in, or determined under, the agreement mentioned in that paragraph;

(c) in a case falling within paragraph (c) of that subsection, anything which the person mentioned in that paragraph was required to do by virtue of the remediation notice;

(d) in a case falling within paragraph (d) of that subsection, anything by way of remediation which the enforcing authority is precluded by section 78J or 78K above from including in a remediation notice;

(e) in a case falling within paragraph (e) or (f) of that subsection, the particular thing mentioned in the paragraph in question.

[[F861](5) In this section "relevant land or water environment" means–

(a) the contaminated land in question;

(b) the water environment affected by that land; or

(c) any land adjoining or adjacent to that land or that water environment.**]]**

Extent Information

E54 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F327 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F859 Words in s. 78N(1) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(9)(a)**

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F860 Words in s. 78N(3)(a) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(2)**

F861 S. 78N(5) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(9)(b)**

F328 78P Recovery of, and security for, the cost of remediation by the enforcing authority.

(1) Where, by virtue of section 78N(3)(a), (c), (e) or (f) above, the enforcing authority does any particular thing by way of remediation, it shall be entitled, subject to sections 78J(7) and 78K(6) above, to recover the reasonable cost incurred in doing it from the appropriate person or, if there are two or more appropriate persons in relation to the thing in question, from those persons in proportions determined pursuant to section 78F(7) above.

(2) In deciding whether to recover the cost, and, if so, how much of the cost, which it is entitled to recover under subsection (1) above, the enforcing authority shall have regard—

(a) to any hardship which the recovery may cause to the person from whom the cost is recoverable; and

(b) to any guidance issued by the Secretary of State for the purposes of this subsection.

(3) Subsection (4) below shall apply in any case where—

(a) any cost is recoverable under subsection (1) above from a person—

(i) who is the owner of any premises which consist of or include the contaminated land in question; and

(ii) who caused or knowingly permitted the substances, or any of the substances, by reason of which the land is contaminated land to be in, on or under the land; and

(b) the enforcing authority serves a notice under this subsection (in this Part referred to as a "charging notice") on that person.

(4) Where this subsection applies—

(a) the cost shall carry interest, at such reasonable rate as the enforcing authority may determine, from the date of service of the notice until the whole amount is paid; and

(b) subject to the following provisions of this section, the cost and accrued interest shall be a charge on the premises mentioned in subsection (3)(a)(i) above.

(5) A charging notice shall—

(a) specify the amount of the cost which the enforcing authority claims is recoverable;

(b) state the effect of subsection (4) above and the rate of interest determined by the authority under that subsection; and

(c) state the effect of subsections (7) and (8) below.

(6) On the date on which an enforcing authority serves a charging notice on a person, the authority shall also serve a copy of the notice on every other person who, to the knowledge of the authority, has an interest in the premises capable of being affected by the charge.

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(7) Subject to any order under subsection (9)(b) or (c) below, the amount of any cost specified in a charging notice and the accrued interest shall be a charge on the premises—

(a) as from the end of the period of twenty-one days beginning with the service of the charging notice, or

(b) where an appeal is brought under subsection (8) below, as from the final determination or (as the case may be) the withdrawal, of the appeal,

until the cost and interest are recovered.

(8) A person served with a charging notice or a copy of a charging notice may appeal against the notice to a county court within the period of twenty-one days beginning with the date of service.

(9) On an appeal under subsection (8) above, the court may—

(a) confirm the notice without modification;

(b) order that the notice is to have effect with the substitution of a different amount for the amount originally specified in it; or

(c) order that the notice is to be of no effect.

(10) Regulations may make provision with respect to—

(a) the grounds on which appeals under this section may be made; or

(b) the procedure on any such appeal.

(11) An enforcing authority shall, for the purpose of enforcing a charge under this section, have all the same powers and remedies under the [M49]Law of Property Act 1925, and otherwise, as if it were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

(12) Where any cost is a charge on premises under this section, the enforcing authority may by order declare the cost to be payable with interest by instalments within the specified period until the whole amount is paid.

(13) In subsection (12) above—

"interest" means interest at the rate determined by the enforcing authority under subsection (4) above; and

"the specified period" means such period of thirty years or less from the date of service of the charging notice as is specified in the order.

(14) Subsections (3) to (13) above do not extend to Scotland.

Extent Information

E18 S. 78P(3)-(13) do not extend to Scotland see s. 78P(14)

Textual Amendments

F328 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

Marginal Citations

M49 1925 c. 20.

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F329 78Q Special sites.

(1) If, in a case where a local authority has served a remediation notice, the contaminated land in question becomes a special site, the appropriate Agency may adopt the remediation notice and, if it does so,—

(a) it shall give notice of its decision to adopt the remediation notice to the appropriate person and to the local authority;

(b) the remediation notice shall have effect, as from the time at which the appropriate Agency decides to adopt it, as a remediation notice given by that Agency; and

(c) the validity of the remediation notice shall not be affected by—

(i) the contaminated land having become a special site;

(ii) the adoption of the remediation notice by the appropriate Agency; or

(iii) anything in paragraph (b) above.

(2) Where a local authority has, by virtue of section 78N above, begun to do any thing, or any series of things, by way of remediation—

(a) the authority may continue doing that thing, or that series of things, by virtue of that section, notwithstanding that the contaminated land in question becomes a special site; and

(b) section 78P above shall apply in relation to the reasonable cost incurred by the authority in doing that thing or those things as if that authority were the enforcing authority.

(3) If and so long as any land is a special site, the appropriate Agency may from time to time inspect that land for the purpose of keeping its condition under review.

(4) If it appears to the appropriate Agency that a special site is no longer land which is required to be designated as such a site, the appropriate Agency may give notice—

(a) to the Secretary of State, and

(b) to the local authority in whose area the site is situated,

terminating the designation of the land in question as a special site as from such date as may be specified in the notice.

(5) A notice under subsection (4) above shall not prevent the land, or any of the land, to which the notice relates being designated as a special site on a subsequent occasion.

(6) In exercising its functions under subsection (3) or (4) above, the appropriate Agency shall act in accordance with any guidance given for the purpose by the Secretary of State.

Textual Amendments

F329 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F330 78R Registers.

(1) Every enforcing authority shall maintain a register containing prescribed particulars of or relating to—

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(a) remediation notices served by that authority;

(b) appeals against any such remediation notices;

(c) remediation statements or remediation declarations prepared and published under section 78H above;

(d) in relation to an enforcing authority in England and Wales, appeals against charging notices served by that authority;

(e) notices under subsection (1)(b) or (5)(a) of section 78C above which have effect by virtue of subsection (7) of that section as the designation of any land as a special site;

(f) notices under subsection (4)(b) of section 78D above which have effect by virtue of subsection (6) of that section as the designation of any land as a special site;

(g) notices given by or to the enforcing authority under section 78Q(4) above terminating the designation of any land as a special site;

(h) notifications given to that authority by persons—

(i) on whom a remediation notice has been served, or

(ii) who are or were required by virtue of section 78H(8)(a) above to prepare and publish a remediation statement,

of what they claim has been done by them by way of remediation;

(j) notifications given to that authority by owners or occupiers of land—

(i) in respect of which a remediation notice has been served, or

(ii) in respect of which a remediation statement has been prepared and published,

of what they claim has been done on the land in question by way of remediation;

(k) convictions for such offences under section 78M above as may be prescribed;

(l) such other matters relating to contaminated land as may be prescribed;

but that duty is subject to sections 78S and 78T below.

(2) The form of, and the descriptions of information to be contained in, notifications for the purposes of subsection (1)(h) or (j) above may be prescribed by the Secretary of State.

(3) No entry made in a register by virtue of subsection (1)(h) or (j) above constitutes a representation by the body maintaining the register or, in a case where the entry is made by virtue of subsection (6) below, the authority which sent the copy of the particulars in question pursuant to subsection (4) or (5) below—

(a) that what is stated in the entry to have been done has in fact been done; or

(b) as to the manner in which it has been done.

(4) Where any particulars are entered on a register maintained under this section by the appropriate Agency, the appropriate Agency shall send a copy of those particulars to the local authority in whose area is situated the land to which the particulars relate.

(5) In any case where—

(a) any land is treated by virtue of section 78X(2) below as situated in the area of a local authority other than the local authority in whose area it is in fact situated, and

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(b) any particulars relating to that land are entered on the register maintained under this section by the local authority in whose area the land is so treated as situated,

that authority shall send a copy of those particulars to the local authority in whose area the land is in fact situated.

(6) Where a local authority receives a copy of any particulars sent to it pursuant to subsection (4) or (5) above, it shall enter those particulars on the register maintained by it under this section.

(7) Where information of any description is excluded by virtue of section 78T below from any register maintained under this section, a statement shall be entered in the register indicating the existence of information of that description.

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

(a) to secure that the registers maintained by it under this section are available, at all reasonable times, for inspection by the public free of charge; and

(b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges;

and, for the purposes of this subsection, places may be prescribed by the Secretary of State at which any such registers or facilities as are mentioned in paragraph (a) or (b) above are to be available or afforded to the public in pursuance of the paragraph in question.

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

Textual Amendments

F330 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F331 78S Exclusion from registers of information affecting national security.

(1) No information shall be included in a register maintained under section 78R above if and so long as, in the opinion of the Secretary of State, the inclusion in the register of that information, or information of that description, would be contrary to the interests of national security.

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

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

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

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

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

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

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

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

Textual Amendments

F331 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F332 78T Exclusion from registers of certain confidential information.

(1) No information relating to the affairs of any individual or business shall be included in a register maintained under section 78R above, without the consent of that individual or the person for the time being carrying on that business, if and so long as the information—

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

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

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

(2) Where it appears to an enforcing authority that any information which has been obtained by the authority under or by virtue of any provision of this Part might be commercially confidential, the authority shall—

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

(b) give him a reasonable opportunity—

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

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

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

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

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

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

and, where an appeal is brought in respect of any information, the information shall not be entered in the register until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn.

(4) An appeal under subsection (3) above shall, if either party to the appeal so requests or the Secretary of State so decides, take or continue in the form of a hearing (which must be held in private).

(5) Subsection (10) of section 15 above shall apply in relation to an appeal under subsection (3) above as it applies in relation to an appeal under that section.

(6) Subsection (3) above is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).

(7) The Secretary of State may give to the enforcing authorities directions as to specified information, or descriptions of information, which the public interest requires to be included in registers maintained under section 78R above notwithstanding that the information may be commercially confidential.

(8) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this section at the expiry of the period of four years beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the authority for the information to remain excluded from the register on the ground that it is still commercially confidential and the authority shall determine whether or not that is the case.

(9) Subsections (3) to (6) above shall apply in relation to a determination under subsection (8) above as they apply in relation to a determination under subsection (2) above.

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

(11) For the purposes of subsection (10) above, there shall be disregarded any prejudice to the commercial interests of any individual or person so far as relating only to the value of the contaminated land in question or otherwise to the ownership or occupation of that land.

Textual Amendments

F332 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

Modifications etc. (not altering text)

C61 S. 78T: power, to delegate certain functions, conferred (1.4.1996) by 1995 c. 25, **s.114** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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[F333]78U Reports by the appropriate Agency on the state of contaminated land.

(1) The appropriate Agency shall—

(a) from time to time, or

(b) if the Secretary of State at any time so requests,

prepare and publish a report on the state of contaminated land in England and Wales or in Scotland, as the case may be.

(2) A local authority shall, at the written request of the appropriate Agency, furnish the appropriate Agency with such information to which this subsection applies as the appropriate Agency may require for the purpose of enabling it to perform its functions under subsection (1) above.

(3) The information to which subsection (2) above applies is such information as the local authority may have, or may reasonably be expected to obtain, with respect to the condition of contaminated land in its area, being information which the authority has acquired or may acquire in the exercise of its functions under this Part.

Textual Amendments

F333 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

[F334]78V Site-specific guidance by the appropriate Agency concerning contaminated land.

(1) The appropriate Agency may issue guidance to any local authority with respect to the exercise or performance of the authority's powers or duties under this Part in relation to any particular contaminated land; and in exercising or performing those powers or duties in relation to that land the authority shall have regard to any such guidance so issued.

(2) If and to the extent that any guidance issued under subsection (1) above to a local authority is inconsistent with any guidance issued under this Part by the Secretary of State, the local authority shall disregard the guidance under that subsection.

(3) A local authority shall, at the written request of the appropriate Agency, furnish the appropriate Agency with such information to which this subsection applies as the appropriate Agency may require for the purpose of enabling it to issue guidance for the purposes of subsection (1) above.

(4) The information to which subsection (3) above applies is such information as the local authority may have, or may reasonably be expected to obtain, with respect to any contaminated land in its area, being information which the authority has acquired, or may acquire, in the exercise of its functions under this Part.

Textual Amendments

F334 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000)

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Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F335 78W The appropriate Agency to have regard to guidance given by the Secretary of State.

(1) The Secretary of State may issue guidance to the appropriate Agency with respect to the exercise or performance of that Agency's powers or duties under this Part; and in exercising or performing those powers or duties the appropriate Agency shall have regard to any such guidance so issued.

(2) The duty imposed on the appropriate Agency by subsection (1) above is without prejudice to any duty imposed by any other provision of this Part on that Agency to act in accordance with guidance issued by the Secretary of State.

Textual Amendments

F335 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F336 78X Supplementary provisions. E+W

(1) Where it appears to a local authority that two or more different sites, when considered together, are in such a condition, by reason of substances in, on or under the land, that—

(a) significant harm is being caused or there is a significant possibility of such harm being caused, or

(b) pollution of controlled waters is being, or is likely to be, caused,

this Part shall apply in relation to each of those sites, whether or not the condition of the land at any of them, when considered alone, appears to the authority to be such that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of controlled waters is being or is likely to be caused.

(2) Where it appears to a local authority that any land outside, but adjoining or adjacent to, its area is in such a condition, by reason of substances in, on or under the land, that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of controlled waters is being, or is likely to be, caused within its area—

(a) the authority may, in exercising its functions under this Part, treat that land as if it were land situated within its area; and

(b) except in this subsection, any reference—

(i) to land within the area of a local authority, or

(ii) to the local authority in whose area any land is situated,

shall be construed accordingly;

but this subsection is without prejudice to the functions of the local authority in whose area the land is in fact situated.

(3) A person acting in a relevant capacity—

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(a) shall not thereby be personally liable, under this Part, to bear the whole or any part of the cost of doing any thing by way of remediation, unless that thing is to any extent referable to substances whose presence in, on or under the contaminated land in question is a result of any act done or omission made by him which it was unreasonable for a person acting in that capacity to do or make; and

(b) shall not thereby be guilty of an offence under or by virtue of section 78M above unless the requirement which has not been complied with is a requirement to do some particular thing for which he is personally liable to bear the whole or any part of the cost.

(4) In subsection (3) above, "person acting in a relevant capacity" means—

(a) a person acting as an insolvency practitioner, within the meaning of section 388 of the [M50]Insolvency Act 1986 (including that section as it applies in relation to an insolvent partnership by virtue of any order made under section 421 of that Act);

(b) the official receiver acting in a capacity in which he would be regarded as acting as an insolvency practitioner within the meaning of section 388 of the [M51]Insolvency Act 1986 if subsection (5) of that section were disregarded;

(c) the official receiver acting as receiver or manager;

(d) a person acting as a special manager under section 177 or 370 of the [M52]Insolvency Act 1986;

(e) the Accountant in Bankruptcy acting as permanent or interim trustee in a sequestration (within the meaning of the [M53]Bankruptcy (Scotland) Act 1985);

(f) a person acting as a receiver or receiver and manager—

(i) under or by virtue of any enactment; or

(ii) by virtue of his appointment as such by an order of a court or by any other instrument.

(5) Regulations may make different provision for different cases or circumstances.

Textual Amendments

F336 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

Marginal Citations

M50 1986 c. 63.
M51 1986 c. 45.
M52 1986 c. 45.
M53 1985 c. 51.

[F336]78X Supplementary provisions. S

(1) Where it appears to a local authority that two or more different sites, when considered together, are in such a condition, by reason of substances in, on or under the land, that—

(a) significant harm is being caused or there is a significant possibility of such harm being caused, or

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[F862(b) significant pollution of the water environment, is being caused, or there is a significant possibility of such pollution being caused,**]**

this Part shall apply in relation to each of those sites, whether or not the condition of the land at any of them, when considered alone, appears to the authority to be such that significant harm **[**F863, or significant pollution of the water environment, is being caused, or there is a significant possibility of such harm or pollution being caused**]**.

(2) Where it appears to a local authority that any land outside, but adjoining or adjacent to, its area is in such a condition, by reason of substances in, on or under the land, that significant harm **[**F864, or significant pollution of the water environment, is being caused, or there is a significant possibility of such harm or pollution being caused**]** within its area—

(a) the authority may, in exercising its functions under this Part, treat that land as if it were land situated within its area; and

(b) except in this subsection, any reference—

(i) to land within the area of a local authority, or

(ii) to the local authority in whose area any land is situated,

shall be construed accordingly;

but this subsection is without prejudice to the functions of the local authority in whose area the land is in fact situated.

(3) A person acting in a relevant capacity—

(a) shall not thereby be personally liable, under this Part, to bear the whole or any part of the cost of doing any thing by way of remediation, unless that thing is to any extent referable to substances whose presence in, on or under the contaminated land in question is a result of any act done or omission made by him which it was unreasonable for a person acting in that capacity to do or make; and

(b) shall not thereby be guilty of an offence under or by virtue of section 78M above unless the requirement which has not been complied with is a requirement to do some particular thing for which he is personally liable to bear the whole or any part of the cost.

(4) In subsection (3) above, "person acting in a relevant capacity" means—

(a) a person acting as an insolvency practitioner, within the meaning of section 388 of the M50Insolvency Act 1986 (including that section as it applies in relation to an insolvent partnership by virtue of any order made under section 421 of that Act);

(b) the official receiver acting in a capacity in which he would be regarded as acting as an insolvency practitioner within the meaning of section 388 of the M51Insolvency Act 1986 if subsection (5) of that section were disregarded;

(c) the official receiver acting as receiver or manager;

(d) a person acting as a special manager under section 177 or 370 of the M52Insolvency Act 1986;

(e) the Accountant in Bankruptcy acting as permanent or interim trustee in a sequestration (within the meaning of the M53Bankruptcy (Scotland) Act 1985);

(f) a person acting as a receiver or receiver and manager—

(i) under or by virtue of any enactment; or

(ii) by virtue of his appointment as such by an order of a court or by any other instrument.

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(5) Regulations may make different provision for different cases or circumstances.

Textual Amendments

F336 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F862 S. 78X(1)(b) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(10)(a)(i)**

F863 Words in s. 78X(1) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(10)(a)(ii)**

F864 Words in s. 78X(2) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(10)(b)**

Marginal Citations

M50 1986 c. 63.

M51 1986 c. 45.

M52 1986 c. 45.

M53 1985 c. 51.

F337 78Y 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

F337 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **ss. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F338 78YA Supplementary provisions with respect to guidance by the Secretary of State.

(1) Any power of the Secretary of State to issue guidance under this Part shall only be exercisable after consultation with the appropriate Agency and such other bodies or

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persons as he may consider it appropriate to consult in relation to the guidance in question.

(2) A draft of any guidance proposed to be issued under section 78A(2) or (5), 78B(2) or 78F(6) or (7) above shall be laid before each House of Parliament and the guidance shall not be issued until after the period of 40 days beginning with the day on which the draft was so laid or, if the draft is laid on different days, the later of the two days.

(3) If, within the period mentioned in subsection (2) above, either House resolves that the guidance, the draft of which was laid before it, should not be issued, the Secretary of State shall not issue that guidance.

(4) In reckoning any period of 40 days for the purposes of subsection (2) or (3) above, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

[F339(4A) Subsections (2) to (4) shall not apply in respect of a draft of any guidance to be issued under section 78A(2) or (5), 78B(2) or 78F(6) or (7) above which relates only to Scotland and such a draft shall be laid before the Scottish Parliament and shall not be issued until after the end of the period of 40 days beginning with the day on which the draft was so laid.

(4B) If within the period mentioned in subsection (4A) above the Scottish Parliament resolves that the guidance, the draft of which was laid before it, should not be issued, the Scottish Ministers shall not issue that guidance.

(4C) In reckoning any period of 40 days for the purposes of subsection (4A) or (4B) above no account shall be taken of any time during which the Scottish Parliament is dissolved or is in recess for more than 4 days.**]]**

(5) The Secretary of State shall arrange for any guidance issued by him under this Part to be published in such manner as he considers appropriate.

Textual Amendments

F338 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F339 S. 78YA(4A)-(4C) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 102(3)**

F340 78YB Interaction of this Part with other enactments. E+W

[F341(1) This Part shall not apply if and to the extent that—

(a) any significant harm, or pollution of controlled waters, by reason of which land would otherwise fall to be regarded as contaminated, is attributable to the operation of a regulated facility; and

(b) enforcement action may be taken in relation to that harm or pollution.**]**

(3) If, in a case falling within subsection (1) or (7) of section 59 above, the land in question is contaminated land, or becomes such land by reason of the deposit of the controlled waste in question, a remediation notice shall not be served in respect of that land by reason of that waste or any consequences of its deposit, if and to the extent that it appears to the enforcing authority that the powers of a waste regulation authority or

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waste collection authority under that section may be exercised in relation to that waste or the consequences of its deposit.

(4) No remediation notice shall require a person to do anything the effect of which would be to impede or prevent the making of a discharge in pursuance of a consent given under Chapter II of Part III of the [M54]Water Resources Act 1991 (pollution offences) or, in relation to Scotland, in pursuance of a consent given under Part II of the [M55]Control of Pollution Act 1974.

[[F342](5) In this section—

"enforcement action" means action under regulation 36, 37 or 42 of the Environmental Permitting (England and Wales) Regulations 2007;

"regulated facility" has the meaning given in regulation 8 of those Regulations.**]**

Extent Information

E19 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F340 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F341 S. 78YB(1) substituted (E.W.) (6.4.2008) for s. 78YB(1)-(2C) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 18(a)** (with reg. 72, Sch. 4)

F342 S. 78YB(5) inserted (E.W.) (6.4. 2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 18(b)** (with reg. 72, Sch. 4)

Marginal Citations

M54 1991 c. 57.

M55 1974 c. 40.

[F340]78YBInteraction of this Part with other enactments. S

(1) A remediation notice shall not be served if and to the extent that it appears to the enforcing authority that the powers of the appropriate Agency under section 27 above may be exercised in relation to—

(a) the significant harm (if any), and

(b) the **[**[F865]significant pollution of the water environment**]** (if any),

by reason of which the contaminated land in question is such land.

[[F866](1A) A remediation notice shall not be served if and to the extent that it appears to the enforcing authority that–

(a) the significant harm (if any); and

(b) the significant pollution of the water environment (if any),

by reason of which the contaminated land in question is such land, is as a result of an activity to which–

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(a) the Water Environment (Controlled Activities)(Scotland) Regulations 2005 apply; and

(b) enforcement action may be taken in relation to that activity.**]**

(2) Nothing in this Part shall apply in relation to any land in respect of which there is for the time being in force a site licence under Part II above, except to the extent that any significant harm, or **[**F867significant pollution of the water environment**]**, by reason of which that land would otherwise fall to be regarded as contaminated land is attributable to causes other than—

(a) breach of the conditions of the licence; or

(b) the carrying on, in accordance with the conditions of the licence, of any activity authorised by the licence.

[F868(2A) This Part shall not apply if and to the extent that–

(a) any significant harm, or pollution of **[**F869the water environment**]**, by reason of which the land would otherwise fall to be regarded as contaminated, is attributable to the final disposal by deposit in or on land of controlled waste); and

(b) enforcement action may be taken in relation to that activity.

(2B) A remediation notice shall not be served in respect of contaminated land if and to the extent that–

(a) the significant harm, or pollution of **[**F869the water environment**]**, by reason of which the contaminated land is such land is attributable to an activity (other than the final disposal by deposit in or on land of controlled waste); and

(b) enforcement action may be taken in relation to that activity.

(2C) In subsections (2A) and (2B) above–

"controlled waste" has the meaning given in section 75(4) of this Act;

"enforcement action" means action under regulation 19 (enforcement notices) or regulation 21(2) (power of the Scottish Environment Protection Agency to remedy pollution) of the Pollution Prevention and Control (Scotland) Regulations 2000.**]**

(3) If, in a case falling within subsection (1) or (7) of section 59 above, the land in question is contaminated land, or becomes such land by reason of the deposit of the controlled waste in question, a remediation notice shall not be served in respect of that land by reason of that waste or any consequences of its deposit, if and to the extent that it appears to the enforcing authority that the powers of a waste regulation authority or waste collection authority under that section may be exercised in relation to that waste or the consequences of its deposit.

(4) No remediation notice shall require a person to do anything the effect of which would be to impede or prevent the making of a discharge in pursuance of a consent given under Chapter II of Part III of the M54Water Resources Act 1991 (pollution offences) or, in relation to Scotland, in pursuance of a consent given under Part II of the M55Control of Pollution Act 1974.

Extent Information

E55 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

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Textual Amendments

F340 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F865 Words in s. 78YB(1)(b) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(11)(a)**

F866 S. 78YB(1A) inserted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(11)(b)**

F867 Words in s. 78YB(2) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(11)(c)**

F868 S. 78YB(2A)-(2C) inserted (S.) (28.9.2000) by S.S.I. 2000/323, reg. 36, **Sch. 10 Pt. 1 para. 3(5)**

F869 Words in s. 78YB(2A)(a)(2B)(a) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(2)**

Marginal Citations

M54 1991 c. 57.

M55 1974 c. 40.

[F343 78YC This Part and radioactivity. E+W

Except as provided by regulations, nothing in this Part applies in relation to harm, or pollution of controlled waters, so far as attributable to any radioactivity possessed by any substance; but regulations may—

(a) provide for prescribed provisions of this Part to have effect with such modifications as the Secretary of State considers appropriate for the purpose of dealing with harm, or pollution of controlled waters, so far as attributable to any radioactivity possessed by any substances; or

(b) make such modifications of the M56 Radioactive Substances Act 1993 or any other Act as the Secretary of State considers appropriate.]

Extent Information

E20 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F343 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

Marginal Citations

M56 1993 c. 12.

[F343 78YC This Part and radioactivity. S

Except as provided by regulations, nothing in this Part applies in relation to harm, or pollution of controlled waters, so far as attributable to any radioactivity possessed by any substance; but regulations may—

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(a) provide for prescribed provisions of this Part to have effect with such modifications as the Secretary of State considers appropriate for the purpose of dealing with harm, or pollution of **[**F870the water environment**]**, so far as attributable to any radioactivity possessed by any substances; or

(b) make such modifications of the M56Radioactive Substances Act 1993 or any other Act as the Secretary of State considers appropriate.**]**

Extent Information

E56 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F343 Pt. IIA (ss. 78A-78YC) inserted (in force at 21.9.1995 for certain purposes only, at 1.4.2000 for E. in so far as not already in force, at 14.7.2000 for S. for certain purposes and otherwise 14.7.2000) by 1995 c. 25, **s. 57** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 2000/340, **art. 2(a)**; S.S.I. 2000/180, **art. 2(1)(a)(2)**; S.I. 2000/1986, **art. 2**

F870 Words in s. 78YC substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(2)**

Marginal Citations

M56 1993 c. 12.

PART III

STATUTORY NUISANCES AND CLEAN AIR

Modifications etc. (not altering text)

C62 Pt. III (ss. 79-85) applied: (E.W) (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 167(2)**, 225(2) (with ss. 16(6), 179, 222(3), Sch. 22 para. 1, Sch. 23 para. 6); (E.W.) (1.12.1991) by Land Drainage Act 1991 (c. 59, SIF 73:1), **ss. 15(3)**, 76(2) (with ss. 67(3)(5)(8), 72(6), 74(3)(4)); and (1.8.1991) by S.I. 1991/1773, art. 8, **Sch. 2**
Pt. III (ss. 79-85) amended (27.8.1993) by 1993 c. 12, ss. 40, 49(2), Sch. 3 Pt. I para.7, **Sch. 5 Pt. II para.8** (with ss. 42, 46)
Pt. III (ss. 79-85) excluded (27.8.1993) by 1993 c. 11, **s. 42(4)**
Pt. III (ss. 79-85) power to exclude conferred (27.8.1993) by 1993 c. 11, **ss. 45(1)(a)**, 47(1)(a)

C63 Pt. 3 modified (E.) (6.4.2010) by The Bristol Port Health Authority Order 2010 (S.I. 2010/1214), art. 4, **Sch.**

C64 Pt. 3 modified (E.) (6.4.2010) by The Cowes Port Health Authority Order 2010 (S.I. 2010/1216), art. 4, **Sch.**

C65 Pt. 3 modified (E.) (6.4.2010) by The Portsmouth Port Health Authority Order 2010 (S.I. 2010/1217), art. 4, **Sch.**

C66 Pt. 3 modified (E.) (6.4.2010) by The Southampton Port Health Authority Order 2010 (S.I. 2010/1218), art. 4, **Sch.**

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Statutory nuisances [F344] . . .

Textual Amendments

F344 Words in heading immediately preceding s. 79 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**

79 Statutory nuisances and inspections therefor. E+W

(1) **[**[F345]Subject to subsections (1A) to (6A) below**]**, the following matters constitute "statutory nuisances" for the purposes of this Part, that is to say—

(a) any premises in such a state as to be prejudicial to health or a nuisance;

(b) smoke emitted from premises so as to be prejudicial to health or a nuisance;

(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;

(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;

(e) any accumulation or deposit which is prejudicial to health or a nuisance;

(f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;

[[F346](fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;**]**

[[F347](fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;**]**

(g) noise emitted from premises so as to be prejudicial to health or a nuisance;

[[F348](ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street **[**[F349]or in Scotland, road**]**;**]**

(h) any other matter declared by any enactment to be a statutory nuisance;

and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below **[**[F350]or sections 80 and 80A below**]** and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.

[[F351](1A) No matter shall constitute a statutory nuisance to the extent that it consists of, or is caused by, any land being in a contaminated state.

(1B) Land is in a "contaminated state" for the purposes of subsection (1A) above if, and only if, it is in such a condition, by reason of substances in, on or under the land, that—

(a) harm is being caused or there is a possibility of harm being caused; or

(b) pollution of controlled waters is being, or is likely to be, caused;

and in this subsection "harm", "pollution of controlled waters" and "substance" have the same meaning as in Part IIA of this Act.**]**

(2) Subsection (1)(b) **[**[F352], (fb)**]** and (g) above do not apply in relation to premises—

(a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or

(b) occupied by or for the purposes of a visiting force;

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and "visiting force" means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952.

(3) Subsection (1)(b) above does not apply to—

(i) smoke emitted from a chimney of a private dwelling within a smoke control area,

(ii) dark smoke emitted from a chimney of a building or a chimney serving the furnace of a boiler or industrial plant attached to a building or for the time being fixed to or installed on any land,

(iii) smoke emitted from a railway locomotive steam engine, or

(iv) dark smoke emitted otherwise than as mentioned above from industrial or trade premises.

(4) Subsection (1)(c) above does not apply in relation to premises other than private dwellings.

(5) Subsection (1)(d) above does not apply to steam emitted from a railway locomotive engine.

[F353(5A) Subsection (1)(fa) does not apply to insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981 (animals which are protected), unless they are included in respect of section 9(5) of that Act only.**]**

[F354(5B) Subsection (1)(fb) does not apply to artificial light emitted from—

(a) an airport;

(b) harbour premises;

(c) railway premises, not being relevant separate railway premises;

(d) tramway premises;

(e) a bus station and any associated facilities;

(f) a public service vehicle operating centre;

(g) a goods vehicle operating centre;

(h) a lighthouse;

(i) a prison.**]**

(6) Subsection (1)(g) above does not apply to noise caused by aircraft other than model aircraft.

[F355(6A) Subsection (1)(ga) above does not apply to noise made—

(a) by traffic,

(b) by any naval, military or air force of the Crown or by a visiting force (as defined in subsection (2) above), or

(c) by a political demonstration or a demonstration supporting or opposing a cause or campaign.**]**

(7) In this Part—

[F356"airport" has the meaning given by section 95 of the Transport Act 2000;**]**

[F357"appropriate person" means—

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

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

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[F358“associated facilities”, in relation to a bus station, has the meaning given by section 83 of the Transport Act 1985;**]**

[F359“bus station” has the meaning given by section 83 of the Transport Act 1985;**]**

“chimney” includes structures and openings of any kind from or through which smoke may be emitted;

“dust” does not include dust emitted from a chimney as an ingredient of smoke;

[F360“equipment” includes a musical instrument;**]**

“fumes” means any airborne solid matter smaller than dust;

“gas” includes vapour and moisture precipitated from vapour;

[F361“goods vehicle operating centre”, in relation to vehicles used under an operator's licence, means a place which is specified in the licence as an operating centre for those vehicles, and for the purposes of this definition “operating centre” and “operator's licence” have the same meaning as in the Goods Vehicles (Licensing of Operators) Act 1995;**]**

[F362“harbour premises” means premises which form part of a harbour area and which are occupied wholly or mainly for the purposes of harbour operations, and for the purposes of this definition “harbour area” and “harbour operations” have the same meaning as in Part 3 of the Aviation and Maritime Security Act 1990;**]**

“industrial, trade or business premises” means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing;

[F363“lighthouse” has the same meaning as in Part 8 of the Merchant Shipping Act 1995;**]**

“local authority” means, subject to subsection (8) below,—

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

(b) **[**F364in England and Wales**]** outside Greater London, a district council; F365 . . .

(bb) **[**F366in Wales, a county council or county borough council;**]**

(c) the Council of the Isles of Scilly; **[**F367and

(d) in Scotland, a district or islands council or a council constituted under section 2 of the M57Local Government etc (Scotland) Act 1994;**]**

“noise” includes vibration;

[F368“person responsible”—

(a) in relation to a statutory nuisance, means the person to whose act, default or sufferance the nuisance is attributable;

(b) in relation to a vehicle, includes the person in whose name the vehicle is for the time being registered under **[**F369the Vehicle Excise and Registration Act 1994**]** and any other person who is for the time being the driver of the vehicle;

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(c) in relation to machinery or equipment, includes any person who is for the time being the operator of the machinery or equipment;**]**

"prejudicial to health" means injurious, or likely to cause injury, to health;

"premises" includes land and, subject to subsection (12) **[**F370and **[**F371, in relation to England and Wales,**]** section 81A(9)**]** below, any vessel;

[F372"prison" includes a young offender institution;**]**

"private dwelling" means any building, or part of a building, used or intended to be used, as a dwelling;

[F373"public service vehicle operating centre", in relation to public service vehicles used under a PSV operator's licence, means a place which is an operating centre of those vehicles, and for the purposes of this definition "operating centre", "PSV operator's licence" and "public service vehicle" have the same meaning as in the Public Passenger Vehicles Act 1981;**]**

[F374"railway premises" means any premises which fall within the definition of "light maintenance depot", "network", "station" or "track" in section 83 of the Railways Act 1993;**]**

[F375"relevant separate railway premises" has the meaning given by subsection (7A);**]**

[F376"road" has the same meaning as in Part IV of the New Roads and Street Works Act 1991;**]**

"smoke" includes soot, ash, grit and gritty particles emitted in smoke;

[F377"street" means a highway and any other road, footway, square or court that is for the time being open to the public;

[F378"tramway premises" means any premises which, in relation to a tramway, are the equivalent of the premises which, in relation to a railway, fall within the definition of "light maintenance depot", "network", "station" or "track" in section 83 of the Railways Act 1993;**]]**

and any expressions used in this section and in **[**F379the Clean Air Act 1993**]** have the same meaning in this section as in that Act and **[**F379section 3 of the Clean Air Act 1993**]** shall apply for the interpretation of the expression "dark smoke" and the operation of this Part in relation to it.

[F380(7A) Railway premises are relevant separate railway premises if—

(a) they are situated within—

(i) premises used as a museum or other place of cultural, scientific or historical interest, or

(ii) premises used for the purposes of a funfair or other entertainment, recreation or amusement, and

(b) they are not associated with any other railway premises.

(7B) For the purposes of subsection (7A)—

(a) a network situated as described in subsection (7A)(a) is associated with other railway premises if it is connected to another network (not being a network situated as described in subsection (7A)(a));

(b) track that is situated as described in subsection (7A)(a) but is not part of a network is associated with other railway premises if it is connected to track that forms part of a network (not being a network situated as described in subsection (7A)(a));

(c) a station or light maintenance depot situated as described in subsection (7A)(a) is associated with other railway premises if it is used in connection with

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the provision of railway services other than services provided wholly within the premises where it is situated.

In this subsection "light maintenance depot", "network", "railway services", "station" and "track" have the same meaning as in Part 1 of the Railways Act 1993.**]**

[F381(7C) In this Part "relevant industrial, trade or business premises" means premises that are industrial, trade or business premises as defined in subsection (7), but excluding—

(a) land used as arable, grazing, meadow or pasture land,

(b) land used as osier land, reed beds or woodland,

(c) land used for market gardens, nursery grounds or orchards,

(d) land forming part of an agricultural unit, not being land falling within any of paragraphs (a) to (c), where the land is of a description prescribed by regulations made by the appropriate person, and

(e) land included in a site of special scientific interest (as defined in section 52(1) of the Wildlife and Countryside Act 1981),

and excluding land covered by, and the waters of, any river or watercourse, that is neither a sewer nor a drain, or any lake or pond.

(7D) For the purposes of subsection (7C)—

"agricultural" has the same meaning as in section 109 of the Agriculture Act 1947;

"agricultural unit" means land which is occupied as a unit for agricultural purposes;

"drain" has the same meaning as in the Water Resources Act 1991;

"lake or pond" has the same meaning as in section 104 of that Act;

"sewer" has the same meaning as in that Act.**]**

(8) Where, by an order under section 2 of the M58Public Health (Control of Disease) Act 1984, a port health authority has been constituted for any port health district, **[**F382or in Scotland where by an order under section 172 of the M59Public Health (Scotland) Act 1897 a port local authority or a joint port local authority has been constituted for the whole or part of a port,**]** the port health authority **[**F383, port local authority or joint port local authority, as the case may be**]** shall have by virtue of this subsection, as respects its district, the functions conferred or imposed by this Part in relation to statutory nuisances other than a nuisance falling within paragraph **[**F384(fb),**]**(g) **[**F385or (ga)**]** of subsection (1) above and no such order shall be made assigning those functions; and "local authority" and "area" shall be construed accordingly.

(9) In this Part "best practicable means" is to be interpreted by reference to the following provisions—

(a) "practicable" means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications;

(b) the means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and structures;

(c) the test is to apply only so far as compatible with any duty imposed by law;

(d) the test is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances;

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and, in circumstances where a code of practice under section 71 of the [M60]Control of Pollution Act 1974 (noise minimisation) is applicable, regard shall also be had to guidance given in it.

(10) A local authority shall not without the consent of the Secretary of State institute summary proceedings under this Part in respect of a nuisance falling within paragraph (b), (d) **[**[F386], (e) **[**[F387], (fb)**]** or (g)**][**[F388]and, in relation to Scotland, **[**[F386]paragraph (ga)**],]** of subsection (1) above if proceedings in respect thereof might be instituted under Part I **[**[F389]of the [M61]Alkali &c. Works Regulation Act 1906 or section 5 of the [M62]Health and Safety at Work etc. Act 1974.**][**[F390]or under regulations under section 2 of the Pollution Prevention and Control Act 1999.**]**

(11) The area of a local authority which includes part of the seashore shall also include for the purposes of this Part the territorial sea lying seawards from that part of the shore; and subject to subsection (12) **[**[F370]and **[**[F391], in relation to England and Wales,**]** section 81A(9)**]** below, this Part shall have effect, in relation to any area included in the area of a local authority by virtue of this subsection—

(a) as if references to premises and the occupier of premises included respectively a vessel and the master of a vessel; and

(b) with such other modifications, if any, as are prescribed in regulations made by the Secretary of State.

(12) A vessel powered by steam reciprocating machinery is not a vessel to which this Part of this Act applies.

Extent Information

E21 Ss. 79-82, which previously extended to England and Wales only, extend to Scotland from 1.4.1996 (except where specified) by virtue of the repeal of s. 83 of this Act by 1995 c. 25, s. 120(3), **Sch. 24**; S.I. 1996/186, **art. 3**

E22 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F345 Words in s. 79(1) substituted (1.4.2000 for E., 14.7.2000 for S. and 15.9.2001 for W.) by virtue of 1995 c. 25, s. 120(1), **Sch. 22 para. 89(2)** (with ss. 7(6), 115, 117); S.I. 2000/340, **art. 2(b)** (with art. 3); S.S.I. 2000/180, **art. 2(1)(b)** (with art. 3); S.I. 2001/3211, **art. 2(c)** (with saving in art. 3)

F346 S. 79(1)(fa) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 30.1.2007 otherwise for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 101(2)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 6(a)** (as amended by S.I. 2007/120, art. 3(c)(d)); S.I. 2007/120

F347 S. 79(1)(fb) inserted (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 102(2)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(a)** (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F348 S. 79(1)(ga) inserted (5.1.1994) by 1993 c. 40, **ss. 2(2)(b)**, 12(1)

F349 Words in s. 79(1)(ga) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(a)** (with ss. 7(6), 115), 117; S.I. 1996/186, **art. 3**

F350 Words in s. 79(1) inserted (5.1.1994) by 1993 c. 40, **ss. 2(2)(c)**, 12(1)

F351 S. 79(1A)(1B) inserted (1.4.2000 for E., 14.7.2000 for S. and 15.9.2001 for W.) by 1995 c. 25, s. 120(1), **Sch. 22 para. 89(3)** (with ss. 7(6), 115, 117); S.I. 2000/340, **art. 2(b)** (with art. 3); S.S.I. 2000/180, **art. 2(1)(b)** (with art. 3); S.I. 2001/3211, **art. 2(c)** (with saving in art. 3)

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F352 Words in s. 79(2) inserted (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 102(3)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(a)** (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F353 S. 79(5A) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 30.1.2007 otherwise for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 101(3)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 6(a)** (as amended by S.I. 2007/120, art. 3(c)(d)); S.I. 2007/120

F354 S. 79(5B) inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 102(4)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(a)** (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F355 S. 79(6A) inserted (5.1.1994) by 1993 c. 40, **ss. 2(3)**, 12(1)

F356 In s. 79(7) definition of "airport" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 102(5)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(a)** (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F357 In s. 79(7) definition of "appropriate person" inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 30.1.2007 otherwise for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **s. 101(4)**; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 6(a)** (as amended by S.I. 2007/120, art. 3(c)(d)); S.I. 2007/120

F358 In s. 79(7) definition of "associated facilities" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 102(5)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(a)** (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F359 In s. 79(7) definition of "bus station" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **s. 102(5)**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7** (as amended by S.I. 2007/120, art. 3(h))

F360 Definition of "equipment" in s. 79(7) inserted (5.1.1994) by 1993 c. 40, **ss. 2(4)(a)**, 12(1)

F361 In s. 79(7) definition of "goods vehicle operating centre" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 102(5)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(a)** (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F362 In s. 79(7) definition of "harbour premises" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 102(5)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(a)** (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F363 In s. 79(7) definition of "lighthouse" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 102(5)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(a)** (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F364 Words "in England and Wales" in para. (b) in the definition of "local authority" in s. 79(7)(b) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(b)(i)**(with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** and words "in England" expressed to be inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(5)** (with s. 54(7), Sch. 17 paras. 22, 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

F365 Word in s. 79(7) in the definition of "local authority" repealed (1.4.1996) by 1995 c. 25, ss. 107, 120(3), Sch. 17 para. 2(b)(i), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F366 S. 79(7): para. (bb) in the definition of "local authority" inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(5)** (with s. 54(7), Sch. 17 paras. 22, 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

F367 S. 79(7): Words in the definition of "local authority" inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(b)(i)**(with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F368 Definition of "person responsible" in s. 79(7) substituted (5.1.1994) by 1993 c. 40, **ss. 2(4)(b)**, 12(1)

F369 Words in s. 79(7) substituted (1.9.1994) by 1994 c. 22, ss.63, 66(1), **Sch. 3 para. 27**(with s. 57(4))

F370 Words in s. 79(7)(11) inserted (5.1.1994) by 1993 c. 40, **ss. 10(1)**, 12(1)

F371 S. 79(7): Words in the definition of "premises" inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(b)(ii)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F372 In s. 79(7) definition of "prison" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 102(5)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(a)** (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

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F373 In s. 79(7) definition of "public service vehicle operating centre" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 102(5)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(a)** (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F374 In s. 79(7) definition of "railway premises" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 102(5)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(a)** (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F375 In s. 79(7) definition of "relevant separate railway premises" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 102(5)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(a)** (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F376 S. 79(7): Definition of "road" inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(b)(iii)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F377 Definition of "street" in s. 79(7) inserted (5.1.1994) by 1993 c. 40, **ss. 2(4)(c)**, 12(1)

F378 In s. 79(7) definition of "tramway premises" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 102(5)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(a)** (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F379 Words in s. 79(7) substituted (27.8.1993) by 1993 c. 11, s. 67(1), **Sch. 4 para. 4**

F380 S. 79(7A)(7B) inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 102(6)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(a)** (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F381 S. 79(7C)(7D) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 30.1.2007 otherwise for W.) by virtue of Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 101(5)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 6(a)** (as amended by S.I. 2007/120, art. 3(c)(d)); S.I. 2007/120

F382 Words in s. 79(8) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(c)(i)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F383 Words in s. 79(8) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(c)(ii)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F384 Words in s. 79(8) inserted (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 102(7)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(a)** (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F385 Words in s. 79(8) inserted (5.1.1994) by 1993 c. 40, **ss. 2(5)**, 12(1)

F386 Words in s. 79(10) substituted (E.W.) (1.8.2000) and (S.) (28.9.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 Pt. 1 para. 7** and S.S.I. 2000/323, reg. 36, **Sch. 10 Pt. 1 para. 3(6)**

F387 Words in s. 79(10) inserted (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 102(8)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(a)** (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F388 Words in s. 79(10) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(d)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F389 Words in s. 79(10) repealed (16.12.1996 for E.W. and otherwise prosp.) by 1990 c. 43, ss. 162(2), 164(3), **Sch. 16 Pt. I**; S.I. 1996/3056, **art. 2**

F390 Words in s. 79(10) inserted (21.3.2000 for E.W. and 29.9.2000 for S.) by 1999 c. 24, s. 6, **Sch. 2 para. 6**; S.I. 2000/800, **art. 2**; S.S.I. 2000/322, **art. 2**

F391 Words in s. 79(11) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(e)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C67 S. 79 applied (with modifications) (17.12.1996) by 1996 c. ix, **ss. 1(1)**, 24

Marginal Citations

M57 1994 c. 39.

M58 1984 c. 22.

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M59 1897 c. 38.
M60 1974 c. 40.
M61 1906 c. 14.
M62 1974 c. 37.

79 Statutory nuisances and inspections therefor. S

(1) **[**F345Subject to subsections **[**F871(1ZA)**]** to (6A) below**]**, the following matters constitute "statutory nuisances" for the purposes of this Part, that is to say—

(a) any premises in such a state as to be prejudicial to health or a nuisance;

(b) smoke emitted from premises so as to be prejudicial to health or a nuisance;

(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;

(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;

(e) any accumulation or deposit which is prejudicial to health or a nuisance;

[F872(ea) any water covering land or land covered with water which is in such a state as to be prejudicial to health or a nuisance;**]**

(f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;

[F873(faa) any insects emanating from premises and being prejudicial to health or a nuisance;**]**

[F874(fba) artificial light emitted from—

(i) premises;

(ii) any stationary object,

so as to be prejudicial to health or a nuisance;**]**

(g) noise emitted from premises so as to be prejudicial to health or a nuisance;

[F348(ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street **[**F349or in Scotland, road**]**;**]**

(h) any other matter declared by any enactment to be a statutory nuisance;

and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below **[**F350or sections 80 and 80A below**]** and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.

[F875(1ZA) The Scottish Ministers may by regulations—

(a) amend this section so as to—

(i) prescribe additional matters which constitute statutory nuisances for the purposes of this Part;

(ii) vary the description of any matter which constitutes a statutory nuisance;

(b) in relation to an amendment under paragraph (a), amend this Act and any other enactment to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Scottish Ministers consider appropriate.

(1ZB) Before making regulations under subsection (1ZA) above, the Scottish Ministers must consult, in so far as it is reasonably practicable to do so, the persons mentioned in subsection (1ZC) below.

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(1ZC) Those persons are—

(a) such associations of local authorities; and

(b) such other persons,

as the Scottish Ministers consider appropriate.**]**

[F876F351(1A) No matter shall constitute a statutory nuisance to the extent that it consists of, or is caused by, any land being in a contaminated state.

[F876(1B) Land is in a "contaminated state" for the purposes of sub section (1A) above if, and only if, it is in such a condition, by reason of substances in, on or under the land, that–

(a) significant harm is being caused or there is a significant possibility of such harm being caused; or

(b) significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused;

and in this subsection "harm", "pollution" in relation to the water environment, "substance" and "the water environment" have the same meanings as in Part IIA of this Act.**]]**

(2) Subsection (1)(b) **[**F877, (fba)**]** and (g) above do not apply in relation to premises **[**F878(or, in respect of paragraph (fba)(ii) above, a stationary object located on premises)**]**—

(a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or

(b) occupied by or for the purposes of a visiting force;

and "visiting force" means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952.

(3) Subsection (1)(b) above does not apply to—

(i) smoke emitted from a chimney of a private dwelling within a smoke control area,

(ii) dark smoke emitted from a chimney of a building or a chimney serving the furnace of a boiler or industrial plant attached to a building or for the time being fixed to or installed on any land,

(iii) smoke emitted from a railway locomotive steam engine, or

(iv) dark smoke emitted otherwise than as mentioned above from industrial or trade premises.

(4) Subsection (1)(c) above does not apply in relation to premises other than private dwellings.

(5) Subsection (1)(d) above does not apply to steam emitted from a railway locomotive engine.

[F879(5ZA) For the purposes of subsection (1)(ea) above, "land"—

(a) includes structures (other than buildings) in, on or over land;

(b) does not include—

(i) mains or other pipes used for carrying a water supply;

(ii) any part of the public sewerage system;

(iii) any other sewers, drains or other pipes used for carrying sewage;

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(iv) the foreshore, that is to say, the land between the high and low water marks of ordinary spring tides;

(v) the seabed.

(5ZB) In subsection (5ZA) above—

"drain", "sewage" and "sewer" have the meanings given by section 59 of the Sewerage (Scotland) Act 1968 (c. 47);

"main" has the meaning given by section 109(1) of the Water (Scotland) Act 1980 (c. 45);

"pipe" includes a service pipe within the meaning of that section of that Act;

"public sewerage system" has the meaning given by section 29 of the Water Services etc. (Scotland) Act 2005 (asp 3).**]**

[[F880](5AA) Subsection (1)(faa) above does not apply to insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981 (c. 69).

(5AB) For the purposes of subsection (1)(faa) above, "premises" does not include—

(a) a site of special scientific interest (within the meaning of section 3(6) of the Nature Conservation (Scotland) Act 2004 (asp 6));

(b) such other place (or type of place) as may be prescribed in regulations made by the Scottish Ministers.

(5AC) Before making regulations under subsection (5AB)(b) above, the Scottish Ministers must consult, in so far as it is reasonably practicable to do so, the persons mentioned in subsection (5AD) below.

(5AD) Those persons are—

(a) such associations of local authorities; and

(b) such other persons,

as the Scottish Ministers consider appropriate.**]**

[[F881](5BA) Subsection (1)(fba) above does not apply to artificial light emitted from a lighthouse (within the meaning of Part 8 of the Merchant Shipping Act 1995 (c. 21)).**]**

(6) Subsection (1)(g) above does not apply to noise caused by aircraft other than model aircraft.

[[F355](6A) Subsection (1)(ga) above does not apply to noise made—

(a) by traffic,

(b) by any naval, military or air force of the Crown or by a visiting force (as defined in subsection (2) above), or

(c) by a political demonstration or a demonstration supporting or opposing a cause or campaign.**]**

(7) In this Part—

"chimney" includes structures and openings of any kind from or through which smoke may be emitted;

"dust" does not include dust emitted from a chimney as an ingredient of smoke;

[[F360]"equipment" includes a musical instrument;**]**

"fumes" means any airborne solid matter smaller than dust;

"gas" includes vapour and moisture precipitated from vapour;

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"industrial, trade or business premises" means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing;

"local authority" means, subject to subsection eight below,—

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

(b) **[**F364in England and Wales**]** outside Greater London, a district council;
F365 . . .

(bb) **[**F366in Wales, a county council or county borough council;**]**

(c) the Council of the Isles of Scilly; **[**F367and

(d) in Scotland, a district or islands council or a council constituted under section 2 of the M57Local Government etc (Scotland) Act 1994;**]**

"noise" includes vibration;

[F368"person responsible"—

(a) in relation to a statutory nuisance, means the person to whose act, default or sufferance the nuisance is attributable;

(b) in relation to a vehicle, includes the person in whose name the vehicle is for the time being registered under **[**F369the Vehicle Excise and Registration Act 1994**]** and any other person who is for the time being the driver of the vehicle;

(c) in relation to machinery or equipment, includes any person who is for the time being the operator of the machinery or equipment;**]**

"prejudicial to health" means injurious, or likely to cause injury, to health;

"premises" includes land **[**F882(subject to subsection (5AB) above)**]**and, subject to subsection (12) **[**F370and **[**F371, in relation to England and Wales,**]** section 81A(9)**]** below, any vessel;

"private dwelling" means any building, or part of a building, used or intended to be used, as a dwelling;

[F376"road" has the same meaning as in Part IV of the New Roads and Street Works Act 1991;**]**

"smoke" includes soot, ash, grit and gritty particles emitted in smoke;

[F377"street" means a highway and any other road, footway, square or court that is for the time being open to the public;**]**

and any expressions used in this section and in **[**F379the Clean Air Act 1993**]** have the same meaning in this section as in that Act and **[**F379section 3 of the Clean Air Act 1993**]** shall apply for the interpretation of the expression "dark smoke" and the operation of this Part in relation to it.

(8) Where, by an order under section 2 of the M58Public Health (Control of Disease) Act 1984, a port health authority has been constituted for any port health district,or in Scotland where by an order under section 172 of the M59Public Health (Scotland) Act 1897 a port local authority or a joint port local authority has been constituted for the whole or part of a port, the port health authority, port local authority or joint port local authority, as the case may be shall have by virtue of this subsection, as respects its district, the functions conferred or imposed by this Part in relation to

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statutory nuisances other than a nuisance falling within paragraph (g) **[**F385or (ga)**]** of subsection (1) above and no such order shall be made assigning those functions; and "local authority" and "area" shall be construed accordingly.

(9) In this Part "best practicable means" is to be interpreted by reference to the following provisions—

(a) "practicable" means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications;

(b) the means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and structures;

(c) the test is to apply only so far as compatible with any duty imposed by law;

(d) the test is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances;

and, in circumstances where a code of practice under section 71 of the M60Control of Pollution Act 1974 (noise minimisation) is applicable, regard shall also be had to guidance given in it.

(10) A local authority shall not without the consent of the Secretary of State institute summary proceedings under this Part in respect of a nuisance falling within paragraph (b), (d) **[**F386, (e) or (g)**][**F388and, in relation to Scotland, **[**F386paragraph (ga)**],]** of subsection (1) above if proceedings in respect thereof might be instituted under Part I **[**F389of the M61Alkali &c. Works Regulation Act 1906 or section 5 of the M62Health and Safety at Work etc. Act 1974.**][**F390or under regulations under section 2 of the Pollution Prevention and Control Act 1999.**]**

(11) The area of a local authority which includes part of the seashore shall also include for the purposes of this Part the territorial sea lying seawards from that part of the shore; and subject to subsection (12) **[**F370and **[**F391, in relation to England and Wales,**]** section 81A(9)**]** below, this Part shall have effect, in relation to any area included in the area of a local authority by virtue of this subsection—

(a) as if references to premises and the occupier of premises included respectively a vessel and the master of a vessel; and

(b) with such other modifications, if any, as are prescribed in regulations made by the Secretary of State.

(12) A vessel powered by steam reciprocating machinery is not a vessel to which this Part of this Act applies.

Extent Information

E21 Ss. 79-82, which previously extended to England and Wales only, extend to Scotland from 1.4.1996 (except where specified) by virtue of the repeal of s. 83 of this Act by 1995 c. 25, s. 120(3), **Sch. 24**; S.I. 1996/186, **art. 3**

E57 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F345 Words in s. 79(1) substituted (1.4.2000 for E., 14.7.2000 for S. and 15.9.2001 for W.) by virtue of 1995 c. 25, s. 120(1), **Sch. 22 para. 89(2)** (with ss. 7(6), 115, 117); S.I. 2000/340, **art. 2(b)** (with art. 3); S.S.I. 2000/180, **art. 2(1)(b)** (with art. 3); S.I. 2001/3211, **art. 2(c)** (with saving in art. 3)

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F348 S. 79(1)(ga) inserted (5.1.1994) by 1993 c. 40, **ss. 2(2)(b)**, 12(1)

F349 Words in s. 79(1)(ga) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(a)** (with ss. 7(6), 115), 117; S.I. 1996/186, **art. 3**

F350 Words in s. 79(1) inserted (5.1.1994) by 1993 c. 40, **ss. 2(2)(c)**, 12(1)

F351 S. 79(1A)(1B) inserted (1.4.2000 for E., 14.7.2000 for S. and 15.9.2001 for W.) by 1995 c. 25, s. 120(1), **Sch. 22 para. 89(3)** (with ss. 7(6), 115, 117); S.I. 2000/340, **art. 2(b)** (with art. 3); S.S.I. 2000/180, **art. 2(1)(b)** (with art. 3); S.I. 2001/3211, **art. 2(c)** (with saving in art. 3)

F355 S. 79(6A) inserted (5.1.1994) by 1993 c. 40, **ss. 2(3)**, 12(1)

F360 Definition of "equipment" in s. 79(7) inserted (5.1.1994) by 1993 c. 40, **ss. 2(4)(a)**, 12(1)

F364 Words "in England and Wales" in para. (b) in the definition of "local authority" in s. 79(7)(b) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(b)(i)**(with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** and words "in England" expressed to be inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(5)** (with s. 54(7), Sch. 17 paras. 22, 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

F365 Word in s. 79(7) in the definition of "local authority" repealed (1.4.1996) by 1995 c. 25, ss. 107, 120(3), Sch. 17 para. 2(b)(i), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F366 S. 79(7): para. (bb) in the definition of "local authority" inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(5)** (with s. 54(7), Sch. 17 paras. 22, 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

F367 S. 79(7): Words in the definition of "local authority" inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(b)(i)**(with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F368 Definition of "person responsible" in s. 79(7) substituted (5.1.1994) by 1993 c. 40, **ss. 2(4)(b)**, 12(1)

F369 Words in s. 79(7) substituted (1.9.1994) by 1994 c. 22, ss.63, 66(1), **Sch. 3 para. 27**(with s. 57(4))

F370 Words in s. 79(7)(11) inserted (5.1.1994) by 1993 c. 40, **ss. 10(1)**, 12(1)

F371 S. 79(7): Words in the definition of "premises" inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(b)(ii)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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F391 Words in s. 79(11) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(e)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F871 Words in s. 79(1) substituted (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5) {ss. 112(2)(a)}, 128(2) (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1

F872 S. 79(1)(ea) inserted (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5) {ss. 111(2)}, 128(2) (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1

F873 S. 79(1)(faa) inserted after s. 79(1)(fa) (S.) (26.1.2009) by virtue of Public Health etc. (Scotland) Act 2008 (asp 5), **ss. 109(2)**, 128(2)(with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1

F874 S. 79(1)(fba) inserted after s. 79(1)(fb) (S.) (26.1.2009) by virtue of Public Health etc. (Scotland) Act 2008 (asp 5), **ss. 110(2)**, 128(2) (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1

F875 S. 79(1ZA)-(1ZC) inserted after s. 79(1) (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5) {s. 112(2)(b)}, 128(2) (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1

F876 S. 79(1B) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, **2(12)**

F877 Words in s. 79(2) inserted (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), **ss. 110(3)(a)**, 128(2) (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1

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F878 Words in s. 79(2) inserted (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), **ss. 110(3)(b)**, 128(2) (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1

F879 S. 79(5ZA)-(5ZB) inserted after s. 79(5) (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), **ss. 111(3)**, 128(2) (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1

F880 S. 79(5AA)-(5AD) inserted (S.) (26.1.2009) by virtue of Public Health etc. (Scotland) Act 2008 (asp 5), **ss. 109(3)**, 128(2) (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1

F881 S. 79(5BA) inserted after s. 79(5B) (S.) (26.1.2009) by virtue of Public Health etc. (Scotland) Act 2008 (asp 5), **ss. 110(4)**, 128(2) (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1

F882 Words in s. 79(7) inserted (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), **ss. 109(4)**, 128(2) (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1

Modifications etc. (not altering text)

C67 S. 79 applied (with modifications) (17.12.1996) by 1996 c. ix, **ss. 1(1)**, 24

C162 Ss. 79-81 excluded (S.) (22.4.2006 for certain purposes and otherwise prosp.) by Water Services etc. (Scotland) Act 2005 (asp 3), **ss. 26(10)**, 37(2) (with s. 36); S.S.I. 2006/167, **art. 2**, Sch. 2

Marginal Citations

M57 1994 c. 39.

M58 1984 c. 22.

M59 1897 c. 38.

M60 1974 c. 40.

M61 1906 c. 14.

M62 1974 c. 37.

80 Summary proceedings for statutory nuisances. E+W

(1) **[**F392Subject to subsection (2A)**]** where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the area of the authority, the local authority shall serve a notice ("an abatement notice") imposing all or any of the following requirements—

(a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;

(b) requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes,

and the notice shall specify the time or times within which the requirements of the notice are to be complied with.

(2) **[**F393Subject to section 80A(1) below, the abatement notice**]** shall be served—

(a) except in a case falling within paragraph (b) or (c) below, on the person responsible for the nuisance;

(b) where the nuisance arises from any defect of a structural character, on the owner of the premises;

(c) where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, on the owner or occupier of the premises.

[F394(2A) Where a local authority is satisfied that a statutory nuisance falling within paragraph (g) of section 79(1) above exists, or is likely to occur or recur, in the area of the authority, the authority shall—

(a) serve an abatement notice in respect of the nuisance in accordance with subsections (1) and (2) above; or

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(b) take such other steps as it thinks appropriate for the purpose of persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence.

(2B) If a local authority has taken steps under subsection (2A)(b) above and either of the conditions in subsection (2C) below is satisfied, the authority shall serve an abatement notice in respect of the nuisance.

(2C) The conditions are—

(a) that the authority is satisfied at any time before the end of the relevant period that the steps taken will not be successful in persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence;

(b) that the authority is satisfied at the end of the relevant period that the nuisance continues to exist, or continues to be likely to occur or recur, in the area of the authority.

(2D) The relevant period is the period of seven days starting with the day on which the authority was first satisfied that the nuisance existed, or was likely to occur or recur.

(2E) The appropriate person is the person on whom the authority would otherwise be required under subsection (2A)(a) above to serve an abatement notice in respect of the nuisance.**]**

(3) **[**[F395]A person served with an abatement notice**]** may appeal against the notice to a magistrates' court **[**[F396]or in Scotland, the sheriff**]** within the period of twenty-one days beginning with the date on which he was served with the notice.

(4) If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, he shall be guilty of an offence.

(5) Except in a case falling within subsection (6) below, a person who commits an offence under subsection (4) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction.

(6) A person who commits an offence under subsection (4) above on industrial, trade or business premises shall be liable on summary conviction to a fine not exceeding £20,000.

(7) Subject to subsection (8) below, in any proceedings for an offence under subsection (4) above in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

(8) The defence under subsection (7) above is not available—

(a) in the case of a nuisance falling within paragraph (a), (d), (e), (f) **[**[F397], (fa)**]** or (g) of section 79(1) above except where the nuisance arises on industrial, trade or business premises;

[[F398](aza) in the case of a nuisance falling within paragraph (fb) of section 79(1) above except where—

(i) the artificial light is emitted from industrial, trade or business premises, or

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(ii) the artificial light (not being light to which sub-paragraph (i) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility;**]**

[F399(aa) in the case of a nuisance falling within paragraph (ga) of section 79(1) above except where the noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes;**]**

(b) in the case of a nuisance falling within paragraph (b) of section 79(1) above except where the smoke is emitted from a chimney; and

(c) in the case of a nuisance falling within paragraph (c) or (h) of section 79(1) above.

[F400(8A) For the purposes of subsection (8)(aza) a relevant sports facility is an area, with or without structures, that is used when participating in a relevant sport, but does not include such an area comprised in domestic premises.

(8B) For the purposes of subsection (8A) "relevant sport" means a sport that is designated for those purposes by order made by the Secretary of State, in relation to England, or the National Assembly for Wales, in relation to Wales.

A sport may be so designated by reference to its appearing in a list maintained by a body specified in the order.

(8C) In subsection (8A) "domestic premises" means—

(a) premises used wholly or mainly as a private dwelling, or

(b) land or other premises belonging to, or enjoyed with, premises so used.**]**

(9) In proceedings for an offence under subsection (4) above in respect of a statutory nuisance falling within paragraph (g) **[**F401or (ga)**]**of section 79(1) above where the offence consists in contravening requirements imposed by virtue of subsection (1)(a) above it shall be a defence to prove—

(a) that the alleged offence was covered by a notice served under section 60 or a consent given under section 61 or 65 of the M63Control of Pollution Act 1974 (construction sites, etc); or

(b) where the alleged offence was committed at a time when the premises were subject to a notice under section 66 of that Act (noise reduction notice), that the level of noise emitted from the premises at that time was not such as to a constitute a contravention of the notice under that section; or

(c) where the alleged offence was committed at a time when the premises were not subject to a notice under section 66 of that Act, and when a level fixed under section 67 of that Act (new buildings liable to abatement order) applied to the premises, that the level of noise emitted from the premises at that time did not exceed that level.

(10) Paragraphs (b) and (c) of subsection (9) above apply whether or not the relevant notice was subject to appeal at the time when the offence was alleged to have been committed.

Extent Information

E23 Ss. 79-82, which previously extended to England and Wales only, extend to Scotland from 1.4.1996 (except where specified) by virtue of the repeal of s. 83 of this Act by 1995 c. 25, s. 120(3), **Sch. 24**; S.I. 1996/186, **art. 3**

E24 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

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Textual Amendments

F392 Words in s. 80(1) inserted (E.W.) (6.4.2006 for E. and 27.10.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 86**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 2(q)**

F393 Words in s. 80(2) substituted (5.1.1994) by 1993 c. 40, **ss. 3(2)**, 12(1)

F394 S. 80(2A)-(2E) inserted (E.W.) (6.4.2006 for E. and 27.10.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 86**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 2(q)**

F395 Words in s. 80(3) substituted (5.1.1994) by 1993 c. 40, **ss. 3(3)**, 12(1)

F396 Words in s. 80(3) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para.3** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F397 Words in s. 80(8)(a) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E.and 31.1.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 103(2)(a)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 6(b)** (as amended (30.1.2007) by S.I. 2007/120, art. 3)

F398 S. 80(8)(aza) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 31.1.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 103(2)(b)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(b)** (as amended (30.1.2007) by S.I. 2007/120, art. 3)

F399 S. 80(8)(aa) inserted (5.1.1994) by 1993 c. 40, **ss. 3(4)**, 12(1)

F400 S. 80(8A)-(8C) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 31.1.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 103(3)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(b)** (as amended (30.1.2007) by S.I. 2007/120, art. 3)

F401 Words in s. 80(9) inserted (5.1.1994) by 1993 c. 40, **ss. 3(5)**, 12(1)

Modifications etc. (not altering text)

C68 S. 80(4) restricted (E.) (13.4.2001) by S.I. 2001/1478, **reg. 3(b)**

Marginal Citations

M63 1974 c. 40.

80 Summary proceedings for statutory nuisances. S

(1) Where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the area of the authority, the local authority shall serve a notice ("an abatement notice") imposing all or any of the following requirements—

(a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;

(b) requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes,

and the notice shall specify the time or times within which the requirements of the notice are to be complied with.

(2) **[**F393Subject to section 80A(1) below, the abatement notice**]** shall be served—

(a) except in a case falling within paragraph (b) or (c) below, on the person responsible for the nuisance;

(b) where the nuisance arises from any defect of a structural character, on the owner of the premises;

(c) where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, on the owner or occupier of the premises.

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(3) **[**F395A person served with an abatement notice**]** may appeal against the notice to a magistrates' court **[**F396or in Scotland, the sheriff**]** within the period of twenty-one days beginning with the date on which he was served with the notice.

(4) If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, he shall be guilty of an offence.

[F883(4A) Where a local authority have reason to believe that a person has committed an offence under subsection (4) above, the local authority may give that person a notice (a "fixed penalty notice") in accordance with section 80ZA offering the person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.**]**

(5) Except in a case falling within subsection (6) below, a person who commits an offence under subsection (4) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction.

(6) A person who commits an offence under subsection (4) above on industrial, trade or business premises shall be liable on summary conviction to a fine not exceeding **[**F884£40,000**]** .

(7) Subject to subsection (8) below, in any proceedings for an offence under subsection (4) above in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

(8) The defence under subsection (7) above is not available—

(a) in the case of a nuisance falling within paragraph (a), (d), (e), (f) or (g) of section 79(1) above except where the nuisance arises on industrial, trade or business premises;

[F399(aa) in the case of a nuisance falling within paragraph (ga) of section 79(1) above except where the noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes;**]**

(b) in the case of a nuisance falling within paragraph (b) of section 79(1) above except where the smoke is emitted from a chimney; and

(c) in the case of a nuisance falling within paragraph (c) or (h) of section 79(1) above.

(9) In proceedings for an offence under subsection (4) above in respect of a statutory nuisance falling within paragraph (g) **[**F401or (ga)**]**of section 79(1) above where the offence consists in contravening requirements imposed by virtue of subsection (1)(a) above it shall be a defence to prove—

(a) that the alleged offence was covered by a notice served under section 60 or a consent given under section 61 or 65 of the M63Control of Pollution Act 1974 (construction sites, etc); or

(b) where the alleged offence was committed at a time when the premises were subject to a notice under section 66 of that Act (noise reduction notice), that the level of noise emitted from the premises at that time was not such as to a constitute a contravention of the notice under that section; or

(c) where the alleged offence was committed at a time when the premises were not subject to a notice under section 66 of that Act, and when a level fixed

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under section 67 of that Act (new buildings liable to abatement order) applied to the premises, that the level of noise emitted from the premises at that time did not exceed that level.

(10) Paragraphs (b) and (c) of subsection (9) above apply whether or not the relevant notice was subject to appeal at the time when the offence was alleged to have been committed.

Extent Information

E23 Ss. 79-82, which previously extended to England and Wales only, extend to Scotland from 1.4.1996 (except where specified) by virtue of the repeal of s. 83 of this Act by 1995 c. 25, s. 120(3), **Sch. 24**; S.I. 1996/186, **art. 3**

E58 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F393 Words in s. 80(2) substituted (5.1.1994) by 1993 c. 40, **ss. 3(2)**, 12(1)

F395 Words in s. 80(3) substituted (5.1.1994) by 1993 c. 40, **ss. 3(3)**, 12(1)

F396 Words in s. 80(3) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para.3** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F399 S. 80(8)(aa) inserted (5.1.1994) by 1993 c. 40, **ss. 3(4)**, 12(1)

F401 Words in s. 80(9) inserted (5.1.1994) by 1993 c. 40, **ss. 3(5)**, 12(1)

F883 S. 80(4A) inserted (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5) {ss. 113(2)}, 128(2) (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1

F884 Words in s. 80(6) substituted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), ss. 66, 145(2), **Sch. 2 Pt. 1 para. 4(4)**; S.S.I. 2004/420, **art. 3**, Sch. 1

Modifications etc. (not altering text)

C68 S. 80(4) restricted (E.) (13.4.2001) by S.I. 2001/1478, **reg. 3(b)**

C163 S. 79-81 excluded (S.) (22.4.2006 for certain purposes and otherwise prosp.) by Water Services etc. (Scotland) Act 2005 (asp 3), **ss. 26(10)**, 37(2) (with s. 36); S.S.I. 2006/167, **art. 2**, Sch. 2

Marginal Citations

M63 1974 c. 40.

[F402 80ZA Fixed penalty notice: supplemental

(1) This section applies to a fixed penalty notice given under section 80(4A).

(2) A fixed penalty notice must give reasonable particulars of the circumstances alleged to constitute the offence.

(3) A fixed penalty notice must also state—

(a) the amount of the fixed penalty;

(b) the period within which it may be paid;

(c) the—

(i) person to whom; and

(ii) address at which,

payment may be made;

(d) the method or methods by which payment may be made;

(e) the consequences of not making a payment within the period for payment.

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(4) The amount of the fixed penalty under section 80(4A) is—

(a) in the case of a nuisance relating to industrial, trade or business premises, £400;

(b) in any other case, £150.

(5) The period for payment of the fixed penalty is 14 days beginning with the day after the day on which the notice is given.

(6) The local authority may extend the period for paying the fixed penalty in any particular case if they consider it appropriate to do so by sending notice to the person to whom the fixed penalty notice was given.

(7) No proceedings for an offence under section 80(4) may be commenced before the end of the period for payment of the fixed penalty.

(8) In proceedings for an offence under section 80(4), a certificate which—

(a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the local authority; and

(b) states that payment of the amount specified in the fixed penalty notice was or was not received by the expiry of the period within which that fixed penalty may be paid,

is sufficient evidence of the facts stated.

(9) Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.

(10) Any sum received by a local authority under section 80(4A) accrues to that authority.

(11) The Scottish Ministers may, by regulations—

(a) provide that fixed penalty notices may not be given in such circumstances as may be prescribed;

(b) provide for the form of a fixed penalty notice;

(c) provide for the method or methods by which fixed penalties may be paid;

(d) modify subsection (4)(a) or (b) above so as to substitute a different amount (not exceeding level 2 on the standard scale) for the amount for the time being specified there;

(e) provide for the amount of the fixed penalty to be different in different cases or descriptions of case;

(f) modify subsection (5) above so as to substitute a different period for the period for the time being specified there;

(g) provide for the keeping of accounts, and the preparation and publication of statements of account relating to fixed penalties under section 80(4A).

(12) Before making regulations under subsection (11) above, the Scottish Ministers must consult, in so far as it is reasonably practicable to do so, the persons mentioned in subsection (13) below.

(13) Those persons are—

(a) such associations of local authorities; and

(b) such other persons,

as the Scottish Ministers consider appropriate.**]**

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Textual Amendments

F402 S. 80ZA inserted (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5) {ss. 113(3)}, 128(2) (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1

[F403 80A Abatement notice in respect of noise in street.

(1) In the case of a statutory nuisance within section 79(1)(ga) above that—

(a) has not yet occurred, or

(b) arises from noise emitted from or caused by an unattended vehicle or unattended machinery or equipment,

the abatement notice shall be served in accordance with subsection (2) below.

(2) The notice shall be served—

(a) where the person responsible for the vehicle, machinery or equipment can be found, on that person;

(b) where that person cannot be found or where the local authority determines that this paragraph should apply, by fixing the notice to the vehicle, machinery or equipment.

(3) Where—

(a) an abatement notice is served in accordance with subsection (2)(b) above by virtue of a determination of the local authority, and

(b) the person responsible for the vehicle, machinery or equipment can be found and served with a copy of the notice within an hour of the notice being fixed to the vehicle, machinery or equipment,

a copy of the notice shall be served on that person accordingly.

(4) Where an abatement notice is served in accordance with subsection (2)(b) above by virtue of a determination of the local authority, the notice shall state that, if a copy of the notice is subsequently served under subsection (3) above, the time specified in the notice as the time within which its requirements are to be complied with is extended by such further period as is specified in the notice.

(5) Where an abatement notice is served in accordance with subsection (2)(b) above, the person responsible for the vehicle, machinery or equipment may appeal against the notice under section 80(3) above as if he had been served with the notice on the date on which it was fixed to the vehicle, machinery or equipment.

(6) Section 80(4) above shall apply in relation to a person on whom a copy of an abatement notice is served under subsection (3) above as if the copy were the notice itself.

(7) A person who removes or interferes with a notice fixed to a vehicle, machinery or equipment in accordance with subsection (2)(b) above shall be guilty of an offence, unless he is the person responsible for the vehicle, machinery or equipment or he does so with the authority of that person.

(8) A person who commits an offence under subsection (7) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

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Extent Information

E25 Ss. 79-82, which previously extended to England and Wales only, extend to Scotland from 1.4.1996 (except where specified) by virtue of the repeal of s. 83 of this Act by 1995 c. 25, s. 120(3), **Sch. 24**; S.I. 1996/186, **art. 3**

Textual Amendments

F403 S. 80A inserted (5.1.1994) by 1993 c. 40, **ss. 3(6)**, 12(1)

Modifications etc. (not altering text)

C69 S. 80A applied (with modifications)(17.12.1996) by 1996 c. ix, **ss. 1(1)**, 24(2)

C70 Ss. 79-81 excluded (S.) (22.4.2006 for certain purposes and otherwise prosp.) by Water Services etc. (Scotland) Act 2005 (asp 3), **ss. 26(10)**, 37(2) (with s. 36); S.S.I. 2006/167, **art. 2**, Sch. 2

81 Supplementary provisions. E+W

(1) **[**F404Subject to subsection (1A) below, where**]** more than one person is responsible for a statutory nuisance section 80 above shall apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance.

[F405(1A) In relation to a statutory nuisance within section 79(1)(ga) above for which more than one person is responsible (whether or not what any one of those persons is responsible for would by itself amount to such a nuisance), section 80(2)(a) above shall apply with the substitution of "any one of the persons" for "the person".

(1B) In relation to a statutory nuisance within section 79(1)(ga) above caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment for which more than one person is responsible, section 80A above shall apply with the substitution—

(a) in subsection (2)(a), of "any of the persons" for "the person" and of "one such person" for "that person",

(b) in subsection (2)(b), of "such a person" for "that person",

(c) in subsection (3), of "any of the persons" for "the person" and of "one such person" for "that person",

(d) in subsection (5), of "any person" for "the person", and

(e) in subsection (7), of "a person" for "the person" and of "such a person" for "that person".**]**

(2) Where a statutory nuisance which exists or has occurred within the area of a local authority, or which has affected any part of that area, appears to the local authority to be wholly or partly caused by some act or default committed or taking place outside the area, the local authority may act under section 80 above as if the act or default were wholly within that area, except that any appeal shall be heard by a magistrates' court **[**F406or in Scotland, the sheriff**]** having jurisdiction where the act or default is alleged to have taken place.

(3) Where an abatement notice has not been complied with the local authority may, whether or not they take proceedings for an offence **[**F407or, in Scotland, whether or not proceedings have been taken for an offence,**]** under section 80(4) above, abate the nuisance and do whatever may be necessary in execution of the notice.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) Any expenses reasonably incurred by a local authority in abating, or preventing the recurrence of, a statutory nuisance under subsection (3) above may be recovered by them from the person by whose act or default the nuisance was caused and, if that person is the owner of the premises, from any person who is for the time being the owner thereof; and the court **[**F408or sheriff**]** may apportion the expenses between persons by whose acts or defaults the nuisance is caused in such manner as the court consider **[**F408or sheriff considers**]** fair and reasonable.

(5) If a local authority is of opinion that proceedings for an offence under section 80(4) above would afford an inadequate remedy in the case of any statutory nuisance , they may, subject to subsection (6) below, take proceedings in the High Court **[**F409or, in Scotland, in any court of competent jurisdiction,**]** for the purpose of securing the abatement, prohibition or restriction of the nuisance, and the proceedings shall be maintainable notwithstanding the local authority have suffered no damage from the nuisance.

(6) In any proceedings under subsection (5) above in respect of a nuisance falling within paragraph (g) **[**F410or (ga)**]**of section 79(1) above, it shall be a defence to prove that the noise was authorised by a notice under section 60 or a consent under section 61 (construction sites) of the M64Control of Pollution Act 1974.

(7) The further supplementary provisions in Schedule 3 to this Act shall have effect.

Extent Information

E26 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

E27 Ss. 79-82, which previously extended to England and Wales only, extend to Scotland from 1.4.1996 (except where specified) by virtue of the repeal of s. 83 of this Act by 1995 c. 25, s. 120(3), **Sch. 24**; S.I. 1996/186, **art. 3**

Textual Amendments

F404 Words in s. 81(1) substituted (5.1.1994) by 1993 c. 40, **ss. 4(2)**, 12(1)(2)

F405 S. 81(1A)(1B) inserted (5.1.1994) by 1993 c. 40, **ss. 4(3)**, 12(1)(2)

F406 Words in s. 81(2) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 4(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F407 Words in s. 81(3) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 4(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F408 Words in s. 81(4) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 4(c)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F409 Words in s. 81(5) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 4(d)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F410 Words in s. 81(6) inserted (5.1.1994) by 1993 c. 40, **ss. 4(4)**, 12(1)(2)

Modifications etc. (not altering text)

C71 S. 79-81 excluded (S.) (22.4.2006 for certain purposes and otherwise prosp.) by Water Services etc. (Scotland) Act 2005 (asp 3), **ss. 26(10)**, 37(2) (with s. 36); S.S.I. 2006/167, **art. 2**, Sch. 2

C72 S. 81(3) extended (19.9.1996) by 1996 c. 37, **s. 10(7)**; S.I. 1996/2219, **art.2**

Marginal Citations

M64 1974 c. 40.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

81 Supplementary provisions. S

(1) **[**F404Subject to subsection (1A) below, where**]** more than one person is responsible for a statutory nuisance section 80 above shall apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance.

[F405(1A) In relation to a statutory nuisance within section 79(1)(ga) above for which more than one person is responsible (whether or not what any one of those persons is responsible for would by itself amount to such a nuisance), section 80(2)(a) above shall apply with the substitution of "any one of the persons" for "the person".

(1B) In relation to a statutory nuisance within section 79(1)(ga) above caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment for which more than one person is responsible, section 80A above shall apply with the substitution—

(a) in subsection (2)(a), of "any of the persons" for "the person" and of "one such person" for "that person",

(b) in subsection (2)(b), of "such a person" for "that person",

(c) in subsection (3), of "any of the persons" for "the person" and of "one such person" for "that person",

(d) in subsection (5), of "any person" for "the person", and

(e) in subsection (7), of "a person" for "the person" and of "such a person" for "that person".**]**

(2) Where a statutory nuisance which exists or has occurred within the area of a local authority, or which has affected any part of that area, appears to the local authority to be wholly or partly caused by some act or default committed or taking place outside the area, the local authority may act under section 80 above as if the act or default were wholly within that area, except that any appeal shall be heard by a magistrates' court **[**F406or in Scotland, the sheriff**]** having jurisdiction where the act or default is alleged to have taken place.

[F885(3) Where an abatement notice has not been complied with, the local authority may, whether or not—

(a) proceedings have been taken for an offence under section 80(4); or

(b) a fixed penalty notice has been given under section 80(4A) in respect of that offence (regardless of whether the fixed penalty notice is accepted),

abate the nuisance and do whatever may be necessary in execution of the abatement notice.**]**

[F886(3A) The power under subsection (3) above shall, where the matter to be abated is a statutory nuisance by virtue of section 79(1)(g) above, include power to seize and remove any equipment which it appears to the authority is being or has been used in the emission of the noise in question.

(3B) A person who wilfully obstructs any person exercising, by virtue of subsection (3A) above, the power conferred by subsection (3) above shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(3C) Schedule 1 to the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) shall have effect in relation to equipment seized by virtue of subsection (3A) above as it does in relation to equipment seized under section 47(2) of that Act, subject to the following modifications—

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(a) in paragraph 1(a), "noise offence" means an offence under section 80(4) above in respect of a statutory nuisance falling within section 79(1)(g) above; and

(b) in paragraph 1(b), "seized equipment" means equipment seized by virtue of subsection (3A) above.**]**

(4) Any expenses reasonably incurred by a local authority in abating, or preventing the recurrence of, a statutory nuisance under subsection (3) above may be recovered by them from the person by whose act or default the nuisance was caused and, if that person is the owner of the premises, from any person who is for the time being the owner thereof; and the court **[**F408or sheriff**]** may apportion the expenses between persons by whose acts or defaults the nuisance is caused in such manner as the court consider **[**F408or sheriff considers**]** fair and reasonable.

(5) If a local authority is of opinion that proceedings for an offence under section 80(4) above would afford an inadequate remedy in the case of any statutory nuisance , they may, subject to subsection (6) below, take proceedings in the High Court **[**F409or, in Scotland, in any court of competent jurisdiction,**]** for the purpose of securing the abatement, prohibition or restriction of the nuisance, and the proceedings shall be maintainable notwithstanding the local authority have suffered no damage from the nuisance.

(6) In any proceedings under subsection (5) above in respect of a nuisance falling within paragraph (g) **[**F410or (ga)**]**of section 79(1) above, it shall be a defence to prove that the noise was authorised by a notice under section 60 or a consent under section 61 (construction sites) of the M64Control of Pollution Act 1974.

(7) The further supplementary provisions in Schedule 3 to this Act shall have effect.

Extent Information

E27 Ss. 79-82, which previously extended to England and Wales only, extend to Scotland from 1.4.1996 (except where specified) by virtue of the repeal of s. 83 of this Act by 1995 c. 25, s. 120(3), **Sch. 24**; S.I. 1996/186, **art. 3**

E59 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F404 Words in s. 81(1) substituted (5.1.1994) by 1993 c. 40, **ss. 4(2)**, 12(1)(2)

F405 S. 81(1A)(1B) inserted (5.1.1994) by 1993 c. 40, **ss. 4(3)**, 12(1)(2)

F406 Words in s. 81(2) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 4(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F408 Words in s. 81(4) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 4(c)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F409 Words in s. 81(5) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 4(d)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

F410 Words in s. 81(6) inserted (5.1.1994) by 1993 c. 40, **ss. 4(4)**, 12(1)(2)

F885 S. 81(3) substituted (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), **ss. 113(4)**, 128(2) (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1

F886 S. 81(3A)-(3C) inserted (S.) (1.12.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), ss. 144(1), 145(2), **Sch. 4 para. 3**; S.S.I. 2004/420, **art. 3**, Sch. 3

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Modifications etc. (not altering text)

C71 S. 79-81 excluded (S.) (22.4.2006 for certain purposes and otherwise prosp.) by Water Services etc. (Scotland) Act 2005 (asp 3), **ss. 26(10)**, 37(2) (with s. 36); S.S.I. 2006/167, **art. 2**, Sch. 2

Marginal Citations

M64 1974 c. 40.

[F411 81A Expenses recoverable from owner to be a charge on premises.

(1) Where any expenses are recoverable under section 81(4) above from a person who is the owner of the premises there mentioned and the local authority serves a notice on him under this section—

(a) the expenses shall carry interest, at such reasonable rate as the local authority may determine, from the date of service of the notice until the whole amount is paid, and

(b) subject to the following provisions of this section, the expenses and accrued interest shall be a charge on the premises.

(2) A notice served under this section shall—

(a) specify the amount of the expenses that the local authority claims is recoverable,

(b) state the effect of subsection (1) above and the rate of interest determined by the local authority under that subsection, and

(c) state the effect of subsections (4) to (6) below.

(3) On the date on which a local authority serves a notice on a person under this section the authority shall also serve a copy of the notice on every other person who, to the knowledge of the authority, has an interest in the premises capable of being affected by the charge.

(4) Subject to any order under subsection (7)(b) or (c) below, the amount of any expenses specified in a notice under this section and the accrued interest shall be a charge on the premises—

(a) as from the end of the period of twenty-one days beginning with the date of service of the notice, or

(b) where an appeal is brought under subsection (6) below, as from the final determination of the appeal,

until the expenses and interest are recovered.

(5) For the purposes of subsection (4) above, the withdrawal of an appeal has the same effect as a final determination of the appeal.

(6) A person served with a notice or copy of a notice under this section may appeal against the notice to the county court within the period of twenty-one days beginning with the date of service.

(7) On such an appeal the court may—

(a) confirm the notice without modification,

(b) order that the notice is to have effect with the substitution of a different amount for the amount originally specified in it, or

(c) order that the notice is to be of no effect.

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(8) A local authority shall, for the purpose of enforcing a charge under this section, have all the same powers and remedies under the [M65]Law of Property Act 1925, and otherwise, as if it were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

(9) In this section—

"owner", in relation to any premises, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the premises or, where the premises are not let at a rack rent, would be so entitled if they were so let, and

"premises" does not include a vessel.

[This section does not apply to Scotland.**]]**
[F412](10)

Textual Amendments

F411 Ss. 81A, 81B inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 10(2)**, 12(1)

F412 S. 81A(10) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para.5** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

Marginal Citations

M65 1925 c. 20.

[F413]81B Payment of expenses by instalments.

(1) Where any expenses are a charge on premises under section 81A above, the local authority may by order declare the expenses to be payable with interest by instalments within the specified period, until the whole amount is paid.

(2) In subsection (1) above—

"interest" means interest at the rate determined by the authority under section 81A (1) above, and

"the specified period" means such period of thirty years or less from the date of service of the notice under section 81A above as is specified in the order.

(3) Subject to subsection (5) below, the instalments and interest, or any part of them, may be recovered from the owner or occupier for the time being of the premises.

(4) Any sums recovered from an occupier may be deducted by him from the rent of the premises.

(5) An occupier shall not be required to pay at any one time any sum greater than the aggregate of—

(a) the amount that was due from him on account of rent at the date on which he was served with a demand from the local authority together with a notice requiring him not to pay rent to his landlord without deducting the sum demanded, and

(b) the amount that has become due from him on account of rent since that date.

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[F414(6) This section does not apply to Scotland.**]**

Textual Amendments

F413 Ss. 81A, 81B inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 10(2)**, 12(1)

F414 S. 81B(6) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para.5** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

82 Summary proceedings by persons aggrieved by statutory nuisances.

(1) A magistrates' court may act under this section on a complaint **[**F415or, in Scotland, the sheriff may act under this section on a summary application,**]** made by any person on the ground that he is aggrieved by the existence of a statutory nuisance.

(2) If the magistrates' court **[**F416or, in Scotland, the sheriff**]** is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises **[**F417or, in the case of a nuisance within section 79(1)(ga) above, in the same street**][**F416or, in Scotland, road**]**, the court **[**F416or the sheriff**]** shall make an order for either or both of the following purposes—

(a) requiring the defendant **[**F416or, in Scotland, defender**]** to abate the nuisance, within a time specified in the order, and to execute any works necessary for that purpose;

(b) prohibiting a recurrence of the nuisance, and requiring the defendant **[**F416or defender**]**, within a time specified in the order, to execute any works necessary to prevent the recurrence;

and **[**F416, in England and Wales,**]** may also impose on the defendant a fine not exceeding level 5 on the standard scale.

(3) If the magistrates' court **[**F418or the sheriff**]** is satisfied that the alleged nuisance exists and is such as, in the opinion of the court **[**F418or of the sheriff**]**, to render premises unfit for human habitation, an order under subsection (2) above may prohibit the use of the premises for human habitation until the premises are, to the satisfaction of the court **[**F418or of the sheriff**]**, rendered fit for that purpose.

(4) Proceedings for an order under subsection (2) above shall be brought—

(a) except in a case falling within **[**F419paragraph (b), (c) or (d) below**]**, against the person responsible for the nuisance;

(b) where the nuisance arises from any defect of a structural character, against the owner of the premises;

(c) where the person responsible for the nuisance cannot be found, against the owner or occupier of the premises.

[F420(d) in the case of a statutory nuisance within section 79(1)(ga) above caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment, against the person responsible for the vehicle, machinery or equipment.**]**

(5) **[**F421Subject to subsection (5A) below, where**]** more than one person is responsible for a statutory nuisance, subsections (1) to (4) above shall apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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[F422(5A) In relation to a statutory nuisance within section 79(1)(ga) above for which more than one person is responsible (whether or not what any one of those persons is responsible for would by itself amount to such a nuisance), subsection (4)(a) above shall apply with the substitution of "each person responsible for the nuisance who can be found" for "the person responsible for the nuisance".

(5B) In relation to a statutory nuisance within section 79(1)(ga) above caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment for which more than one person is responsible, subsection (4)(d) above shall apply with the substitution of "any person" for "the person".**]**

(6) Before instituting proceedings for an order under subsection (2) above against any person, the person aggrieved by the nuisance shall give to that person such notice in writing of his intention to bring the proceedings as is applicable to proceedings in respect of a nuisance of that description and the notice shall specify the matter complained of.

(7) The notice of the bringing of proceedings in respect of a statutory nuisance required by subsection (6) above which is applicable is—

(a) in the case of a nuisance falling within paragraph (g) **[**F423or (ga)**]** of section 79(1) above, not less than three days' notice; and

(b) in the case of a nuisance of any other description, not less than twenty-one days' notice;

but the Secretary of State may, by order, provide that this subsection shall have effect as if such period as is specified in the order were the minimum period of notice applicable to any description of statutory nuisance specified in the order.

(8) A person who, without reasonable excuse, contravenes any requirement or prohibition imposed by an order under subsection (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction.

(9) Subject to subsection (10) below, in any proceedings for an offence under subsection (8) above in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

(10) The defence under subsection (9) above is not available—

(a) in the case of a nuisance falling within paragraph (a), (d), (e), (f) **[**F424, (fa)**]** or (g) of section 79(1) above except where the nuisance arises on industrial, trade or business premises;

[F425(aza) in the case of a nuisance falling within paragraph (fb) of section 79(1) above except where—

(i) the artificial light is emitted from industrial, trade or business premises, or

(ii) the artificial light (not being light to which sub-paragraph (i) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility;**]**

[F426(aa) in the case of a nuisance falling within paragraph (ga) of section 79(1) above except where the noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes;**]**

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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(b) in the case of a nuisance falling within paragraph (b) of section 79(1) above except where the smoke is emitted from a chimney;

(c) in the case of a nuisance falling within paragraph (c) or (h) of section 79(1) above; and

(d) in the case of a nuisance which is such as to render the premises unfit for human habitation.

[F427(10A) For the purposes of subsection (10)(aza) "relevant sports facility" has the same meaning as it has for the purposes of section 80(8)(aza).**]**

(11) If a person is convicted of an offence under subsection (8) above, a magistrates' court **[**F428or the sheriff**]** may, after giving the local authority in whose area the nuisance has occurred an opportunity of being heard, direct the authority to do anything which the person convicted was required to do by the order to which the conviction relates.

(12) Where on the hearing of proceedings for an order under subsection (2) above it is proved that the alleged nuisance existed at the date of the making of the complaint **[**F429or summary application**]**, then, whether or not at the date of the hearing it still exists or is likely to recur, the court **[**F429or the sheriff**]** shall order the **[**F430defendant or defender (or defendants or defenders**]** in such proportions as appears fair and reasonable) to pay to the person bringing the proceedings such amount as the court **[**F429or the sheriff**]** considers reasonably sufficient to compensate him for any expenses properly incurred by him in the proceedings.

(13) If it appears to the magistrates' court **[**F431or to the sheriff**]** that neither the person responsible for the nuisance nor the owner or occupier of the premises **[**F432or (as the case may be) the person responsible for the vehicle, machinery or equipment**]** can be found the court **[**F431or the sheriff**]** may, after giving the local authority in whose area the nuisance has occurred an opportunity of being heard, direct the authority to do anything which the court **[**F431or the sheriff**]** would have ordered that person to do.

Extent Information

E28 Ss. 79-82, which previously extended to England and Wales only, extend to Scotland from 1.4.1996 (except where specified) by virtue of the repeal of s. 83 of this Act by 1995 c. 25, s. 120(3), **Sch. 24**; S.I. 1996/186, **art. 3**

Textual Amendments

F415 Words in s. 82(1) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 6(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F416 Words in s. 82(2) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 6(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F417 Words in s. 82(2) inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(2)**, 12(1)

F418 Words in s. 82(3) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 6(c)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F419 Words in s. 82(4)(a) substituted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(3)(a)**, 12(1)

F420 S. 82(4)(d) added (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(3)(b)**, 12(1)

F421 Words in s. 82(5) substituted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(4)**, 12(1)

F422 S. 82(5A)(5B) inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(5)**, 12(1)

F423 Words in s. 82(7)(a) inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(6)**, 12(1)

F424 Words in s. 82(10)(a) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 31.1.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act

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2005 (c. 16), **ss. 103(4)(a)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 6(b)** (as amended (30.1.2007) by S.I. 2007/120, art. 3)

F425 S. 82(10)(aza) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 31.1.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 103(4)(b)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(b)** (as amended (30.1.2007) by S.I. 2007/120, art. 3)

F426 S. 82(10)(aa) inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(7)**, 12(1)

F427 S. 82(10A) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 31.1.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 103(5)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 7(b)** (as amended (30.1.2007) by S.I. 2007/120, art. 3)

F428 Words in s. 82(11) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 6(d)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F429 Words in s. 82(12) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 6(e)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F430 Words in s. 82(12) substituted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 6(e)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F431 Words in s. 82(13) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 6(f)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F432 Words in s. 82(13) inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(8)**, 12(1)

Modifications etc. (not altering text)

C73 S. 82 restricted (1.4.2000) by S.I. 2000/823, **art. 3**

C74 S. 82(1) excluded (conditionally) (20.8.1999) by S.I. 1999/2336, **art. 23(1)**

C75 S. 82(2) restricted (23.8.2007) by The Docklands Light Railway (Capacity Enhancement and 2012 Games Preparation) Order 2007 (S.I. 2007/2297), **art. 41(1)** (with arts. 3(6), 12(3), 41(3))

C76 S. 82(2) restricted (30.5.2007) by The Mersey Docks and Harbour Company (Seaforth River Terminal) Harbour Revision Order 2007 (S.I. 2007/1440), **art. 17(1)** (with art. 20)

C77 S. 82(2) restricted (18.12.1996) by 1996 c. 61, **s. 30(1)**
S. 82(2) restricted (18.7.2001) by S.I. 2001/2870, **art. 22(1)**
S. 82(2) restricted (9.11.2001) by S.I. 2001/3682, **art. 31(1)**
S. 82(2) restricted (28.4.2003) by The Network Rail (West Coast Main Line) Order 2003 (S.I. 2003/1075), **art. 35(1)** (with art. 40)
S. 82(2) restricted (4.3.2004) by The Network Rail (West Coast Main Line) Order 2004 (S.I. 2004/389), **art. 33(1)** (with art. 38)
S. 82(2) restricted (2.4.2004) by The Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 (S.I. 2004/757), **art. 50(1)** (with art. 50(3))
S. 82(2) restricted (4.5.2005) by The Telford Railfreight Terminal (Donnington) Order 2005 (S.I. 2005/1163), **art. 20(1)** (with art. 30)
S. 82(2) restricted (25.11.2005) by The Docklands Light Railway (Capacity Enhancement) Order 2005 (S.I. 2005/3105), **art. 48(1)** (with arts. 3(5), 15(3))
S. 82(2) restricted (22.11.2006) by The Docklands Light Railway (Stratford International Extension) Order 2006 (S.I. 2006/2905), **art. 46(1)** (with arts. 43, 46(3))
S. 82(2) restricted (13.12.2006) by The Network Rail (Thameslink 2000) Order 2006 (S.I. 2006/3117), **art. 36(1)** (with arts. 34, 35(2))

C78 S. 82(2) excluded (30.4.2002) by The Docklands Light Railway (Silvertown and London City Airport Extension) Order 2002 (S.I. 2002/1066), **art. 43(1)**

C79 S. 82(2) restricted (22.7.2008) by Crossrail Act 2008 (c. 18), **s. 21(1)**

C80 S. 82(2) restricted (14.10.2008) by The Felixstowe Branch Line and Ipswich Yard Improvement Order 2008 (S.I. 2008/2512), **art. 40(1)** (with art. 36(3))

C81 S. 82(2) restricted (16.5.2008) by The London Gateway Port Harbour Empowerment Order 2008 (S.I. 2008/1261), **art. 27(1)**

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C82 S. 82(2) restricted (9.6.2009) by The Nottingham Express Transit System Order 2009 (S.I. 2009/1300), **art. 78(1)** (with Sch. 16)
C83 S. 82(2) restricted (18.9.2009) by The London Underground (Victoria Station Upgrade) Order 2009 (S.I. 2009/2364), **art. 38(1)**
C84 S. 82(2) restricted (27.8.2010) by The Llangollen and Corwen Railway Order 2010 (S.I. 2010/2136), **art. 10(1)** (with art. 10(3))
C85 S. 82(2) restricted (1.9.2010) by The Port of Bristol (Deep Sea Container Terminal) Harbour Revision Order 2010 (S.I. 2010/2020), **art. 26(1)** (with arts. 18, 19)
C86 S. 82(8) restricted (13.4.2001) by S.I. 2001/1478, **reg. 3(b)**

Statutory nuisances: Scotland

F433 83 . . . . . .

Textual Amendments
F433 S. 83 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**

Termination of existing controls over offensive trades and businesses

84 Termination of Public Health Act controls over offensive trades etc.

(1) Where a person carries on, in the area or part of the area of any local authority—

(a) in England or Wales, a trade which—

(i) is an offensive trade within the meaning of section 107 of the M66Public Health Act 1936 in that area or part of that area, and

(ii) constitutes a prescribed process designated for local control for the carrying on of which an authorisation is required under section 6 of this Act; or

(b) in Scotland, a business which—

(i) is mentioned in section 32(1) of the Public Health (Scotland) Act 1897 (or is an offensive business by virtue of that section) in that area or part of that area; and

(ii) constitutes a prescribed process designated for local control for the carrying on of which an authorisation is required under the said section 6,

subsection (2) below shall have effect in relation to that trade or business as from the date on which an authorisation is granted under section 6 of this Act or, if that person has not applied for such an authorisation within the period allowed under section 2(1) above for making applications under that section, as from the end of that period.

(2) Where this subsection applies in relation to the trade or business carried on by any person—

(a) nothing in section 107 of the Public Health Act 1936 or in section 32 of the Public Health (Scotland) Act 1897 shall apply in relation to it, and

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(b) no byelaws or further byelaws made under section 108(2) of the said Act of 1936, or under subsection (2) of the said section 32, with respect to a trade or business of that description shall apply in relation to it;

but without prejudice to the continuance of, and imposition of any penalty in, any proceedings under the said section 107 or the said section 32 which were instituted before the date as from which this subsection has effect in relation to the trade or business.

(3) Subsection (2)(b) above shall apply in relation to the trade of fish frying as it applies in relation to an offensive trade.

(4) When the Secretary of State considers it expedient to do so, having regard to the operation of Part I and the preceding provisions of this Part of this Act in relation to offensive trades or businesses, he may by order repeal—

(a) sections 107 and 108 of the [M67]Public Health Act 1936; and

(b) section 32 of the [M68]Public Health (Scotland) Act 1897;

and different days may be so appointed in relation to trades or businesses which constitute prescribed processes and those which do not.

(5) In this section—

"prescribed process" has the same meaning as in Part I of this Act; and

"offensive trade" or "trade" has the same meaning as in section 107 of the Public Health Act 1936.

Marginal Citations

M66 1936 c. 49.
M67 1936 c. 49.
M68 1897 c. 38.

Application to gases of certain Clean Air Act provisions

[F434]85 . . . . . .

Textual Amendments

F434 S. 85 repealed (27.8.1993) by 1993 c. 11, s. 67(3), **Sch.6**

PART IV

LITTER ETC

Modifications etc. (not altering text)

C87 Pt. IV amended: by S.I. 1991/476, **art. 2**; (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para.10**; S.I. 1994/2038, **art. 3**.

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C88 Pt. IV extended: by S.I.1991/961, **art. 2**; (E.W.) (1.11.1996) by 1996 c. 56, ss. 19, 583(2), **Sch. 1 para.10** (with ss. 1(4), 561, 562, Sch. 39)

Provisions relating to litter

86 Preliminary.

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

(2) In England and Wales the following are "principal litter authorities"—

(a) a county council,

[[F435](aa) a county borough council,**]**

(b) a district council,

(c) a London borough council,

(d) the Common Council of the City of London, and

(e) the Council of the Isles of Scilly;

but the Secretary of State may, by order, designate other descriptions of local authorities as litter authorities for the purposes of this Part; and any such authority shall also be a principal litter authority.

(3) In Scotland the following are "principal litter authorities"—

[[F436](a) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**]**

(c) a joint board.

(4) Subject to subsection (8) below, land is "relevant land" of a principal litter authority if, not being relevant land falling within subsection (7) below, it is open to the air and is land (but not a highway or in Scotland a public road) which is under the direct control of such an authority to which the public are entitled or permitted to have access with or without payment.

(5) Land is "Crown land" if it is land—

(a) occupied by the Crown Estate Commissioners as part of the Crown Estate,

(b) occupied by or for the purposes of a government department or for naval, military or air force purposes, or

(c) occupied or managed by any body acting on behalf of the Crown;

is "relevant Crown land" if it is Crown land which is open to the air and is land (but not a highway or in Scotland a public road) to which the public are entitled or permitted to have access with or without payment; and "the appropriate Crown authority" for any Crown land is the Crown Estate Commissioners, the Minister in charge of the government department or the body which occupies or manages the land on the Crown's behalf, as the case may be.

(6) Subject to subsection (8) below, land is "relevant land" of a designated statutory undertaker if it is land which is under the direct control of any statutory undertaker or statutory undertaker of any description which may be designated by the Secretary of State, by order, for the purposes of this Part, being land to which the public are entitled or permitted to have access with or without payment or, in such cases as may be prescribed in the designation order, land in relation to which the public have no such right or permission.

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(7) Subject to subsection (8) below, land is "relevant land" of a designated educational institution if it is open to the air and is land which is under the direct control of the governing body of or, in Scotland, of such body or of the education authority responsible for the management of, any educational institution or educational institution of any description which may be designated by the Secretary of State, by order, for the purposes of this Part.

(8) The Secretary of State may, by order, designate descriptions of land which are not to be treated as relevant Crown land or as relevant land of principal litter authorities, of designated statutory undertakers or of designated educational institutions or of any description of any of them.

(9) Every highway maintainable at the public expense other than a trunk road which is a special road is a "relevant highway" and the local authority which is, for the purposes of this Part, "responsible" for so much of it as lies within its area is, subject to any order under subsection (11) below—

(a) in Greater London, the council of the London borough or the Common Council of the City of London;

(b) **[**F437in England**]**outside Greater London, the council of the district;

[F438(bb) in Wales, the council of the county or county borough;**]** and

(c) the Council of the Isles of Scilly.

(10) In Scotland, every public road other than a trunk road which is a special road is a "relevant road" and the local authority which is, for the purposes of this Part, "responsible" for so much of it as lies within **[**F439their**]**area is, subject to any order under subsection (11) below, **[**the council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**]**.

(11) The Secretary of State may, by order, as respects relevant highways or relevant roads, relevant highways or relevant roads of any class or any part of a relevant highway or relevant road specified in the order, transfer the responsibility for the discharge of the duties imposed by section 89 below from the local authority to the highway or roads authority; but he shall not make an order under this subsection unless—

(a) (except where he is the highway or roads authority) he is requested to do so by the highway or roads authority;

(b) he consults the local authority; and

(c) it appears to him to be necessary or expedient to do so in order to prevent or minimise interference with the passage or with the safety of traffic along the highway or, in Scotland, road in question;

and where, by an order under this subsection, responsibility for the discharge of those duties is transferred, the authority to which the transfer is made is, for the purposes of this Part, "responsible" for the highway, road or part specified in the order.

(12) **[**F440Land is "relevant land within a litter control area of a local authority" if it is land included in an area designated by the local authority under section 90 below to which the public are entitled or permitted to have access with or without payment.**]**

(13) A place on land shall be treated as "open to the air" notwithstanding that it is covered if it is open to the air on at least one side.

(14) The Secretary of State may, by order, apply the provisions of this Part which apply to refuse to any description of animal droppings in all or any prescribed circumstances subject to such modifications as appear to him to be necessary.

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(15) Any power under this section may be exercised differently as respects different areas, different descriptions of land or for different circumstances.

Textual Amendments

F435 S. 86(2)(aa) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(6)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F436 S. 86(3)(a) substituted (S.) (1.4.1996) for paras. (a)(b) by 1994 c. 39, s. 180(1), **Sch. 13 para. 167(10)(a)**; S.I. 1996/323, **art. 4(1)(c)**.

F437 Words in s. 86(9)(b) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(7)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F438 S. 86(9)(bb) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(7)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**

F439 Words in s. 86(10) substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 167(10)(b)**; S.I. 1996/323, **art. 4(1)(c)**.

F440 S. 86(12) repealed (E.W.) (6.3.2007 for E and 15.3.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 107, 108, **Sch. 5 Pt. 2**; S.I. 2006/2797, **art. 4(oo)**; S.I. 2007/390, **art. 2(c)**

Commencement Information

I37 S. 86 partly in force; s. 86 not in force at Royal Assent see s. 164(3); s. 86(2)(6)-(8)(11)(14)(15) wholly in force at 14.1.1991 and s. 86(1)(4)(5)(9)(13) in force (E.W.) at 13.2.1991 by S.I. 1991/96, **arts. 2**, 3; s. 86(3)(10) wholly in force at 1.4.1991, s. 86(1)(4)(5)(13) in force (S.) at 1.4.1991 and s. 86(12) wholly in force at 1.6.1991 by S.I. 1991/1042, **arts. 2**, 3.

87 Offence of leaving litter. E+W

[F441(1) A person is guilty of an offence if he throws down, drops or otherwise deposits any litter in any place to which this section applies and leaves it.

(2) This section applies to any place in the area of a principal litter authority which is open to the air, subject to subsection (3) below.

(3) This section does not apply to a place which is "open to the air" for the purposes of this Part by virtue of section 86(13) above if the public does not have access to it, with or without payment.

(4) It is immaterial for the purposes of this section whether the litter is deposited on land or in water.

(4A) No offence is committed under subsection (1) above where the depositing of the litter is—

(a) authorised by law; or

(b) done by or with the consent of the owner, occupier or other person having control of the place where it is deposited.

(4B) A person may only give consent under subsection (4A)(b) above in relation to the depositing of litter in a lake or pond or watercourse if he is the owner, occupier or other person having control of—

(a) all the land adjoining that lake or pond or watercourse; and

(b) all the land through or into which water in that lake or pond or watercourse directly or indirectly discharges, otherwise than by means of a public sewer.

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(4C) In subsection (4B) above, "lake or pond", "watercourse" and "public sewer" have the same meanings as in section 104 of the Water Resources Act 1991.**]**

(5) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) A local authority, with a view to promoting the abatement of litter, may take such steps as the authority think appropriate for making the effect of subsection (5) above known to the public in their area.

(7) In any proceedings in Scotland for an offence under this section it shall be lawful to convict the accused on the evidence of one witness.

Extent Information

E29 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F441 S. 87(1)-(4C) substituted (E.W.) (7.6.2005) for s. 87(1)-(4) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 18**, 108(4)(b)

Modifications etc. (not altering text)

C89 S. 87 applied (with modifications) (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), 31, **Sch. 2 Pt. 1**

C90 S. 87 applied (20.9.2000) by 2000 c. vii, **ss. 1(1)**, 21

Commencement Information

I38 S. 87 partly in force; s. 87 not in force at Royal Assent see s. 164(2); s. 87(1) (2) (3)(a)-(e) (4)-(6) in force (E.W) 13.2.1991 by S.I. 1991/96, **art. 3**
S. 87(7) in force at 1.4.1991; s. 87(1)(2)(3)(a)-(e) (4)-(6) in force (S.) 1.4.1991 and s. 87(3)(f) in force 1.6.1991 see s. 164(3) and S.I. 1991/1042, **arts. 2**, 3

87 Offence of leaving litter. S

(1) If any person throws down, drops or otherwise deposits in, into or from any place to which this section applies, and leaves, any thing whatsoever in such circumstances as to cause, or contribute to, or tend to lead to, the defacement by litter of any place to which this section applies, he shall, subject to subsection (2) below, be guilty of an offence.

(2) No offence is committed under this section where the depositing and leaving of the thing was—

(a) authorised by law, or

(b) done with the consent of the owner, occupier or other person or authority having control of the place in or into which that thing was deposited.

(3) This section applies to any public open place and, in so far as the place is not a public open place, also to the following places—

(a) any relevant highway or relevant road and any trunk road which is a special road;

(b) any place on relevant land of a principal litter authority;

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(c) any place on relevant Crown land;
(d) any place on relevant land of any designated statutory undertaker;
(e) any place on relevant land of any designated educational institution;
(f) any place on relevant land within a litter control area of a local authority.

(4) In this section "public open place" means a place in the open air to which the public are entitled or permitted to have access without payment; and any covered place open to the air on at least one side and available for public use shall be treated as a public open place.

(5) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) A local authority, with a view to promoting the abatement of litter, may take such steps as the authority think appropriate for making the effect of subsection (5) above known to the public in their area.

(7) In any proceedings in Scotland for an offence under this section it shall be lawful to convict the accused on the evidence of one witness.

Extent Information

E60 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)

C89 S. 87 applied (with modifications) (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), 31, **Sch. 2 Pt. 1**

C90 S. 87 applied (20.9.2000) by 2000 c. vii, **ss. 1(1)**, 21

Commencement Information

I38 S. 87 partly in force; s. 87 not in force at Royal Assent see s. 164(2); s. 87(1) (2) (3)(a)-(e) (4)-(6) in force (E.W) 13.2.1991 by S.I. 1991/96, **art. 3**
S. 87(7) in force at 1.4.1991; s. 87(1)(2)(3)(a)-(e) (4)-(6) in force (S.) 1.4.1991 and s. 87(3)(f) in force 1.6.1991 see s. 164(3) and S.I. 1991/1042, **arts. 2**, 3

88 Fixed penalty notices for leaving litter. E+W

(1) Where on any occasion an authorised officer of a litter authority finds a person who he has reason to believe has on that occasion committed an offence under section 87 above in the area of that authority, he may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

(2) Where a person is given a notice under this section in respect of an offence—
(a) no proceedings shall be instituted for that offence before the expiration of fourteen days following the date of the notice; and
(b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.

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

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(a) the period during which, by virtue of subsection (2) above, proceedings will not be taken for the offence;

(b) the amount of the fixed penalty; and

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

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

(4) Where a letter is sent in accordance with subsection (3) above payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(5) The form of notices under this section shall be such as the Secretary of State may by order prescribe.

[F442(6) The fixed penalty payable in pursuance of a notice under this section is payable to the litter authority whose authorised officer gave the notice.

(6A) The amount of a fixed penalty payable in pursuance of a notice under this section—

(a) is the amount specified by a principal litter authority in relation to its area (whether the penalty is payable to that or another authority), or

(b) if no amount is so specified, is £75.

(6B) The reference in subsection (6A) above to a principal litter authority does not include an English county council for an area for which there is also a district council.

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

(8) In any proceedings a certificate which—

(a) purports to be signed by or on behalf of—

(i) in England and Wales, the chief finance officer of the litter authority; or

(ii) in Scotland, the proper officer; and

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

shall be evidence of the facts stated.

[F443(8A) If an authorised officer of a litter authority proposes to give a person a notice under this section, the officer may require the person to give him his name and address.

(8B) A person commits an offence if—

(a) he fails to give his name and address when required to do so under subsection (8A) above, or

(b) he gives a false or inaccurate name or address in response to a requirement under that subsection.

(8C) A person guilty of an offence under subsection (8B) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.**]**

(9) For the purposes of this section the following are "litter authorities"—

(a) any principal litter authority, other than **[**F444an English county**]** council **[**F445, a regional council**]** or a joint board;

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(b) any **[**F446English**]** county council **[**F447, regional council**]** or joint board designated by the Secretary of State, by order, in relation to such area as is specified in the order (not being an area in a National Park);

F448(c) . . . . . .

F448(d) . . . . . .

(e) the Broads Authority.

[F449(f) a parish or community council.**]**

(10) In this section—

[F450"authorised officer", in relation to a litter authority, means—

(a) an employee of the authority who is authorised in writing by the authority for the purpose 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; and

(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 litter authority, means the person having responsibility for the financial affairs of the authority;

F451 . . .

F451 . . .

"proper officer" means the officer who has, as respects the authority, the responsibility mentioned in section 95 of the M69Local Government (Scotland) Act 1973 (financial administration).

[F452(11) The appropriate person may by regulations prescribe conditions to be satisfied by a person before a parish or community council may authorise him in writing for the purpose of giving notices under this section.**]**

Extent Information

E30 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F442 S. 88(6)(6A)(6B)(7) substituted (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.) for s. 88(6)(7) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 19(2)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2 (with art. 4(3)(a)); S.I. 2006/2797, **art. 4(f)** (with art. 10(3)(a)); S.I. 2007/739

F443 S. 88(8A)-(8C) 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. 19(3)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2 (with art. 4(3)(a)); S.I. 2006/2797, **art. 4(f)** (with art. 10(3)(a)); S.I. 2007/739

F444 Words in s. 88(9)(a) substituted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(8)(a)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**.

F445 Words in s. 88(9)(a) repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 167(12), **Sch. 14**; S.I. 1996/323, art. 4(1)(c)(d), **Sch. 2**

F446 Word in s. 88(9)(b) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(8)(b)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**.

F447 Words in s. 88(9)(b) repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 167(12), **Sch. 14**; S.I. 1996/323, art. 4(1)(c)(d), **Sch. 2**

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F448 S. 88(9)(c)(d) 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.**

F449 S. 88(9)(f) 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. 19(4)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2 (with art. 4(3)(a)); S.I. 2006/2797, **art. 4(f)** (with art. 10(3)(a)); S.I. 2007/739

F450 In s. 88(10) definition of "authorised officer" substituted (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. 19(5)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2 (with art. 4(3)(a)); S.I. 2006/2797, **art. 4(f)** (with art. 10(3)(a)); S.I. 2007/739

F451 Definitions in s. 88(10) 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.**

F452 S. 88(11) inserted (E.W.) (14.3.2006 for E., 16.3.2006 for certain purposes for W. and 15.3.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 19(6)**, 108; S.I. 2006/795, **art. 2(1)**, Sch. 1 (with art. 4(3)(a)); S.I. 2006/768, **art. 3**; S.I. 2006/2797, **art. 4(f)** (with art. 10(3)(a)); S.I. 2007/739

Modifications etc. (not altering text)

C91 S. 88 applied (with modifications) (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), 31, **Sch. 2 Pt. 2**

C92 S. 88 extended (with modifications) (E.W.) (19.9.1995) by 1995 c. 25, ss. 70, 125(3), **Sch. 9 para. 12(b)** (with ss. 7(6), 115, 117, Sch. 8 para. 7)
S. 88(2)-(8) applied (with modifications) (E.W.) (17.8.1996) by 1996 c. 20, **ss. 4(2)(3)**, 8(2) (with s. 1) (as amended (1.4.2002) by S.I. 2002/425, **art. 2**)

C93 S. 88 extended (2.12.2002) by Police Reform Act 2002 (c. 30), s. 38, **Sch. 4 Pt. 1 para. 1(2)(d)**; S.I. 2002/2750, **art. 2(a)(ii)**
S. 88 extended (2.12.2002) by Police Reform Act 2002 (c. 30), s. 41, **Sch. 5 para. 1(2)(c)**; S.I. 2002/2750, **art. 2(a)(iii)**

Commencement Information

I39 S. 88 wholly in force at 13.2.1991; s. 88 not in force at Royal Assent, see s. 164(2); s. 88(7)(9)(b) in force at 14.1.1991 and s. 88(1)-(4)(6)(8)(9)(a)(c)-(e)(10) in force for E.W. at 13.2.1991 by S.I. 1991/96, **arts. 2**, 3; s. 88(1)-(4)(6)(8)(9)(a)(c)(d)(10) in force for S. at 1.4.1991 by S.I. 1991/1042, **art. 2**

Marginal Citations

M69 1973 c. 65.

88 Fixed penalty notices for leaving litter. S

(1) Where F887. . .

[F888(a)**]** an authorised officer of a litter authority F887. . . has reason to believe **[**F889that a person has**]** committed an offence under section 87 above in the area of that authority**[**F890; or

(b) a constable has reason to believe that a person has committed an offence under that section,**]**

he may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

[F891(1A) Where a constable 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 litter authority in whose area the offence was committed.**]**

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

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

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

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

(a) the period during which, by virtue of subsection (2) above, proceedings will not be taken for the offence;

(b) the amount of the fixed penalty; and

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

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

(4) Where a letter is sent in accordance with subsection (3) above payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(5) The form of notices under this section shall be such as the Secretary of State may by order prescribe.

[F892(5A) A fixed penalty payable in pursuance of a notice under this section shall be payable to the litter authority in whose area the offence was committed.**]**

F893(6) The fixed penalty payable F894. . . in pursuance of a notice under this section shall, subject to subsection (7) below, be **[**F895£50**][**F896or, in Wales, £75**]**; and as respects the sums received by **[**F897a litter**]** authority, those sums—

(a) **[**F898if received by an authority in England and Wales, shall be paid to the Secretary of State;**]**

(b) if received by an authority in Scotland, shall **[**F899accrue to the litter authority**]** .

(7) The Secretary of State may by order substitute a different amount **[**F900(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 (6) above.

(8) In any proceedings a certificate which—

(a) purports to be signed by or on behalf of—

(i) in England and Wales, the chief finance officer of the litter authority; or

(ii) in Scotland, the proper officer **[**F901for the litter authority in whose area the offence was committed**]**; and

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

shall be evidence of the facts stated.

(9) For the purposes of this section the following are "litter authorities"—

(a) any principal litter authority, other than **[**F444an English county**]** council **[**F445, a regional council**]** or a joint board;

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(b) any **[**F446English**]** county council **[**F447, regional council**]** or joint board designated by the Secretary of State, by order, in relation to such area as is specified in the order (not being an area in a National Park);

F448(c) . . . . . .

F448(d) . . . . . .

(e) the Broads Authority.

(10) In this section—

"authorised officer" means an officer of, F902. . . a litter authority who is authorised in writing by the authority for the purpose of issuing notices under this section;

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

F451 . . .

F451 . . .

"proper officer" means the officer who has, as respects the authority, the responsibility mentioned in section 95 of the M69Local Government (Scotland) Act 1973 (financial administration).

Extent Information

E61 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F444 Words in s. 88(9)(a) substituted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(8)(a)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**.

F445 Words in s. 88(9)(a) repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 167(12), **Sch. 14**; S.I. 1996/323, art. 4(1)(c)(d), **Sch. 2**

F446 Word in s. 88(9)(b) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(8)(b)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**.

F447 Words in s. 88(9)(b) repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 167(12), **Sch. 14**; S.I. 1996/323, art. 4(1)(c)(d), **Sch. 2**

F448 S. 88(9)(c)(d) 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.**

F451 Definitions in s. 88(10) 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.**

F887 Words in s. 88(1) repealed (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 56(2)(a)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

F888 Words in s. 88(1) renumbered (S.) (28.10.2004) as s. 88(1)(a) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 56(2)(c)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

F889 Words in s. 88(1) substituted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 56(2)(b)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

F890 S. 88(1)(b) and preceding word inserted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 56(2)(d)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

F891 S. 88(1A) inserted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 56(3)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

F892 S. 88(5A) inserted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 56(4)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

F893 By The Litter and Dog Fouling (Fixed Penalty) (Wales) Order 2004 (S.I. 2004/909), **art. 2(b)**, it is provided (W.) (1.4.2004) that any surviving reference to £25 in s. 88(6) is hereby repealed

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F894 Words in s. 88(6) repealed (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 56(5)(a)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

F895 S. 88(6): "£50" substituted for "£25" (E.) (1.4.2002) and (S.) (1.7.2003) by The Litter (Fixed Penalty) (England) Order 2002 (S.I. 2002/424), **art. 2** and by The Litter (Fixed Penalty) (Scotland) Order 2003 (S.S.I. 2003/268), **art. 2**

F896 Words in s. 88(6) inserted (W.) (1.4.2004) by The Litter and Dog Fouling (Fixed Penalty) (Wales) Order 2004 (S.I. 2004/909), **art. 2(a)**

F897 Words in s. 88(6) substituted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 56(5)(b)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

F898 S. 88(6)(a) repealed (18.11.2003 for E. and 27.11.2003 for W.) by Local Government Act 2003 (c. 26), s. 119(1), **Sch. 8 Pt. 1**; S.I. 2003/2938, **art. 3** (subject to art. 8, Sch.); S.I. 2003/3034, **art. 2(1)**, Sch. 1 Pt. 1

F899 Words in s. 88(6)(b) substituted (S.) (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 80, 84, **Sch. para. 8(b)**; S.S.I. 2008/42, **art. 3(1)**, Sch.

F900 Words in s. 88(7) inserted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 56(6)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

F901 Words in s. 88(8)(a)(ii) inserted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 56(7)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

F902 Words in definition in s. 88(10) 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)

C91 S. 88 applied (with modifications) (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), 31, **Sch. 2 Pt. 2**

C92 S. 88 extended (with modifications) (E.W.) (19.9.1995) by 1995 c. 25, ss. 70, 125(3), **Sch. 9 para. 12(b)** (with ss. 7(6), 115, 117, Sch. 8 para. 7)
S. 88(2)-(8) applied (with modifications) (E.W.) (17.8.1996) by 1996 c. 20, **ss. 4(2)(3)**, 8(2) (with s. 1) (as amended (1.4.2002) by S.I. 2002/425, **art. 2**)

C93 S. 88 extended (2.12.2002) by Police Reform Act 2002 (c. 30), s. 38, **Sch. 4 Pt. 1 para. 1(2)(d)**; S.I. 2002/2750, **art. 2(a)(ii)**
S. 88 extended (2.12.2002) by Police Reform Act 2002 (c. 30), s. 41, **Sch. 5 para. 1(2)(c)**; S.I. 2002/2750, **art. 2(a)(iii)**

Commencement Information

I39 S. 88 wholly in force at 13.2.1991; s. 88 not in force at Royal Assent, see s. 164(2); s. 88(7)(9)(b) in force at 14.1.1991 and s. 88(1)-(4)(6)(8)(9)(a)(c)-(e)(10) in force for E.W. at 13.2.1991 by S.I. 1991/96, **arts. 2**, 3; s. 88(1)-(4)(6)(8)(9)(a)(c)(d)(10) in force for S. at 1.4.1991 by S.I. 1991/1042, **art. 2**

Marginal Citations

M69 1973 c. 65.

89 Duty to keep land and highways clear of litter etc.

(1) It shall be the duty of—

(a) each local authority, as respects any relevant highway or, in Scotland, relevant road for which it is responsible,

(b) the Secretary of State, as respects any trunk road which is a special road and any relevant highway or relevant road for which he is responsible,

(c) each principal litter authority, as respects its relevant land,

(d) the appropriate Crown authority, as respects its relevant Crown land,

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(e) each designated statutory undertaker, as respects its relevant land, **[**F453and**]**

(f) the governing body of each designated educational institution or in Scotland such body or, as the case may be, the education authority responsible for the management of the institution, as respects its relevant land, **[**F454and

(g) the occupier of any relevant land within a litter control area of a local authority,**]**

to ensure that the land is, so far as is practicable, kept clear of litter and refuse.

(2) Subject to subsection (6) below, it shall also be the duty of—

(a) each local authority, as respects any relevant highway or relevant road for which it is responsible,

(b) the Secretary of State, as respects any trunk road which is a special road and any relevant highway or relevant road for which he is responsible,

to ensure that the highway or road is, so far as is practicable, kept clean.

(3) In determining what standard is required, as respects any description of land, highway or road, for compliance with subsections (1) and (2) above, regard shall be had to the character and use of the land, highway or road as well as the measures which are practicable in the circumstances.

(4) Matter of any description prescribed by regulations made by the Secretary of State for the purposes of subsections (1)(a) and (2) above shall be litter or refuse to which the duties imposed by those subsections apply as respects relevant highways or relevant roads whether or not it would be litter or refuse apart from this subsection.

(5) It shall be the duty of a local authority, when discharging its duty under subsection (1)(a) or (2) above as respects any relevant highway or relevant road, to place and maintain on the highway or road such traffic signs and barriers as may be necessary for giving warning and preventing danger to traffic or for regulating it and afterwards to remove them as soon as they cease to be necessary for those purposes; but this subsection has effect subject to any directions given under subsection (6) below.

(6) In discharging its duty under subsection (1)(a) or (2) above to keep clear of litter and refuse or to clean any relevant highway or relevant road for which it is responsible, the local authority shall comply with any directions given to it by the highway or roads authority with respect to—

(a) the placing and maintenance of any traffic signs or barriers;

(b) the days or periods during which clearing or cleaning shall not be undertaken or undertaken to any extent specified in the direction;

and for the purpose of enabling it to discharge its duty under subsection (1)(a) or (2) above as respects any relevant highway or relevant road the local authority may apply to the highway authority or roads authority for that authority to exercise its powers under **[**F455section 14(1) or (2)**]** of the M70Road Traffic Regulation Act 1984 (temporary prohibition or restriction of traffic).

[F456(6A) The Scottish Ministers may give to any person subject to a duty imposed by subsection (1) or (2) above such directions as they consider necessary or expedient for securing compliance by such person with such duty.

(6B) A person to whom a direction is given under subsection (6A) shall comply with the direction.

(6C) A direction under subsection (6A) may—

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(a) be given generally or to a specific person;

(b) make different provision for different persons and different cases or circumstances;

(c) include provision specifying, in relation to any factor by reference to which a person's discharging of any such duty can be measured, standards to be met by the person.

(6D) The Scottish Ministers shall—

(a) cause—

(i) any direction under subsection (6A) above; and

(ii) any variation or revocation of such a direction,

to be published; and

(b) cause copies of each such direction, variation or revocation to be made available to the public.**]**

(7) The Secretary of State shall prepare and issue a code of practice for the purpose of providing practical guidance on the discharge of the duties imposed by subsections (1) and (2) above.

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

(9) The Secretary of State may issue modifications of, or withdraw, a code issued under subsection (7) above; but where a code is withdrawn, he shall prepare and issue a new code under that subsection in substitution for it.

(10) Any person subject to any duty imposed by subsection (1) or (2) above shall have regard to the code of practice in force under subsection (7) above in discharging that duty.

(11) A draft code prepared under subsection (7) above shall be laid before both Houses of Parliament and shall not be issued until after the end of the period of 40 days beginning with the day on which the code was so laid, or if the draft is laid on different days, the later of the two days.

(12) If, within the period mentioned in subsection (11) above, either House resolves that the code the draft of which was laid before it should not be issued, the Secretary of State shall not issue that code.

(13) No account shall be taken in reckoning any period of 40 days for the purposes of **[**F457subsection (11) above**]** of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

[F458(13A) Subsections (11) to (13) shall not apply in respect of a draft code prepared under subsection (7) above which relates only to Scotland and such a code shall be laid before the Scottish Parliament and shall not be issued until after the end of the period of 40 days beginning with the day on which the code was so laid.

(13B) If within the period mentioned in subsection (13A) above the Scottish Parliament resolves that the code, the draft of which was laid before it, should not be issued the Scottish Ministers shall not issue that code.

(13C) No account shall be taken in reckoning any period of 40 days for the purposes of subsection (13A) above of any time during which the Scottish Parliament is dissolved or is in recess for more than 4 days.**]**

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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(14) In this section "traffic sign" has the meaning given in section 64(1) of the [M71]Road Traffic Regulation Act 1984.

Textual Amendments

F453 Word in s. 89(1)(e) inserted (6.3.2007 for E. and 18.1.2008 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 106, 108, **Sch. 4 para. 5**; S.I. 2007/390, **art. 2(a)**; S.I. 2007/3371, **art. 2(a)**

F454 S. 89(1)(g) and preceding word repealed (6.3.2007 for E. and 15.3.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 107, 108, **Sch. 5 Pt. 2**; S.I. 2006/2797, **art. 4(oo)**; S.I. 2007/390, **art. 2(c)**

F455 Words in s. 89(6) substituted (1.7.1992) by Road Traffic (Temporary Restrictions) Act 1991 (c. 26, SIF 107:1), **s. 2(6)(7)**; S.I. 1992/1218, **art. 2**.

F456 S. 89(6A)-(6D) inserted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 57(2)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

F457 Words in s. 89(13) substituted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 102(4)(a)**

F458 S. 89(13A)-(13C) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 102(4)(b)**

Modifications etc. (not altering text)

C94 S. 89(1)(a) modified by S.I. 1991/719, **reg. 3(1)**

C95 S. 89(1)(c) modified by s.I. 1991/719, reg. 3(2)

C96 S. 89(1)(f) modified by S.I. 1991/719, **reg. 3(3)**

C97 S. 89(2) modified by S.I. 1991/719, **reg. 3(4)**

Commencement Information

I40 S. 89 wholly in force at 1.6.1991; s. 89 not in force at Royal Assent see s. 164(2); s. 89(7)(8)(9)(11)(12)(13) in force at 13.11.1990 by S.I. 1990/2243; s. 89(4) in force at 14.1.1991 by S.I. 1991/96, **art. 2** S. 89(1)(a)-(f)(2)(3)(5)(6)(10)(14) in force at 1.4.1991 and s. 89(1)(g) in force at 1.6.1991 see s. 164(3) and S.I. 1991/1042, **arts. 2**, 3

Marginal Citations

M70 1984 c. 27.

M71 1984 c. 27.

90 Litter control areas.

[[F459](1) The Secretary of State may, by order, prescribe descriptions of land which may be designated under subsection (3) below as, or as part of, a litter control area.

(2) The power of the Secretary of State to prescribe descriptions of land under subsection (1) above includes power to describe land by reference to the ownership or occupation of the land or the activities carried on on it.

(3) Any principal litter authority other than **[**[F460]an English**]** county council, **[**[F461]a**]**[[F462]regional council] or **[**[F461]a**]**joint board may, in accordance with the following provisions of this section, by order designate any land in their area as, or as part of, a litter control area.

(4) No order under subsection (3) above designating any land shall be made unless the authority is of the opinion that, by reason of the presence of litter or refuse, the

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condition of the land is, and unless they make a designation order is likely to continue to be, such as to be detrimental to the amenities of the locality.

(5) The power to make a designation order under subsection (3) above shall be excluded from the functions to which section 101 of the [M72]Local Government Act 1972 (functions capable of delegation) applies.

(6) An authority proposing to make a designation order in relation to any land shall—

(a) notify persons who appear to the authority to be persons who will be affected by the proposed order;

(b) give them an opportunity to make representations about it within the period of twenty-one days beginning with the service of the notice; and

(c) take any representations so made into account in making their decision.

(7) A designation order under subsection (3) above shall identify the land to which it applies and shall be in such form as the Secretary of State may by order prescribe.**]**

Extent Information

E31 See s. 164(4)(5)

Textual Amendments

F459 S. 90 ceased to have effect (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.) and repealed (E.W.) (6.3.2007 for E. and 15.3.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 20(1), 107, 108, **Sch. 5 Pt. 2**; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(g)(oo)**; S.I. 2007/390, **art. 2(c)**

F460 Words in s. 90(3) substituted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(9)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F461 Word in s. 90(3) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(9)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F462 Words in s. 90(3) repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 167(12), **Sch.14**; S.I. 1996/323, art. 4(1)(c)(d), **Sch.2**.

Commencement Information

I41 S. 90 wholly in force at 1.6.1991; s. 90 not in force at Royal Assent see s. 164(2); s. 90(1)(2)(7) in force at 14.1.1991 by S.I. 1991/96, **art. 2**
S. 90(3)-(6) in force 1.6.1991 see s. 164(3) and S.I. 1991/1042, **art. 3**

Marginal Citations

M72 1972 c. 70.

91 Summary proceedings by persons aggrieved by litter.

(1) A magistrates' court may act under this section on a complaint made by any person on the ground that he is aggrieved by the defacement, by litter or refuse, of—

(a) any relevant highway;

(b) any trunk road which is a special road;

(c) any relevant land of a principal litter authority;

(d) any relevant Crown land;

(e) any relevant land of a designated statutory undertaker; **[**[F463]or**]**

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(f) any relevant land of a designated educational institution; **[**F464or

(g) any relevant land within a litter control area of a local authority.**]**

(2) A magistrates' court may also act under this section on a complaint made by any person on the ground that he is aggrieved by the want of cleanliness of any relevant highway or any trunk road which is a special road.

(3) A principal litter authority shall not be treated as a person aggrieved for the purposes of proceedings under this section.

(4) Proceedings under this section shall be brought against the person who has the duty to keep the land clear under section 89(1) above or to keep the highway clean under section 89(2) above, as the case may be.

(5) Before instituting proceedings under this section against any person, the complainant shall give to the person not less than five days written notice of his intention to make the complaint and the notice shall specify the matter complained of.

(6) If the magistrates' court is satisfied that the highway or land in question is defaced by litter or refuse or, in the case of a highway, is wanting in cleanliness, the court may, subject to subsections (7) and (8) below, make an order ("a litter abatement order") requiring the defendant to clear the litter or refuse away or, as the case may be, clean the highway within a time specified in the order.

(7) The magistrates' court shall not make a litter abatement order if the defendant proves that he has complied, as respects the highway or land in question, with his duty under section 89(1) and (2) above.

(8) The magistrates' court shall not make a litter abatement order where it appears that the matter complained of is the result of directions given to the local authority under section 89(6) above by the highway authority.

(9) A person who, without reasonable excuse, fails to comply with a litter abatement order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale together with a further fine of an amount equal to one-twentieth of that level for each day on which the offence continues after the conviction.

(10) In any proceedings for an offence under subsection (9) above it shall be a defence for the defendant to prove that he has complied, as respects the highway or land in question, with his duty under section 89(1) and (2) above.

(11) A

[F465(a) direction under section 89(6A); or**]**

[F466(b)**]** code of practice under section 89(7)

shall be admissible in evidence in any proceedings under this section and if any provision of such a **[**F467direction or**]** code appears to the court to be relevant to any question in the proceedings it shall be taken into account in determining that question.

(12) Where a magistrates' court is satisfied on the hearing of a complaint under this section—

(a) that, when the complaint was made to it, the highway or land in question was defaced by litter or refuse or, as the case may be, was wanting in cleanliness, and

(b) that there were reasonable grounds for bringing the complaint,

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the court shall order the defendant to pay such reasonable sum to the complainant as the court may determine in respect of the expenses incurred by the complainant in bringing the complaint and the proceedings before the court.

(13) In the application of this section to Scotland—

(a) for any reference to a magistrates' court there shall be substituted a reference to the sheriff;

(b) for any reference to a complaint there shall be substituted a reference to a summary application, and "complainant" shall be construed accordingly;

(c) for any reference to the defendant there shall be substituted a reference to the person against whom the proceedings are taken;

(d) for any reference to a highway and a relevant highway there shall be substituted a reference to a road and a relevant road; and

(e) for any reference to a highway authority there shall be substituted a reference to a roads authority,

and any person against whom proceedings are brought may appeal on a point of law to the Court of Session against the making of a litter abatement order.

Textual Amendments

F463 Word in s. 91(1)(e) inserted (E.W.) (6.3.2007 for E. and 18.1.2008 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 106, 108, **Sch. 4 para. 6**; S.I. 2007/390, **art. 2(a)**; S.I. 2007/3371, **art. 2(a)**

F464 S. 91(1)(g) and preceding word repealed (E.W.) (6.3.2007 for E. and 15.3.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 107, 108, **Sch. 5 Pt. 2**; S.I. 2006/2797, **art. 4(oo)**; S.I. 2007/390, **art. 2(c)**

F465 S. 91(11)(a) inserted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 57(3)(a)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

F466 Words in s. 91(11) renumbered (S.) (28.10.2004) as s. 91(11)(b) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 57(3)(b)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

F467 Words in s. 91(11) inserted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 57(3)(c)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

Commencement Information

I42 S. 91 in force: s. 91 not in force at Royal Assent see s. 164(2); s. 91(1)(a)-(f)(2)-(13) in force 1.4.1991, s. 91(1)(g) in force 1.6.1991 see s. 164(3) and S.I. 1991/1042, **arts. 2**, 3

92 Summary proceedings by litter authorities. E+W

(1) Where a principal litter authority other than **[**F468an English**]** county council, **[**F469a**]** [F470regional council] or **[**F469a**]** joint board are satisfied as respects—

(a) any relevant Crown land,

(b) any relevant land of a designated statutory undertaker, **[**F471or**]**

(c) any relevant land of a designated educational institution, F472. . .

(d) F472. . . . . .

that it is defaced by litter or refuse or that defacement of it by litter or refuse is likely to recur, the authority shall serve a notice (a "litter abatement notice") imposing either the requirement or the prohibition or both the requirement and the prohibition specified in subsection (2) below.

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(2) The requirement and prohibition referred to in subsection (1) above are as follows, namely—

(a) a requirement that the litter or refuse be cleared within a time specified in the notice;

(b) a prohibition on permitting the land to become defaced by litter or refuse.

(3) The litter abatement notice shall be served—

(a) as respects relevant Crown land, on the appropriate Crown authority;

(b) as respects relevant land of a designated statutory undertaker, on the undertaker;

(c) as respects relevant land of a designated educational institution, on the governing body of the institution or in Scotland on such body or, as the case may be, on the education authority responsible for the management of the institution;

(d) [F473] . . . . . .

(4) The person served with the notice may appeal against the notice to a magistrates' court or, in Scotland, to the sheriff by way of summary application within the period of twenty-one days beginning with the date on which the notice was served.

(5) If, on any appeal under subsection (4) above, the appellant proves that, as respects the land in question, he has complied with his duty under section 89(1) above, the court shall allow the appeal.

(6) If a person on whom a litter abatement notice is served, without reasonable excuse, fails to comply with or contravenes the requirement or prohibition imposed by the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale together with a further fine of an amount equal to one-twentieth of that level for each day on which the offence continues after the conviction.

(7) In any proceedings for an offence under subsection (6) above it shall be a defence for the person charged to prove that he has complied, as respects the land in question, with his duty under section 89(1) above.

(8) A code of practice under section 89(7) above shall be admissible in evidence in any proceedings under this section and if any provision of such a code appears to the court to be relevant to any question in the proceedings it shall be taken into account in determining that question.

(9) If a person on whom a litter abatement notice is served fails to comply with the requirement imposed by the notice in respect of any land, the authority may, subject to subsection (10) below—

(a) enter on the land and clear the litter or refuse; and

(b) recover from that person the expenditure attributable to their having done so, except such of the expenditure as that person shows was unnecessary in the circumstances.

[[F474](10) Subsection (9) above does not apply in relation to any land to which subsection (11) or (12) below applies.

(11) This subsection applies to any relevant Crown land which is occupied for naval, military or air force purposes.

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(12) This subsection applies to any relevant land of a statutory undertaker in relation to which the Secretary of State has specified, by order, that it is requisite or expedient that, in the national interest, subsection (9) above should not apply.**]**

Extent Information

E32 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F468 Words in s. 92(1) substituted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(9)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F469 Word in s. 92(1) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(9)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F470 Words in s. 92(1) repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 167(13), **Sch.14**; S.I. 1996/323, art. 4(1)(c)(d), **Sch.2**.

F471 Word in s. 92(1)(b) inserted (6.3.2007 (E.) 18.1.2008 (W.)) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 106, 108, **Sch. 4 para. 7**; S.I. 2007/390, **art. 2**; S.I. 2007/3371, **art. 2(a)**

F472 S. 92(1)(d) and preceding word repealed (6.3.2007 (E.) 15.3.2007 (W.)) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 107, 108, **Sch. 5 Pt. 2**; S.I. 2006/2797, **art. 4(oo)**; S.I. 2007/390, **art. 2(c)**; S.I. 2007/739, reg. 1(2)

F473 S. 92(3)(d) repealed (6.3.2007 (E.) 15.3.2007 (W.)) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 107, 108, **Sch. 5 Pt. 2**; S.I. 2006/2797, **art. 4(oo)**; S.I. 2007/390, **art. 2(c)**; S.I. 2007/739, reg. 1(2)

F474 S. 92(10)-(12) substituted (E.W.) (31.3.2004) for s. 92(10) by Anti-social Behaviour Act 2003 (c. 38), **ss. 56(1)**, 93; S.I. 2004/690, **art. 3**; S.I. 2004/999, **art. 2**

Commencement Information

I43 S. 92 in force: s. 92 not in force at Royal Assent see 164(2); s. 92(1)(a)-(c)(2)-(10) in force 1.4.1991 and s. 92(1)(d) in force 1.6.1991 see s. 164(3) and S.I. 1991/1042, **arts. 2**, 3

92 Summary proceedings by litter authorities. S

(1) Where a principal litter authority other than **[**[F468]an English**]** county council, **[**[F469]a**]** [[F470]regional council] or **[**[F469]a**]** joint board are satisfied as respects—

(a) any relevant Crown land,

(b) any relevant land of a designated statutory undertaker,

(c) any relevant land of a designated educational institution, or

(d) any relevant land within a litter control area of a local authority,

that it is defaced by litter or refuse or that defacement of it by litter or refuse is likely to recur, the authority shall serve a notice (a "litter abatement notice") imposing either the requirement or the prohibition or both the requirement and the prohibition specified in subsection (2) below.

(2) The requirement and prohibition referred to in subsection (1) above are as follows, namely—

(a) a requirement that the litter or refuse be cleared within a time specified in the notice;

(b) a prohibition on permitting the land to become defaced by litter or refuse.

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(3) The litter abatement notice shall be served—

(a) as respects relevant Crown land, on the appropriate Crown authority;

(b) as respects relevant land of a designated statutory undertaker, on the undertaker;

(c) as respects relevant land of a designated educational institution, on the governing body of the institution or in Scotland on such body or, as the case may be, on the education authority responsible for the management of the institution;

(d) in any other case, on the occupier of the land or, if it is unoccupied, on the owner of the land.

(4) The person served with the notice may appeal against the notice to a magistrates' court or, in Scotland, to the sheriff by way of summary application within the period of twenty-one days beginning with the date on which the notice was served.

(5) If, on any appeal under subsection (4) above, the appellant proves that, as respects the land in question, he has complied with his duty under section 89(1) above, the court shall allow the appeal.

(6) If a person on whom a litter abatement notice is served, without reasonable excuse, fails to comply with or contravenes the requirement or prohibition imposed by the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale together with a further fine of an amount equal to one-twentieth of that level for each day on which the offence continues after the conviction.

(7) In any proceedings for an offence under subsection (6) above it shall be a defence for the person charged to prove that he has complied, as respects the land in question, with his duty under section 89(1) above.

(8) A

[[F903](a) direction under section 89(6A); or**]**

[[F904](b)**]** code of practice under section 89(7)

above shall be admissible in evidence in any proceedings under this section and if any provision of such a **[**[F905]direction or**]** code appears to the court to be relevant to any question in the proceedings it shall be taken into account in determining that question.

(9) If a person on whom a litter abatement notice is served fails to comply with the requirement imposed by the notice in respect of any land, the authority may, subject to subsection (10) below—

(a) enter on the land and clear the litter or refuse; and

(b) recover from that person the expenditure attributable to their having done so, except such of the expenditure as that person shows was unnecessary in the circumstances.

(10) Subsection (9) above does not apply in relation to relevant Crown land or relevant land of statutory undertakers.

Extent Information

E62 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F468 Words in s. 92(1) substituted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(9)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F469 Word in s. 92(1) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(9)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F470 Words in s. 92(1) repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 167(13), **Sch.14**; S.I. 1996/323, art. 4(1)(c)(d), **Sch.2**.

F903 S. 92(8)(a) inserted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 57(4)(a)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

F904 Words in s. 92(8) renumbered (S.) (28.10.2004) as s. 92(8)(b) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 57(4)(b)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

F905 Words in s. 92(8) inserted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 57(4)(c)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

Commencement Information

I43 S. 92 in force: s. 92 not in force at Royal Assent see 164(2); s. 92(1)(a)-(c)(2)-(10) in force 1.4.1991 and s. 92(1)(d) in force 1.6.1991 see s. 164(3) and S.I. 1991/1042, **arts. 2**, 3

[F475 92A Litter clearing notices

(1) A principal litter authority may in accordance with this section serve a notice (a "litter clearing notice") in relation to any land in its area which is open to the air.

(2) Before serving a litter clearing notice in relation to any land a principal litter authority must be satisfied that the land is defaced by litter or refuse so as to be detrimental to the amenity of the locality.

(3) A litter clearing notice is to require the person on whom it is served—

(a) to clear the land of the litter or refuse; and

(b) if the principal litter authority is satisfied that the land is likely to become defaced by litter or refuse again, to take reasonable steps to prevent it from becoming so defaced.

(4) A litter clearing notice must be served on—

(a) the occupier of the land to which it relates; or

(b) if the land is not occupied, the owner.

(5) A litter clearing notice imposing a requirement under subsection (3)(a) above may specify—

(a) a period within which the requirement must be complied with;

(b) standards of compliance.

(6) A period specified under subsection (5)(a) above may not be less than 28 days beginning with the day on which the notice is served.

(7) A principal litter authority must, in discharging its functions under this section, have regard to any guidance given to the authority by the appropriate person.

(8) The form and content of a litter clearing notice is to be such as the appropriate person may by order specify.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(9) Where a principal litter authority proposes to serve a litter clearing notice in respect of any land but is unable after reasonable enquiry to ascertain the name or proper address of the occupier of the land (or, if the land is unoccupied, the owner)—

(a) the authority may post the notice on the land (and may enter any land to the extent reasonably necessary for that purpose), and

(b) the notice is to be treated as having been served upon the occupier (or, if the land is unoccupied, the owner) at the time the notice is posted.

(10) Subsection (1) above does not apply to an English county council for an area for which there is a district council.

(11) A litter clearing notice may not be served in relation to land of any of the following descriptions—

(a) a highway maintainable at the public expense;

(b) land under the direct control of a principal litter authority;

(c) Crown land;

(d) relevant land of a designated statutory undertaker;

(e) relevant land of a designated educational institution;

(f) land which is covered (but "open to the air" for the purposes of this Part by virtue of section 86(13) above) and to which the public are not entitled or permitted to have access, with or without payment.

Textual Amendments

F475 Ss. 92A-92C inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 20(2)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(g)**

92B Appeals against litter clearing notices

(1) A person on whom a litter clearing notice is served under section 92A above may appeal against it to a magistrates' court in accordance with the provisions of this section.

(2) An appeal under this section must be made within a period of 21 days beginning with the day on which the notice is served.

(3) The grounds on which an appeal under this section may be made are that—

(a) there is a material defect or error in, or in connection with, the notice;

(b) the notice should have been served on another person;

(c) the land is not defaced by litter or refuse so as to be detrimental to the amenity of the locality;

(d) the action required is unfair or unduly onerous.

(4) A notice against which an appeal under this section is made is of no effect pending the final determination or withdrawal of the appeal.

(5) On the determination of an appeal under this section, the magistrates' court must—

(a) quash the notice;

(b) modify the notice (including modifying it by extending the period specified in it); or

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(c) dismiss the appeal.

Textual Amendments

F475 Ss. 92A-92C inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 20(2)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(g)**

92C Failure to comply with litter clearing notice

(1) This section applies where the person on whom a litter clearing notice is served under section 92A above fails without reasonable excuse to comply with any requirement imposed by the notice.

(2) The person is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) The principal litter authority which served the notice or any person authorised by the authority may enter the land to which the notice relates and clear it of litter and refuse.

(4) Where a principal litter authority exercises the power in subsection (3) above, it may require the person on whom the notice was served to pay a reasonable charge in respect of the exercise of the power.

(5) A principal litter authority may for the purposes of subsection (4) above impose charges by reference to land of particular descriptions or categories (including categories determined by reference to surface area).**]**

Textual Amendments

F475 Ss. 92A-92C inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 20(2)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(g)**

93 Street litter control notices.

(1) A principal litter authority other than **[**[F476]an English**]** county council, **[**[F477]a**]** [[F478]regional council] or a joint board may, with a view to the prevention of accumulations of litter or refuse in and around any street or open land adjacent to any street, issue notices ("street litter control notices") imposing requirements on occupiers of premises in relation to such litter or refuse, in accordance with this section and section 94 below.

(2) If the authority is satisfied, in respect of any premises which are of a description prescribed under section 94(1)(a) below and have a frontage on a street in their area, that—

(a) there is recurrent defacement by litter or refuse of any land, being part of the street or open land adjacent to the street, which is in the vicinity of the premises, or

(b) the condition of any part of the premises which is open land in the vicinity of the frontage is, and if no notice is served is likely to continue to be, detrimental to the amenities of the locality by reason of the presence of litter or refuse, or

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(c) there is produced, as a result of the activities carried on on the premises, quantities of litter or refuse of such nature and in such amounts as are likely to cause the defacement of any part of the street, or of open land adjacent to the street, which is in the vicinity of the premises,

the authority may serve a street litter control notice on the occupier or, if the premises are unoccupied, on the owner of the premises.

(3) A notice shall, subject to section 94(2), (3) and (4) below—

(a) identify the premises and state the grounds under subsection (2) above on which it is issued;

(b) specify an area of open land which adjoins or is in the vicinity of the frontage of the premises on the street;

(c) specify, in relation to that area or any part of it, such reasonable requirements as the authority considers appropriate in the circumstances;

and, for the purposes of paragraph (b) above, an area which includes land on both sides of the frontage of the premises shall be treated as an area adjoining that frontage.

[[F479](3A) A vehicle or stall or other moveable structure which is used for one or more commercial or retail activities while parked or set at a particular place on or verging a street is to be treated for the purposes of this section and section 94 below as if it were premises situated at that place having a frontage on that street in the place where it is parked or set.

(3B) In subsection (3A) above, "vehicle" means any vehicle intended or adapted for use on roads.**]**

(4) In this section and section 94 below—

"notice" means a street litter control notice;

"open land" means land in the open air;

"the premises", in relation to a notice, means the premises in respect of which the notice is issued;

"specified area" means the area specified in a notice under subsection (3)(b) above; and

"street" means a relevant highway, a relevant road or any other highway or road over which there is a right of way on foot.

Textual Amendments

F476 Words in s. 93(1) substituted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(10)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F477 Word in s. 93(1) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(10)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**.

F478 Words in s. 93(1) repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 167(14), **Sch.14**; S.I. 1996/323, art. 4(1)(c)(d), **Sch.2**.

F479 S. 93(3A)(3B) inserted (E.W.) (6.4.2006 for E. and 15.3.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 21(1)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(h)**

Commencement Information

I44 S. 93 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

94 Street litter: supplementary provisions. E+W

(1) The Secretary of State may by order prescribe—

(a) the descriptions of commercial or retail premises in respect of which a street litter control notice may be issued;

(b) the descriptions of land which may be included in a specified area; and

(c) the maximum area of land which may be included in a specified area;

and different descriptions or maximum dimensions may be prescribed under paragraph (b) or (c) above for different cases or circumstances.

(2) The power to describe premises or land under subsection (1)(a) or (b) above includes power to describe the premises or land by reference to occupation or ownership or to the activities carried on there.

(3) The land comprised in a specified area—

(a) shall include only land of one or more of the descriptions prescribed under subsection (1)(b) above;

(b) shall not include any land which is not—

(i) part of the premises,

(ii) part of a street,

(iii) relevant land of a principal litter authority, or

(iv) land under the direct control of any other local authority; and

(c) shall not exceed any applicable maximum area prescribed under subsection (1)(c) above;

F480 . . . .

(4) The requirements which may be imposed by a notice shall relate to the clearing of litter or refuse from the specified area and may in particular require—

(a) the provision or emptying of receptacles for litter or refuse;

(b) the doing within a period specified in the notice of any such thing as may be so specified **[**F481(including the standards to which any such thing must be done)**]**; or

(c) the doing (while the notice remains in force) at such times or intervals, or within such periods, of any such thing as may be so specified;

but a notice may not require the clearing of litter or refuse from any carriageway, except at a time when the carriageway is closed to all vehicular traffic.

(5) In relation to so much of the specified area as is not part of the premises the authority shall take account, in determining what requirements to impose, of their own duties under this Part or otherwise, and of any similar duties of any other local authority, in relation to that land.

(6) An authority proposing to serve a notice shall—

(a) inform the person on whom the notice is to be served;

(b) give him the opportunity to make representations about the notice within the period of twenty-one days beginning with the day on which he is so informed; and

(c) take any representations so made into account in making their decision.

(7) A person on whom a notice is served may appeal against the notice to a magistrate's court or, in Scotland, to the sheriff by way of summary application; and the court may quash the notice or may quash, vary or add to any requirement imposed by the notice.

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[F482(8) A person commits an offence if, without reasonable excuse, he fails to comply with a requirement imposed on him by a notice.

(9) A person guilty of an offence under subsection (8) above is liable on summary conviction to a fine not exceeding level 4 on the standard scale.**]**

Extent Information

E33 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F480 Words in s. 94(3) repealed (E.W.) (6.3.2007 for E. and 15.3.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 107, 108, **Sch. 5 Pt. 2**; S.I. 2006/2797, **art. 4(oo)**; S.I. 2007/390, **art. 2(c)**

F481 Words in s. 94(4)(b) inserted (E.W.) (6.4.2006 for E. and 15.3.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 21(2)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(h)**

F482 S. 94(8)(9) substituted (E.W.) (6.4.2006 for E. and 15.3.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 21(3)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(h)**

Commencement Information

I45 S. 94 wholly in force; s. 94 not in force at Royal Assent see s. 164(2); s. 94(1)(2) in force at 14.1.1991 by S.I. 1991/96, **art. 2**; s. 94(3)-(9) in force at 1.4.1991 by S.I. 1991/1042, **art. 2**

94 Street litter: supplementary provisions. S

(1) The Secretary of State may by order prescribe—

(a) the descriptions of commercial or retail premises in respect of which a street litter control notice may be issued;

(b) the descriptions of land which may be included in a specified area; and

(c) the maximum area of land which may be included in a specified area;

and different descriptions or maximum dimensions may be prescribed under paragraph (b) or (c) above for different cases or circumstances.

(2) The power to describe premises or land under subsection (1)(a) or (b) above includes power to describe the premises or land by reference to occupation or ownership or to the activities carried on there.

(3) The land comprised in a specified area—

(a) shall include only land of one or more of the descriptions prescribed under subsection (1)(b) above;

(b) shall not include any land which is not—

(i) part of the premises,

(ii) part of a street,

(iii) relevant land of a principal litter authority, or

(iv) land under the direct control of any other local authority; and

(c) shall not exceed any applicable maximum area prescribed under subsection (1)(c) above;

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but a specified area shall not include any part of the premises which is or is part of a litter control area.

(4) The requirements which may be imposed by a notice shall relate to the clearing of litter or refuse from the specified area and may in particular require—

(a) the provision or emptying of receptacles for litter or refuse;

(b) the doing within a period specified in the notice of any such thing as may be so specified; or

(c) the doing (while the notice remains in force) at such times or intervals, or within such periods, of any such thing as may be so specified;

but a notice may not require the clearing of litter or refuse from any carriageway, except at a time when the carriageway is closed to all vehicular traffic.

(5) In relation to so much of the specified area as is not part of the premises the authority shall take account, in determining what requirements to impose, of their own duties under this Part or otherwise, and of any similar duties of any other local authority, in relation to that land.

(6) An authority proposing to serve a notice shall—

(a) inform the person on whom the notice is to be served;

(b) give him the opportunity to make representations about the notice within the period of twenty-one days beginning with the day on which he is so informed; and

(c) take any representations so made into account in making their decision.

(7) A person on whom a notice is served may appeal against the notice to a magistrate's court or, in Scotland, to the sheriff by way of summary application; and the court may quash the notice or may quash, vary or add to any requirement imposed by the notice.

(8) If it appears to the authority that a person has failed or is failing to comply with any requirement imposed by a notice the authority may apply to a magistrate's court or, in Scotland, to the sheriff by way of summary application for an order requiring the person to comply with the requirement within such time as may be specified in the order.

(9) A person who, without reasonable excuse, fails to comply with an order under subsection (8) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Extent Information

E63 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Commencement Information

I45 S. 94 wholly in force; s. 94 not in force at Royal Assent see s. 164(2); s. 94(1)(2) in force at 14.1.1991 by S.I. 1991/96, **art. 2**; s. 94(3)-(9) in force at 1.4.1991 by S.I. 1991/1042, **art. 2**

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[F483 94A Fixed penalty notices relating to sections 92C and 94

(1) This section applies where on any occasion it appears to an authorised officer of a principal litter authority that a person has committed an offence under section 92C(2) or 94(8) above in relation to a notice served by that authority.

(2) The authorised officer may give that person a notice offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the principal litter authority.

(3) Subsections (2) to (5) of section 88 above (fixed penalty notices for leaving litter) apply in relation to notices given under this section as they apply in relation to notices given under that section.

(4) The amount of a fixed penalty payable to a principal litter authority under this section is—

(a) the amount specified by the authority in relation to its area (and an authority may specify different amounts for the two different offences referred to in subsection (1) above); or

(b) if no amount is so specified, £100.

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

(6) In any proceedings a certificate which—

(a) purports to be signed by or on behalf of the chief finance officer of a principal litter authority; and

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

is evidence of the facts stated.

(7) In this section—

"authorised officer", in relation to a principal litter authority, means an officer of the authority who is authorised in writing by the authority for the purposes of giving notices under this section;

"chief finance officer", in relation to a principal litter authority, means the person having responsibility for the financial affairs of that authority.]

Textual Amendments

F483 S. 94A inserted (E.W.) (6.4.2006 for E. and 15.3.2007 in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 22**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(i)**

[F484 94B Free distribution of printed matter

Schedule 3A (distribution of printed matter on designated land) has effect.]

Textual Amendments

F484 S. 94B inserted (E.W.) (6.4.2006 for E. and 15.3.2007 in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 23(1)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(j)**

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95 Public registers.

(1) It shall be the duty of each principal litter authority other than **[**F485an English**]**county council, **[**F486a**]** [F487regional council or] **[**F486a**]** joint board to maintain, in accordance with this section, a register containing copies of—

(a) **[**F488all orders made by the authority under section 90(3) above; and**]**

(b) all street litter control notices issued under section 93(1) above.**[**F489 and

(c) all orders made by the authority under paragraph 2(1) of Schedule 3A.**]**

(2) Where the requirements of a street litter control notice are varied or added to on an appeal under section 94(7) above a copy of the order making the variation or addition shall be included in the register.

(3) Copies of the orders and notices required to be kept in the register shall be so kept for so long as the order or notice is in force.

(4) It shall be the duty of each authority maintaining a register under this section—

(a) to secure that the register is available, at all reasonable times, for inspection by the public free of charge; and

(b) to afford to members of the public facilities for obtaining copies of the documents kept in the register, on payment of reasonable charges.

(5) A register under this section need not be kept in documentary form.

Textual Amendments

F485 Words in s. 95(1) substituted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(9)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F486 Word in s. 95(1) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(9)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F487 Words in s. 95(1) repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 167(15), **Sch.14**; S.I. 1996/323, art. 4(1)(c)(d), **Sch.2**.

F488 S. 95(1)(a) repealed (E.W.) (6.3.2007 for E. and 15.3.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 107, 108, **Sch. 5 Pt. 2**; S.I. 2006/2797, **art. 4(oo)**; S.I. 2007/390, **art. 2(c)**

F489 S. 95(1)(c) and preceding word inserted (E.W.) (6.3.2007 for E. and 18.1.2008 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 106, 108, **Sch. 4 para. 8**; S.I. 2007/390 {art. 2(a)}; S.I. 2007/3371, **art. 2(a)**

Commencement Information

I46 S. 95 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

96 Application of Part II.

(1) This section applies to litter and refuse collected—

(a) by any authority or person in pursuance of section 89(1) above;

(b) by a principal litter authority in pursuance of section 92(9) **[**F490or 92C(3)**]** above; or

(c) by any person in pursuance of section 93 above.

(2) The Secretary of State may make regulations providing that prescribed provisions of Part II shall have effect, with such modifications (if any) as may be prescribed—

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(a) as if references to controlled waste or controlled waste of a prescribed description included references to litter and refuse to which this section applies or any description of such litter and refuse;

(b) as if references to controlled waste or controlled waste of a prescribed description collected under section 45 above included references to litter and refuse collected as mentioned in subsection (1) above or any description of such litter and refuse.

(3) The powers conferred by this section are exercisable in relation to litter and refuse to which it applies whether or not the circumstances are such that the litter or refuse would be treated as controlled waste apart from this section and this section is not to affect the interpretation of the expressions defined in section 75 above.

Textual Amendments

F490 Words in s. 96(1)(b) inserted (E.W.) (6.3.2007 for E. and 18.1.2008 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 106, 108, **Sch. 4 para. 9**; S.I. 2007/390, **art. 2(a)**; S.I. 2007/3371, **art. 2(a)**

Modifications etc. (not altering text)

C98 S. 96 applied (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), **22(7)** (with s. 22(10))

C99 S. 96 applied (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), **20(7)** (with s. 20(10))

Commencement Information

I47 S. 96 wholly in force; s. 96 not in force at Royal Assent see s. 164(2); s. 96(2)(3) in force at 14.1.1991 by S.I. 1991/96, **art. 2**; s. 96(1) in force at 1.4.1991 by S.I. 1991/1042, **art. 2**

97 Transitional provision relating to section 89.

(1) The Secretary of State may, for the purposes of the transition to the duties imposed by section 89 above on local authorities and educational bodies, by regulations, make provision—

(a) modifying that section, or

(b) modifying Part I of the Local Government Act 1988 (competition rules for functional work or works contracts).

(2) Regulations under this section may make different provision for different descriptions of authorities, different areas or other different circumstances or cases.

(3) In this section—

"educational bodies" means the governing bodies and education authorities mentioned in section 89(1)(f) above; and

"local authorities" means the local authorities mentioned in section 89(1)(a) and (c) and (2)(a) above.

[F491 97A Fixed penalty notices: supplementary

(1) The appropriate person may by regulations make provision in connection with the powers conferred under—

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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(a) section 88(6A)(a) and (7) above;
(b) section 94A(4)(a) and (5) above;
(c) paragraph 7(4)(a) and (5) of Schedule 3A.

(2) Regulations under subsection (1) may (in particular)—
(a) require an amount specified under section 88(6A)(a), 94A(4)(a) or paragraph 7(4)(a) of Schedule 3A to fall within a range prescribed in the regulations;
(b) restrict the extent to which, and the circumstances in which, an authority can make provision under section 88(7), 94A(5) or paragraph 7(5) of Schedule 3A.

(3) The appropriate person may by order substitute a different amount for the amount for the time being specified in section 88(6A)(b), 94A(4)(b) or paragraph 7(4)(b) of Schedule 3A.

(4) Regulations or an order under this section may make different provision for different purposes.**]**

Textual Amendments

F491 S. 97A inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 24**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(k)**

[F492 97B Exclusion of liability

(1) None of the persons mentioned in subsection (2) below is to have any liability to an occupier or owner of land for damages or otherwise (whether at common law or otherwise) arising out of anything done or omitted to be done in the exercise or purported exercise of the power in section 92(9), 92A(9) or 92C(3) above.

(2) Those persons are—
(a) the principal litter authority and any employee of the authority; and
(b) in the case of the power in section 92C(3) above, any person authorised by the authority under that provision and the employer or any employee of that person.

(3) Subsection (1) above does not apply—
(a) if the act or omission is shown to be in bad faith;
(b) to liability arising out of a failure to exercise due care and attention;
(c) so as to prevent an award of damages in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 1998.

(4) This section does not affect any other exemption from liability (whether at common law or otherwise).**]**

Textual Amendments

F492 S. 97B inserted (E.W.) (6.4.2006 for E. and 15.3.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 25**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(l)**

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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98 Definitions.

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

[F493(1A) "Appropriate person" means—

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

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

(2) "Educational institution", in relation to England and Wales, means—

F494(a) . . . . . .

(b) the Open University;

(c) any institution which provides higher education or further education (or both) which is full-time education being an institution which—

(i) is maintained by grants made by the Secretary of State under **[**F495section 485 of the Education Act 1996**]**;

(ii) F496. . . . . .

(iii) is maintained by a local education authority;

[F497(d) any institution within the higher education sector within the meaning of section 91(5) of the Further and Higher Education Act 1992**]**

(e) any city technology college **[**F498, city college for the technology of the arts or **[**F499Academy**]]**;

[F500(f) any community, foundation or voluntary school;

F500(g) any community or foundation special school.**]**

(3) "Educational institution", in relation to Scotland, means—

(a) any university within the meaning of the Education Reform Act 1988 funded by the Universities Funding Council under section 131 of that Act;

(b) the Open University;

[F501(c) any educational establishment (not being a school) within the meaning of section 135(1) of the Education (Scotland) Act 1980 for the provision of any form of further education for the management of which establishment an education authority is responsible;

(cc) any college of further education within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992 managed by a board of management established under Part I of that Act;**]**

[F502(d) a designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992;**]**

[F503(da) any institution within the further education sector within the meaning of section 91(3) of the Further and Higher Education Act 1992**]**

(e) a technology academy within the meaning of section 68(1) of the 1989 Act;

(f) a public school as defined in section 135(1) of the **[**F504Education (Scotland) Act 1980 ("the 1980 Act")**]**;

(g) a grant-aided school as defined in section 135(1) of the 1980 Act;

[F505(h) a self-governing school within the meaning of section 1(3) of the 1989 Act.**]**

(4) "Joint board", in relation to Scotland, has the meaning given by section 235(1) of the M73Local Government (Scotland) Act 1973.

(5) "Highway" (and "highway maintainable at the public expense"), "special road" and "trunk road", in relation to England and Wales, have the same meaning as in the

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[M74]Highways Act 1980 and "public road", "special road" and "trunk road", in relation to Scotland, have the same meaning as in the [M75]Roads (Scotland) Act 1984.

[[F506](5A) "Litter" includes—

(a) the discarded ends of cigarettes, cigars and like products, and

(b) discarded chewing-gum and the discarded remains of other products designed for chewing.**]**

(6) "Statutory undertaker" means—

(a) any person authorised by any enactment to carry on any railway, light railway, tramway or road transport undertaking;

(b) any person authorised by any enactment to carry on any canal, inland navigation, dock, harbour or pier undertaking; or

(c) any relevant airport operator (within the meaning of Part V of the [M76]Airports Act 1986).

Textual Amendments

F493 S. 98(1A) inserted (E.W.) (7.4.2005) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **s. 26**

F494 S. 98(2)(a) repealed (1.4.1993) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. II para. 95(a), **Sch. 9**; S.I. 1992/831, art. 2, **Sch. 3**.

F495 Words in s. 98(2)(c)(i) substituted (1.11.1996) by 1996 c. 56, s. 582(1), 583(2), **Sch. 37 Pt. I para. 100(a)** (with ss. 1(4), Sch. 39).

F496 Words in s. 98(2)(c)(ii) repealed (6.11.2006 for E. and 2.1.2008 for W.) by Education Act 2002 (c. 32), ss. 215(1)(2), 216, Sch. 21 para. 10, **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2006/2895, **art. 2**; S.I. 2007/3611, **art. 4(1)**, Sch. Pt. 1 (with Sch. Pt. 3 para. 1)

F497 S. 98(2)(d) substituted (1.4.1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. II para. 95(b)**; S.I. 1992/831, art. 2, **Sch. 3**.

F498 Words in s. 98(2)(e) substituted (28.7.2000 for specified purposes and otherwise*prosp.*) by 2000 c. 21, ss. 149, 154, **Sch. 9 para. 19** (with s. 150)

F499 Words in s. 98(2)(e) substituted (26.7.2002) by Education Act 2002 (c. 32), s. 65(3), **Sch. 7 Pt. 2 para. 2** (with ss. 210(8), 214(4)); S.I. 2002/2002, **art. 2** (as amended by S.I. 2002/2018)

F500 S. 98(2)(f)(g) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 23** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**

F501 S. 98(3)(c)(cc) substituted (1.4.1993) by Further and Higher Education (Scotland) Act 1992 (c. 37) s. 62(2), Sch. 9 para. 13(a); S.I. 1992/817, art. 3(2), **Sch. 4**.

F502 S. 98(3)(d) substituted (16.5.1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 62(2), **Sch. 9**, para. 13(b); S.I. 1992/817, art. 3(2), **Sch. 1**

F503 S. 98(2)(da) inserted (1.4.1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. II para. 95(c)**; S.I. 1992/831, art. 2, **Sch. 3**.

F504 Words in s. 98(3)(f) substituted (16.5.1992) by Further and Higher Education (Scotland) Act 1992 (c. 37) s. 62(2), Sch. 9 para. 13(c); S.I. 1992/817, art. 3(2), **Sch. 1**

F505 S. 98(3)(h) repealed (S.) (31.12.2004) by 2000 asp 6, ss. 60(2), 61(2), Sch. 3; S.S.I. 2004/528, **art. 2**

F506 S. 98(5A) inserted (E.W.) (7.6.2005) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 27**, 108(4)(c)

Modifications etc. (not altering text)

C100 S. 98(2) applied (E.W.)(1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt. I**.

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Commencement Information

I48 S. 98 partly in force; s. 98 not in force at Royal Assent see s. 164(2); s. 98(1) (2) (5) (6) in force (E.W) 13.2.1991 by S.I. 1991/96, **art. 3**
S. 98(3)(4) in force 1.4.1991; s. 98(1)(5)(6) in force (S.) 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

Marginal Citations

M73 1973 c. 65.
M74 1980 c. 66.
M75 1984 c. 54.
M76 1986 c. 31.

Abandoned trolleys

99 Powers in relation to abandoned shopping and luggage trolleys.

(1) A local authority may, subject to subsection (3) below, resolve that Schedule 4 to this Act is to apply in its area; and if a local authority does so resolve, that Schedule shall come into force in its area on the day specified in the resolution, which must not be before the expiration of the period of three months beginning with the day on which the resolution is passed.

(2) A local authority shall publish in at least one newspaper circulating in its area a notice that the authority has passed a resolution under this section and indicating the general effect of that Schedule.

(3) It shall be the duty of a local authority, before making any resolution for the application of Schedule 4 to this Act in its area, to consult with the persons or representatives of persons who appear to the authority to be persons who will be affected by the application of that Schedule.

(4) It shall be the duty of a local authority from time to time to consult about the operation of Schedule 4 to this Act with the persons or representatives of persons who appear to be affected by its operation.

(5) In this section "local authority" means—

(a) the council of a district;
(b) the council of a London borough;
(c) the Common Council of the City of London;
(d) the council of the Isles of Scilly;
[F507(dd) in Wales, the council of a county or county borough;**]**and
(e) in Scotland, **[**F508a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**]**.

(6) In Schedule 4 to this Act "the local authority" means any local authority which has resolved that that Schedule is to apply in its area.

Textual Amendments

F507 S. 99(5)(dd) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(11)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

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F508 Words in s. 99(5)(e) substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 167(16)**; S.I. 1996/323, art. 4(1)(c)(d), **Sch.2**.

PART V

AMENDMENT OF THE RADIOACTIVE SUBSTANCES ACT 1960

Modifications etc. (not altering text)
C101 Pt. V (ss. 100–105) amended (transfer of functions) by S.I. 1990/2598, **art. 2**

F509 100 . . . . . .

Textual Amendments
F509 S. 100 repealed (27.8.1993) by 1993 c. 12, s. 50, **Sch. 6 Pt.I** (with ss. 42, 46)

F510 101 . . . . . .

Textual Amendments
F510 S. 101 repealed (27.8.1993) by 1993 c. 12, s. 50, **Sch. 6 Pt.I** (with ss. 42, 46)

F511 102 . . . . . .

Textual Amendments
F511 S. 102 repealed (27.8.1993) by 1993 c. 12, s. 50, **Sch. 6 Pt.I** (with ss. 42, 46)

F512 103 . . . . . .

Textual Amendments
F512 S. 103 repealed (27.8.1993) by 1993 c. 12, s. 50, **Sch. 6 Pt.I** (with ss. 42, 46)

F513 104 . . . . . .

Textual Amendments
F513 S. 104 repealed (27.8.1993) by 1993 c. 12, s. 50, **Sch. 6 Pt.I** (with ss. 42, 46)

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F514 105 . . . . . .

Textual Amendments

F514 S. 105 repealed (27.8.1993) by 1993 c. 12, s. 50, **Sch. 6 Pt.I** (with ss. 42, 46)

PART VI

GENETICALLY MODIFIED ORGANISMS

Extent Information

E34 Pt VI: for extent of this Part see s. 164(4) below.

Modifications etc. (not altering text)

C102 Pt. VI (ss. 106-127): transfer of functions (16.2.2000) by S.I. 2000/253, art. 2, **Sch. 1**

C103 Pt. VI (ss. 106-127) modified (E.) (temp. from 17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **5(3)**, 39
Pt. VI (ss. 106-127) modified (S.) (temp. from 5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 5(3)**
Pt. VI (ss. 106-127) modified (W.) (temp. from 31.12.2002) by Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 6(3)**

Preliminary

106 Purpose of Part VI and meaning of "genetically modified organisms" and related expressions. E+W

[F515(1) This Part has effect for the purpose of ensuring that all appropriate measures are taken to avoid damage to the environment which may arise from the escape or release from human control of genetically modified organisms.**]**

(2) In this Part the term "organism" means any acellular, unicellular or multicellular entity (in any form), other than humans or human embryos; and, unless the context otherwise requires, the term also includes any article or substance consisting of or including biological matter.

(3) For the purpose of subsection (2) above "biological matter" means anything (other than an entity mentioned in that subsection) which consists of or includes—

(a) tissue or cells (including gametes or propagules) or subcellular entities, of any kind, capable of replication or of transferring genetic material, or

(b) genes or other genetic material, in any form, which are so capable,

and it is immaterial, in determining if something is or is not an organism or biological matter, whether it is the product of natural or artificial processes of reproduction and, in the case of biological matter, whether it has ever been part of a whole organism.

(4) For the purposes of this Part an organism is "genetically modified" if any of the genes or other genetic material in the organism—

[F516(a) have been artificially modified, or**]**

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(b) are inherited or otherwise derived, through any number of replications, from genes or other genetic material (from any source) which were so modified.

[F517(4A) Genes or other genetic material in an organism are "artificially modified" for the purposes of subsection (4) above if they are altered otherwise than by a process which occurs naturally in mating or natural recombination.

This subsection is subject to subsections (4B) and (4C) below.

(4B) For the purposes of subsection (4) above—

(a) genes or other genetic material shall be taken to be artificially modified if they are altered using such techniques as may be prescribed for the purposes of this paragraph;

(b) genes or other genetic material shall not be regarded as artificially modified by reason only of being altered by the use of such techniques as may be prescribed for the purposes of this paragraph.

(4C) An organism shall be taken not to be a genetically modified organism for the purposes of this Part if it is an organism of a prescribed description.

(4D) In subsections (4B) and (4C) above "prescribed" means prescribed by regulations made by the Secretary of State **[**F518or, in relation to Wales, the National Assembly for Wales**].]**

(5) F519. . . . . .

(6) F519. . . . . .

(7) In this Part, where the context permits, a reference to "reproduction", in relation to an organism, includes a reference to its replication or its transferring genetic material.

Extent Information

E35 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F515 S. 106(1) substituted (E.) (17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **3(2)** and (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 4(1)(2)**

F516 S. 106(4)(a) substituted (E.) (17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **3(3)** and (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 4(1)(3)**

F517 S. 106(4A)-(4D) inserted (E.) (17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **3(4)** and (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 4(1)(4)** (as modified by reg. 4(5))

F518 Words in s. 106(4D) inserted (W.) (31.12.2002) by Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 4(5)**

F519 S. 106(5)(6) omitted (E.) (17.10.2002) by virtue of Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **3(5)** and (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 4(1)(7)**

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Modifications etc. (not altering text)

C104 S. 106(4) modified (E.) (temp. from 17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **5(1)(2)**

C105 S. 106(4) modified (W.) (temp. from 31.12.2002) by Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 6(1)(2)**

Commencement Information

I49 S. 106 wholly in force at 1.2.1993; s. 106 not in force at Royal Assent see s. 164(2)(3); s. 106(4)(5) in force 1.4.1991 see S.I. 1991/1042, art. 2; s. 106(1)-(3)(6)(7) in force at 1.2.1993 see S.I. 1992/3253, art. 3.

106 Purpose of Part VI and meaning of "genetically modified organisms" and related expressions. S

[F906(1) This Part has effect for the purpose of ensuring that all appropriate measures are taken to avoid damage to the environment which may arise from the escape or release from human control of genetically modified organisms.**]**

(2) In this Part the term "organism" means any acellular, unicellular or multicellular entity (in any form), other than humans or human embryos; and, unless the context otherwise requires, the term also includes any article or substance consisting of or including biological matter.

(3) For the purpose of subsection (2) above "biological matter" means anything (other than an entity mentioned in that subsection) which consists of or includes—

(a) tissue or cells (including gametes or propagules) or subcellular entities, of any kind, capable of replication or of transferring genetic material, or

(b) genes or other genetic material, in any form, which are so capable,

and it is immaterial, in determining if something is or is not an organism or biological matter, whether it is the product of natural or artificial processes of reproduction and, in the case of biological matter, whether it has ever been part of a whole organism.

(4) For the purposes of this Part **[**F907, subject to subsection (4C) below,**]** an organism is "genetically modified" if any of the genes or other genetic material in the organism—

[F908(a) have been artificially modified, or**]**

(b) are inherited or otherwise derived, through any number of replications, from genes or other genetic material (from any source) which were so modified.

[F909(4A) subject to subsections (4B) and (4C) below, genes or other genetic material in an organism are "artificially modified" for the purposes of subsection (4) above if they are altered otherwise than by a process which occurs naturally in mating or natural recombination.

(4B) For the purposes of subsection (4) above–

(a) genes or other genetic material shall be taken to be artificially modified if they are altered using such techniques as may be prescribed for the purposes of this paragraph;

(b) genes or other genetic material shall not be regarded as artificially modified by reason only of being altered by the use of such techniques as may be prescribed for the purposes of this paragraph.

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(4C) An organism shall be taken not to be a genetically modified organism for the purposes of this Part if it is an organism of a prescribed description.

(4D) In subsections (4B) and (4C) above, "prescribed" means prescribed by regulations made by the Scottish Ministers.**]**

(5) [F910] . . . . . .

(6) [F910] . . . . . .

(7) In this Part, where the context permits, a reference to "reproduction", in relation to an organism, includes a reference to its replication or its transferring genetic material.

Extent Information

E64 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F906 S. 106(1) substituted (S.) (5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 3(2)**

F907 Words in s. 106(4) inserted (S.) (5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 3(3)(a)**

F908 S. 106(4)(a) substituted (S.) (5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 3(3)(b)**

F909 S. 106(4A)-(4D) inserted (S.) (5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 3(4)**

F910 S. 106(5)(6) omitted (S.) (5.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 3(5)**

Modifications etc. (not altering text)

C164 S. 106(4) modified (S.) (temp. from 5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 5(1)(2)**

Commencement Information

I49 S. 106 wholly in force at 1.2.1993; s. 106 not in force at Royal Assent see s. 164(2)(3); s. 106(4)(5) in force 1.4.1991 see S.I. 1991/1042, art. 2; s. 106(1)-(3)(6)(7) in force at 1.2.1993 see S.I. 1992/3253, art. 3.

107 Meaning of "damage to the environment", "control" and related expressions in Part VI. E+W

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

[[F520](2) The "environment" includes land, air and water and living organisms supported by any of those media.**]**

(3) "Damage to the environment" is caused by the presence in the environment of genetically modified organisms which have (or of a single such organism which has) escaped or been released from a person's control and are (or is) capable of causing harm **[**[F521]to the living organisms supported by the environment**]**.

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(4) An organism shall be regarded as present in the environment notwithstanding that it is present in or on any human or other organism, or any other thing, which is itself present in the environment.

(5) Genetically modified organisms present in the environment are capable of causing harm if—

(a) they are individually capable, or are present in numbers such that together they are capable, of causing harm; or

(b) they are able to produce descendants which will be capable, or which will be present in numbers such that together they will be capable, of causing harm;

and a single organism is capable of causing harm either if it is itself capable of causing harm or if it is able to produce descendants which will be so capable.

[F522(6) "Harm" means adverse effects as regards the health of humans or the environment.**]**

(7) "Harmful" and "harmless" mean respectively, in relation to genetically modified organisms, their being capable or their being incapable of causing harm.

(8) The Secretary of State may by regulations provide, in relation to genetically modified organisms of any description specified in the regulations, that—

(a) the capacity of those organisms for causing harm of any description so specified, or

(b) harm of any description so specified,

shall be disregarded for such purposes of this Part as may be so specified.

[F523(9) Organisms of any description are under the "control" of a person where he keeps them contained by measures designed to limit their contact with humans and the environment and to prevent or minimise the risk of harm.**]**

(10) An organism under a person's control is "released" if he deliberately causes or permits it to cease to be under his control or the control of any other person and to enter the environment; and such an organism "escapes" if, otherwise than by being released, it ceases to be under his control or that of any other person and enters the environment.

[F524(11) Genetically modified organisms of any description are "marketed" by a person when products consisting of or including such organisms are placed on the market by being made available to other persons, whether or not for consideration.**]**

Extent Information

E36 This version of this provision extends to England and Wales; a separate version has been created for Scotland only

Textual Amendments

F520 S. 107(2) substituted (E.) (17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **4(2)** and (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 5(1)(2)(a)**

F521 Words in s. 107(3) omitted (E.) (17.10.2002) by virtue of Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **4(3)** and (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 5(1)(2)(b)**

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F522 S. 107(6) substituted (E.) (17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **4(4)** and (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 5(1)(2)(c)**

F523 S. 107(9) substituted (E.) (17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **4(5)** and (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 5(1)(2)(d)**

F524 S. 107(11) substituted (E.) (17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **4(6)** and (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 5(1)(2)(e)**

Commencement Information

I50 S. 107 wholly in force at 1.2.1993; s. 107 not in force at Royal Assent see s. 164(2)(3); s. 107(8) in force 1.4.1991 see S.I. 1991/1042, art. 2; s. 107(1)-(7)(9)-(11) in force at 1.2.1993 see S.I. 1992/3253, art. 3.

107 Meaning of "damage to the environment", "control" and related expressions in Part VI. S

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

[F911(2) The "environment" includes land, air and water and the living organisms supported by any of those media.**]**

(3) "Damage to the environment" is caused by the presence in the environment of genetically modified organisms which have (or of a single such organism which has) escaped or been released from a person's control and are (or is) capable of causing harm F912. . . .

(4) An organism shall be regarded as present in the environment notwithstanding that it is present in or on any human or other organism, or any other thing, which is itself present in the environment.

(5) Genetically modified organisms present in the environment are capable of causing harm if—

(a) they are individually capable, or are present in numbers such that together they are capable, of causing harm; or

(b) they are able to produce descendants which will be capable, or which will be present in numbers such that together they will be capable, of causing harm;

and a single organism is capable of causing harm either if it is itself capable of causing harm or if it is able to produce descendants which will be so capable.

[F913(6) "Harm" means adverse effects as regards the health of humans or the environment.**]**

(7) "Harmful" and "harmless" mean respectively, in relation to genetically modified organisms, their being capable or their being incapable of causing harm.

(8) The Secretary of State may by regulations provide, in relation to genetically modified organisms of any description specified in the regulations, that—

(a) the capacity of those organisms for causing harm of any description so specified, or

(b) harm of any description so specified,

shall be disregarded for such purposes of this Part as may be so specified.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F914(9) Organisms of any description are under the "control" of a person where that person keeps them contained by specific measure designed to limit their contact with humans and the environment and to prevent or minimise the risk of harm.**]**

(10) An organism under a person's control is "released" if he deliberately causes or permits it to cease to be under his control or the control of any other person and to enter the environment; and such an organism "escapes" if, otherwise than by being released, it ceases to be under his control or that of any other person and enters the environment.

[F915(11) Genetically modified organisms of any description are "marketed" when products consisting of or including such organisms are placed on the market by being made available to other persons, whether or not for consideration.**]**

Extent Information

E65 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F911 S. 107(2) substituted (S.) (5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 4(2)**

F912 Words in s. 107(3) omitted (S.) (5.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 4(3)**

F913 S. 107(6) substituted (S.) (5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 4(4)**

F914 S. 107(9) substituted (S.) (5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 4(5)**

F915 S. 107(11) substituted (S.) (5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 4(6)**

Commencement Information

I50 S. 107 wholly in force at 1.2.1993; s. 107 not in force at Royal Assent see s. 164(2)(3); s. 107(8) in force 1.4.1991 see S.I. 1991/1042, art. 2; s. 107(1)-(7)(9)-(11) in force at 1.2.1993 see S.I. 1992/3253, art. 3.

General controls

108 Risk assessment and notification requirements.

(1) Subject to subsections (2) and (7) below, no person shall import or acquire, release or market any genetically modified organisms unless, before doing that act—

(a) he has carried out an assessment of any risks there are (by reference to the nature of the organisms and the manner in which he intends to keep them after their importation or acquisition or, as the case may be, to release or market them) of damage to the environment being caused as a result of doing that act; and

(b) in such cases and circumstances as may be prescribed, he has given the Secretary of State such notice of his intention of doing that act and such information as may be prescribed.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Subsection (1) above does not apply to a person proposing to do an act mentioned in that subsection who is required under section 111(1)(a) below to have a consent before doing that act.

(3) Subject to subsections (4) and (7) below, a person who is keeping genetically modified organisms shall, in such cases or circumstances and at such times or intervals as may be prescribed—

(a) carry out an assessment of any risks there are of damage to the environment being caused as a result of his continuing to keep them;

(b) give the Secretary of State notice of the fact that he is keeping the organisms and such information as may be prescribed.

(4) Subsection (3) above does not apply to a person who is keeping genetically modified organisms and is required under section 111(2) below to have a consent authorising him to continue to keep the organisms.

(5) It shall be the duty of a person who carries out an assessment under subsection (1)(a) or (3)(a) above to keep, for the prescribed period, such a record of the assessment as may be prescribed.

(6) A person required by subsection (1)(b) or (3)(b) above to give notice to the Secretary of State shall give the Secretary of State such further information as the Secretary of State may by notice in writing require.

(7) Regulations under this section may provide for exemptions, or for the granting by the Secretary of State **[**[F525], or by the Secretary of State and the Food Standards Agency acting jointly,**]** of exemptions to particular persons or classes of person, from the requirements of subsection (1) or (3) above in such cases or circumstances, and to such extent, as may be prescribed.

(8) The Secretary of State may at any time—

(a) give directions to a person falling within subsection (1) above requiring that person to apply for a consent before doing the act in question; or

(b) give directions to a person falling within subsection (3) above requiring that person, before such date as may be specified in the direction, to apply for a consent authorising him to continue keeping the organisms in question;

and a person given directions under paragraph (a) above shall then, and a person given directions under paragraph (b) above shall from the specified date, be subject to section 111 below in place of the requirements of this section.

(9) Regulations under this section may—

(a) prescribe the manner in which assessments under subsection (1) or (3) above are to be carried out and the matters which must be investigated and assessed;

(b) prescribe minimum periods of notice between the giving of a notice under subsection (1)(b) above and the doing of the act in question;

(c) make provision allowing the Secretary of State to shorten or to extend any such period;

(d) prescribe maximum intervals at which assessments under subsection (3)(a) above must be carried out;

and the regulations may make different provision for different cases and different circumstances.

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(10) In this section "prescribed" means prescribed by the Secretary of State in regulations under this section.

Textual Amendments

F525 Words in s. 108(7) inserted (1.4.2000) by 1999 c. 28, s. 18, **Sch. 3 Pt. III para. 17** (with s. 38); S.I. 2000/1066, **art. 2**

Modifications etc. (not altering text)

C106 Ss. 108-110 extended (Isles of Scilly) (with modifications) (4.8.2006) by The Environmental Protection Act 1990 (Isles of Scilly) Order 2006 (S.I. 2006/1381), **art. 3**

C107 S. 108(1)(a) restricted (temp. from 15.11.2004 to 18.4.2007) by The Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), reg. 17A (as inserted by The Genetically Modified Organisms (Deliberate Release) (Scotland) Amendment Regulations 2004 (S.S.I. 2004/439), **reg. 5**)

Commencement Information

I51 S. 108 partly in force; s. 108 not in force at Royal Assent see s. 164(2)(3); s. 108(1)(b)(3)(b)(5)(7)(9) in force 1.4.1991 by S.I. 1991/1042, **art. 2**; s. 108(10) in force at 1.1.1993 and s. 108(1) in force for certain purposes at 1.2.1993 by S.I. 1992/3253, **arts. 2**, 3

109 General duties relating to importation, acquisition, keeping, release or marketing of organisms.

(1) A person who—

(a) is proposing to import or acquire any genetically modified organisms, or

(b) is keeping any such organisms, or

(c) is proposing to release or market any such organisms,

shall, subject to subsection (5) below, be subject to the duties specified in subsection (2), (3) or (4) below, as the case may be.

(2) A person who proposes to import or acquire genetically modified organisms—

(a) shall take all reasonable steps to identify, by reference to the nature of the organisms and the manner in which he intends to keep them (including any precautions to be taken against their escaping or causing damage to the environment), what risks there are of damage to the environment being caused as a result of their importation or acquisition; and

(b) shall not import or acquire the organisms if it appears that, despite any precautions which can be taken, there is a risk of damage to the environment being caused as a result of their importation or acquisition.

(3) A person who is keeping genetically modified organisms—

(a) shall take all reasonable steps to keep himself informed of any damage to the environment which may have been caused as a result of his keeping the organisms and to identify what risks there are of damage to the environment being caused as a result of his continuing to keep them;

(b) shall cease keeping the organisms if, despite any additional precautions which can be taken, it appears, at any time, that there is a risk of damage to the environment being caused as a result of his continuing to keep them; and

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(c) shall use the best available techniques not entailing excessive cost for keeping the organisms under his control and for preventing any damage to the environment being caused as a result of his continuing to keep the organisms;

and where a person is required by paragraph (b) above to cease keeping the organisms he shall dispose of them as safely and as quickly as practicable and paragraph (c) above shall continue to apply until he has done so.

(4) A person who proposes to release genetically modified organisms—

(a) shall take all reasonable steps to keep himself informed, by reference to the nature of the organisms and the extent and manner of the release (including any precautions to be taken against their causing damage to the environment), what risks there are of damage to the environment being caused as a result of their being released;

(b) shall not release the organisms if it appears that, despite the precautions which can be taken, there is a risk of damage to the environment being caused as a result of their being released; and

(c) subject to paragraph (b) above, shall use the best available techniques not entailing excessive cost for preventing any damage to the environment being caused as a result of their being released;

and this subsection applies, with the necessary modifications, to a person proposing to market organisms as it applies to a person proposing to release organisms.

(5) This section does not apply—

(a) to persons proposing to import or acquire, to release or to market any genetically modified organisms, in cases or circumstances where, under section 108 above, they are not required to carry out a risk assessment before doing that act;

(b) to persons who are keeping any genetically modified organisms and who—

(i) were not required under section 108 above to carry out a risk assessment before importing or acquiring them;

(ii) have not been required under that section to carry out a risk assessment in respect of the keeping of those organisms since importing or acquiring them; or

(c) to holders of consents, in the case of acts authorised by those consents.

Modifications etc. (not altering text)

C108 Ss. 108-110 extended (Isles of Scilly) (with modifications) (4.8.2006) by The Environmental Protection Act 1990 (Isles of Scilly) Order 2006 (S.I. 2006/1381), **art. 3**

110 Prohibition notices.

(1) The Secretary of State may serve a notice under this section (a "prohibition notice") on any person he has reason to believe—

(a) is proposing to import or acquire, release or market any genetically modified organisms; or

(b) is keeping any such organisms;

if he is of the opinion that doing any such act in relation to those organisms or continuing to keep them, as the case may be, would involve a risk of causing damage to the environment.

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(2) A prohibition notice may prohibit a person from doing an act mentioned in subsection (1)(a) above in relation to any genetically modified organisms or from continuing to keep them; and the prohibition may apply in all cases or circumstances or in such cases or circumstances as may be specified in the notice.

(3) A prohibition notice shall—

(a) state that the Secretary of State is, in relation to the person on whom it is served, of the opinion mentioned in subsection (1) above;

(b) specify what is, or is to be, prohibited by the notice; and

(c) if the prohibition is not to be effective on being served, specify the date on which the prohibition is to take effect;

and a notice may be served on a person notwithstanding that he may have a consent authorising any act which is, or is to be, prohibited by the notice.

(4) Where a person is prohibited by a prohibition notice from continuing to keep any genetically modified organisms, he shall dispose of them as quickly and safely as practicable or, if the notice so provides, as may be specified in the notice.

(5) The Secretary of State may at any time withdraw a prohibition notice served on any person by notice given to that person.

Modifications etc. (not altering text)

C109 Ss. 108-110 extended (Isles of Scilly) (with modifications) (4.8.2006) by The Environmental Protection Act 1990 (Isles of Scilly) Order 2006 (S.I. 2006/1381), **art. 3**

Commencement Information

I52 S. 110 partly in force; s. 110 not in force at Royal Assent see s. 164; s. 110 in force for certain purposes at 1.2.1993 see s. 164(2)(3) and S.I. 1992/3253, **art. 3**.

Consents

111 Consents required by certain persons.

(1) Subject to subsection (7) below, no person shall import or acquire, release or market any genetically modified organisms—

(a) in such cases or circumstances as may be prescribed in relation to that act, or

(b) in any case where he has been given directions under section 108(8)(a) above,

except in pursuance of a consent granted by the Secretary of State and in accordance with any limitations and conditions to which the consent is subject.

(2) Subject to subsection (7) below, no person who has imported or acquired any genetically modified organisms (whether under a consent or not) shall continue to keep the organisms—

(a) in such cases or circumstances as may be prescribed, after the end of the prescribed period, or

(b) if he has been given directions under section 108(8)(b) above, after the date specified in the directions,

except in pursuance of a consent granted by the Secretary of State and in accordance with any limitations or conditions to which the consent is subject.

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(3) A person who is required under subsection (2) above to cease keeping any genetically modified organisms shall dispose of them as quickly and safely as practicable.

(4) An application for a consent must contain such information and be made and advertised in such manner as may be prescribed and shall be accompanied by the fee required under section 113 below.

(5) The applicant shall, in prescribed circumstances, give such notice of his application to such persons as may be prescribed.

(6) The Secretary of State may by notice to the applicant require him to furnish such further information specified in the notice, within such period **[**F526and in such form and manner**]** as may be so specified, as he may require for the purpose of determining the application; and if the applicant fails to furnish the information within the specified period **[**F527and in the specified form and manner**]** the Secretary of State may refuse to proceed with the application.

[F528A notice under this subsection must state the reasons for requiring the further information specified in the notice.**]**

[F529(6ZA) A notice under subsection (6) must state the reasons for requiring the further information specified in the notice.**]**

[F530(6A) Where an applicant for consent for releasing or marketing genetically modified organisms becomes aware, before his application is either granted or rejected, of any new information with regard to any risks there are of damage to the environment being caused as a result of the organisms being released or marketed, he shall notify the Secretary of State of that new information forthwith.**]**

(7) Regulations under this section may provide for exemptions, or for the granting by the Secretary of State **[**F531, or by the Secretary of State and the Food Standards Agency acting jointly,**]** of exemptions to particular persons or classes of person, from—

(a) any requirement under subsection (1) or (2) above to have a consent, or

(b) any of the requirements to be fulfilled under the regulations by an applicant for a consent,

in such cases or circumstances as may be prescribed.

(8) Where an application for a consent is duly made to him, the Secretary of State may grant the consent subject to such limitations and conditions as may be imposed under section 112 below or he may refuse the application.

(9) The conditions attached to a consent may include conditions which are to continue to have effect notwithstanding that the holder has completed or ceased the act or acts authorised by the consent.

(10) The Secretary of State may at any time, by notice given to the holder of a consent, revoke the consent or vary the consent (whether by attaching new limitations and conditions or by revoking or varying any limitations and conditions to which it is at that time subject).

(11) Regulations under this section may make different provision for different cases and different circumstances; and in this section "prescribed" means prescribed in regulations under this section.

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Textual Amendments

F526 Words in s. 111(6) inserted (S.) (5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 19(1)(a)(i)**

F527 Words in s. 111(6) inserted (S.) (5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 19(1)(a)(ii)**

F528 Words in s. 111(6) inserted (E.) (17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **19(1)** and (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 20(1)**

F529 S. 111(6ZA) inserted (S.) (5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 19(1)(b)**

F530 S. 111(6A) inserted (1.2.1993) by S.I. 1992/3280, **reg. 13(1)**

F531 Words in s. 111(7) inserted (1.4.2000) by 1999 c. 28, s. 18, **Sch. 3 Pt. III para. 17** (with s. 38); S.I. 2000/1066, **art. 2**

Modifications etc. (not altering text)

C110 S. 111(1)(a) restricted (temp. from 15.11.2004 to 18.4.2007) by The Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), reg. 17A (as inserted by The Genetically Modified Organisms (Deliberate Release) (Scotland) Amendment Regulations 2004 (S.S.I. 2004/439), **reg. 5**)

C111 S. 111(6): functions of the Scottish Ministers specified (3.5.2002) by The Scotland Act 1998 (Agency Arrangements) (Specification) (No. 2) Order 2002 (S.I. 2002/800), art. 2, **Sch.**

Commencement Information

I53 S. 111 partly in force; not in force at Royal Assent see s. 164(2)(3); s. 111(1)(2)(4)(5)(7)(11) in force 1.4.1991 by S.I. 1991/1042, **art. 2**; s. 111(6)(6A)(8)-(10) in force at 1.2.1993 by S.I. 1992/3253, **art. 3**

112 Consents: limitations and conditions. E+W

(1) The Secretary of State may include in a consent such limitations and conditions as he may think fit **[**F532for the purpose of ensuring that all appropriate measures are taken to avoid damage to the environment which may arise from the activity permitted by the consent**]**; F533. . .

(2) Without prejudice to the generality of subsection (1) above, the conditions included in a consent may—

(a) require the giving of notice of any fact to the Secretary of State; or

(b) prohibit or restrict the keeping, releasing or marketing of genetically modified organisms under the consent in specified cases or circumstances;

and where, under any condition, the holder of a consent is required to cease keeping any genetically modified organisms, he shall dispose of them, if no manner is specified in the conditions, as quickly and safely as practicable.

(3) Subject to subsection (6) below, there is implied in every consent for the importation or acquisition of genetically modified organisms a general condition that the holder of the consent shall—

(a) take all reasonable steps to keep himself informed (by reference to the nature of the organisms and the manner in which he intends to keep them after their importation or acquisition) of any risks there are of damage to the environment being caused as a result of their importation or acquisition; and

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(b) if at any time it appears that any such risks are more serious than were apparent when the consent was granted, notify the Secretary of State forthwith.

(4) Subject to subsection (6) below, there is implied in every consent for keeping genetically modified organisms a general condition that the holder of the consent shall—

(a) take all reasonable steps to keep himself informed of any damage to the environment which may have been caused as a result of his keeping the organisms and of any risks there are of such damage being caused as a result of his continuing to keep them;

(b) if at any time it appears that any such risks are more serious than were apparent when the consent was granted, notify the Secretary of State forthwith; and

(c) use the best available techniques not entailing excessive cost for keeping the organisms under his control and for preventing any damage to the environment being caused as a result of his continuing to keep them.

(5) Subject to subsection (6) below, there is implied in every consent for releasing or marketing genetically modified organisms a general condition that the holder of the consent shall—

(a) take all reasonable steps to keep himself informed (by reference to the nature of the organisms and the extent and manner of the release or marketing) of any risks there are of damage to the environment being caused as a result of their being released or, as the case may be, marketed;

[F534(b) notify the Secretary of State **[**F535forthwith**]** of—

(i) any new information which becomes available with regard to any risks there are of damage to the environment being so caused, and

(ii) **[**F536the effects of any releases by him for the assessment of any risks there are of damage to the environment being so caused by such organisms being released or marketed;**]**

[any unforeseen event, occurring in connection with a release by him,
F537(iii) which might affect the risks there are of damage to the environment being caused as a result of their being released;**]]**

[F538(c) take such measures as are necessary to prevent damage to the environment being caused as a result of the release or, as the case may be, the marketing of the organisms;**]**

[F539(d) notify the Secretary of State **[**F540or, in relation to Wales, the National Assembly for Wales**]** of the measures (if any) taken as a result of new information becoming available or an unforeseen event occurring as described in paragraph (b)(iii) above; and

(e) in a case where new information becomes available or an unforeseen event so occurs, revise the information contained in his application for a consent accordingly and supply the revised information to the Secretary of State **[**F540or, in relation to Wales, the National Assembly for Wales**].]**

(6) The general condition implied into a consent under subsection (3), (4) or (5) above has effect subject to any conditions imposed under subsection (1) above; and the obligations imposed by virtue of subsection (4)(c) or (5)(c) above shall not apply to any aspect of an act authorised by a consent which is regulated by such a condition.

(7) There shall be implied in every consent for keeping, releasing or marketing genetically modified organisms of any description a general condition that the holder of the consent—

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(a) shall take all reasonable steps to keep himself informed of developments in the techniques which may be available in his case for preventing damage to the environment being caused as a result of the doing of the act authorised by the consent in relation to organisms of that description; and

(b) if it appears at any time that any better techniques are available to him than is required by any condition included in the consent under subsection (1) above, shall notify the Secretary of State of that fact forthwith.

But this general condition shall have effect subject to any conditions imposed under subsection (1) above.

Extent Information

E37 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F532 Words in s. 112(1) inserted (E.) (17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **29(2)** and (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 30(1)(2)**

F533 Words in s. 112(1) omitted (17.11.1992) by virtue of S.I. 1992/2617, **reg. 2**

F534 S. 112(5)(b) substituted (1.2.1993) by S.I. 1992/3280, **reg. 9** made by specified Ministers acting as respects England, as respects Wales and as respects Scotland

F535 Word in s. 112(5)(b) inserted (E.) (17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **29(3)(a)(i)** and (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 30(1)(3)(4)(a)(i)**

F536 S. 112(5)(b)(ii) omitted (E.) (17.10.2002) by virtue of Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **29(3)(a)(ii)** and (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 30(1)(3)(4)(a)(ii)**

F537 S. 112(5)(b)(iii) inserted (E.) (17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **29(3)(a)(iii)** and (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 30(1)(3)(4)(a)(iii)**

F538 S. 112(5)(c) substituted (E.) (17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **29(3)(b)** and (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 30(1)(3)(4)(b)**

F539 S. 112(5)(d)(e) inserted (E.) (17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **29(3)(c)** and (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 30(1)(5)-(7)** (as modified by reg. 30(6))

F540 Words in s. 112(5)(d)(e) inserted (W.) (31.12.2002) by Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 30(6)**

Commencement Information

I54 S. 112 partly in force; s. 112 not in force at Royal Assent see s. 164(2)(3); s. 112(1)(2)(5)-(7) in force at 1.2.1993 see S.I. 1992/3253, art. 3

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112 Consents: limitations and conditions. S

(1) The Secretary of State may include in a consent such limitations and conditions as he may think fit **[**F916for the purpose of ensuring that all appropriate measures are taken to avoid damage to the environment which may arise from the activity permitted by the consent**]**; F533. . .

(2) Without prejudice to the generality of subsection (1) above, the conditions included in a consent may—

(a) require the giving of notice of any fact to the Secretary of State; or

(b) prohibit or restrict the keeping, releasing or marketing of genetically modified organisms under the consent in specified cases or circumstances;

and where, under any condition, the holder of a consent is required to cease keeping any genetically modified organisms, he shall dispose of them, if no manner is specified in the conditions, as quickly and safely as practicable.

(3) Subject to subsection (6) below, there is implied in every consent for the importation or acquisition of genetically modified organisms a general condition that the holder of the consent shall—

(a) take all reasonable steps to keep himself informed (by reference to the nature of the organisms and the manner in which he intends to keep them after their importation or acquisition) of any risks there are of damage to the environment being caused as a result of their importation or acquisition; and

(b) if at any time it appears that any such risks are more serious than were apparent when the consent was granted, notify the Secretary of State forthwith.

(4) Subject to subsection (6) below, there is implied in every consent for keeping genetically modified organisms a general condition that the holder of the consent shall—

(a) take all reasonable steps to keep himself informed of any damage to the environment which may have been caused as a result of his keeping the organisms and of any risks there are of such damage being caused as a result of his continuing to keep them;

(b) if at any time it appears that any such risks are more serious than were apparent when the consent was granted, notify the Secretary of State forthwith; and

(c) use the best available techniques not entailing excessive cost for keeping the organisms under his control and for preventing any damage to the environment being caused as a result of his continuing to keep them.

(5) Subject to subsection (6) below, there is implied in every consent for releasing or marketing genetically modified organisms a general condition that the holder of the consent shall—

(a) take all reasonable steps to keep himself informed (by reference to the nature of the organisms and the extent and manner of the release or marketing) of any risks there are of damage to the environment being caused as a result of their being released or, as the case may be, marketed;

[F534(b) notify the Secretary of State **[**F917forthwith**]** of—

(i) any new information which becomes available with regard to any risks there are of damage to the environment being so caused, and

(ii) F918. . . . . .

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[any unforeseen event, occurring in connection with a release by him, [F919](iii) which might affect the risks there are of damage to the environment being caused as a result of their being released;**]]**

[[F920](c) take such measures as are necessary to prevent damage to the environment being caused as a result of the release, or, as the case may be, the marketing of the organisms;**]**

[[F921](d) notify the Scottish Ministers forthwith of the measures (if any) taken as a result of new information becoming available or an unforeseen event occurring as described in paragraph (b)(iii); and

(e) in a case where new information becomes available or an unforeseen event so occurs, revise the information contained in his application for a consent accordingly and supply the revised information to the Scottish Ministers in such form and manner as they may specify.**]**

(6) The general condition implied into a consent under subsection (3), (4) or (5) above has effect subject to any conditions imposed under subsection (1) above; and the obligations imposed by virtue of subsection (4)(c) or (5)(c) above shall not apply to any aspect of an act authorised by a consent which is regulated by such a condition.

(7) There shall be implied in every consent for keeping, releasing or marketing genetically modified organisms of any description a general condition that the holder of the consent—

(a) shall take all reasonable steps to keep himself informed of developments in the techniques which may be available in his case for preventing damage to the environment being caused as a result of the doing of the act authorised by the consent in relation to organisms of that description; and

(b) if it appears at any time that any better techniques are available to him than is required by any condition included in the consent under subsection (1) above, shall notify the Secretary of State of that fact forthwith.

But this general condition shall have effect subject to any conditions imposed under subsection (1) above.

Extent Information

E66 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F533 Words in s. 112(1) omitted (17.11.1992) by virtue of S.I. 1992/2617, **reg. 2**

F534 S. 112(5)(b) substituted (1.2.1993) by S.I. 1992/3280, **reg. 9** made by specified Ministers acting as respects England, as respects Wales and as respects Scotland

F916 Words in s. 112(1) inserted (S.) (5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 29(2)**

F917 Word in s. 112(5)(b) inserted (S.) (5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 29(3)(a)(i)**

F918 S. 112(5)(b)(ii) omitted (S.) (5.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 29(3)(a)(ii)**

F919 S. 112(5)(b)(iii) inserted (S.) (5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 29(3)(a)(iii)**

F920 S. 112(5)(c) substituted (S.) (5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 29(3)(b)**

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F921 S. 112(5)(d)(e) inserted (S.) (5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 29(3)(c)**

Commencement Information

I54 S. 112 partly in force; s. 112 not in force at Royal Assent see s. 164(2)(3); s. 112(1)(2)(5)-(7) in force at 1.2.1993 see S.I. 1992/3253, art. 3

113 Fees and charges.

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

(a) fees payable in respect of applications for consents; and

(b) charges payable by persons holding consents in respect of the subsistence of their consents;

and it shall be a condition of any such consent that any applicable prescribed charge is paid in accordance with that scheme.

(2) A scheme under this section may, in particular—

(a) provide for different fees or charges to be payable in different cases or circumstances;

(b) provide for the times at which and the manner in which payments are to be made; and

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

(3) The Secretary of State shall so frame a scheme under this section as to secure, so far as practicable, that the amounts payable under it will be sufficient, taking one financial year with another, to cover the expenditure of the Secretary of State in discharging his functions under this Part in relation to consents.

(4) The Secretary of State shall, on making or revising a scheme under this section, lay a copy of the scheme or of the scheme as revised before each House of Parliament.

[[F541](5) The Scottish Ministers may, with the consent of the Secretary of State, provide in a scheme under this section for any functions under the scheme to be performed by a Minister of the Crown or government department where they consider it expedient to do so in relation to the implementation of Council Directive 90/220/EEC[M77].**]**

Textual Amendments

F541 S. 113(5) inserted (S.) (5.4.2001) by S.S.I. 2001/99, **reg. 2**

Commencement Information

I55 S. 113 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

Marginal Citations

M77 O.J. No. L 117, 8.5.90, p.15

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Inspectors

114 Appointment etc of inspectors.

(1) The Secretary of State may appoint as inspectors, for carrying this Part into effect, such number of persons appearing to him to be qualified for the purpose as he may consider necessary.

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

(3) An inspector shall not be personally liable in any civil or criminal proceedings for anything done in the purported exercise of any power under section 115 or 117 below if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(4) In England and Wales an inspector, if authorised to do so by the Secretary of State, may, although not of counsel or a solicitor, prosecute before a magistrates' court proceedings for an offence under section 118(1) below.

(5) In this Part "inspector" means, subject to section 125 below, a person appointed as an inspector under subsection (1) above.

Commencement Information

I56 S. 114 wholly in force; s. 114 not in force at Royal Assent see s. 164(2)(3); s. 114(1)-(3) in force at 1.4.1991 see S.I. 1991/1042, art. 2; s. 114(4)(5) in force at 1.2.1993 see S.I. 1992/3253, art. 3.

115 Rights of entry and inspection.

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

(2) Those powers are exercisable—

(a) in relation to premises—

(i) on which the inspector has reason to believe a person is keeping or has kept any genetically modified organisms, or

(ii) from which he has reason to believe any such organisms have been released or have escaped; and

(b) in relation to premises on which the inspector has reason to believe there may be harmful genetically modified organisms or evidence of damage to the environment caused by genetically modified organisms;

but they are not exercisable in relation to premises used wholly or mainly for domestic purposes.

(3) The powers of an inspector are—

(a) at any reasonable time (or, in a situation in which in his opinion there is an immediate risk of damage to the environment, at any time)—

(i) to enter premises which he has reason to believe it is necessary for him to enter and to take with him any person duly authorised by

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the Secretary of State and, if the inspector has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and

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

(b) to carry out such tests and inspections (and to make such recordings), as may in any circumstances be necessary;

(c) to direct that any, or any part of, premises which he has power to enter, or anything in or on such premises, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any test or inspection;

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

(e) in the case of anything found in or on any premises which he has power to enter, which appears to him to contain or to have contained genetically modified organisms which have caused or are likely to cause damage to the environment, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is necessary);

(f) in the case of anything mentioned in paragraph (e) above or anything found on premises which he has power to enter which appears to be a genetically modified organism or to consist of or include genetically modified organisms, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—

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

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

(iii) to ensure that it is available for use as evidence in any proceedings for an offence under section 118 below;

(g) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any test or inspection under this subsection to answer (in the absence of persons other than a person nominated to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers;

(h) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which are required to be kept under this Part or it is necessary for him to see for the purposes of any test or inspection under this subsection and to inspect, and take copies of, or of any entry in, the records;

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

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

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

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

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

(7) Where under the power conferred by subsection (3)(f) above an inspector takes possession of anything found on any premises, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars sufficient to identify what he has seized and stating that he has taken possession of it under that power; and before taking possession under that power of—

(a) any thing that forms part of a batch of similar things, or

(b) any substance,

an inspector shall, if it is practical and safe for him to do so, take a sample of it and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

(8) No answer given by a person in pursuance of a requirement imposed under subsection (3)(g) above shall be admissible in evidence—

(a) in any proceedings in England and Wales against that person; or

(b) in any criminal proceedings in Scotland against that person.

(9) The powers conferred by subsection (3)(a), (b), (c), (d), (e) and (h) above shall also be exercisable (subject to subsections (4), (5) and (6) above) by any person authorised for the purpose in writing by the Secretary of State.

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

Commencement Information

I57 S. 115 wholly in force; not in force at Royal Assent see s. 164(2); s. 115(4) in force 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**; s. 115(1)-(3)(5)-(10) in force at 1.2.1993 see S.I. 1992/3253, art. 3.

Enforcement powers and offences

116 Obtaining of information from persons.

(1) For the purposes of the discharge of his functions under this Part, the Secretary of State may, by notice in writing served on any person who appears to him—

(a) to be involved in the importation, acquisition, keeping, release or marketing of genetically modified organisms; or

(b) to be about to become, or to have been, involved in any of those activities;

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require that person to furnish such relevant information available to him as is specified in the notice, in such form and within such period following service of the notice as is so specified.

(2) For the purposes of this section "relevant information" means information concerning any aspects of the activities in question, including any damage to the environment which may be or have been caused thereby; and the discharge by the Secretary of State of an obligation of the United Kingdom under the Community Treaties or any international agreement concerning the protection of the environment from harm caused by genetically modified organisms shall be treated as a function of his under this Part.

Commencement Information

I58 S. 116 partly in force; s. 116 in force for certain purposes at 1.2.1993 see s. 164(2)(3) and S.I. 1992/3253, **art. 3**

117 Power to deal with cause of imminent danger of damage to the environment.

(1) Where, in the case of anything found by him on any premises which he has power to enter, an inspector has reason to believe that it is a genetically modified organism or that it consists of or includes genetically modified organisms and that, in the circumstances in which he finds it, it is a cause of imminent danger of damage to the environment, he may seize it and cause it to be rendered harmless (whether by destruction, by bringing it under proper control or otherwise).

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

(a) any thing that forms part of a batch of similar things, or

(b) any substance,

the inspector shall, if it is practicable and safe for him to do so, take a sample of it and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

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

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

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

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

Commencement Information

I59 S. 117 wholly in force at 1.2.1993 see s. 164(2)(3) and S.I. 192/3253, art. 3.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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118 Offences.

(1) It is an offence for a person—

(a) to do anything in contravention of section 108(1) above in relation to something which is, and which he knows or has reason to believe is, a genetically modified organism;

(b) to fail to comply with section 108(3) above when keeping something which is, and which he knows or has reason to believe is, a genetically modified organism;

(c) to do anything in contravention of section 111(1) or (2) above in relation to something which is, and which he knows or has reason to believe is, a genetically modified organism;

(d) to fail to comply with any requirement of subsection (2), (3)(a), (b) or (c) or (4) of section 109 above in relation to something which is, and which he knows or has reason to believe is, a genetically modified organism;

(e) to fail, without reasonable excuse, to comply with section 108(5) or (6) **[**[F542]or section 111(6A)**]** above;

(f) to contravene any prohibition imposed on him by a prohibition notice;

(g) without reasonable excuse, to fail to comply with any requirement imposed under section 115 above;

(h) to prevent any other person from appearing before or from answering any question to which an inspector may, by virtue of section 115(3) above, require an answer;

(i) intentionally to obstruct an inspector in the exercise or performance of his powers or duties, other than his powers or duties under section 117 above;

(j) intentionally to obstruct an inspector in the exercise of his powers or duties under section 117 above;

(k) to fail, without reasonable excuse, to comply with any requirement imposed by a notice under section 116 above;

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

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

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

(m) intentionally to make a false entry in any record required to be kept under section 108 or 111 above;

(n) with intent to deceive, to forge or use a document purporting to be issued under section 111 above or required for any purpose thereunder or to make or have in his possession a document so closely resembling any such document as to be likely to deceive;

(o) falsely to pretend to be an inspector.

(2) It shall be a defence for a person charged with an offence under paragraph (a), (b), (c), (d) or (f) of subsection (1) above to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(3) A person guilty of an offence under paragraph (c) or (d) of subsection (1) above shall be liable—

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

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

(4) A person guilty of an offence under paragraph (f) of subsection (1) above shall be liable—

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

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

(5) A person guilty of an offence under paragraph (a) or (b) of subsection (1) above shall be liable—

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

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

(6) A person guilty of an offence under paragraph (e), (j), (k), (l), (m) or (n) of subsection (1) above shall be liable—

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

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

(7) A person guilty of an offence under paragraph (g), (h) or (i) of subsection (1) above shall be liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both.

(8) A person guilty of an offence under paragraph (o) of subsection (1) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(9) Where a person is convicted of an offence under paragraph (b) of subsection (1) above in respect of his keeping any genetically modified organism, then, if the contravention in respect of which he was convicted is continued after he was convicted he shall be guilty of a further offence and liable on summary conviction to a fine of one-fifth of level 5 on the standard scale for each day on which the contravention is so continued.

(10) Proceedings in respect of an offence under this section shall not be instituted in England and Wales except by the Secretary of State or with the consent of the Director of Public Prosecutions or in Northern Ireland except with the consent of the Director of Public Prosecutions for Northern Ireland.

Textual Amendments

F542 Words in s. 118(1)(e) inserted (1.2.1993) by S.I. 1992/3280, **reg. 13(2)** made by specified Ministers acting as respects England, as respects Wales and as respects Scotland.

Commencement Information

I60 S. 118 partly in force; s. 118 not in force at Royal Assent see. s. 164(2)(3); s. 118(1)(a)(c)(e)-(l)(m) (in so far as it relates to s. 111) (n)(o)(2)-(10) in force at 1.2.1993 S.I. 1992/3253, **art. 3**

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119 Onus of proof as regards techniques and evidence.

(1) In any proceedings for either of the following offences, that is to say—

(a) an offence under section 118(1)(c) above consisting in a failure to comply with the general condition implied by section 112(4)(c) or (5)(c) above; or

(b) an offence under section 118(1)(d) above consisting in a failure to comply with section 109(3)(c) or (4)(c) above;

it shall be for the accused to prove**[**F543 the matters described in subsection (1A) below.

(1A) The matters referred to in subsection (1) above are—

(a) in the case of an offence under section 118(1)(c) above consisting in a failure to comply with the general condition implied by section 112(5)(c) above—

(i) that no measures, other than the measures taken by him, were necessary to prevent damage being caused to the environment from the release or, as the case may be, marketing of the organisms, or

(ii) in a case where he took no measures, that no measures were necessary; and

(b) in any other case,**]** that there was no better available technique not entailing excessive cost than was in fact used to satisfy the condition or to comply with that section.

(2) Where an entry is required by a condition in a consent to be made in any record as to the observance of any other condition and the entry has not been made, that fact shall be admissible as evidence that that other condition has not been observed.

Textual Amendments

F543 Words in s. 119 inserted: (E.) (17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **30**; (S.) (5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 30**; (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 31**

Commencement Information

I61 S. 119 wholly in force at 1.2.1993 see s. 164(2)(3) and S.I. 1992/3253, **art. 3**.

120 Power of court to order cause of offence to be remedied.

(1) Where a person is convicted of an offence under section 118(1)(a), (b), (c), (d), (e) or (f) above in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying those matters.

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

(3) Where a person is ordered under subsection (1) above to remedy any matters, that person shall not be liable under section 118 above in respect of those matters, in so far as they continue during the time fixed by the order or any further time allowed under subsection (2) above.

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Commencement Information

I62 S. 120 wholly in force at 1.2.1993 see. s. 1674(2)(3) and S.I. 1992/3253, **art. 3**

121 Power of Secretary of State to remedy harm.

(1) Where the commission of an offence under section 118(1)(a), (b), (c), (d), (e) or (f) above causes any harm which it is possible to remedy, the Secretary of State may, subject to subsection (2) below—

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

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

(2) The Secretary of State shall not exercise his powers under this section, where any of the steps are to be taken on or will affect land in the occupation of any person other than a person convicted of the offence in question, except with the permission of that person.

Commencement Information

I63 S. 121 wholly in force at 1.2.1993 see s. 164(2)(3) and S.I. 1992/3253, **art. 3**.

Publicity

122 Public register of information.

(1) The Secretary of State shall maintain a register ("the register") containing prescribed particulars of or relating to—

(a) notices given or other information furnished under section 108 above;

(b) directions given under section 108(8) above;

(c) prohibition notices;

(d) applications for consents (and any further information furnished in connection with them) and any advice given by the committee appointed under section 124 below in relation to such applications;

(e) consents granted by the Secretary of State and any information furnished to him in pursuance of consent conditions;

(f) any other information obtained or furnished under any provision of this Part;

(g) convictions for such offences under section 118 above as may be prescribed;

(h) such other matters relating to this Part as may be prescribed;

but that duty is subject to section 123 below.

(2) It shall be the duty of the Secretary of State—

(a) to secure that the register is open to inspection by members of the public free of charge at all reasonable hours; and

(b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges.

(3) The register may be kept in any form.

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(4) The Secretary of State may make regulations with respect to the keeping of the register; and in this section "prescribed" means prescribed in regulations made by the Secretary of State.

Modifications etc. (not altering text)

C112 S. 122(1)(2): functions of the Scottish Ministers specified (3.5.2002) by The Scotland Act 1998 (Agency Arrangements) (Specification) (No. 2) Order 2002 (S.I. 2002/800), art. 2, **Sch.**

Commencement Information

I64 S. 122 partly in force; s. 122 not in force at Royal Assent, see s. 164(2)(3); s. 122(1) in force for certain purposes at 1.4.1991 and s. 122(4) in force at 1.4.1991, see S.I. 1991/1042, art. 2; s. 122(1)(c)-(h)(2)(3) in force at 1.2.1993, see S.I. 1992/3253, art. 3

123 Exclusion from register of certain information.

(1) No information shall be included in the register under section 122 above if and so long as, in the opinion of the Secretary of State, the inclusion of the information would be contrary to the interests of national security.

(2) No information shall be included in the register if and so long as, in the opinion of the Secretary of State, it ought to be excluded on the ground that its inclusion might result in damage to the environment.

(3) No information relating to the affairs of any individual or business shall be included in the register without the consent of that individual or the person for the time being carrying on that business, if the Secretary of State has determined that the information—

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

(b) is not information of a description to which subsection (7) below applies;

unless the Secretary of State is of the opinion that the information is no longer commercially confidential in relation to him.

(4) Nothing in subsection (3) above requires the Secretary of State to determine whether any information is or is not commercially confidential except where the person furnishing the information applies to have it excluded on the ground that it is (in relation to himself or another person) commercially confidential.

(5) Where an application has been made for information to be excluded under subsection (3) above, the Secretary of State shall make a determination and inform the applicant of it as soon as is practicable.

(6) Where it appears to the Secretary of State that any information (other than information furnished by the person to whom it relates) which has been obtained under or by virtue of any provision of this Part might be commercially confidential, the Secretary of State shall—

(a) give to the person to whom or to whose business it relates notice that the information is required to be included in the register unless excluded under subsection (3) above; and

(b) give him a reasonable opportunity—

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

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

and the Secretary of State shall take any representations into account before determining whether the information is or is not commercially confidential.

(7) The prescribed particulars of or relating to the matters mentioned in section 122(1)(a), **[**F544(c),**]**(d) and (e) above shall be included in the register notwithstanding that they may be commercially confidential if and so far as they are of any of the following descriptions, namely—

(a) the name and address of the person giving the notice or furnishing the information;

(b) **[**F545F546the general description**]** of any genetically modified organisms to which the notice or other information relates;

(c) **[**F547the location at any time of those organisms;**]**

(d) the purpose for which those organisms are being imported, acquired, kept, released or marketed (according to whichever of those acts the notice or other information relates);

(e) **[**F547results of any assessment of the risks of damage to the environment being caused by the doing of any of those acts;**]**

(f) notices under section 112(3), (4), (5) or (7) above;

and the Secretary of State may by regulations prescribe any other description of information as information which the public interest requires to be included in the register notwithstanding that it may be commercially confidential.

(8) Information excluded from the register under subsection (3) above shall be treated as ceasing to be commercially confidential for the purposes of that subsection at the expiry of a period of four years beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it or to whom or to whose business it relates may apply to the Secretary of State for the information to remain excluded on the ground that it is still commercially confidential.

(9) The Secretary of State may by order substitute for the period for the time being specified in subsection (8) above such other period as he considers appropriate.

Textual Amendments

F544 S. 123(7): "(c)," inserted (E.) (17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **33(2)(a)**; (S.) (5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 33(2)(a)**; (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 34(2)(a)**

F545 In s. 123(7)(b) the words "the general description" substituted (E.) (17.10.2002) for the words "the description" by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **33(2)(b)** and (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 34(2)(b)**

F546 In s. 123(7)(b) the word "general" inserted (S.) (5.12.2002) after the word "the" where it first appears by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 33(2)(b)**

F547 S. 123(7)(c)(e) omitted (E.) (17.10.2002) by virtue of Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **33(2)(c)**; (S.) (5.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541),

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reg. 33(2)(c); (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 34(2)(c)**

Modifications etc. (not altering text)

C113 S. 123(3)-(6)(8): functions of the Scottish Ministers specified (3.5.2002) by The Scotland Act 1998 (Agency Arrangements) (Specification) (No. 2) Order 2002 (S.I. 2002/800), art. 2, **Sch.**

Commencement Information

I65 S. 123 wholly in force; s. 123 not in force at Royal Assent, see s. 164(2)(3); s. 123(7)(9) in force at 1.4.1991, see S.I. 1991/1042, art. 2; s. 123(1)-(6)(8) in force at 1.2.1993, see S.I. 1992/3253, art. 3

Supplementary

124 Advisory committee for purposes of Part VI.

(1) The Secretary of State shall appoint a committee to provide him with advice—

(a) on the exercise of his powers under sections 111, 112 and 113 above;

(b) on the exercise of any power under this Part to make regulations;

and on such other matters concerning his functions under this Part as he may from time to time direct.

(2) The chairman and other members of the committee shall hold and vacate office in accordance with the terms of their appointment.

(3) The Secretary of State shall pay to the members of the committee such remuneration (if any) and such allowances as he may, with the consent of the Treasury, determine.

Modifications etc. (not altering text)

C114 S. 124 extended (Isles of Scilly) (with modifications) (4.8.2006) by The Environmental Protection Act 1990 (Isles of Scilly) Order 2006 (S.I. 2006/1381), **art. 3**

Commencement Information

I66 S. 124 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

125 Delegation of enforcement functions.

(1) The Secretary of State may, by an agreement made with any public authority, delegate to that authority or to any officer appointed by an authority exercising functions on behalf of that authority any of his enforcement functions under this Part, subject to such restrictions and conditions as may be specified in the agreement.

(2) For the purposes of this section the following are "enforcement functions" of the Secretary of State, that is to say, his functions under—

section 110;

section 114(1) and (4);

section 116;

section 118(10); and

section 121;

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and "inspector" in sections 115 and 117 includes, to the extent of the delegation, any inspector appointed by an authority other than the Secretary of State by virtue of an agreement under this section.

(3) The Secretary of State shall, if and so far as an agreement under this section so provides, make payments to the authority to reimburse the authority the expenses incurred in the performance of functions delegated under this section; but no such agreement shall be made without the approval of the Treasury.

Commencement Information

I67 S. 125 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

[F548 126 Mode of exercise of certain functions.

(1) Any power of the Secretary of State to make regulations under this Part (other than the power conferred by section 113 above) is exercisable, where the regulations to be made relate to any matter with which the Minister is concerned, by the Secretary of State and the Minister acting jointly.

(2) Any function of the Secretary of State under this Part (other than a power to make regulations) is exercisable, where the function is to be exercised in relation to a matter with which the Minister is concerned, by the Secretary of State and the Minister acting jointly (but subject to subsection (3) below).

(3) Any function of the Secretary of State under sections 108(8) and 110 above is exercisable, where the function is to be exercised in relation to a matter with which the Agency is concerned—

(a) if it is a matter with which the Minister is also concerned, by the Secretary of State, the Minister and the Agency acting jointly;

(b) otherwise, by the Secretary of State and the Agency acting jointly.

(4) Accordingly, references in this Part to the Secretary of State shall, where subsection (1), (2) or (3) above applies, be treated as references to the authorities in question acting jointly.

(5) The Agency shall be consulted before—

(a) any regulations are made under this Part, other than under section 113 above, or

(b) any consent is granted or varied.

(6) The reference in section 113 above to expenditure of the Secretary of State in discharging functions under this Part in relation to consents shall be taken to include a reference to the corresponding expenditure of the Minister in discharging those functions jointly with the Secretary of State.

(7) The validity of anything purporting to be done in pursuance of the exercise of a function of the Secretary of State under this Part shall not be affected by any question whether that thing fell, by virtue of this section, to be done jointly with the Minister or the Agency (or both).

(8) In this section—

"the Agency" means the Food Standards Agency; and

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"the Minister" means the Minister of Agriculture, Fisheries and Food.**]**

Textual Amendments

F548 S. 126 substituted (1.4.2000) by 1999 c. 28, s. 18, **Sch. 3 Pt. III para. 18** (with s. 38); S.I. 2000/1066, **art. 2**

127 Definitions.

(1) In this Part—

"acquire", in relation to genetically modified organisms, includes any method by which such organisms may come to be in a person's possession, other than by their being imported;

"consent" means a consent granted under section 111 above, and a reference to the limitations or conditions to which a consent is subject is a reference to the limitations or conditions subject to which the consent for the time being has effect;

"descendant", in relation to a genetically modified organism, means any other organism whose genes or other genetic material is derived, through any number of generations, from that organism by any process of reproduction;

"import" means import into the United Kingdom;

"premises" includes any land;

"prohibition notice" means a notice under section 110 above.

(2) This Part, except in so far as it relates to importations of genetically modified organisms, **[**[F549]applies to the territorial sea adjacent to England as it applies in England **[**[F550]and applies to the territorial sea adjacent to Wales as it applies in Wales**]]** and **[**[F551] applies to any area for the time being designated under section 1(7) of the Continental Shelf Act 1964 [M78] as it applies in England**]** .

Textual Amendments

F549 Words in s. 127(2) substituted (UK for certain purposes, otherwise E. only) (17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **38(a)** and (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 40(1)**

F550 Words in s. 127(2) inserted (W.) (31.12.2002) by Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 40(2)**

F551 Words in s. 127(2) substituted (UK for certain purposes, otherwise E. only) (17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **38(b)**

Commencement Information

I68 S. 127 wholly in force at 1.2.1993 see s. 164(2)(3) and S.I. 1992/3253, **art. 3**.

Marginal Citations

M78 1964 c. 29.

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PART VII

NATURE CONSERVATION IN GREAT BRITAIN AND COUNTRYSIDE MATTERS IN WALES

Modifications etc. (not altering text)
C115 Pt. VII (ss. 128-139) applied (S.) (01.04.1992) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), **s. 4(1)**; S.I. 1991/2633, **art.4**.

New Councils for England, Scotland and Wales

[F552 128 Creation and constitution of new Councils.

(1) There shall be a council to be called the Countryside Council for Wales (in this Part referred to as "the Council").

(2) The Council shall have not less than 8 nor more than 12 members and those members shall be appointed by the National Assembly for Wales.

(3) The National Assembly for Wales may by order made by statutory instrument amend subsection (2) above so as to substitute for the number for the time being specified as the maximum membership of the Council such other number as the Assembly thinks appropriate.

(4) Schedule 6 has effect with respect to the constitution and proceedings of the Council.**]**

Textual Amendments
F552 S. 128 substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 117(1)**; S.I. 2006/2541, **art. 2**

[F553 129 Grants to the Council

(1) The National Assembly for Wales may make to the Council grants of such amounts as the Assembly thinks fit.

(2) A grant under this section may be made subject to such conditions (including in particular conditions as to the use of the money for the purposes of the Joint Nature Conservation Committee) as the Assembly may think fit.**]**

Textual Amendments
F553 S. 129 substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 118**; S.I. 2006/2541, **art. 2**

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Countryside matters

130 Countryside functions of Welsh Council.

(1) The Countryside Council for Wales shall [F554]. . . have such of the functions under the Acts amended by Schedule 8 to this Act (which relates to countryside matters) as are assigned to them in accordance with the amendments effected by that Schedule.

(2) The Countryside Council for Wales shall discharge those functions—

(a) for the conservation and enhancement of natural beauty in Wales and of the natural beauty and amenity of the countryside in Wales, both in the areas designated under the National Parks and Access to the Countryside Act 1949 as National Parks or **[**[F555]under the Countryside and Rights of Way Act 2000**]** as areas of outstanding natural beauty and elsewhere;

(b) for encouraging the provision or improvement, for persons resorting to the countryside in Wales, of facilities for the enjoyment thereof and for the enjoyment of the opportunities for open-air recreation and the study of nature afforded thereby;

and shall have regard to the social and economic interests of rural areas in Wales.

(3) The reference in subsection (2) above to the conservation of the natural beauty of the countryside includes the conservation of its flora, fauna and geological and physiographical features.

(4) The Countryside Council for Wales [F556]. . . shall discharge their [F556]. . . functions under those Acts (as amended by Schedule 8) on and after a day to be appointed by an order made by the Secretary of State.

Subordinate Legislation Made

P1 S. 130(4): s. 130(4)(with ss. 131(3) and 164(3)) power fully exercised: 1.4.1991 appointed by S.I. 1991/685, **art.4**

Textual Amendments

F554 Words in s. 130(1) repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105, 107, Sch. 11 para. 119(a), **Sch. 12**; S.I. 2006/2541, **art. 2**

F555 Words in s. 130(2)(a) inserted (30.1.2001 for E., 1.5.2001 for W.) by 2000 c. 37, s. 93, **Sch. 15 Pt. I para. 11** (with s. 84(4)-(6)); S.I. 2001/114, **art. 2(2)(e)**; S.I. 2001/1410, **art. 2(g)**

F556 Words in s. 130(4) repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105, 107, Sch. 11 para. 119(b), **Sch. 12**; S.I. 2006/2541, **art. 2**

Commencement Information

I69 S. 130 in force at 1.4.1991 see s. 164(3) and S.I. 1991/685, **art. 3**

Nature conservation in Great Britain

131 Nature conservation functions: preliminary.

[[F557](1) For the purpose of nature conservation and fostering the understanding of nature conservation, the Council shall have the functions conferred on them by this Part and Part 2 of the Natural Environment and Rural Communities Act 2006.**]**

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(2) It shall be the duty of **[**F558the Council**]** in discharging their nature conservation functions to take appropriate account of actual or possible ecological changes.

(3) **[**F558The Council**]** shall discharge their nature conservation functions on and after a day to be appointed by an order made by the Secretary of State.

[F559(4) The National Assembly for Wales may give the Council general or specific directions with regard to the discharge of any of their nature conservation functions under this Part.**]**

(5) F560 . . . . . .

(6) In this Part "nature conservation" means the conservation of flora, fauna or geological or physiographical features.

Subordinate Legislation Made

P2 S. 131(3): S. 130(4)(with ss. 131(3) and 164(3)) power exercised: 1.4.1991 appointed by S.I. 1991/685, **art. 4**

Textual Amendments

F557 S. 131(1) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 120(2)**; S.I. 2006/2541, **art. 2**

F558 Words in s. 131(2)(3) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 120(3)**; S.I. 2006/2541, **art. 2**

F559 S. 131(4) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 120(4)**; S.I. 2006/2541, **art. 2**

F560 S. 131(5) repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105, 107, Sch. 11 para. 120(5), **Sch. 12**; S.I. 2006/2541, **art. 2**

Modifications etc. (not altering text)

C116 S. 131: extension to Scotland continued (1.4.1992) (S.) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), **s. 4(3)**; S.I. 1991/2633, **art. 4**

Commencement Information

I70 Appointed day for specified provisions is 1.4.1991 see S.I.1991/685, art. 4(2)

132 General functions of [F561the Council].

(1) **[**F562The Council shall**]** have the following functions, namely—

(a) such of the functions previously discharged by the Nature Conservancy Council under the Acts amended by Schedule 9 to this Act as are assigned to them in accordance with the amendments effected by that Schedule;

(b) the establishment, maintenance and management of nature reserves (within the meaning of section 15 of the National Parks and Access to the M79Countryside Act 1949) in their area;

(c) the provision of advice for the Secretary of State or any other Minister on the development and implementation of policies for or affecting nature conservation in their area;

(d) the provision of advice and the dissemination of knowledge to any persons about nature conservation in their area or about matters arising from the discharge of their functions under this section or section 134 below;

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(e) the commissioning or support (whether by financial means or otherwise) of research which in their opinion is relevant to any of their functions under this section or section 134 below;

F563 . . . . . .

(2) **[**F564The Council shall**]** have power—

(a) to accept any gift or contribution made to them for the purposes of any of the functions conferred on them by subsection (1) above or section 134 below and, subject to the terms of the gift or contribution, to apply it to those purposes;

(b) to initiate and carry out such research directly related to those functions as it is appropriate that they should carry out instead of commissioning or supporting other persons under paragraph (e) of that subsection;

and they may do all such other things as are incidental or conducive to those functions including (without prejudice to the generality of this provision) making charges and holding land or any interest in or right over land.

(3) F565 . . . . . .

Textual Amendments

F561 Words in s. 132 heading substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 121(5)**; S.I. 2006/2541, **art. 2**

F562 Words in s. 132(1) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 121(2)(a)**; S.I. 2006/2541, **art. 2**

F563 Words in s. 132(1) repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105, 107, Sch. 11 para. 121(2)(b), **Sch. 12**; S.I. 2006/2541, **art. 2**

F564 Words in s. 132(2) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 121(3)**; S.I. 2006/2541, **art. 2**

F565 S. 132(3) repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105, 107, Sch. 11 para. 121(4), **Sch. 12**; S.I. 2006/2541, **art. 2**

Modifications etc. (not altering text)

C117 S. 132 extended (E.) (1.1.2005) by The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004 (S.I. 2004/3196), **reg. 6(4)** (as amended (30.4.2005) by The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) (Amendment) Regulations 2005 (S.I. 2005/918), reg. 2(d)) (both S.I. 2004/3196 and S.I. 2005/918 were revoked (12.1.2006) by S.I. 2005/3459, reg. 10)
S. 132 extended (W.) (1.1.2005) by The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Regulations 2004 (S.I. 2004/3280), **reg. 6(5)** (as substituted (1.11.2006) by The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) (Amendment) Regulations 2006 (S.I. 2006/2831), reg. 2(5))
S. 132 extended (E.) (12.1.2006) by The Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2005 (S.I. 2005/3459), **reg. 6(5)**

C118 S. 132(2) modified (E.) (1.1.2005) by The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004 (S.I. 2004/3196), **reg. 6(4)** (as amended (30.4.2005) by The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) (Amendment) Regulations 2005 (S.I. 2005/918), reg. 2(d)) (both S.I. 2004/3196 and S.I. 2005/918 were revoked (12.1.2006) by S.I. 2005/3459, reg. 10)

C119 S. 132(2) modified (W.) (1.1.2005) by The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Regulations 2004 (S.I. 2004/3280), **reg. 6(5)** (as substituted (1.11.2006) by The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) (Amendment) Regulations 2006 (S.I. 2006/2831), reg. 2(5))

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C120 S. 132(2) modified (E.) (12.1.2006) by The Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2006 (S.I. 2005/3459), **reg. 6(5)**

Commencement Information

I71 S. 132 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/685, **art. 3**

Marginal Citations

M79 1949 c. 97.

133 Special functions of Councils.

F566 . . . . . .

Textual Amendments

F566 S. 133 repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105, 107, Sch. 11 para. 122, **Sch. 12**; S.I. 2006/2541, **art. 2**

134 Grants and loans by [F567the Council].

(1) **[**F568The Council may**]**, with the consent of or in accordance with a general authorisation given by **[**F569the National Assembly for Wales**]**, give financial assistance by way of grant or loan (or partly in one way and partly in the other) to any person in respect of expenditure incurred or to be incurred by him in doing anything which in their opinion is conducive to nature conservation or fostering the understanding of nature conservation.

(2) F570 . . . . . .

(3) On making a grant or loan **[**F571the Council**]** may impose such conditions as they think fit, including (in the case of a grant) conditions for repayment in specified circumstances.

(4) **[**F572The Council**]** shall exercise their powers under subsection (3) above so as to ensure that any person receiving a grant or loan under this section in respect of premises to which the public are to be admitted (on payment or otherwise) shall, in the means of access both to and within the premises, and in the parking facilities and sanitary conveniences to be available (if any), make provision, so far as it is in the circumstances both practicable and reasonable, for the needs of members of the public visiting the premises who are disabled.

Textual Amendments

F567 Words in s. 134 heading substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 123(6)**; S.I. 2006/2541, **art. 2**

F568 Words in s. 134(1) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 123(2)(a)**; S.I. 2006/2541, **art. 2**

F569 Words in s. 134(1) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 123(2)(b)**; S.I. 2006/2541, **art. 2**

F570 S. 134(2) repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105, 107, Sch. 11 para. 123(3), **Sch. 12**; S.I. 2006/2541, **art. 2**

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F571 Words in s. 134(3) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 123(4)**; S.I. 2006/2541, **art. 2**

F572 Words in s. 134(4) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 123(5)**; S.I. 2006/2541, **art. 2**

Transfer of property, rights and liabilities to new Councils

135 Schemes for the transfer of property etc. of the Nature Conservancy Council.

F573 . . . . . .

Textual Amendments

F573 S. 135 repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105, 107, Sch. 11 para. 124, **Sch. 12**; S.I. 2006/2541, **art. 2**

136 Transfer to Welsh Council of certain property etc. of Countryside Commission.

F574 . . . . . .

Textual Amendments

F574 S. 136 repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105, 107, Sch. 11 para. 124, **Sch. 12**; S.I. 2006/2541, **art. 2**

Employment by new Councils of staff of existing bodies

137 Offers of employment to employees of Nature Conservancy Council and certain employees of Countryside Commission.

F575 . . . . . .

Textual Amendments

F575 S. 137 repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105, 107, Sch. 11 para. 124, **Sch. 12**; S.I. 2006/2541, **art. 2**

Dissolution of Nature Conservancy Council

138 Winding up and dissolution of Nature Conservancy Council.

F576 . . . . . .

Textual Amendments

F576 S. 138 repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105, 107, Sch. 11 para. 124, **Sch. 12**; S.I. 2006/2541, **art. 2**

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Transitional provisions and savings

139 Transitional provisions and savings.

Schedule 11 to this Act (which contains transitional provisions and savings relating to this Part) shall have effect.

PART VIII

MISCELLANEOUS

Other controls on substances, articles or waste

140 Power to prohibit or restrict the importation, use, supply or storage of injurious substances or articles.

(1) The Secretary of State may by regulations prohibit or restrict—

(a) the importation into and the landing and unloading in the United Kingdom,

(b) the use for any purpose,

(c) the supply for any purpose, and

(d) the storage,

of any specified substance or article if he considers it appropriate to do so for the purpose of preventing the substance or article from causing pollution of the environment or harm to human health or to the health of animals or plants.

(2) Any such prohibition or restriction may apply—

(a) in all, or only in specified, areas;

(b) in all, or only in specified, circumstances or if conditions imposed by the regulations are not complied with; and

(c) to all, or only to specified descriptions of, persons.

(3) Regulations under this section may—

(a) confer on the Secretary of State power to direct that any substance or article whose use, supply or storage is prohibited or restricted is to be treated as waste or controlled waste of any description and in relation to any such substance or article—

(i) to apply, with or without modification, specified provisions of Part II; or

(ii) to direct that it be disposed of or treated in accordance with the direction;

(b) confer on the Secretary of State power, where a substance or article has been imported, landed or unloaded in contravention of a prohibition or restriction imposed under subsection (1)(a) above, to require that the substance or article be disposed of or treated in or removed from the United Kingdom;

(c) confer powers corresponding to those conferred by **[**F577section 108 of the Environment Act 1995**]** on persons authorised for any purpose of the regulations by the Secretary of State or any local or other authority; and

(d) include such other incidental and supplemental, and such transitional provisions, as the Secretary of State considers appropriate.

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(4) The Secretary of State may, by regulations under this section, direct that, for the purposes of any power conferred on him under subsection (3)(b) above, any prohibition or restriction on the importation into or the landing and unloading in the United Kingdom imposed—

(a) by or under any Community instrument, or

(b) by or under any enactment,

shall be treated as imposed under subsection (1)(a) above and any power conferred on him under subsection (3)(b) above shall be exercisable accordingly.

(5) The Secretary of State may by order establish a committee to give him advice in relation to the exercise of the power to make regulations under this section and Schedule 12 to this Act shall have effect in relation to it.

(6) Subject to subsection (7) below, it shall be the duty of the Secretary of State before he makes any regulations under this section other than regulations under subsection (4) above—

(a) to consult the committee constituted under subsection (5) above about the proposed regulations;

(b) having consulted the committee, to publish in the London Gazette and, if the regulations apply in Scotland or Northern Ireland, the Edinburgh Gazette or, as the case may be, Belfast Gazette and in any other publication which he considers appropriate, a notice indicating the effect of the proposed regulations and specifying—

(i) the date on which it is proposed that the regulations will come into force;

(ii) a place where a draft of the proposed regulations may be inspected free of charge by members of the public during office hours; and

(iii) a period of not less than fourteen days, beginning with the date on which the notice is first published, during which representations in writing may be made to the Secretary of State about the proposed regulations; and

(c) to consider any representations which are made to him in accordance with the notice.

(7) The Secretary of State may make regulations under this section in relation to any substance or article without observing the requirements of subsection (6) above where it appears to him that there is an imminent risk, if those requirements are observed, that serious pollution of the environment will be caused.

(8) The Secretary of State may, after performing the duty imposed on him by subsection (6) above with respect to any proposed regulations, make the regulations either—

(a) in the form of the draft mentioned in subsection (6)(b) above, or

(b) in that form with such modifications as he considers appropriate;

but the Secretary of State shall not make any regulations incorporating modifications unless he is of opinion that it is appropriate for the requirements of subsection (6) above to be disregarded.

(9) Regulations under this section may provide that a person who contravenes or fails to comply with a specified provision of the regulations or causes or permits another person to contravene or fail to comply with a specified provision of the regulations commits an offence and may prescribe the maximum penalty for the offence.

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(10) No offence under the regulations shall be made punishable with imprisonment for more than two years or punishable on summary conviction with a fine exceeding level 5 on the standard scale (if not calculated on a daily basis) or, in the case of a continuing offence, exceeding one-tenth of the level on the standard scale specified as the maximum penalty for the original offence.

(11) In this section—

"the environment" means the air, water and land, or any of those media, and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground;

"specified" means specified in the regulations; and

"substance" means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour and it includes mixtures of substances.

Textual Amendments

F577 Words in s. 140(3)(c) substituted (E.W.S.) (6.5.1999) by S.I. 1999/1108, **reg. 2**

Modifications etc. (not altering text)

C121 S. 140 extended (with modifications) (19.2.1999) by S.I. 1999/396, **reg. 2**

141 Power to prohibit or restrict the importation or exportation of waste.

(1) The Secretary of State may, for the purpose of preventing any risk of pollution of the environment or of harm to human health arising from waste being imported or exported or of conserving the facilities or resources for dealing with waste, make regulations prohibiting or restricting, or providing for the prohibition or restriction of—

(a) the importation into and the landing and unloading in the United Kingdom, or

(b) the exportation, or the loading for exportation, from the United Kingdom,

of waste of any description.

(2) Regulations under this section may make different provision for different descriptions of waste or waste of any description in different circumstances.

(3) Regulations under this section may, as respects any description of waste, confer or impose on waste regulation authorities or any of them such functions in relation to the importation of waste as appear to be appropriate to the Secretary of State, subject to such limitations and conditions as are specified in the regulations.

(4) Regulations under this section may confer or impose on waste regulation authorities or any of them functions of enforcing any of the regulations on behalf of the Secretary of State whether or not the functions fall within subsection (3) above.

(5) Regulations under this section may—

(a) as respects functions conferred or imposed on waste regulation authorities—

(i) make them exercisable in relation to individual consignments or consignments in a series by the same person but not in relation to consignments or descriptions of consignments generally; and

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(ii) confer on the Secretary of State power, by direction to the authorities or any of them, to make the functions or any of them exercisable instead by him whether indefinitely or for any period;

(b) impose or provide for the imposition of prohibitions either absolutely or only if conditions or procedures prescribed in or under the regulations are not complied with;

(c) impose duties to be complied with before, on or after any importation or exportation of waste by persons who are, or are to be, consignors, consignees, carriers or holders of the waste or any waste derived from it;

(d) confer powers corresponding to those conferred by section 69(3) above;

(e) provide for appeals to the Secretary of State from determinations made by authorities under the regulations;

(f) provide for the keeping by the Secretary of State, waste regulation authorities and waste collection authorities of public registers of information relating to the importation and exportation of waste and for the transmission of such information between any of those persons;

(g) create offences, subject to the limitation that no offence shall be punishable with imprisonment for more than two years or punishable on summary conviction with imprisonment for more than six months or a fine exceeding level 5 on the standard scale (if not calculated on a daily basis) or, in the case of a continuing offence, exceeding one-tenth of the level on the standard scale specified as the maximum penalty for the original offence.

(6) In this section—

"the environment" means land, water and air or any of them;

"harm" includes offence to any of man's senses;

"waste", "waste collection authority", and "waste regulation authority" have the same meaning as in Part II; and

"the United Kingdom" includes its territorial sea.

(7) In the application of this section to Northern Ireland and the territorial sea of the United Kingdom adjacent to Northern Ireland "waste regulation authority" means **[**[F578]the Department of the Environment for Northern Ireland**]**.

Textual Amendments

F578 Words in s. 141(7) substituted (N.I.) (27.11.2003 save for specified purposes and otherwise in accordance with art. 3 of the commencing S.R.) by S.I. 1997/2778 (N.I. 19), art. 83(1), Sch. 5 para. 5; S.R. 2003/489, **art. 2**, Sch.

142 Powers to obtain information about potentially hazardous substances.

(1) The Secretary of State may, for the purpose of assessing their potential for causing pollution of the environment or harm to human health, by regulations make provision for and in connection with the obtaining of relevant information relating to substances which may be specified by him by order for the purposes of this section.

(2) The Secretary of State shall not make an order under subsection (1) above specifying any substance—

(a) which was first supplied in any member State on or after 18th September 1981; or

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(b) in so far as it is a regulated substance for the purposes of any relevant enactment.

(3) The Secretary of State shall not make an order under subsection (1) above specifying any substance without consulting the committee established under section 140(5) except where it appears to him that information about the substance needs to be obtained urgently under this section.

(4) Regulations under this section may—

(a) prescribe the descriptions of relevant information which are to be furnished under this section in relation to specified substances;

(b) impose requirements on manufacturers, importers or suppliers generally to furnish information prescribed under paragraph (a) above;

(c) provide for the imposition of requirements on manufacturers, importers or suppliers generally to furnish relevant information relating to products or articles containing specified substances in relation to which information has been furnished in pursuance of paragraph (b) above;

(d) provide for the imposition of requirements on particular manufacturers, importers or suppliers to furnish further information relating to specified substances in relation to which information has been furnished in pursuance of paragraph (b) above;

(e) provide for the imposition of requirements on particular manufacturers or importers to carry out tests of specified substances and to furnish information of the results of the tests;

(f) authorise persons to comply with requirements to furnish information imposed on them by or under the regulations by means of representative persons or bodies;

(g) impose restrictions on the disclosure of information obtained under this section and provide for determining what information is, and what information is not, to be treated as furnished in confidence;

(h) create offences, subject to the limitation that no offence shall be punishable with imprisonment or punishable on summary conviction with a fine exceeding level 5 on the standard scale;

(i) make any public authority designated by the regulations responsible for the enforcement of the regulations to such extent as may be specified in the regulations;

(j) include such other incidental and supplemental, and such transitional, provisions as the Secretary of State considers appropriate.

(5) The Secretary of State shall have regard, in imposing or providing for the imposition of any requirement under subsection (4)(b), (c), (d) or (e) above, to the cost likely to be involved in complying with the requirement.

(6) In this section—

"the environment" means the air, water and land or any of them;

"relevant information", in relation to substances, products or articles, means information relating to their properties, production, distribution, importation or use or intended use and, in relation to products or articles, to their disposal as waste;

"substance" means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour and it includes mixtures of substances.

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F579(7) The enactments which are relevant for the purposes of subsection (2)(b) above are the following—

[F580the Manufacture and Storage of Explosives Regulations 2005**]**;

[F581the M80Radioactive Substances Act 1993**]**;

Parts II, III and VIII of the M81Medicines Act 1968;

Part IV of the M82Agriculture Act 1970;

the M83Misuse of Drugs Act 1971;

Part III of the M84Food and Environment Protection Act 1985; F582. . .

the M85Food Safety Act 1990;

[F583the Veterinary Medicines Regulations 2006;

and a substance is a regulated substance for the purposes of any such enactment in so far as any prohibition, restriction or requirement is imposed in relation to it by or under the enactment for the purposes of that enactment.**]**

Textual Amendments

F579 By The Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006 (S.R. 2006/425), arts. 1, 27(1), **Sch. 6 para. 14(3)** (with reg. 26) it is provided that for the words "Explosive Substances Act 1875" in s. 142(7) there be substituted (N.I.) (1.12.2006) the words "Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006"

F580 Words in s. 142(7) substituted (26.4.2005 with application as mentioned in reg. 3 of the amending S.I.) by The Manufacture and Storage of Explosives Regulations 2005 (S.I. 2005/1082), regs. 1(1), 28(1), **Sch. 5 para. 19(3)**

F581 Words in s. 142(7) substituted (27.8.1993) by 1993 c. 12, ss. 49(1), 51(2), **Sch. 4 para.8** (with ss. 42, 46)

F582 Word in s. 142(7) omitted (1.10.2006) by virtue of The Veterinary Medicines Regulations 2006 (S.I. 2006/2407), reg. 44(3), **Sch. 9 Pt. 1 para. 8(a)** (with reg. 3)

F583 Words in s. 142(7) added (1.10.2006) by The Veterinary Medicines Regulations 2006 (S.I. 2006/2407), reg. 44(3), **Sch. 9 Pt. 1 para. 8(b)** (with reg. 3)

Marginal Citations

M80 1993 C. 12.

M81 1968 c. 67.

M82 1970 c. 40.

M83 1971 c. 38.

M84 1985 c. 48.

M85 1990 c. 16.

F584143 . . . . . .

Textual Amendments

F584 S. 143 repealed (1.4.2000 for E., 14.7.2000 for S. and 15.9.2001 for W.) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 91, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 2000/340, **art. 2(b)(c)** (with art. 3); S.S.I. 2000/180, **art. 2(1)(b)** (with art. 3); S.I. 2001/3211, **art. 2(b)** (with saving in art. 3)

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144 Amendments of hazardous substances legislation.

Schedule 13 to this Act (which contains miscellaneous amendments to the legislation relating to hazardous substances) shall have effect.

Commencement Information

I72 S. 144 partly in force; s. 144 not in force at Royal Assent see s.164(3); s. 144 in force for certain purposes at 1.1.1992 by S.I. 1991/2829 art. 3; s. 144 in force at 18.2.1993 (insofar as it relates to paras. 11 and 12 of Schedule 13, Part II) and 1.5.1993 (insofar as it relates to para. 13 of Schedule 13, Part II) by S.I. 1993/274, **arts. 2(1)**, 3

145 Penalties for offences of polluting controlled waters etc.

F585(1) . . . . . .

(2) In sections 31(7)(a), 31A(2)(c)(i) and 32(7)(a) of the M86Control of Pollution Act 1974 (corresponding penalties for Scotland), for the words "the statutory maximum" there shall be substituted "£20,000".

Textual Amendments

F585 S. 145(1) repealed (1. 12. 1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3** (with Sch. 2 paras. 10, 14(1), 15)

Marginal Citations

M86 1974 c. 40.

Pollution at sea

146 Deposits of substances and articles in the sea, etc.

(1) Part II of the M87Food and Environment Protection Act 1985 (under which licences are required for deposits by British vessels etc at sea anywhere or by foreign vessels etc in United Kingdom waters or, in certain circumstances, within British fishery limits) shall be amended as follows.

(2) In section 5 (licences for depositing at sea)—

(a) in paragraph (a), after the words "United Kingdom waters" there shall be inserted the words "or United Kingdom controlled waters";

(b) paragraphs (c) and (d) shall be omitted;

(c) in paragraph (e)—

(i) in sub-paragraph (i), after the words "United Kingdom waters" there shall be inserted the words "or United Kingdom controlled waters" and at the end there shall be inserted the word "or"; and

(ii) sub-paragraph (iii) shall be omitted.

(3) In section 6 (licences for incineration at sea), in subsection (1)(a)—

(a) in sub-paragraph (i), after the words "United Kingdom waters" there shall be inserted the words "or United Kingdom controlled waters" and at the end there shall be inserted the word "or"; and

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(b) sub-paragraph (iii) shall be omitted.

(4) In section 9(5) (Convention State defence to offence of acting without or in contravention of a licence), in paragraph (b), for the word "waters" there shall be substituted the words "controlled waters (and not within United Kingdom waters)".

(5) In section 11 (powers of officers)—

(a) in subsection (2)(b), for the words "British fishery limits" there shall be substituted the words "United Kingdom waters or United Kingdom controlled waters;"; and

(b) in subsection (3)(a), for the words "British fishery limits" there shall be substituted the words "United Kingdom waters or United Kingdom controlled waters;".

(6) In section 21 (penalties for offences)—

(a) in subsection (2), for the words "2(4) and 9(1)" there shall be substituted the words "and 2(4)"; and

(b) after that subsection, there shall be inserted the following subsection—

"(2A) A person guilty of an offence under section 9(1) shall be liable—

(a) on summary conviction, to a fine of an amount not exceeding £50,000; and

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

(7) In section 24(1) (definitions) at the end of the definition of "United Kingdom waters" there shall be inserted the words "and "United Kingdom controlled waters" means any part of the sea within the limits of an area designated under section 1(7) of the [M88]Continental Shelf Act 1964".

(8) In Schedule 2 (powers in relation to vessels, aircraft, etc. for the purposes of Part I or Part II or both Parts of the Act), in paragraph 3(3) (removal to United Kingdom), after the words "Part I" there shall be inserted the words "or II".

Marginal Citations

M87 1985 c. 48.

M88 1964 c. 29.

147 Public registers relating to deposits in the sea and incineration at sea.

In Part II of the [M89]Food and Environment Protection Act 1985, for section 14 (registers of licences) there shall be substituted the following section—

"**14 Duty of licensing authority to keep public registers of information.**

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

(a) applications for licences made to that authority;

(b) the licences issued by that authority;

(c) variations of licences effected by that authority;

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(d) revocations of licences effected by that authority;

(e) convictions for any offences under section 9 above;

(f) information obtained or furnished in pursuance of section 8(3), (4) or (5) above;

(g) the occasions on which either of the Ministers has carried out any operation under section 10 above; and

(h) such other matters relating to operations for which licences are needed under this Part of this Act as may be prescribed.

(2) No information shall be included in any register which, in the opinion of either of the Ministers, is such that its disclosure on the register—

(a) would be contrary to the interests of national security, or

(b) would prejudice to an unreasonable degree some person's commercial interests.

(3) Information excluded from a register by virtue of subsection (2)(b) above shall be treated as ceasing to prejudice a person's commercial interests at the expiry of the period of four years beginning with the date on which the Minister made his decision under that subsection; but, on the application of any person to whom it relates, the Minister shall decide whether the information should be included or continue to be excluded from the register.

(4) Where information of any description is excluded from a register by virtue of subsection (2)(b) above, a statement shall be entered in the register indicating the existence of information of that description.

(5) It shall be the duty of each licensing authority—

(a) to secure that the register maintained by the authority under this section is available, at all reasonable times, for inspection by the public free of charge; and

(b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges.

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

(7) In this section "prescribed" means prescribed in regulations.

(8) Either of the Ministers may exercise any power to make regulations under this section and any such power shall be exercisable by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament."

Commencement Information

I73 S. 147 wholly in force at 31.5.1991 see s. 164(3) and S.I. 1991/1319, **art. 2**

Marginal Citations

M89 1985 c. 48.

F586148 . . . . . .

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F586 S. 148 repealed (1.1.1996) by 1995 c. 21, ss. 314(1), 316(2), **Sch.12** (with savings in s. 312(1) and Sch. 14 para. 1)

Control of Dogs

149 Seizure of stray dogs.

(1) Every local authority shall appoint an officer (under whatever title the authority may determine) for the purpose of discharging the functions imposed or conferred by this section for dealing with stray dogs found in the area of the authority.

(2) The officer may delegate the discharge of his functions to another person but he shall remain responsible for securing that the functions are properly discharged.

(3) Where the officer has reason to believe that any dog found in a public place or on any other land or premises is a stray dog, he shall (if practicable) seize the dog and detain it, but, where he finds it on land or premises which is not a public place, only with the consent of the owner or occupier of the land or premises.

(4) Where any dog seized under this section wears a collar having inscribed thereon or attached thereto the address of any person, or the owner of the dog is known, the officer shall serve on the person whose address is given on the collar, or on the owner, a notice in writing stating that the dog has been seized and where it is being kept and stating that the dog will be liable to be disposed of if it is not claimed within seven clear days after the service of the notice and the amounts for which he would be liable under subsection (5) below are not paid.

(5) A person claiming to be the owner of a dog seized under this section shall not be entitled to have the dog returned to him unless he pays all the expenses incurred by reason of its detention and such further amount as is for the time being prescribed.

(6) Where any dog seized under this section has been detained for seven clear days after the seizure or, where a notice has been served under subsection (4) above, the service of the notice and the owner has not claimed the dog and paid the amounts due under subsection (5) above the officer may dispose of the dog—

(a) by selling it or giving it to a person who will, in his opinion, care properly for the dog;

(b) by selling it or giving it to an establishment for the reception of stray dogs; or

(c) by destroying it in a manner to cause as little pain as possible;

but no dog seized under this section shall be sold or given for the purposes of vivisection.

(7) Where a dog is disposed of under subsection (6)(a) or (b) above to a person acting in good faith, the ownership of the dog shall be vested in the recipient.

(8) The officer shall keep a register containing the prescribed particulars of or relating to dogs seized under this section and the register shall be available, at all reasonable times, for inspection by the public free of charge.

(9) The officer shall cause any dog detained under this section to be properly fed and maintained.

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(10) Notwithstanding anything in this section, the officer may cause a dog detained under this section to be destroyed before the expiration of the period mentioned in subsection (6) above where he is of the opinion that this should be done to avoid suffering.

(11) In this section—

"local authority", in relation to England [F587]. . ., means a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly **[**[F588]in relation to Wales, means a county council or a county borough council**]** and, in relation to Scotland, means **[**[F589]a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**]**;

"officer" means an officer appointed under subsection (1) above;

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

"public place" means—

(i) as respects England and Wales, any highway and any other place to which the public are entitled or permitted to have access;

(ii) as respects Scotland, any road (within the meaning of the [M90]Roads (Scotland) Act 1984) and any other place to which the public are entitled or permitted to have access;

and, for the purposes of section 160 below in its application to this section, the proper address of the owner of a dog which wears a collar includes the address given on the collar.

Textual Amendments

F587 Words in s. 149(11) repealed (1.4.1996) by 1994 c. 19, ss. 22(3), 66(8), Sch. 9 para. 17(13), **Sch.18** (with ss. 54(7), 66(7), Sch. 17 paras. 22, 23(2)); S.I. 1996/396, art. 3, **Sch.1**

F588 Words in s. 149(11) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(13)** (with ss. 54(7), 66(7), Sch. 17 paras. 22, 23(2)); S.I. 1996/396, art. 3, **Sch.1**

F589 Words in s. 149(11) substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 167(17)**; S.I. 1996/323, **art. 4(c)**

Modifications etc. (not altering text)

C122 S. 149 extended (1.4.1992) by S.I. 1992/901, **art. 4**.

Commencement Information

I74 S. 149 wholly in force; s. 149 not in force at Royal Assent see. s. 164(3); s. 149 in force for certain purposes at 14.2.1992 see S.I. 1992/266, art. 2; s. 149 in force in so far as not then already in force at 1.4.1992 see s. 164(3) and S.I. 1992/266, **art. 3**.

Marginal Citations

M90 1984 c. 54.

150 Delivery of stray dogs to [F590]. . . local authority officer.

(1) Any person (in this section referred to as "the finder") who takes possession of a stray dog shall forthwith either—

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(a) return the dog to its owner; or

(b) take the dog—

(i) to the officer of the local authority for the area in which the dog was found; [F591]. . .

(ii) [F591]. . . . . .

and shall inform the officer of the local authority [F592]. . . where the dog was found.

(2) Where a dog has been taken under subsection (1) above to the officer of a local authority, then—

(a) if the finder desires to keep the dog, he shall inform the officer of this fact and shall furnish his name and address and the officer shall, having complied with the procedure (if any) prescribed under subsection (6) below, allow the finder to remove the dog;

(b) if the finder does not desire to keep the dog, the officer shall, unless he has reason to believe it is not a stray, treat it as if it had been seized by him under section 149 above.

(3) Where the finder of a dog keeps the dog by virtue of this section he must keep it for not less than one month.

(4) In Scotland a person who keeps a dog by virtue of this section for a period of two months without its being claimed by the person who has right to it shall at the end of that period become the owner of the dog.

(5) If the finder of a dog fails to comply with the requirements of subsection (1) or (3) above he shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(6) The Secretary of State may, by regulations, prescribe the procedure to be followed under subsection (2)(a) above.

(7) In this section "local authority" and "officer" have the same meaning as in section 149 above.

Textual Amendments

F590 Words in s. 150 heading repealed (E.W.) (6.4.2008) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 68(4), 107, 108, **Sch. 5 Pt. 6**; S.I. 2008/956, **art. 2(b)**

F591 S. 150(1)(b)(ii) and preceding word repealed (E.W.) (6.4.2008) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 68(3)(a), 107, 108, **Sch. 5 Pt. 6**; S.I. 2008/956, **art. 2(b)**

F592 Words in s. 150(1) repealed (E.W.) (6.4.2008) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 68(3)(b), 107, 108, **Sch. 5 Pt. 6**; S.I. 2008/956, **art. 2(b)**

Commencement Information

I75 S. 150 wholly in force; s. 150 not in force at Royal Assent see s. 164(3); s. 150 in force for certain purposes at 14.2.1992 see s. 164(3) and S.I. 1992/266, **art. 2**; s. 150 in force in so far as not then already in force at 1.4.1992 see s. 164(3) and S.I. 1992/266, **art. 3**.

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151 Enforcement of orders about collars and tags for dogs.

(1) Section 13 of the Animal Health Act 1981 (orders for control, etc. of dogs) shall be amended by the insertion, after subsection (2), of the following subsections—

"(3) An order under subsection (2)(a) above may include provision for the execution and enforcement of the order by the officers of local authorities (and not by the police force for any area).

(4) In subsection (3) above "local authority" and "officer" have the same meaning as in section 149 of the Environmental Protection Act 1990."

(2) In section 50(1) of that Act (meaning of "local authority") at the end there shall be inserted the words "and to section 13(3) above".

(3) In section 60(1) of that Act (enforcement), at the end, there shall be inserted the words "but subject, in the case of orders under section 13, to any provision made under subsection (3) of that section."

Commencement Information

I76 S. 151 wholly in force; s. 151 not in force at Royal Assent see s. 164(3); s. 151 in force for certain purposes at 14.2.1992 see s. 164(3) and S.I. 1992/266, **art. 2**; s. 151 in force in so far as not then aleardy in force at 1.4.1992 see s. 164(3) and S.I. 1992/266, **art. 3**.

Straw and stubble burning

152 Burning of straw and stubble etc.

(1) The appropriate Minister may by regulations prohibit or restrict the burning of crop residues on agricultural land by persons engaged in agriculture and he may (by the same or other regulations) provide exemptions from any prohibition or restriction so imposed.

(2) Regulations providing an exemption from any prohibition or restriction may make the exemption applicable—

(a) in all, or only in specified, areas;

(b) to all, or only to specified, crop residues; or

(c) in all, or only in specified, circumstances.

(3) Any power to make regulations under this section includes power—

(a) to make different provision for different areas or circumstances;

(b) where burning of a crop residue is restricted, to impose requirements to be complied with before or after the burning;

(c) to create offences subject to the limitation that no offence shall be made punishable otherwise than on summary conviction and the fine prescribed for the offence shall not exceed level 5 on the standard scale; and

(d) to make such incidental, supplemental and transitional provision as the appropriate Minister considers appropriate.

(4) Where it appears to the appropriate Minister appropriate to do so in consequence of any regulations made under the foregoing provisions of this section, the appropriate

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Minister may, by order, repeal any byelaws of local authorities dealing with the burning of crop residues on agricultural land.

(5) In this section—

"agriculture" and "agricultural land" have, as respects England or as respects Wales, the same meaning as in the [M91]Agriculture Act 1947 and, as respects Scotland, the same meaning as in the [M92]Agriculture (Scotland) Act 1948;

"crop residue" means straw or stubble or any other crop residue;

"the appropriate Minister" means the Minister of Agriculture, Fisheries and Food or the Secretary of State or both of them.

Commencement Information

I77 S. 152 wholly in force at 10.7.1991 see s. 164(3) and S.I. 1991/1577, **art. 2**

Marginal Citations

M91 1947 c. 48.

M92 1948 c. 45.

Environmental expenditure

153 Financial assistance for environmental purposes.

(1) The Secretary of State may, with the consent of the Treasury, give financial assistance to, or for the purposes of, any of the following—

(a) the United Nations Environment Programme;

(b) the European Environmental Bureau;

(c) the chemicals programme of the Organisation for Economic Co-operation and Development;

(d) the joint inter-Governmental panel on Climate Change of the United Nations Environment Programme and the World Meteorological Organisation;

(e) the International Union for the Conservation of Nature and Natural Resources;

(f) the Convention on International Trade in Endangered Species of Wild Fauna and Flora;

(g) the Convention on Wetlands of International Importance Especially as Waterfowl Habitat;

(h) the Convention on Long-range Transboundary Air Pollution and any protocol to that Convention;

(i) the Convention and Protocol for the Protection of the Ozone Layer;

(j) the Convention on the Conservation of Migratory Species of Wild Animals;

(k) the Groundwork Foundation and Trusts;

(l) the environmental protection technology scheme for research and development in the United Kingdom in relation to such technology;

(m) the programme known as the special grants programme so far as it relates to the protection, improvement or better understanding of the environment of, or of any part of, Great Britain.

[F593(n) the programmes of regional and islands councils in Scotland, as local authorities exercising functions under the Sewerage (Scotland) Act [M93]1968,

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for the carrying out of works to improve the quality of inland, coastal and relevant territorial waters, as defined in section 30A of the Control of Pollution Act [M94]1974, or otherwise to benefit the environment.**]**

[[F594](n) the Royal Society for the Encouragement of Arts, Manufactures and Commerce so far as its activities relate to the protection, improvement or better understanding of the environment.**]**

[[F595](o) UK 2000 Scotland.**]**

[[F596](p) the programme known as the Environment Wales programme so far as it relates to the protection, improvement or better understanding of the environment of, or of any part of, Wales.**]**

[[F597](q) the grant programme known as the Environmental Action Fund;

(r) the programmes or schemes of the United Nations Habitat and Human Settlements Foundation;

(s) the programmes or schemes of the International Federation for Housing and Planning so far as they relate to the protection, improvement or better understanding of the environment;

(t) the programmes or schemes of the INTA.AIVN-International Urban Development Association so far as they relate to the protection, improvement or better understanding of the environment;

(u) the scheme known as the Darwin Initiative for the Survival of Species that provides support for the conservation and sustainable use of biological resources and habitats and for the furtherance of the aims of the Convention on Biological Diversity.**]**

[[F598](v) the programme known as the Promotion of Positive Environmental Management in Industry Programme.**]**

[[F599](w) any national or international architectural award scheme or competition scheme relating to the protection, improvement or better understanding of the environment;

(x) the National Forest Company.**]**

[[F600](y) the Energy Saving Trust Limited.**]**

[[F601](z) the Convention on Biological Diversity;

(aa) the United Nations Framework Convention on Climate Change.**]**

[[F602](bb) the programme known as Radon Measurement and Support for Remedial Works Campaigns in England;**]**

[[F603](cc) the programme known as the Mersey Basin Campaign, in so far as it relates to the protection, improvement or better understanding of the environment, administered by the Mersey Basin Business Foundation;

(dd) Going For Green Limited, in so far as the activities of that company relate to the protection, improvement or better understanding of the environment.**]**

[[F604](ee) the programme known as the Sustainable Action Fund.**]**

[[F605](ff) The Tidy Britain Group.**]**

[[F606](gg) The Wales Wildlife and Countryside Link.**]**

[[F607](hh) Environmental Campaigns Limited.**]**

[[F608](ii) the Convention for the Protection of the Marine Environment of the North East Atlantic.**]**

[[F609](jj) the programme known as Pollution Emergency Response Services;

(kk) the programme known as the Waste and Resources Action Programme;

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(ll) the Protocol on Energy Efficiency and Related Environmental Aspects to the Energy Charter Treaty;**]**

[F610(mm) the programme known as the Strategic Waste Fund.**]**

[F611(nn) any scheme for the storage, treatment or disposal of any material or product for the purpose of preventing or reducing environmental damage;**]**

[F612(oo) the programme known as the Waste Minimisation and Recycling Programme;

(pp) the Carbon Trust;**]**

[F613(qq) the fund known as the Aggregates Levy Sustainability Fund;**]**

(rr) F614 . . . . . .

[F615(rr) the programme known as the Waste Minimisation and Recycling Programme;

(ss) the Carbon Trust;

(tt) any scheme for the regulation of emissions from motor vehicles.**]**

[F616(uu) the scheme known as the Bio-energy Infrastructure Scheme for Scotland.**]**

[F617**[**F618(uu) the International Sustainable Development Fund;**]]**

[F619(vv) the scheme known as the Bio-energy Infrastructure Scheme.**]**

[F620(ww) **[**F621the scheme known as the World Summit on Sustainable Development Implementation Fund;**]]**

[F622(xx) the programme known as the Envirowise Programme, in relation to its activities in England.**]**

[F623(yy) the Zero Carbon Hub Limited.**]**

[F624(zz) the scheme known as the Community and Renewable Energy Scheme.**]**

(2) Financial assistance may be given in respect of particular activities or generally in respect of all or some part of the activities carried on or supported by the recipient.

(3) Financial assistance shall be given in such form and on such terms as the Secretary of State may think fit and, in particular, assistance may be given by making grants (whether or not repayable), loans or guarantees to, or by incurring expenditure, or providing services, staff or equipment for the benefit of, the recipient.

(4) The Secretary of State may, by order, vary subsection (1) above by adding to or deleting from it any description of organisation, scheme, programme or international agreement whose purposes relate to the protection, improvement or better understanding of the environment.

F625(5) . . . . . .

Textual Amendments

F593 S. 153(1) varied (S.) by the addition of s. 153(1)(n) (beginning "the programmes") by S.I. 1991/146, **art. 2** (made 26.1.1991 and coming into force 1.3.1991)

F594 S. 153(1)(n) (beginning "the Royal Society") added (15.4.1991) by S.I. 1992/682, **art. 2**.

F595 S. 153(1) varied (S.) by the addition of s. 153(1)(o) by S.I. 1991/1179, **art. 2**

F596 S. 153(1)(p) inserted (1.4.1992) by S.I. 1992/654, **art. 2**.

F597 S. 153(1)(q)-(u) added (12.5.1993) by S.I. 1993/1062, **art. 2**

F598 S. 153(1)(v) added (15.7.1993) by S.I. 1993/1518, **art. 2**

F599 S. 153(1)(w)(x) inserted (15.2.1995) by S.I. 1995/150, **art. 2**

F600 S. 153(1)(y) inserted (28.5.1995) by S.I. 1995/554, **art. 2**

F601 S. 153(1)(z)(aa) inserted (16.5.1995) by S.I. 1995/1085, **art. 2**

F602 S. 153(1)(bb) substituted (1.3.2000) by S.I. 2000/207, **art. 2**

F603 S. 153(1)(cc)(dd) added (1.4.1996) by S.I. 1996/505, **art. 2**

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F604 S. 153(1)(ee) inserted (1.7.1996) by S.I. 1996/1431, **arts. 1**, 2
F605 S. 153(1)(ff) inserted (1.4.1997) by S.I. 1997/651, **art. 2**
F606 S. 153(1)(gg) inserted (1.4.1998) by S.I. 1998/538, **art. 2**.
F607 S. 153(1)(hh) inserted (24.4.1998) by S.I. 1998/1001, **art. 2**.
F608 S. 153(1)(ii) inserted (27.1.1999) by S.I. 1998/3234, **art. 2**.
F609 S. 153(1)(jj)(kk)(ll) inserted (8.9.2000) by S.I. 2000/2211, **art. 2**
F610 S. 153(1)(mm) inserted (S.) (1.1.2001) by S.S.I. 2000/430, **art. 2**
F611 S. 153(1)(nn) added (S.) (26.3.2002) by The Financial Assistance for Environmental Purposes (Scotland) Order 2002 (S.S.I. 2002/83), **art. 2**
F612 S. 153(1)(oo)(pp) inserted (29.7.2002) by The Financial Assistance for Environmental Purposes Order 2002 (S.I. 2002/1686), **art. 2**
F613 S. 153(1)(qq) inserted (27.8.2002) by The Financial Assistance for Environmental Purposes (No. 2) Order 2002 (S.I. 2002/2021), **art. 2**
F614 S. 153(1)(rr) (which was inserted by S.I. 2003/714, art. 2) repealed (1.1.2006) by Clean Neighbourhoods and Environment Act 2005 (c. 16), s. 107, **Sch. 5 Pt. 8**; S.I. 2005/3439, **art. 2**
F615 S. 153(1)(rr)-(tt) added (S.) (1.4.2003) by The Financial Assistance for Environmental Purposes (Scotland) Order 2003 (S.S.I. 2003/173), **art. 2**
F616 S. 153(1)(uu) added (S.) (1.7.2005) by The Financial Assistance for Environmental Purposes (Scotland) Order 2005 (S.S.I. 2005/324), **art. 2**
F617 S. 153(1)(uu) inserted (E.W.) (10.9.2003) by The Financial Assistance for Environmental Purposes (England and Wales) Order 2003 (S.I. 2003/2119), **art. 2**
F618 S. 153(1)(uu) substituted (E.W.) (9.7.2007) by The Financial Assistance for Environmental Purposes Order 2007 (S.I. 2007/1671), **art. 3(a)**
F619 S. 153(1)(vv) inserted (E.W.N.I.) (29.7.2005) by The Financial Assistance for Environmental Purposes Order 2005 (S.I. 2005/1805), **art. 2**
F620 S. 153(1)(ww) inserted (E.W.N.I.) (31.7.2006) by The Financial Assistance for Environmental Purposes Order 2006 (S.I. 2006/1735), **art. 2(a)**
F621 S. 153(1)(ww) repealed (E.W.N.I) (9.7.2007) by The Financial Assistance for Environmental Purposes Order 2007 (S.I. 2007/1671), **art. 3(b)**
F622 S. 153(1)(xx) inserted (E.W.) (31.7.2006) by The Financial Assistance for Environmental Purposes Order 2006 (S.I. 2006/1735), **art. 2(b)**
F623 S. 153(1)(yy) inserted (E.W.) (23.1.2009) by The Financial Assistance for Environmental Purposes (England and Wales) Order 2008 (S.I. 2008/3243), **art. 2**
F624 S. 153(1)(zz) inserted (S.) (6.4.2009) by The Financial Assistance for Environmental Purposes (Scotland) Order (S.S.I. 2009/75), {art. 2}
F625 S. 153(5) repealed (2.12.1999) by 1998 c. 47, s. 100(2), **Sch. 15** (with s. 95); S.I. 1999/3209, art. 2, **Sch.**

Marginal Citations

M93 1968 c.47 (**100:2**).
M94 1974 c.40 (**46:4**).

154 The Groundwork Foundation: superannuation.

Employment with the Groundwork Foundation shall be and shall be deemed always to have been included among the kinds of employment to which a superannuation scheme under section 1 of the [M95]Superannuation Act 1972 can apply, and accordingly in Schedule 1 to that Act (in which those kinds of employment are listed) the words "Groundwork Foundation" shall be inserted after the words "Gaming Board for Great Britain".

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Marginal Citations
M95 1972 c. 11.

155 Remuneration of chairman of Inland Waterways Amenity Advisory Council.

In section 110 of the [M96]Transport Act [M97]1968 (Inland Waterways Amenity Advisory Council) at the end there shall be inserted—

"(7) The Secretary of State may, with the consent of the Treasury, pay the chairman of the Council out of money provided by Parliament such remuneration as the Secretary of State may determine; and where the chairman is in receipt of such remuneration he shall not be paid any allowance under subsection (6) of this section in respect of loss of remunerative time."

Marginal Citations
M96 1968 c. 78.
M97 1968 c. 73.

PART IX

GENERAL

156 Power to give effect to Community and other international obligations etc.

(1) The Secretary of State may by regulations provide that the provisions to which this section applies shall have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty's Government in the United Kingdom—

(a) to give effect to any Community obligation or exercise any related right; or

(b) to give effect to any obligation or exercise any related right under any international agreement to which the United Kingdom is for the time being a party.

(2) This section applies to the following provisions of this Act—

(a) Part I;

(b) Part II;

(c) Part VI; and

(d) in Part VIII, sections 140, 141 or 142;

and the provisions of the **[**[F626]the [M98]Radioactive Substances Act 1993**]**.

(3) In this section—

"modifications" includes additions, alterations and omissions;

"prescribed" means prescribed in regulations under this section; and

"related right", in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.

(4) This section, in its application to Northern Ireland, has effect subject to the following modifications, that is to say—

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(a) in its application in relation to Part VI and sections 140, 141, and 142, the reference to Her Majesty's Government in the United Kingdom includes a reference to Her Majesty's Government in Northern Ireland; and

(b) in its application in relation to the Radioactive Substances Act 1960, the reference to the Secretary of State shall be construed as a reference to the Department of the Environment for Northern Ireland and the reference to Her Majesty's Government in the United Kingdom shall be construed as a reference to Her Majesty's Government in Northern Ireland;

and regulations under it made by that Department shall be a statutory rule for the purposes of the [M99]Statutory Rules (Northern Ireland) Order 1979 and shall be subject to negative resolution within the meaning of section 41(6) of the [M100]Interpretation Act (Northern Ireland) 1954.

Textual Amendments

F626 Words in s. 156(2) substituted (27.8.1993) by 1993 c. 12, ss. 49(1), 51(2), **Sch. 4 para.9** (with ss. 42, 46)

Commencement Information

I78 S. 156 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

Marginal Citations

M98 1960 c. 34.

M99 S.I. 1979/1573 (N.I. 12).

M100 1954 c. 33 (N.I.).

157 Offences by bodies corporate.

(1) Where an offence under any provision of this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Modifications etc. (not altering text)

C123 S. 157 applied (1.5.1994) by S.I. 1994/1056, **regs. 1(1)**, 20(6)
S. 157: powers to make corresponding provisions conferred (27.7.1999) by 1999 c. 24, s. 2, **Sch. 1 Pt. I para. 20(1)(a)**

158 Offences under Parts I, II, IV, VI, etc. due to fault of others.

Where the commission by any person of an offence under Part I, II, IV, or VI, or section 140, 141 or 142 above is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of

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this section whether or not proceedings for the offence are taken against the first-mentioned person.

Modifications etc. (not altering text)

C124 S. 158: power to make corresponding provisions conferred (27.7.1999) by 1999 c. 24, s. 2, **Sch. 1 Pt. I para. 20(1)(a)**

Commencement Information

I79 S. 158 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

159 Application to Crown.

(1) Subject to the provisions of this section, the provisions of this Act and of regulations and orders made under it shall bind the Crown.

(2) No contravention by the Crown of any provision of this Act or of any regulations or order made under it shall make the Crown criminally liable; but the High Court or, in Scotland, the Court of Session may, on the application of any public or local authority charged with enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in subsection (2) above, the provisions of this Act and of regulations and orders made under it shall apply to persons in the public service of the Crown as they apply to other persons.

(4) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any powers of entry exercisable in relation to them specified in the certificate that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to the premises, those powers shall not be exercisable in relation to those premises; and in this subsection "Crown premises" means premises held or used by or on behalf of the Crown.

(5) Nothing in this section shall be taken as in any way affecting Her Majesty in her private capacity; and this subsection shall be construed as if section 38(3) of the [M101]Crown Proceedings Act 1947 (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Act.

(6) References in this section to regulations or orders are references to regulations or orders made by statutory instrument.

(7) For the purposes of this section in its application to Part II and Part IV the authority charged with enforcing the provisions of those Parts in its area is—

(a) in the case of Part II, any waste regulation authority, and

(b) in the case of Part IV, any principal litter authority.

Modifications etc. (not altering text)

C125 S. 159(4): functions excercisable concurrently (1.7.1999) by the Scottish Ministers and Ministers of the Crown after consultation with the Secretary of State by S.I. 1999/1750, art. 3, **Sch. 2**

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Marginal Citations

M101 1947 c. 44.

160 Service of notices.

(1) Any notice required or authorised by or under this Act to be served on or given to an inspector may be served or given by delivering it to him or by leaving it at, or sending it by post to, his office.

(2) Any such notice required or authorised to be served on or given to a person other than an inspector may be served or given by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.

(3) Any such notice may—

(a) in the case of a body corporate, be served on or given to the secretary or clerk of that body;

(b) in the case of a partnership, be served on or given to a partner or a person having the control or management of the partnership business.

(4) For the purposes of this section and of section 7 of the [M102]Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person on or to whom any such notice is to be served or given shall be his last known address, except that—

(a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body;

(b) in the case of a partnership or person having the control or the management of the partnership business, it shall be the principal office of the partnership;

and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be their principal office within the United Kingdom.

(5) If the person to be served with or given any such notice has specified an address in the United Kingdom other than his proper address within the meaning of subsection (4) above as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address shall also be treated for the purposes of this section and section 7 of the Interpretation Act 1978 as his proper address.

(6) The preceding provisions of this section shall apply to the sending or giving of a document as they apply to the giving of a notice.

Modifications etc. (not altering text)

C126 S. 160: power to make corresponding provisions conferred (27.7.1999) by 1999 c. 24, s. 2, **Sch. 1 Pt. I para. 20(1)(a)**

C127 S. 160 modified (E.W.) (31.3.2004 for E. for certain purposes, 31.3.2004 for W. and 6.4.2006 otherwise for E.) by Anti-social Behaviour Act 2003 (c. 38), **ss. 49(3)**, 93; S.I. 2004/690, **art. 4**; S.I. 2004/999, **art. 2**; S.I. 2006/393, **art. 2**

C128 S. 160(2)-(5) applied (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 60**, **61**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

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Marginal Citations
M102 1978 c. 30.

161 Regulations, orders and directions.

(1) Any power of the Secretary of State **[**F627, National Assembly for Wales**]** or the Minister of Agriculture, Fisheries and Food under this Act to make regulations or orders shall be exercisable by statutory instrument; but this subsection does not apply to orders under section 72 above or paragraph 4 of Schedule 3.

(2) **[**F628Subject to subsection (2B) below,**]** a statutory instrument containing regulations under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

[F629(2ZA) Subsection (2) does not apply to a statutory instrument containing regulations under paragraph 11 of Schedule 2AA to this Act to which paragraph 16(5) of that Schedule applies.**]**

[F630(2A) Subsection (2) does not apply to a statutory instrument made solely by the National Assembly for Wales.**]**

[F631(2B) No statutory instrument containing regulations made under section 79(1ZA) or 80ZA(11) above may be made unless a draft of it has been laid before, and approved by resolution of, the Scottish Parliament.**]**

(3) Except in the cases specified in subsection (4) below, a statutory instrument containing an order under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Subsection (3) above does not apply to **[**F632a statutory instrument—

(a) which contains an order under section 78M(4) above, or

[F633(aa) which contains—

(i) an order under paragraph 2(3), 6(2) or 15(2) of Schedule 2AA to this Act, or

(ii) an order under paragraph 5(1) of that Schedule to which paragraph 16(3) of that Schedule applies, or**]**

(b) by reason only that it contains**]** an order under section **[**F634128(3)**]** 130(4), 131(3) or 138(2) above or section 164(3) below.**[**F635 or

(c) which is made solely by the National Assembly for Wales.**]**

(5) Any power conferred by this Act to give a direction shall include power to vary or revoke the direction.

(6) Any direction given under this Act shall be in writing.

Textual Amendments
F627 Words in s. 161(1) inserted (E.W.) (7.4.2005) by Clean Neighbourhoods and Environment Act 2005 (c. 16), s. 106, **Sch. 4 para. 10(2)**
F628 Words in s. 161(2) inserted (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), **ss. 114(2)**, 128(2) (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1
F629 S. 161(2ZA) inserted (E.W.) by Climate Change Act 2008 (c. 27), ss. 71, 100, **Sch. 5 para. 4(2)** (the amendment coming into force in accordance with ss. 72-75 of the amending Act, see s. 100(2)(5))

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F630 S. 161(2A) inserted (E.W.) (7.4.2005) by Clean Neighbourhoods and Environment Act 2005 (c. 16), s. 106, **Sch. 4 para. 10(3)**

F631 S. 161(2B) inserted (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5) {ss. 114(3)}, 128(2) (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1

F632 Words in s. 161(4) inserted (1.4.2000 for E., 14.7.2000 for S. and 15.9.2001 for W.) by 1995 c. 25, s. 120(1), **Sch. 22 para.92** (with ss. 7(6), 115, 117); S.I. 2000/340, **art. 2(b)** (with art. 3); S.S.I. 2000/180, **art. 2(1)(b)** (with art. 3); S.I. 2001/3211, **art. 2(b)** (with saving in art. 3)

F633 S. 161(4)(aa) inserted (E.W.) by Climate Change Act 2008 (c. 27), ss. 71, 100, **Sch. 5 para. 4(3)** (the amendment coming into force in accordance with ss. 72-75 of the amending Act, see s. 100(2)(5))

F634 Words in s. 161(4)(b) inserted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 125**; S.I. 2006/2541, **art. 2**

F635 S. 161(4)(c) and preceding word inserted (E.W.) (7.4.2005) by Clean Neighbourhoods and Environment Act 2005 (c. 16), s. 106, **Sch. 4 para. 10(4)**

162 Consequential and minor amendments and repeals.

(1) The enactments specified in Schedule 15 to this Act shall have effect subject to the amendments specified in that Schedule.

(2) The enactments specified in Schedule 16 to this Act are hereby repealed subject to section 77 above, Schedule 11 to this Act and any provision made by way of a note in Schedule 16.

(3) The repeal of section 124 of the [M103]Civic Government (Scotland) Act 1982 shall not affect a compulsory purchase order made for the purposes of that section under the [M104]Local Government (Scotland) Act 1973 before the coming into force of the repeal and such compulsory purchase order may be proceeded with and shall have effect as if the said section 124 had not been repealed.

(4) The Secretary of State may by order repeal or amend any provision of any local Act passed before this Act (including an Act confirming a provisional order) or of any order or other instrument made under an Act so passed if it appears to him that the provision is inconsistent with, or has become unnecessary or requires alteration in consequence of, any provision of this Act or corresponds to any provision repealed by this Act.

(5) Any regulations made under section 100 of the [M105]Control of Pollution Act 1974 shall have effect after the repeal of that section by subsection (2) above as if made under section 140 of this Act.

Commencement Information

I80 S. 162 partly in force; s. 162 partly in force at Royal Assent, see s. 164(2); s. 162 partly in force at: 1.1.1991 by S.I. 1990/2635, **art. 3**; 14.1.1991 by S.I. 1991/96, **art. 2**; 1.4.1991 by S.I. 1991/685, **art. 3**; 1.4.1991 by S.I. 1991/1042, **art. 2**; 31.5.1991 by S.I. 1991/1319, **art. 2**; 1.1.1992 and 1.4.1992 by S.I. 1991/2829, **arts. 3**, 4; 1.4.1992 by S.I. 1992/266, **art. 3**; s. 162(3) in force 1.4.1992 by S.I. 1992/266, **art. 3**; s. 162(1) in force for certain purposes at 18.2.1993 by S.I. 1993/274, **art. 2(1)**; s. 162(2) in force at 18.2.1993 and 1.5.1993 for certain purposes by S.I. 1993/274, **arts. 2(1)**, 3; s. 162(1)(2) in force at 1.5.1994 and other ascertainable dates for limited purposes by S.I. 1994/1096, **arts. 2(1)(2)(3)**, 3; s. 162(2) in force at 1.12.1994, or certain later ascertainable dates, for limited purposes by S.I. 1994/2854, **art. 2**; s. 162(2) in force at 16.12.1996 for certain purposes by S.I. 1996/3056, **art. 2**

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Marginal Citations

M103 1982 c. 45.
M104 1973 c. 65.
M105 1974 c. 40.

163 Financial provisions.

(1) There shall be paid out of money provided by Parliament—

(a) any administrative or other expenses incurred by any Minister of the Crown in consequence of the provisions of this Act; and

(b) any increase attributable to this Act in the sums payable out of money so provided under any other Act.

(2) Any fees or other sums received by any Minister of the Crown by virtue of any provisions of this Act shall be paid into the Consolidated Fund.

[F636 163A Application of Part VI: England and Wales

[F637 (1) The amendments made to the provisions of Part VI by the 2002 Regulations, other than the amendment of section 127(2) as it relates to the continental shelf, have effect in relation to England only, and accordingly, in the application of that Part in relation to Wales, the provisions listed in subsection (2) below continue to have effect without the amendments made by the 2002 Regulations.

(2) The provisions referred to in subsection (1) above are—

(a) section 106(1) and (4) to (6);

(b) section 107(2), (3), (6), (9) and (11);

(c) section 111(6);

(d) section 112(1) and (5);

(e) section 119(1);

(f) section 123(7);

(g) section 127(2) in so far as it relates to the territorial sea.

(3) In this section "the 2002 Regulations" means the Genetically Modified Organisms (Deliberate Release) Regulations 2002.**]]**

Textual Amendments

F636 S. 163A inserted (E.W.) (17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **39**

F637 S. 163A ceases to have effect (W.) (31.12.2002) by virtue of Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 41**

164 Short title, commencement and extent.

(1) This Act may be cited as the Environmental Protection Act 1990.

(2) The following provisions of the Act shall come into force at the end of the period of two months beginning with the day on which it is passed, namely—

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sections 79 to 85;
section 97;
section 99;
section 105 in so far as it relates to paragraphs 7, 13, 14 and 15 of Schedule 5;
section 140;
section 141;
section 142;
section 145;
section 146;
section 148;
section 153;
section 154;
section 155;
section 157;
section 160;
section 161;
section 162(1) in so far as it relates to paragraphs 4, 5, 7, 8, 9, 18, 22, 24 and 31(4)(b) of Schedule 15; but, in the case of paragraph 22, in so far only as that paragraph inserts a paragraph (m) into section 7(4) of the Act of 1984;
section 162(2) in so far as it relates to Part III of Schedule 16 and, in Part IX of that Schedule, the repeal of section 100 of the [M106]Control of Pollution Act 1974;
section 162(5);
section 163.

(3) The remainder of this Act (except this section) shall come into force on such day as the Secretary of State may by order appoint and different days may be appointed for different provisions or different purposes.

(4) Only the following provisions of this Act (together with this section) extend to Northern Ireland, namely—

section 3(5) to (8);
section 62(2)(e) in so far as it relates to importation;
Part V;
[F638]. . ., section 127(2) in so far as it relates to the continental shelf;
section 140 in so far as it relates to importation;
section 141;
section 142 in so far as it relates to importation;
section 146;
section 147;
section 148;
section 153 except subsection (1)(k) and (m);
section 156 in so far as it relates to Part VI and sections 140, 141 and 142 in so far as they extend to Northern Ireland and in so far as it relates to the [M107]Radioactive Substances Act 1960;
section 158 in so far as it relates to Part VI and sections 140, 141 and 142 in so far as they extend to Northern Ireland.

[[F639](4A) Sections 45A, 45B and 47A do not extend to Scotland.**]**

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(5) Where any enactment amended or repealed by this Act extends to any part of the United Kingdom, the amendment or repeal extends to that part, subject, however, to any express provision in Schedule 15 or 16.

Subordinate Legislation Made

P3 S. 164(3) power partly exercised by: S.I. 1990/2226, 1990/2243, 1990/2565, 1990/2635, 1991/96
S. 164(3): s. 130(4) (with ss. 131(3) and 164(3)) power partly exercised: 1.4.1991 appointed for specified provisions by S.I. 1991/685, **art. 3**
S. 164(3) power partly exercised : 1.4.1991 and 1.6.1991 appointed for specified provisions by S.I. 1991/1042, **art. 2** and art. 3
S. 164(3) power partly exercised: 31.5.1991 appointed for specified provisions by S.I. 1991/1319, **art. 2**
S. 164(3) power partly exercised: 10.7.1991 and 1.8.1991 appointed for specified provisions by S.I. 1991/1577, **arts. 2**, 3
S. 164(3) power partly exercised: 13.12.1991, 1.1.1992 and 1.4.1992 appointed for specified provisions by S.I. 1991/2829, **arts. 2**, 3, 4
S. 164(3) power partly exercised (13.2.1992): different dates appointed for specified provisions by S.I. 1992/266, **arts. 2**, 3
S. 164(3) power partly exercised (18.12.1992): different dates appointed for specified provisions by S.I. 1992/3253, **arts. 2**, 3
S. 164(3) power partly exercised (15.2.1993): different dates appointed for specified provisions by S.I. 1993/274, **arts. 2**, 3
S. 164(3) power partly exercised (15.3.1994): 16.3.1994 appointed for s. 41 by S.I. 1994/780, **art. 2**
S. 164(3) power partly exercised (14.4.1994): 1.5.1994 (and other ascertainable dates for limited purposes) appointed for specified provisions by S.I. 1994/1096, **arts. 2**, 3 (amended by S.I. 1994/2487, 1994/3234)
S. 164(3) power partly exercised (6.11.1994): 1.12.1994 (or certain later ascertainable dates for limited purposes) appointed for s. 162(2) by S.I. 1994/2854, **art. 2**
S. 164(3) power partly exercised (10.8.1995): 11.8.1995 appointed for s. 62 by S.I. 1995/2152, **art. 2**
S. 164(3) power partly exercised (28.11.1996): 16.12.1996 appointed for s. 162(2) for certain purposes by S.I. 1996/3056, **art. 2**

Textual Amendments

F638 Words in s. 164(4) repealed (1.6.1994) by S.I. 1991/1714 (N.I. 19), **art.25**; S.R. 1994/141, **art.2**

F639 S. 164(4A) inserted (E.W.) (30.12.2003) by Household Waste Recycling Act 2003 (c. 29), **ss. 4**, 5(2)

Marginal Citations

M106 1974 c. 40.

M107 1960 c. 34.

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SCHEDULES

SCHEDULE 1

Section 6.

AUTHORISATIONS FOR PROCESSES: SUPPLEMENTARY PROVISIONS

PART I

GRANT OF AUTHORISATIONS

Applications for authorisations

1 (1) An application to the enforcing authority for an authorisation must contain such information, and be made in such manner, as may be prescribed in regulations made by the Secretary of State.

(2) An application to the enforcing authority for an authorisation must also, unless regulations made by the Secretary of State exempt applications of that class, be advertised in such manner as may be prescribed in regulations so made.

(3) The enforcing authority may, by notice in writing to the applicant, require him to furnish such further information specified in the notice, within the period so specified, as the authority may require for the purpose of determining the application.

(4) If a person fails to furnish any information required under sub-paragraph (3) above within the period specified thereunder the enforcing authority may refuse to proceed with the application.

(5) Regulations under this paragraph may make different provision for different classes of applications.

Modifications etc. (not altering text)
C129 Sch. 1 para. 1(2) excluded (E.W.) (1.4.1991) and (S.) (1.4.1992) by S.I. 1991/507 regs. 6(1) and 7(4).

Determination of applications

2 (1) Subject to sub-paragraph (2) below, the enforcing authority shall give notice of any application for an authorisation, enclosing a copy of the application, to the persons who are prescribed or directed to be consulted under this paragraph and shall do so within the specified period for notification.

(2) The Secretary of State may, by regulations, exempt any class of application from the requirements of this paragraph or exclude any class of information contained in applications for authorisations from those requirements, in all cases or as respects specified classes only of persons to be consulted.

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(3) Any representations made by the persons so consulted within the period allowed shall be considered by the enforcing authority in determining the application.

(4) For the purposes of sub-paragraph (1) above—

(a) persons are prescribed to be consulted on any description of application for an authorisation if they are persons specified for the purposes of applications of that description in regulations made by the Secretary of State;

(b) persons are directed to be consulted on any particular application if the Secretary of State specifies them in a direction given to the enforcing authority;

and the "specified period for notification" is the period specified in the regulations or in the direction.

(5) Any representations made by any other persons within the period allowed shall also be considered by the enforcing authority in determining the application.

(6) Subject to sub-paragraph (7) below, the period allowed for making representations is—

(a) in the case of persons prescribed or directed to be consulted, the period of twenty-eight days beginning with the date on which notice of the application was given under sub-paragraph (1) above, and

(b) in the case of other persons, the period of twenty-eight days beginning with the date on which the making of the application was advertised in pursuance of paragraph 1(2) above.

(7) The Secretary of State may, by order, substitute for the period for the time being specified in sub-paragraph (6)(a) or (b) above, such other period as he considers appropriate.

Modifications etc. (not altering text)
C130 Sch. 1 para. 2 excluded (1.4.1991 for E.W. and 1.4.1992 for S.) by S.I. 1991/507 reg. 6(1)
C131 Sch. 1 para. 2(1) excluded (1.4.1991 for E.W. and 1.4.1992 for S.) by S.I. 1991/507 reg. 7(2)

3 (1) The Secretary of State may give directions to the enforcing authority requiring that any particular application or any class of applications for an authorisation shall be transmitted to him for determination pending a further direction under sub-paragraph (5) below.

(2) The enforcing authority shall inform the applicant of the fact that his application is being transmitted to the Secretary of State.

(3) Where an application for an authorisation is referred to him under sub-paragraph (1) above the Secretary of State may—

(a) cause a local inquiry to be held in relation to the application; or

(b) afford the applicant and the authority concerned an opportunity of appearing before and being heard by a person appointed by the Secretary of State;

and he shall exercise one of the powers under this sub-paragraph in any case where, in the manner prescribed by regulations made by the Secretary of State, a request is made to be heard with respect to the application by the applicant or **[**[F640]the enforcing authority**]** concerned.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) Subsections (2) to (5) of section 250 of the [M108]Local Government Act 1972 (supplementary provisions about local inquiries under that section) or, in relation to Scotland, subsections (2) to (8) of section 210 of the [M109]Local Government (Scotland) Act 1973 (which make similar provision) shall, without prejudice to the generality of subsection (1) of either of those sections, apply to inquiries in pursuance of sub-paragraph (3) above as they apply to inquiries in pursuance of either of those sections and, in relation to England and Wales, as if the reference to a local authority in subsection (4) of the said section 250 included a reference to the enforcing authority.

(5) The Secretary of State shall, on determining any application transferred to him under this paragraph, give to the enforcing authority such a direction as he thinks fit as to whether it is to grant the application and, if so, as to the conditions that are to be attached to the authorisation.

Extent Information
E38 See s. 164(4)(5)

Textual Amendments
F640 Words in Sch. 1 Pt. I para. 3(3) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 93(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

Marginal Citations
M108 1972 c. 70.
M109 1973 c. 65.

4 The Secretary of State may give the enforcing authority a direction with respect to any particular application or any class of applications for an authorisation requiring the authority not to determine or not to proceed with the application or applications of that class until the expiry of any such period as may be specified in the direction, or until directed by the Secretary of State that they may do so, as the case may be.

5 (1) Except in a case where an application has been referred to the Secretary of State under paragraph 3 above and subject to sub-paragraph (3) below, the enforcing authority shall determine an application for an authorisation within the period of four months beginning with the day on which it received the application or within such longer period as may be agreed with the applicant.

(2) If the enforcing authority fails to determine an application for an authorisation within the period allowed by or under this paragraph the application shall, if the applicant notifies the authority in writing that he treats the failure as such, be deemed to have been refused at the end of that period.

(3) The Secretary of State may, by order, substitute for the period for the time being specified in sub-paragraph (1) above such other period as he considers appropriate and different periods may be substituted for different classes of application.

Modifications etc. (not altering text)
C132 Sch. 1 para. 5(1) modified (1.4.1991 for E.W. and 1.4.1992 for S.) by S.I. 1991/513, **arts. 2(1)** and 3(1)(3)(5)(6).

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART II

VARIATION OF AUTHORISATIONS

Variations by the enforcing authority

6 (1) **[**F641Except as provided by sub-paragraph (1A) below,**]** The requirements of this paragraph apply where an enforcing authority has decided to vary an authorisation under section 10 and is of the opinion that any action to be taken by the holder of the authorisation in consequence of the variation will involve a substantial change in the manner in which the process is being carried on.

[F642(1A) The requirements of this paragraph shall not apply in relation to any variations of an authorisation which an enforcing authority has decided to make in consequence of representations made in accordance with this paragraph and which are specified by way of variation of a variation notice by a further notice under section 10(3A) of this Act.**]**

(2) Subject to sub-paragraph (3) below, the enforcing authority shall give notice of the action to be taken by the holder of the authorisation to the persons who are prescribed or directed to be consulted under this paragraph and shall do so within the specified period for notification; and the holder shall advertise the action in the manner prescribed in regulations made by the Secretary of State.

(3) The Secretary of State may, by regulations, exempt any class of variation from all or any of the requirements of this paragraph or exclude any class of information relating to action to be taken by holders of authorisations from all or any of those requirements, in all cases or as respects specified classes only of persons to be consulted.

(4) Any representations made by the persons so consulted within the period allowed shall be considered by the enforcing authority in taking its decision.

(5) For the purposes of sub-paragraph (2) above—

(a) persons are prescribed to be consulted on any description of variation if they are persons specified for the purposes of variations of that description in regulations made by the Secretary of State;

(b) persons are directed to be consulted on any particular variation if the Secretary of State specifies them in a direction given to the enforcing authority;

and the "specified period for notification" is the period specified in the regulations or in the direction.

(6) Any representations made by any other persons within the period allowed shall also be considered by the enforcing authority in taking its decision.

(7) Subject to sub-paragraph (8) below, the period allowed for making representations is—

(a) in the case of persons prescribed or directed to be consulted, the period of twenty-eight days beginning with the date on which notice was given under sub-paragraph (2) above, and

(b) in the case of other persons, the period of twenty-eight days beginning with the date of the advertisement under sub-paragraph (2) above.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(8) The Secretary of State may, by order, substitute for the period for the time being specified in sub-paragraph (7)(a) or (b) above, such other period as he considers appropriate.

Textual Amendments

F641 Words in Sch. 1 Pt. I para. 6(1) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 93(3)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

F642 Sch. 1 Pt. I para. 6(1A) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 93(4)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

Modifications etc. (not altering text)

C133 Sch. 1 para. 6 excluded (1.4.1991 for E.W. and 1.4.1992 for S.) by S.I. 1991/507, **reg. 6(1)**.

C134 Sch. 1 para. 6(2) excluded (1.4.1991 for E.W. and 1.4.1992 for S.) by S.I. 1991/507, **reg. 7(2)(4)**.

Applications for variation

7 (1) The requirements of this paragraph apply where an application is made to an enforcing authority under section 11(4) for the variation of an authorisation.

(2) Subject to sub-paragraph (3) below, the enforcing authority shall give notice of any such application for a variation of an authorisation, enclosing a copy of the application, to the persons who are prescribed or directed to be consulted under this paragraph and shall do so within the specified period for notification; and the holder of the authorisation shall advertise the application in the manner prescribed in regulations made by the Secretary of State.

(3) The Secretary of State may, by regulations, exempt any class of application from all or any of the requirements of this paragraph or exclude any class of information furnished with applications for variations of authorisations from all or any of those requirements, in all cases or as respects specified classes only of persons to be consulted.

(4) Any representations made by the persons so consulted within the period allowed shall be considered by the enforcing authority in determining the application.

(5) For the purposes of sub-paragraph (2) above—

(a) persons are prescribed to be consulted on any description of application for a variation if they are persons specified for the purposes of applications of that description in regulations made by the Secretary of State;

(b) persons are directed to be consulted on any particular application if the Secretary of State specifies them in a direction given to the enforcing authority;

and the "specified period for notification" is the period specified in the regulations or in the direction.

(6) Any representation made by any other persons within the period allowed shall also be considered by the enforcing authority in determining the application.

(7) Subject to sub-paragraph (8) below, the period allowed for making representations is—

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) in the case of persons prescribed or directed to be consulted, the period of twenty-eight days beginning with the date on which notice of the application was given under sub-paragraph (2) above; and

(b) in the case of other persons, the period of twenty-eight days beginning with the date on which the making of the application was advertised in pursuance of sub-paragraph (2) above.

(8) The Secretary of State may, by order, substitute for the period for the time being specified in sub-paragraph (7)(a) or (b) above, such other period as he considers appropriate.

Modifications etc. (not altering text)
C135 Sch. 1 para. 7 excluded (1.4.1991 for E.W. and 1.4.1992 for S.) by S.I. 1991/507, **reg. 6(1)**
C136 Sch. 1 para. 7(2) excluded (1.4.1991 for E.W. and 1.4.1992 for S.) by S.I. 1991/507, **reg. 7(2)(4)**

I[F643] Call in of applications for variation

Textual Amendments
F643 Sch. 1 Pt. I paras. 8-10 and cross heading inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 93(5)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

[F644]8 (1) The Secretary of State may give directions to the enforcing authority requiring that any particular application or any class of applications for the variation of an authorisation shall be transmitted to him for determination pending a further direction under sub-paragraph (5) below.

(2) The enforcing authority shall inform the applicant of the fact that his application is being transmitted to the Secretary of State.

(3) Where an application for the variation of an authorisation is referred to him under sub-paragraph (1) above the Secretary of State may—

(a) cause a local inquiry to be held in relation to the application; or

(b) afford the applicant and the authority concerned an opportunity of appearing before and being heard by a person appointed by the Secretary of State;

and he shall exercise one of the powers under this sub-paragraph in any case where, in the manner prescribed by regulations made by the Secretary of State, a request is made to be heard with respect to the application by the applicant or the enforcing authority concerned.

(4) Subsections (2) to (5) of section 250 of the [M110]Local Government Act 1972 (supplementary provisions about local inquiries under that section) or, in relation to Scotland, subsections (2) to (8) of section 210 of the [M111]Local Government (Scotland) Act 1973 (which make similar provision) shall, without prejudice to the generality of subsection (1) of either of those sections, apply to local inquiries or other hearings in pursuance of sub-paragraph (3) above as they apply to inquiries in pursuance of either of those sections and, in relation to England and Wales, as if the reference to a local authority in subsection (4) of the said section 250 included a reference to the enforcing authority.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) The Secretary of State shall, on determining any application transferred to him under this paragraph, give to the enforcing authority such a direction as he thinks fit as to whether it is to grant the application and, if so, as to the conditions that are to be attached to the authorisation by means of the variation notice.

Textual Amendments

F644 Sch. 1 Pt. I paras. 8-10 and cross heading inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 93(5)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

Marginal Citations

M110 1972 c. 70.
M111 1973 c. 65.

F645 9 The Secretary of State may give the enforcing authority a direction with respect to any particular application or any class of applications for the variation of an authorisation requiring the authority not to determine or not to proceed with the application or applications of that class until the expiry of any such period as may be specified in the direction, or until directed by the Secretary of State that they may do so, as the case may be.

Textual Amendments

F645 Sch. 1 Pt. I paras. 8-10 and cross heading inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 93(5)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

F646 10 (1) Except in a case where an application for the variation of an authorisation has been referred to the Secretary of State under paragraph 8 above and subject to sub-paragraph (3) below, the enforcing authority shall determine an application for the variation of an authorisation within the period of four months beginning with the day on which it received the application or within such longer period as may be agreed with the applicant.**]**

Textual Amendments

F646 Sch. 1 Pt. I paras. 8-10 and cross heading inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 93(5)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

[F647SCHEDULE 2]

Section 32.

WASTE DISPOSAL AUTHORITIES AND COMPANIES

Textual Amendments

F647 Sch. 2 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 by S.I. 2006/1002, art. 2)); S.I. 2006/768, **art. 2(a)(d)** (with art. 5 (as amended by S.I. 2006/2797, art. 11))

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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[F648PART I]

TRANSITION TO COMPANIES

Textual Amendments

F648 Sch. 2 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** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2** (with art. 5 (as amended by S.I. 2006/2797))

[F649Preliminary]

Textual Amendments

F649 Sch. 2 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** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2** (with art. 5 (as amended by S.I. 2006/2797))

1 **[**F650In this Part of this Schedule—

"authority" means an existing disposal authority as defined in section 32(1);

"company" means a waste disposal contractor formed under the M112Companies Act 1985 by a waste disposal authority as mentioned in section 30(5);

"direction" means a direction under section 32(2);

"joint company" means a company in which more than one authority holds securities;

"securities", in relation to a company includes shares, debentures, bonds or other securities of the company, whether or not constituting a charge on the assets of the company; and

"the vesting date" means the date on which property, rights and liabilities vest in a company by virtue of a transfer scheme under paragraph 6 below.**]**

Textual Amendments

F650 Sch. 2 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** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2** (with art. 5 (as amended by S.I. 2006/2797))

Marginal Citations

M112 1985 c. 6.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F651 Notice of direction]

Textual Amendments

F651 Sch. 2 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** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2** (with art. 5 (as amended by S.I. 2006/2797))

2 **[**F652(1) The Secretary of State, before giving any directions to any authority or constituent authority, shall give notice of his intention to do so to that authority.

(2) A notice under this paragraph shall give a general indication of the provisions to be included in the direction, indicating in particular whether the proposed direction will require the formation of one or more than one company and the authority or authorities who are to form or control the company or companies and whether any existing disposal authority will be abolished.

(3) A notice under this paragraph shall state that the authority to whom it is given is entitled, within a period specified in the notice, to make to the Secretary of State applications or representations with respect to the proposed direction under paragraph 3 below.**]**

Textual Amendments

F652 Sch. 2 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 by S.I. 2006/1002)); S.I. 2006/768, **art. 2(a)(d)** (with art. 5 (as amended by S.I. 2006/2797))

[F653 Applications for exemption from and representations about directions]

Textual Amendments

F653 Sch. 2 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 by S.I. 2006/1002)); S.I. 2006/768, **art. 2(a)(d)** (with art. 5 (as amended by S.I. 2006/2797))

3 **[**F654(1) An authority which has been given notice under paragraph 2 above of a proposed direction may, within the period specified in the notice, make to the Secretary of State either an application under sub-paragraph (2) below or representations under sub-paragraph (3) below.

(2) An authority may, under this sub-paragraph, apply to the Secretary of State requesting him not to make a direction in its case on the ground that the authority falls within any of paragraphs (a), (b), (c) or (d) of section 32(3).

(3) An authority may, under this sub-paragraph, make representations to the Secretary of State requesting him to make, in the direction, other provision than that proposed in the notice.

(4) It shall be the duty of the Secretary of State to consider any application duly made under sub-paragraph (2) above and to notify the authority of his decision.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) It shall be the duty of the Secretary of State to consider any representations duly made under sub-paragraph (3) above before he gives a direction.**]**

Textual Amendments

F654 Sch. 2 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 by S.I. 2006/1002)); S.I. 2006/768, **art. 2(a)(d)** (with art. 5 (as amended by S.I. 2006/2797))

[F655Directions]

Textual Amendments

F655 Sch. 2 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 by S.I. 2006/1002)); S.I. 2006/768, **art. 2(a)(d)** (with art. 5 (as amended by S.I. 2006/2797))

4 **[F656**(1) A direction may require the authority or authorities to whom it is given to form or participate in forming one or more than one company or to form or participate in forming one or more than one joint company and it shall specify the date before which the company or companies is or are to be formed.

(2) Where a direction is to require a joint company to be formed the direction may be given to such of the authorities as the Secretary of State considers appropriate (the "representative authority").

(3) Where a direction is given to an authority as the representative authority it shall be the duty of that representative authority to consult the other authorities concerned before forming a company in accordance with the direction.

(4) The Secretary of State may exercise his powers to vary or revoke a direction and give a further direction at any time before the vesting date, whether before or after a company has been formed in accordance with the direction or previous direction, as the case may be.**]**

Textual Amendments

F656 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

[F657Formation and status of companies]

Textual Amendments

F657 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

5

[F658(1) An authority which has been directed to form a company shall do so by forming it under the M113Companies Act 1985 as a company which—

(a) is limited by shares, and

(b) is a wholly-owned subsidiary of the authority or authorities forming it;

and it shall do so before such date as the Secretary of State specifies in the direction.

(2) The authority shall so exercise its control of the company as to secure that, at some time before the vesting date, the conditions specified in section 68(6)(a) to (h) of the M114Local Government and Housing Act 1989 (conditions for "arm's length companies") apply in relation to the company and shall, at some time before the vesting date, resolve that the company shall be an arm's length company for the purposes of Part V of that Act.

(3) In this paragraph "wholly-owned subsidiary", in relation to a company and an authority, is to be construed in accordance with section 736 of the Companies Act 1985.**]**

Textual Amendments

F658 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

Marginal Citations

M113 1985 c. 6.

M114 1989 c. 42.

[F659Transfer schemes]

Textual Amendments

F659 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

6

[F660(1) Where an authority has formed a company or companies in pursuance of a direction, the authority shall, before such date as the Secretary of State may specify in a direction given to the authority under this sub-paragraph, submit to the Secretary of State a scheme providing for the transfer to the company or companies of any property, rights or liabilities of that or that and any other authority, or of any subsidiary of its or theirs, which appear to be appropriate to transfer as representing the relevant part of the undertaking of that authority or of that authority and the other authorities.

(2) In preparing a scheme in pursuance of sub-paragraph (1) above the authority shall take into account any advice given by the Secretary of State as to the provisions he regards as appropriate for inclusion in the scheme (and in particular any advice as to the description of property, rights and liabilities which it is in his view appropriate to transfer to the company).

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) A scheme under this paragraph shall not come into force until it has been approved by the Secretary of State and the date on which it is to come into force shall be such date as the Secretary of State may, either in giving his approval or subsequently, specify in writing to the authority; and the Secretary of State may approve a scheme either without modifications or with such modifications as he thinks fit after consulting the authority who submitted the scheme.

(4) If it appears to the Secretary of State that a scheme submitted under sub-paragraph (1) above does not accord with any advice given by him, he may do one or other of the following things, as he thinks fit, namely—

(a) approve the scheme under sub-paragraph (3) above with modifications; or

(b) after consulting the authority who submitted the scheme, substitute for it a scheme of his own, to come into force on such date as may be specified in the scheme.

(5) In the case of a scheme for the transfer to a company or joint company of the relevant part of the undertaking of two or more authorities, the representative authority shall consult the other authority or authorities before submitting the scheme under sub-paragraph (1) above; and the Secretary of State shall not approve the scheme (whether with or without modifications), or substitute a scheme of his own unless—

(a) he has given that other authority or (as the case may be) those other authorities an opportunity of making, within such time as he may allow for the purpose, written representations with respect to the scheme; and

(b) he has considered any such representations made to him within that time.

(6) The Secretary of State shall not specify the date on which the scheme is to come into force without consulting the authority which submitted the scheme and, where the scheme was submitted by a representative authority, the other authorities concerned.

(7) On the coming into force of a scheme under this paragraph the property, rights and liabilities affected by the scheme shall be transferred and vest in accordance with the scheme.

(8) As a consequence of the vesting by virtue of the scheme of property, rights and liabilities of an authority in a company, that company shall issue to the authority such securities of the company as are specified in the transfer scheme.**]**

Textual Amendments

F660 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

[F661 Transfer schemes: supplementary provisions]

Textual Amendments

F661 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

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[F662A scheme under paragraph 6 above may define the property, rights and liabilities to be transferred by the scheme—

(a) by specifying the property, rights and liabilities in question; or

(b) by referring to all the property, rights and liabilities comprised in any specified part of the undertaking or undertakings to be transferred; or

(c) partly in the one way and partly in the other;

and may make such supplemental, incidental and consequential provision as the authority making the scheme considers appropriate.**]**

Textual Amendments

F662 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

8

[F663(1) The provisions of this paragraph apply to the transfer to a company of the property, rights and liabilities representing the relevant part of an authority's undertaking.

(2) Any property, rights or liabilities held or subsisting partly for the purpose of the relevant part of the authority's undertaking and partly for the purpose of another part shall, where the nature of the property, rights or liabilities permits, be divided or apportioned between the authority and the company in such proportions as may be appropriate; and where any estate or interest in land falls to be so divided, any rent payable under a lease in respect of that estate or interest, and any rent charged on that estate or interest, shall be correspondingly apportioned or divided so that the one part is payable in respect of, or charged on, only one part of the estate or interest and the other part is payable in respect of, or charged on, only the other part of the estate or interest.

(3) Any property, rights or liabilities held or subsisting as mentioned in sub-paragraph (2) above the nature of which does not permit their division or apportionment as so mentioned shall be transferred to the company or retained by the authority according to which of them appear at the vesting date likely to make use of the property, or, as the case may be, to be affected by the right or liability, to the greater extent, subject to such arrangements for the protection of the other of them as may be agreed between them.

(4) It shall be the duty of the authority and the company, before or after the vesting date, so far as practicable to enter into such written agreements, and to execute such other instruments, as are necessary or expedient to identify or define the property, rights and liabilities transferred to the company or retained by the authority and as will—

(a) afford to the authority and the company as against one another such rights and safeguards as they may require for the proper discharge of the authority's functions and the proper carrying on of the company's undertaking; and

(b) make, as from such date (not being earlier than the vesting date) as may be specified in that agreement or instrument, such clarifications and modifications of the division of the authority's undertaking as will best serve the proper discharge of the authority's functions and the proper carrying on of the company's undertaking.

(5) Any such agreement shall provide so far as it is expedient—

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(a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to interests in land or not, and whether involving the surrender of any existing interest or the creation of a new interest or not;

(b) for the granting of indemnities in connection with the severance of leases and other matters;

(c) for responsibility for complying with any statutory requirements as respects matters to be registered and any licences, authorisations or permissions which need to be obtained.

(6) If the authority or the company represents to the Secretary of State, or if it appears to him without such a representation, that it is unlikely in the case of any matter on which agreement is required under sub-paragraph (4) above that such agreement will be reached, the Secretary of State may, whether before or after the vesting date, give a direction determining the manner in which the property, rights or liabilities in question are to be divided between the authority and the company, and may include in the direction any provision which might have been included in an agreement under that sub-paragraph; and any property, rights or liabilities required by the direction to be transferred to the company shall be regarded as having been transferred to, and by virtue of the transfer scheme vested in, the company accordingly.**]**

Textual Amendments

F663 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

[F664*Tax and company provisions****]***

Textual Amendments

F664 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

9 **[**F665(1) Any shares in a company which are issued as a consequence of the vesting by a transfer scheme of property, rights and liabilities in the company shall—

(a) be issued as fully paid; and

(b) treated for the purposes of the application of the M115Companies Act 1985 in relation to that company as if they had been paid up by virtue of the payment to the company of their nominal value in cash.

(2) For the purposes of Chapter I of Part II of the M116Capital Allowances Act 1990 (capital allowance in respect of machinery and plant) property which is vested in a company by virtue of a transfer scheme shall be treated as if—

(a) it had been acquired by the company on the transfer date for the purposes for which it is used by the company on and after that date; and

(b) capital expenditure of an amount equal to the price which the property would have fetched if sold in the open market had been incurred on that date by

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the company on the acquisition of the property for the purposes mentioned in paragraph (a) above.**]**

Textual Amendments

F665 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

Marginal Citations

M115 1985 c. 6.

M116 1990 c. 1.

[F666*Benefit of certain planning permission****]***

Textual Amendments

F666 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

10 **[**F667(1) This paragraph applies in relation to planning permission deemed to have been granted to the authority under regulation 4 of the M117Town and Country Planning General Regulations 1976 (deemed planning permission for development by local authorities) which subsists at the vesting date.

(2) Any planning permission to which this paragraph applies which authorises the use of land by the authority for the treatment, keeping or disposal of waste shall, on the transfer of the land to the company by the scheme, enure for the benefit of the land.**]**

Textual Amendments

F667 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

Marginal Citations

M117 S.I.1976/1419.

[F668*Right to production of documents of title****]***

Textual Amendments

F668 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

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[[F669]Where on any transfer by virtue of a transfer scheme the authority is entitled to retain possession of any documents relating to the title to, or to the management of, any land or other property transferred to the company, the authority shall be deemed to have given to the company an acknowledgement in writing of the right of the company to production of that document and to delivery of copies thereof; and, in England and Wales, section 64 of the [M118]Law of Property Act 1925 shall have effect accordingly, and on the basis that the acknowledgement did not contain any such expression of contrary intention as is mentioned in that section.**]**

Textual Amendments

F669 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

Marginal Citations

M118 1925 c. 20.

[**[F670] Proof of title by certificate**]

Textual Amendments

F670 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

12 **[**[F671](1) A joint certificate by or on behalf of the authority and the company that any property specified in the certificate, or any such interest in or right over any such property as may be specified in the certificate, is by virtue of the transfer scheme for the time being vested in the authority or in the company shall be conclusive evidence for all purposes of that fact.

(2) If on the expiration of one month after a request from the authority or the company for the preparation of such a joint certificate the authority and the company have failed to agree on the terms of the certificate, they shall refer the matter to the Secretary of State and issue the certificate in such terms as the Secretary of State may direct.**]**

Textual Amendments

F671 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

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[F672 Construction of agreements]

Textual Amendments

F672 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

13

[F673 Where any of the rights or liabilities transferred by a transfer scheme are rights or liabilities under an agreement to which the authority was a party immediately before the vesting date, whether in writing or not, and whether or not of such a nature that rights and liabilities thereunder could be assigned by the authority, that agreement shall have effect on and after the vesting date as if—

(a) the company had been a party to the agreement; and

(b) for any reference (however worded and whether express or implied) to the authority there were substituted a reference, as respects anything falling to be done on or after the vesting date, to the company; and

(c) any reference (however worded and whether express or implied) to any officer or servant of the authority were, as respects anything falling to be done on or after the vesting date, a reference to such person as the company may appoint or, in default of appointment, to the officer or servant of the company who corresponds as nearly as may be to that officer or servant of the authority; and

(d) where the agreement refers to property, rights or liabilities which fall to be apportioned or divided between the authority and the company, as if the agreement constituted two separate agreements separately enforceable by and against the authority and the company respectively as regards the part of the property, rights and liabilities retained by the authority or, as the case may be, the part of the property, rights and liabilities vesting in the company and not as regards the other part;

and sub-paragraph (d) above shall apply in particular to the covenants, stipulations and conditions of any lease by or to the authority. **]**

Textual Amendments

F673 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

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[F674 Without prejudice to the generality of the provisions of paragraph 13 above, the company and any other person shall, as from the vesting date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any right or liability transferred to and vested in the company by a transfer scheme as he would have had if that right or liability had at all times been a right or liability of the company, and any legal proceedings or applications to any authority pending on the vesting date by or against the authority, in so far as they relate to any property, right or liability transferred to the company by the scheme, or to any agreement to any such property,

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right or liability, shall be continued by or against the company to the exclusion of the authority.**]**

Textual Amendments

F674 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

[F675Third parties affected by vesting provisions]

Textual Amendments

F675 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

15 **[F676**(1) Without prejudice to the provisions of paragraphs 13 and 14 above, any transaction effected between the authority and the company in pursuance of paragraph 8(4) above or of a direction under paragraph 8(6) above shall be binding on all other persons, and notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any other person.

(2) It shall be the duty of the authority and the company, if they effect any transaction in pursuance of paragraph 8(4) above or of a direction under paragraph 8(6) above, to notify any person who has rights or liabilities which thereby become enforceable as to part by or against the authority and as to part by or against the company; and if such a person applies to the Secretary of State and satisfies him that the transaction operated unfairly against him the Secretary of State may give such directions to the authority and the company as appear to him to be appropriate for varying the transaction.

(3) If in consequence of a transfer by a transfer scheme or of anything done in pursuance of paragraphs 8 to 14 above the rights or liabilities of any person other than the authority which were enforceable against or by the authority become enforceable as to part against or by the authority and as to part against or by the company, and the value of any property or interest of that person is thereby diminished, such compensation as may be just shall be paid to that person by the authority, the company or both, and any dispute as to whether and if so how much compensation is payable, or as to the person by whom it shall be paid, shall be referred to, and determined by, the Lands Tribunal.**]**

Textual Amendments

F676 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

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[F677 Transfer of staff]

Textual Amendments

F677 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

16 **[**F678(1) The M119Transfer of Undertakings (Protection of Employment) Regulations 1981 shall apply in relation to the relevant employees of an authority in accordance with sub-paragraph (2) below.

(2) For the purposes of the application of those Regulations in relation to any of the relevant employees of an authority, the relevant part of the undertaking of the authority shall (whether or not it would otherwise be so regarded) be regarded—

(a) as a part of an undertaking within the meaning of those Regulations which is transferred from the authority to the company on the vesting date, and

(b) as being so transferred by a transfer to which those Regulations apply and which is completed on that date.

(3) Where a person is, in pursuance of section 32, to cease to be employed by an authority and to become employed by a company, none of the agreed redundancy procedures applicable to persons employed by waste disposal authorities shall apply to him.

(4) For the purposes of this paragraph persons are "relevant employees" of an authority if they are to become, in pursuance of section 32, employees of a company to which the relevant part of the undertaking of the authority is to be transferred.**]**

Textual Amendments

F678 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

Marginal Citations

M119 S.I.1981/1794

[F679 Information for purposes of transfer scheme]

Textual Amendments

F679 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

17 **[**F680(1) The Secretary of State may, by directions, prescribe descriptions of information which are to be furnished for purposes connected with the transfer by authorities to companies of the relevant part of the undertakings of authorities.

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(2) It shall be the duty of [F681]. . . a waste disposal authority, on being requested to do so by a written notice served on it by the Secretary of State, to furnish to the Secretary of State such information of a description prescribed under sub-paragraph (1) above as may be specified in the notice.**]**

Textual Amendments

F680 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

F681 Words in Sch. 2 para. 17(2) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 94, **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

[F682PART II]

PROVISIONS REGULATING WASTE DISPOSAL AUTHORITIES AND COMPANIES

Textual Amendments

F682 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

[F683Terms of waste disposal contracts]

Textual Amendments

F683 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

18 **[F684**A waste disposal authority shall, in determining the terms and conditions of any contract which the authority proposes to enter into for the keeping, treatment or disposal of waste, so frame the terms and conditions as to avoid undue discrimination in favour of one description of waste disposal contractor as against other descriptions of waste disposal contractors.**]**

Textual Amendments

F684 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

19 **[F685**(1) A waste disposal authority shall have regard to the desirability of including in any contract which the authority proposes to enter into for the keeping, treatment or disposal of waste terms or conditions designed to—

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(a) minimize pollution of the environment or harm to human health due to the disposal or treatment of the waste under the contract; and

(b) maximize the recycling of waste under the contract.

(2) A waste disposal authority shall be entitled—

(a) to invite tenders for any such contract, and

(b) to accept or refuse to accept any tender for such a contract and accordingly to enter or not to enter into a contract,

by reference to acceptance or refusal of acceptance by persons tendering for the contract of any terms or conditions included in the draft contract in pursuance of sub-paragraph (1) above.**]**

Textual Amendments

F685 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

[F686Procedure for putting waste disposal contracts out to tender]

Textual Amendments

F686 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

20 **[F687**(1) A waste disposal authority which proposes to enter into a contract for the keeping, treatment or disposal of controlled waste shall comply with the following requirements before making the contract and if it does not any contract which is made shall be void.

(2) The authority shall publish, in at least two publications circulating among waste disposal contractors, a notice containing—

(a) a brief description of the contract work;

(b) a statement that during a specified period any person may inspect a detailed specification of the contract work free of charge at a specified place and time;

(c) a statement that during that period any person will be supplied with a copy of the detailed specification on request and on payment of the specified charge;

(d) a statement that any person who wishes to submit a tender for the contract must notify the authority of his wish within a specified period; and

(e) a statement that the authority intend to invite tenders for the contract, in accordance with sub-paragraph (4) below.

(3) The authority shall—

(a) ensure that the periods, place and time and the charge specified in the notice are such as are reasonable;

(b) make the detailed specification available for inspection in accordance with the notice; and

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Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) make copies of the detailed specification available for supply in accordance with the notice.

(4) If any persons notified the authority, in accordance with the notice, of their wish to submit tenders for the contract, the authority shall—

(a) if more than four persons did so, invite at least four of them to tender for the contract;

(b) if less than four persons did so, invite each of them to tender for the contract.

(5) In this paragraph—

"the contract work", in relation to a contract for the keeping, treatment or disposal of waste, means the work comprising the services involved in the keeping, treatment or disposal of the waste under the contract; and

"specified" means specified in the notice under sub-paragraph (2) above.**]**

Textual Amendments

F687 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

21

[F688A waste disposal authority, in taking any of the following decisions, namely—

(a) who to invite to tender for the contract under paragraph 20(4)(a) above, and

(b) who to enter into the contract with,

shall disregard the fact that any waste disposal contractor tendering for the contract is, or is not, controlled by the authority.**]**

Textual Amendments

F688 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

[F689Variation of waste disposal contracts]

Textual Amendments

F689 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

22

[F690Where a waste disposal authority has entered into a contract with a waste disposal contractor under the authority's control, paragraph 18 above shall, with the necessary modifications, apply on any proposed variation of the contract during the subsistence of that control, in relation to the terms and conditions that would result from the variation as it applies to the original contract.**]**

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Textual Amendments

F690 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

[F691 Avoidance of restrictions on transfer of securities of companies]

Textual Amendments

F691 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

23 **[**F692(1) Subject to sub-paragraph (3) below, any provision to which this paragraph applies shall be void in so far as it operates—

(a) to preclude the holder of any securities of a waste disposal contractor from disposing of those securities; or

(b) to require the holder of any such securities to dispose, or offer to dispose, of those securities to particular persons or to particular classes of persons; or

(c) to preclude the holder of any securities from disposing of those securities except—

(i) at a particular time or at particular times; or

(ii) on the fulfilment of particular conditions or in other particular circumstances.

(2) This paragraph applies to any provision relating to any securities of a waste disposal contractor which is controlled by a waste disposal authority or to which the authority has transferred the relevant part of its undertaking and contained in—

(a) the memorandum or articles of association of the company or any other instrument purporting to regulate to any extent the respective rights and liabilities of the members of the company;

(b) any resolution of the company; or

(c) any instrument issued by the company and embodying terms and conditions on which any such securities are to be held by persons for the time being holding them.

(3) No provision shall be void by reason of its operating as mentioned in sub-paragraph (1) above if the Secretary of State has given his approval in writing to that provision.**]**

Textual Amendments

F692 Sch. 2 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)** (with art. 6 (as amended by S.I. 2006/1002)); S.I. 2006/768, **art. 2(d)** (with art. 5 (as amended by S.I. 2006/2797))

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[F693SCHEDULE 2A

Sections 44A and 44B.

[F694 OBJECTIVES FOR THE PURPOSES OF THE NATIONAL WASTE STRATEGY]

Textual Amendments

F693 Sch. 2A inserted (1.4.1996) by 1995 c. 25, s. 92(2), **Sch.12** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

F694 Sch. 2A repealed (S.) (23.3.2007) by The National Waste Management Plan for Scotland Regulations 2007 (S.S.I. 2007/251), **reg. 8(1)(a)**

F695 1

[F696 Ensuring that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment and, in particular, without—

(a) risk to water, air, soil, plants or animals;

(b) causing nuisance through noise or odours; or

(c) adversely affecting the countryside or places of special interest.]

Textual Amendments

F695 Sch. 2A inserted (1.4.1996) by 1995 c. 25, s. 92(2), **Sch.12** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

F696 Sch. 2A repealed (S.) (23.3.2007) by The National Waste Management Plan for Scotland Regulations 2007 (S.S.I. 2007/251), **reg. 8(1)(a)**

F697 2

[F698 Establishing an integrated and adequate network of waste disposal installations, taking account of the best available technology not involving excessive costs.]

Textual Amendments

F697 Sch. 2A inserted (1.4.1996) by 1995 c. 25, s. 92(2), **Sch.12** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

F698 Sch. 2A repealed (S.) (23.3.2007) by The National Waste Management Plan for Scotland Regulations 2007 (S.S.I. 2007/251), **reg. 8(1)(a)**

F699 3

[F700 Ensuring that the network referred to in paragraph 2 above enables—

(a) the European Community as a whole to become self-sufficient in waste disposal, and the Member States individually to move towards that aim, taking into account geographical circumstances or the need for specialised installations for certain types of waste; and

(b) waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.]

Textual Amendments

F699 Sch. 2A inserted (1.4.1996) by 1995 c. 25, s. 92(2), **Sch.12** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

F700 Sch. 2A repealed (S.) (23.3.2007) by The National Waste Management Plan for Scotland Regulations 2007 (S.S.I. 2007/251), **reg. 8(1)(a)**

F701 4

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[[F702]Encouraging the prevention or reduction of waste production and its harmfulness, in particular by—

(a) the development of clean technologies more sparing in their use of natural resources;

(b) the technical development and marketing of products designed so as to make no contribution or to make the smallest possible contribution, by the nature of their manufacture, use or final disposal, to increasing the amount or harmfulness of waste and pollution hazards; and

(c) the development of appropriate techniques for the final disposal of dangerous substances contained in waste destined for recovery.**]**

Textual Amendments

F701 Sch. 2A inserted (1.4.1996) by 1995 c. 25, s. 92(2), **Sch.12** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

F702 Sch. 2A repealed (S.) (23.3.2007) by The National Waste Management Plan for Scotland Regulations 2007 (S.S.I. 2007/251), **reg. 8(1)(a)**

[[F703]5 **[**[F704]Encouraging—

(a) the recovery of waste by means of recycling, reuse or reclamation or any other process with a view to extracting secondary raw materials; and

(b) the use of waste as a source of energy.**]]]**

Textual Amendments

F703 Sch. 2A inserted (1.4.1996) by 1995 c. 25, s. 92(2), **Sch.12** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

F704 Sch. 2A repealed (S.) (23.3.2007) by The National Waste Management Plan for Scotland Regulations 2007 (S.S.I. 2007/251), **reg. 8(1)(a)**

[[F705]SCHEDULE 2AA

WASTE REDUCTION SCHEMES

Textual Amendments

F705 Sch. 2AA 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**

Introductory

1 (1) The purpose of a waste reduction scheme is to provide a financial incentive—

(a) to produce less domestic waste, and

(b) to recycle more of what is produced,

and accordingly to reduce the amount of residual domestic waste.

(2) A waste reduction scheme—

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(a) may cover the whole or any part of the area of a waste collection authority, and

(b) may apply to all domestic premises, to domestic premises other than those of a specified description or to specified descriptions of domestic premises.

Conditions for making waste reduction scheme

2 (1) A waste collection authority may make a waste reduction scheme only if—

(a) a good recycling service is available to the occupiers of premises to which the scheme applies,

(b) the scheme takes account of the needs of groups who might be unduly disadvantaged by it, and

(c) the authority has a strategy for preventing, minimising or otherwise dealing with the unauthorised deposit or disposal of waste.

(2) In sub-paragraph (1)(a) above—

(a) a "recycling service" means arrangements for the collection of recyclable domestic waste from premises separately from other waste; and

(b) a "good" recycling service means a recycling service that meets the standards specified for the purposes of this definition in guidance issued by the Secretary of State.

(3) The Secretary of State may by order amend sub-paragraphs (1) and (2) above.

Incentive under waste reduction scheme

3 (1) A waste reduction scheme must provide for a financial incentive that the authority considers will be effective to achieve the purpose of the scheme.

(2) The scheme may provide for the incentive to be provided—

(a) by means of rebates from council tax or by other payments, or

(b) by means of charges under paragraph 4,

or by any combination of those means.

Charges in respect of residual domestic waste

4 (1) A waste reduction scheme may include provision for charging by reference to—

(a) the amount of residual domestic waste collected from premises,

(b) the size of receptacles used for the purposes of the collection of residual domestic waste from premises,

(c) the number of receptacles used for such purposes, or

(d) the frequency with which residual domestic waste is collected from premises,

or by reference to any combination of those factors.

(2) The scheme may, in particular, make provision for occupiers of premises—

(a) to be required (by notice under section 46) to place residual domestic waste for collection in receptacles of a specified kind,

(b) to be required (by such notice) to place such waste in receptacles that are identified by such means as may be specified, or

(c) to be required to do both,

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and for a charge to be made by the authority in respect of the receptacles, the means of identifying them or both.

(3) A charge under this paragraph in respect of a receptacle is in addition to any charge under section 46 in respect of the cost of providing the receptacle.

(4) The amount of any charge under this paragraph need not be related to the authority's costs.

(5) The scheme may make provision as to the person or persons by whom any charge is payable.

(6) The scheme may—

(a) require any charge to be paid in advance on the basis of an estimate of the amount that is likely to be payable in respect of any premises; or

(b) require payments in respect of any charge to be made on account or by instalments.

Charging: supplementary provisions

5 (1) The Secretary of State may by order set a limit on the amount of the charge under paragraph 4 that may be imposed in respect of any premises in any financial year.

(2) A failure to pay a charge under paragraph 4 does not affect the authority's duty under section 45(1)(a) (general duty to arrange for collection of household waste).

(3) Section 45(3) (general prohibition on charging for collection of household waste) has effect subject to paragraph 4.

Requirement of revenue neutrality

6 (1) From year to year, and taking one year with another, the aggregate amount of charges under a waste reduction scheme must not exceed the aggregate amount of the rebates or other payments under the scheme.

(2) The Secretary of State may by order amend sub-paragraph (1) above.

(3) Any such order may make any amendments of paragraph 4(4) that appear to the Secretary of State to be necessary or expedient in consequence of, or in connection with, the amendment of sub-paragraph (1) above.

Procedure for putting scheme in place

7 (1) The authority must comply with the following requirements after making a waste reduction scheme and before it is brought into operation.

(2) The authority must publish the scheme in such manner as it considers appropriate.

(3) The authority must send to the occupier of any premises to which the scheme applies a notice setting out—

(a) the requirements applicable under the scheme in relation to the collection of domestic waste from premises to which the scheme applies;

(b) any rebates or other payments available under the scheme and the manner in which they are to be made; and

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(c) any charges provided for by the scheme and the manner in which they are to be collected.

Appeals

8 A waste reduction scheme must contain provision enabling a person to appeal against any decision affecting, directly or indirectly, that person's entitlement to a rebate or other payment, or liability to pay a charge, under the scheme.

Separate account to be kept

9 (1) A waste collection authority that operates a waste reduction scheme must keep a separate account of—

(a) any rebates or other payments under the scheme, and

(b) any charges received by it under the scheme.

(2) Any person interested may at any reasonable time and without payment inspect the account and make copies of it or any part of it.

(3) A person having custody of the account who intentionally obstructs a person in the exercise of the rights conferred by sub-paragraph (2) above commits an offence.

(4) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Contributions by waste disposal authority

10 (1) Where a waste collection authority that operates a waste reduction scheme is not also the waste disposal authority, the waste disposal authority may pay to the collection authority contributions of such amounts as the disposal authority may determine towards expenditure of the collection authority attributable to the scheme.

(2) The collection authority must supply to the disposal authority such information as the disposal authority may reasonably require for the purpose of determining amounts under this paragraph.

Power to make provision as to administration etc

11 (1) The Secretary of State may by regulations make provision as to—

(a) the manner in which the amount of any rebate or other payment is to be determined, and any rebate or payment is to be given, and

(b) the manner in which—

(i) the amount of any charge is to be determined, and

(ii) any charge is to be collected or enforced.

(2) The regulations may in particular provide—

(a) for appeals against determinations or any failure to make a determination,

(b) for the appointment of persons or bodies to hear appeals, and

(c) for charges to be recoverable, if a county court so orders, as if they were payable under a county court order.

(3) The regulations may include provision—

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(a) for integrating the administration of the scheme with the administration of council tax, and

(b) for that purpose modifying, to such extent as appears to the Secretary of State to be necessary or expedient, any of the enactments relating to council tax.

In paragraph (b) "modifying" includes making additions, amendments or omissions.

(4) The regulations may in particular provide—

(a) for including material relating to the scheme in the notice containing the council tax demand,

(b) for applying to questions arising under the scheme the procedure for appeals about liability to council tax, and

(c) for applying to any liability under the scheme the procedures for the enforcement of liability for council tax.

Use of information obtained for council tax purposes

12 An authority may use for the purpose of administering a waste reduction scheme information it has obtained for the purpose of carrying out its functions under the enactments relating to council tax.

Amendment or revocation of waste reduction scheme

13 (1) An authority that has made a waste reduction scheme may amend or revoke the scheme.

(2) After amending a scheme and before bringing the amendment into operation, the authority must—

(a) publish the amended scheme in such manner as it thinks appropriate, and

(b) if the amendment affects any of the matters previously notified to occupiers, send to the occupier of any premises to which the scheme applies a notice setting out the effect of the amendment.

(3) The amendment or revocation of a scheme does not affect any entitlement or liability under the scheme in respect of a period before the amendment or revocation takes effect.

(4) The revocation of a scheme does not affect the duty of the authority to comply with paragraph 6(1).

Guidance

14 (1) The Secretary of State may issue guidance to waste collection authorities and waste disposal authorities as respects the exercise of their functions under this Schedule.

(2) Any such guidance issued—

(a) must be published in such manner as the Secretary of State considers appropriate, and

(b) may be amended or replaced by further guidance, or revoked.

(3) In exercising their functions under this Schedule waste collection authorities and waste disposal authorities must have regard to any guidance in force under this paragraph.

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Interpretation

15 (1) In this Schedule—

"domestic premises" means—

(a) 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 Caravan Sites and Control of Development Act 1960 (c. 62)) that usually and for the time being is situated on a caravan site (within the meaning of that Act), or

(c) a moored vessel used wholly for the purposes of living accommodation;

"domestic waste" means household waste from domestic premises;

"enactment" includes an enactment contained in subordinate legislation;

"recyclable waste" means waste that is capable of being recycled;

"residual domestic waste" means domestic waste that is not—

(a) waste meeting the conditions for collection by the authority as recyclable waste, or

(b) waste for which a charge may be made by virtue of regulations under section 45(3) (power to charge for collection of household waste in prescribed cases);

"specified" means specified in the waste reduction scheme.

(2) The Secretary of State may by order amend the definition of "domestic premises" in sub-paragraph (1).

(3) References in this Schedule to recycling include re-using and composting.

Orders and regulations

16 (1) An order under paragraph 2(3), 6(2) or 15(2) is subject to affirmative resolution procedure.

(2) Section 161(3) (negative resolution procedure: orders) applies in relation to an order under paragraph 5(1), subject as follows.

(3) An order under that paragraph is subject to affirmative resolution procedure if—

(a) it is the first order to be made under that paragraph, or

(b) it increases the limit for the time being set by an order under that paragraph by more than is necessary to reflect changes in the value of money since that limit was set.

(4) Section 161(2) (negative resolution procedure: regulations) applies in relation to regulations under paragraph 11, subject as follows.

(5) Regulations under that paragraph are subject to affirmative resolution procedure if they modify an enactment contained in an Act of Parliament.

(6) Where an order or regulations are subject to "affirmative resolution procedure" the Secretary of State must not make the order or regulations unless a draft of the statutory instrument containing them has been laid before and approved by resolution of each House of Parliament.**]**

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[F706SCHEDULE 2B

CATEGORIES OF WASTE

Textual Amendments

F706 Sch. 2B inserted (1.1.2005 for S. and 15.5.2006 for E.W.) by 1995 c. 25, ss. 120(1), 125(3), Sch. 22 para.95 (with ss. 7(6), 115, 117); S.S.I. 2004/541, **art. 2**; S.I. 2006/934, **art. 2**

1 Production or consumption residues not otherwise specified below.

2 Off-specification products.

3 Products whose date for appropriate use has expired.

4 Materials spilled, lost or having undergone other mishap, including any materials, equipment, etc, contaminated as a result of the mishap.

5 Materials contaminated or soiled as a result of planned actions (e.g. residues from cleaning operations, packing materials, containers, etc.).

6 Unusable parts (e.g. reject batteries, exhausted catalysts, etc.).

7 Substances which no longer perform satisfactorily (e.g. contaminated solvents, exhausted tempering salts, etc.).

8 Residues of industrial processes (e.g. slags, still bottoms, etc.).

9 Residues from pollution abatement processes (e.g. scrubber sludges, baghouse dusts, spent filters, etc.).

10 Machining or finishing residues (e.g. lathe turnings, mill scales, etc.).

11 Residues from raw materials extraction and processing (e.g. mining residues, oil field slops, etc.).

12 Adulterated materials (e.g. oils contaminated with PCBs, etc.).

13 Any materials, substances or products whose use has been banned by law.

14 Products for which the holder has no further use (e.g. agricultural, household, office, commercial and shop discards, etc.).

15 Contaminated materials, substances or products resulting from remedial action with respect to land.

16 Any materials, substances or products which are not contained in the above categories.**]**

SCHEDULE 3

Section 81.

STATUTORY NUISANCES: SUPPLEMENTARY PROVISIONS

Appeals to magistrates' court

1 (1) This paragraph applies in relation to appeals under section 80(3) against an abatement notice to a magistrates' court.

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(2) An appeal to which this paragraph applies shall be by way of complaint for an order and the [M120]Magistrates' Courts Act 1980 shall apply to the proceedings.

(3) An appeal against any decision of a magistrates' court in pursuance of an appeal to which this paragraph applies shall lie to the Crown Court at the instance of any party to the proceedings in which the decision was given.

(4) The Secretary of State may make regulations as to appeals to which this paragraph applies and the regulations may in particular—

(a) include provisions comparable to those in section 290 of the [M121]Public Health Act 1936 (appeals against notices requiring the execution of works);

(b) prescribe the cases in which an abatement notice is , or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;

(c) prescribe the cases in which the decision on appeal may in some respects be less favourable to the appellant than the decision from which he is appealing;

(d) prescribe the cases in which the appellant may claim that an abatement notice should have been served on some other person and prescribe the procedure to be followed in those cases.

Marginal Citations

M120 1980 c. 43.

M121 1936 c. 49.

Appeals to Sheriff

[[F707]1A(1) This paragraph applies in relation to appeals to the sheriff under section 80(3) against an abatement notice.

(2) An appeal to which this paragraph applies shall be by way of a summary application.

(3) The Secretary of State may make regulations as to appeals to which this paragraph applies and the regulations may in particular include or prescribe any of the matters referred to in sub-paragraphs (4)(a) to (d) of paragraph 1 above.**]**

Textual Amendments

F707 Sch. 3 para. 1A inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para.7(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

Powers of entry etc

2 (1) Subject to sub-paragraph (2) below, any person authorised by a local authority may, on production (if so required) of his authority, enter any premises at any reasonable time—

(a) for the purpose of ascertaining whether or not a statutory nuisance exists; or

(b) for the purpose of taking any action, or executing any work, authorised or required by Part III.

(2) Admission by virtue of sub-paragraph (1) above to any premises used wholly or mainly for residential purposes shall not except in an emergency be demanded as

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of right unless twenty-four hours notice of the intended entry has been given to the occupier.

(3) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—

(a) that admission to any premises has been refused, or that refusal is apprehended, or that the premises are unoccupied or the occupier is temporarily absent, or that the case is one of emergency, or that an application for admission would defeat the object of the entry; and

(b) that there is reasonable ground for entry into the premises for the purpose for which entry is required,

the justice may by warrant under his hand authorise the local authority by any authorised person to enter the premises, if need be by force.

(4) An authorised person entering any premises by virtue of sub-paragraph (1) or a warrant under sub-paragraph (3) above may—

(a) take with him such other persons and such equipment as may be necessary;

(b) carry out such inspections, measurements and tests as he considers necessary for the discharge of any of the local authority's functions under Part III; and

(c) take away such samples or articles as he considers necessary for that purpose.

(5) On leaving any unoccupied premises which he has entered by virtue of sub-paragraph (1) above or a warrant under sub-paragraph (3) above the authorised person shall leave them as effectually secured against trespassers as he found them.

(6) A warrant issued in pursuance of sub-paragraph (3) above shall continue in force until the purpose for which the entry is required has been satisfied.

(7) Any reference in this paragraph to an emergency is a reference to a case where the person requiring entry has reasonable cause to believe that circumstances exist which are likely to endanger life or health and that immediate entry is necessary to verify the existence of those circumstances or to ascertain their cause and to effect a remedy.

[F708(8) In the application of this paragraph to Scotland, a reference to a justice of the peace or to a justice includes a reference to the sheriff.**]**

Textual Amendments

F708 Sch. 3 para. 2(8) added (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 7(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

Modifications etc. (not altering text)

C137 Sch. 3 para. 2 applied (with modifications) (S.) (26.1.2009) by Water Services etc. (Scotland) Act 2005 (asp 3), s. 26(10A) (as inserted by Public Health etc. (Scotland) Act 2008 (asp 5), **s. 115(3)** (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1)

[F709 2A(1) Any person authorised by a local authority may on production (if so required) of his authority—

(a) enter or open a vehicle, machinery or equipment, if necessary by force, or

(b) remove a vehicle, machinery or equipment from a street **[**F710or, in Scotland, road**]]** to a secure place,

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for the purpose of taking any action, or executing any work, authorised by or required under Part III in relation to a statutory nuisance within section 79(1)(ga) above caused by noise emitted from or caused by the vehicle, machinery or equipment.

(2) On leaving any unattended vehicle, machinery or equipment that he has entered or opened under sub-paragraph (1) above, the authorised person shall (subject to sub-paragraph (3) below) leave it secured against interference or theft in such manner and as effectually as he found it.

(3) If the authorised person is unable to comply with sub-paragraph (2) above, he shall for the purpose of securing the unattended vehicle, machinery or equipment either—

(a) immobilise it by such means as he considers expedient, or

(b) remove it from the street to a secure place.

(4) In carrying out any function under sub-paragraph (1), (2) or (3) above, the authorised person shall not cause more damage than is necessary.

(5) Before a vehicle, machinery or equipment is entered, opened or removed under sub-paragraph (1) above, the local authority shall notify the police of the intention to take action under that sub-paragraph.

(6) After a vehicle, machinery or equipment has been removed under sub-paragraph (1) or (3) above, the local authority shall notify the police of its removal and current location.

(7) Notification under sub-paragraph (5) or (6) above may be given to the police at any police station in the local authority's area or, in the case of the Temples, at any police station of the City of London Police.

(8) For the purposes of section 81(4) above, any expenses reasonably incurred by a local authority under sub-paragraph (2) or (3) above shall be treated as incurred by the authority under section 81(3) above in abating or preventing the recurrence of the statutory nuisance in question.

Textual Amendments

F709 Sch. 3 para. 2A inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 4(5)**, 12(1)

F710 Words in Sch. 3 para. 2A(1)(b) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 7(c)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

Offences relating to entry

3 (1) A person who wilfully obstructs any person acting in the exercise of any powers conferred by paragraph 2 **[**F711or 2A**]** above shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(2) If a person discloses any information relating to any trade secret obtained in the exercise of any powers conferred by paragraph 2 above he shall, unless the disclosure was made in the performance of his duty or with the consent of the person having the right to disclose the information, be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

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Textual Amendments

F711 Words in Sch. 3 para. 3(1) inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 4(6)**, 12(1)

Modifications etc. (not altering text)

C138 Sch. 3 para. 3 applied (with modifications) (S.) (26.1.2009) by Water Services etc. (Scotland) Act 2005 (asp 3), s. 26(10A) (as inserted by Public Health etc. (Scotland) Act 2008 (asp 5), **s. 115(3)** (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1)

Default powers

4 (1) This paragraph applies to the following function of a local authority, that is to say its duty under section 79 to cause its area to be inspected to detect any statutory nuisance which ought to be dealt with under section 80 **[**F712or sections 80 and 80A**]** and its powers under paragraph 2 **[**F712or 2A**]** above.

(2) If the Secretary of State is satisfied that any local authority has failed, in any respect, to discharge the function to which this paragraph applies which it ought to have discharged, he may make an order declaring the authority to be in default.

(3) An order made under sub-paragraph (2) above which declares an authority to be in default may, for the purpose of remedying the default, direct the authority ("the defaulting authority") to perform the function specified in the order and may specify the manner in which and the time or times within which the function is to be performed by the authority.

(4) If the defaulting authority fails to comply with any direction contained in such an order the Secretary of State may, instead of enforcing the order by mandamus, make an order transferring to himself the function of the authority specified in the order.

(5) Where the function of a defaulting authority is transferred under sub-paragraph (4) above, the amount of any expenses which the Secretary of State certifies were incurred by him in performing the function shall on demand be paid to him by the defaulting authority.

(6) Any expenses required to be paid by a defaulting authority under sub-paragraph (5) above shall be defrayed by the authority in like manner, and shall be debited to the like account, as if the function had not been transferred and the expenses had been incurred by the authority in performing them.

(7) The Secretary of State may by order vary or revoke any order previously made by him under this paragraph.

(8) Any order under this paragraph may include such incidental, supplemental and transitional provisions as the Secretary of State considers appropriate.

[F713(9) This paragraph does not apply to Scotland.**]**

Textual Amendments

F712 Words in Sch. 3 para. 4(1) inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 4(7)(a)(b)**, 12(1)

F713 Sch. 3 para. 4(9) added (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 7(d)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

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Protection from personal liability

5 Nothing done by, or by a member of, a local authority or by any officer of or other person authorised by a local authority shall, if done in good faith for the purpose of executing Part III, subject them or any of them personally to any action, liability, claim or demand whatsoever (other than any liability under **[**F714section 17 or 18 of the Audit Commission Act 1998**]** (powers of district auditor and court)).

Textual Amendments

F714 Words in Sch. 3 para. 5 substituted (E.W.) (11.9.1998) by 1998 c. 18, ss. 54(1), 55(2), **Sch. 3 para.21**.

Modifications etc. (not altering text)

C139 Sch. 3 para. 5 applied (with modifications) (S.) (26.1.2009) by Water Services etc. (Scotland) Act 2005 (asp 3), s. 26(10A) (as inserted by Public Health etc. (Scotland) Act 2008 (asp 5), **s. 115(3)** (with s. 127)); S.S.I. 2009/9, **art. 2(a)**, Sch. 1

Statement of right of appeal in notices

6 Where an appeal against a notice served by a local authority lies to a magistrates' court **[**F715or, in Scotland, the sheriff**]** by virtue of section 80, it shall be the duty of the authority to include in such a notice a statement indicating that such an appeal lies as aforesaid and specifying the time within which it must be brought.

Textual Amendments

F715 Words in Sch. 3 para. 6 inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 7(e)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

[F716SCHEDULE 3A

FREE DISTRIBUTION OF PRINTED MATTER ON DESIGNATED LAND

Textual Amendments

F716 Sch. 3A inserted (E.W.) (6.4.2006 for E. and 15.3.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 23(2)**, 108; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(j)**

Offence of unauthorised distribution

1 (1) A person commits an offence if he distributes any free printed matter without the consent of a principal litter authority on any land which is designated by the authority under this Schedule, where the person knows that the land is so designated.

(2) A person commits an offence if he causes another person to distribute any free printed matter without the consent of a principal litter authority on any land designated by the authority under this Schedule.

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(3) A person is not guilty of an offence under sub-paragraph (2) if he took reasonable steps to ensure that the distribution did not occur on any land designated under this Schedule.

(4) Nothing in this paragraph applies to the distribution of printed matter—

(a) by or on behalf of a charity within the meaning of the Charities Act 1993, where the printed matter relates to or is intended for the benefit of the charity;

(b) where the distribution is for political purposes or for the purposes of a religion or belief.

(5) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) For the purposes of this Schedule—

(a) to "distribute" printed matter means to give it out to, or offer or make it available to, members of the public and includes placing it on or affixing it to vehicles, but does not include putting it inside a building or letter-box;

(b) printed matter is "free" if it is distributed without charge to the persons to whom it is distributed.

(7) For the purposes of this Schedule a person does not distribute printed matter if the distribution takes place inside a public service vehicle (within the meaning of the Public Passenger Vehicles Act 1981).

Designation

2 (1) A principal litter authority may by order in accordance with this paragraph designate land in its area for the purposes of this Schedule.

(2) The land designated must consist of—

(a) relevant land of the authority;

(b) all or part of any relevant highway for which the authority is responsible; or

(c) both.

(3) A principal litter authority may only designate land where it is satisfied that the land is being defaced by the discarding of free printed matter which has been distributed there.

(4) Where a principal litter authority proposes to make an order under sub-paragraph (1) above in respect of any land, it must—

(a) publish a notice of its proposal in at least one newspaper circulating in an area which includes the land; and

(b) post such a notice on the land.

(5) A notice under sub-paragraph (4) above must specify—

(a) the land proposed to be designated;

(b) the date on which it is proposed that the order is to come into force (which may not be earlier than the end of a period of 28 days beginning with the day on which the notice is given);

(c) the fact that objections may be made to the proposal, how they may be made and the period within which they may be made (being a period of at least 14 days beginning with the day on which the notice is given).

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(6) Where after giving notice under sub-paragraph (4) above and taking into account any objections duly made pursuant to sub-paragraph (5)(c) above an authority decides to make an order under sub-paragraph (1) above in respect of any or all of the land in respect of which the notice was given, the authority must—

(a) publish a notice of its decision in at least one newspaper circulating in an area which includes the land; and

(b) post such a notice on the land.

(7) A notice under sub-paragraph (6) above must specify the date on which the order is to come into force, being a date not earlier than—

(a) the end of the period of 14 days beginning with the day on which the notice is given; and

(b) the date referred to in sub-paragraph (5)(b) above.

(8) A principal litter authority may at any time revoke an order under sub-paragraph (1) above in respect of any land to which the order relates.

(9) A principal litter authority must—

(a) publish a notice of any revocation under sub-paragraph (8) above in at least one newspaper circulating in an area which includes the land in question; and

(b) post such a notice on the land.

(10) Sub-paragraph (1) above does not apply to an English county council for an area for which there is a district council.

Consent and conditions

3 (1) A principal litter authority may on the application of any person consent to that person or any other person (identified specifically or by description) distributing free printed matter on any land designated by the authority under this Schedule.

(2) Consent under this paragraph may be given without limitation or may be limited—

(a) by reference to the material to be distributed;

(b) by reference to a particular period, or particular times or dates;

(c) by reference to any part of the designated land;

(d) to a particular distribution.

(3) A principal litter authority need not give consent under this paragraph to any applicant where it considers that the proposed distribution would in all the circumstances be likely to lead to defacement of the designated land.

(4) Consent need not be given to any applicant if within the period of five years ending on the date of his application—

(a) he has been convicted of an offence under paragraph 1 above; or

(b) he has paid a fixed penalty under paragraph 7 below.

(5) Consent may be given under this paragraph subject to such conditions as the authority consider necessary or desirable for—

(a) protecting the designated land from defacement; or

(b) the effective operation and enforcement of this Schedule.

(6) The conditions which may be imposed by a principal litter authority under this paragraph include conditions requiring any person distributing printed matter

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pursuant to consent given under this paragraph to produce on demand written evidence of the consent to an authorised officer of the authority.

(7) Consent given by a principal litter authority under this paragraph may at any time be revoked (entirely or to any extent) by notice to the person to whom it was given, where—

(a) he has failed to comply with any condition subject to which it was given; or

(b) he is convicted of an offence under paragraph 1 above or pays a fixed penalty under paragraph 7 below.

(8) Any condition imposed under this paragraph in relation to any consent may be varied or revoked by notice given to the person to whom the consent was given.

Fees

4 (1) A principal litter authority may require the payment of a fee before giving consent under paragraph 3 above.

(2) The amount of a fee under this paragraph is to be such as the authority may determine, but may not be more than, when taken together with all other fees charged by the authority under this paragraph, is reasonable to cover the costs of operating and enforcing this Schedule.

Appeals

5 (1) Any person aggrieved by a decision of a principal litter authority under paragraph 3 above—

(a) to refuse consent,

(b) to impose any limitation or condition subject to which consent is given,

(c) to revoke consent (or to revoke it to any extent),

may appeal against the decision to a magistrates' court.

(2) A magistrates' court may on an appeal under this paragraph—

(a) uphold any refusal of consent or require the authority to grant consent (without limitation or condition or subject to any limitation or condition);

(b) require the authority to revoke or vary any condition;

(c) uphold or quash revocation of consent (or uphold or quash revocation to any extent).

Seizure of material

6 (1) Where it appears to an authorised officer of a principal litter authority that a person distributing any printed matter is committing an offence under paragraph 1 above, he may seize all or any of it.

(2) Any person claiming to own any printed matter seized under this paragraph may apply to a magistrates' court for an order that the printed matter be released to him.

(3) On an application under sub-paragraph (2) above, if the magistrates' court considers that the applicant does own the printed matter, the court shall order the principal litter authority to release it to him, except to the extent that the court considers that the authority needs to retain it for the purposes of proceedings relating to an offence under paragraph 1 above.

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(4) Any printed matter seized under this paragraph (and not released under sub-paragraph (3) above) must be returned to the person from whom it is seized—

(a) at the conclusion of proceedings for the offence (unless the court orders otherwise);

(b) at the end of the period in which proceedings for the offence may be instituted, if no such proceedings have been instituted in that period (or have been instituted but discontinued).

(5) Where it is not possible to return any printed matter under sub-paragraph (4) above because the name and address of the person from whom it was seized are not known, a principal litter authority may dispose of or destroy it.

Fixed penalty notices

7 (1) This paragraph applies where on any occasion it appears to an authorised officer of a principal litter authority that a person has committed an offence under paragraph 1 above on any land designated by the authority under this Schedule.

(2) The authorised officer may give that person a notice offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the principal litter authority.

(3) Subsections (2) to (5) of section 88 above apply in relation to notices given under this paragraph as they apply to notices under that section.

(4) The amount of the fixed penalty payable to a principal litter authority under this paragraph—

(a) is the amount specified by the authority in relation to its area; or

(b) if no amount is so specified, is £75.

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

(6) In any proceedings a certificate which—

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

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

is evidence of the facts stated.

(7) If an authorised officer of a principal litter authority proposes to give a person a notice under this paragraph, the officer may require the person to give him his name and address.

(8) A person commits an offence if—

(a) he fails to give his name and address when required to do so under sub-paragraph (7) above; or

(b) he gives a false or inaccurate name or address in response to a requirement under that sub-paragraph.

(9) A person guilty of an offence under sub-paragraph (8) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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(10) In this paragraph, "chief finance officer", in relation to a principal litter authority, means the person having responsibility for the financial affairs of that authority.

Supplementary

8 In this Schedule "authorised officer", in relation to a principal litter authority, means—

(a) an employee of the authority who is authorised in writing by the authority for the purpose of giving notices under paragraph 7 above;

(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; and

(c) any employee of such a person who is authorised in writing by the authority for the purpose of giving such notices.**]**

SCHEDULE 4

Section 99.

Abandoned Shopping and Luggage Trolleys

Application

1 (1) Subject to sub-paragraph (2) below, this Schedule applies where any shopping or luggage trolley is found by an authorised officer of the local authority on any land in the open air and appears to him to be abandoned.

(2) This Schedule does not apply in relation to a shopping or luggage trolley found on the following descriptions of land, that is to say—

(a) land in which the owner of the trolley has a legal estate or, in Scotland, of which the owner of the trolley is the owner or occupier;

(b) where an off-street parking place affords facilities to the customers of shops for leaving there shopping trolleys used by them, land on which those facilities are afforded;

(c) where any other place designated by the local authority for the purposes of this Schedule affords like facilities, land on which those facilities are afforded; and

(d) as respects luggage trolleys, land which is used for the purposes of their undertaking by persons authorised by an enactment to carry on any railway, light railway, tramway or road transport undertaking or by a relevant airport operator (within the meaning of Part V of the [M122]Airports Act 1986).

Marginal Citations
M122 1986 c. 31.

Power to seize and remove trolleys

2 (1) Where this Schedule applies in relation to a shopping or luggage trolley, the local authority may, subject to sub-paragraph (2) below,—

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(a) seize the trolley; and

(b) remove it to such place under its control as the authority thinks fit.

(2) When a shopping or luggage trolley is found on any land appearing to the authorised officer to be occupied by any person, the trolley shall not be removed without the consent of that person unless—

(a) the local authority has served on that person a notice stating that the authority proposes to remove the trolley; and

(b) no notice objecting to its removal is served by that person on the local authority within the period of fourteen days beginning with the day on which the local authority served the notice of the proposed removal on him.

Retention, return and disposal of trolleys

3 (1) Subject to the following sub-paragraphs, the local authority, as respects any shopping or luggage trolley it has seized and removed,—

(a) shall keep the trolley for a period of six weeks; and

(b) may sell or otherwise dispose of the trolley at any time after the end of that period.

(2) The local authority shall, as respects any trolley it has **[**F717seized and removed**]** , as soon as reasonably practicable (but not later than fourteen days) after its removal, serve on the person (if any) who appears to the authority to be the owner of the trolley a notice stating—

(a) that the authority has removed the trolley and is keeping it;

(b) the place where it is being kept; and

(c) that, if it is not claimed, the authority may dispose of it.

(3) Subject to sub-paragraph (4) below, if, within the period mentioned in sub-paragraph (1)(a) above, any person claims to be the owner of a shopping or luggage trolley being kept by the authority under that sub-paragraph, the local authority shall, if it appears that the claimant is the owner, deliver the trolley to him.

(4) A person claiming to be the owner of a shopping or luggage trolley shall not be entitled to have the trolley delivered to him unless he pays the local authority, on demand, such charge as the authority requires.

(5) No shopping or luggage trolley shall be disposed of by the local authority unless (where it has not been claimed) the authority has made reasonable enquiries to ascertain who owns it.

[F718 3A (1) This paragraph applies where the local authority is entitled to sell or otherwise dispose of a shopping or luggage trolley in accordance with paragraph 3(1)(b).

(2) If it appears to the authority that a particular person is the owner of the trolley, the authority may charge him a sum in respect of the removal, storage and disposal of the trolley.

(3) The charge is payable to the authority on demand.

(4) The sum payable as a charge under this paragraph is recoverable by the authority as a debt due to it.

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(5) In proceedings against a person under sub-paragraph (4) for enforcement of a charge, it is a defence for the person to prove that he was not the owner of the trolley to which the charge relates at the time it was removed.**]**

Textual Amendments

F718 Sch. 4 para. 3A inserted (E.W.) (6.4.2006 for E. and 27.10.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 99(3)**, 108 (with s. 100); S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 2(r)**

Charges

4 (1) The local authority, **[**F719in fixing the charges to be paid under this Schedule, shall secure that the charges so payable are such as are sufficient**]** , taking one financial year with another, to cover the cost of removing, storing and disposing of **[**F720shopping or luggage trolleys**]** under this Schedule.

(2) The local authority may agree with persons who own shopping or luggage trolleys and make them available for use in its area a scheme for the collection by them of trolleys they make available for use; and where such an agreement is in force with any person, no charge may be demanded under paragraph 3 **[**F721or 3A**]** above by the local authority in respect of any trolley within the scheme in relation to which the provisions of the scheme are complied with.

Definitions

5 In this Schedule—

"luggage trolley" means a trolley provided by a person carrying on an undertaking mentioned in paragraph 1(2)(d) above to travellers for use by them for carrying their luggage to, from or within the premises used for the purposes of his undertaking, not being a trolley which is power-assisted; and

"shopping trolley", means a trolley provided by the owner of a shop to customers for use by them for carrying goods purchased at the shop, not being a trolley which is power-assisted.

F722SCHEDULE 5

. . . . . .

Textual Amendments

F722 Sch. 5 repealed (27.8.1993) by 1993 c. 12, ss. 50, 51(2), **Sch. 6 Pt.I** (with ss. 42, 46)

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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SCHEDULE 6

Section 128.

[F723THE COUNTRYSIDE COUNCIL FOR WALES: CONSTITUTION.]

Textual Amendments

F723 Sch. 6 heading substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 126(3)**; S.I. 2006/2541, **art. 2**

Preliminary

1 F724 . . . . . .

Textual Amendments

F724 Sch. 6 para. 1 repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105, 107, Sch. 11 para. 126(2), **Sch. 12**; S.I. 2006/2541, **art. 2**

Constitution and membership

2 The council shall be a body corporate.

3 (1) The council shall not be regarded as the servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown; and the council's property shall not be regarded as property of, or property held on behalf of, the Crown.

(2) Sub-paragraph (1) above has effect subject to paragraph 18 below.

4 (1) The Secretary of State shall appoint one of the members of the council to be chairman of the council and may appoint a member to be deputy chairman.

(2) The chairman, deputy chairman and other members of the council shall hold and vacate office in accordance with the terms of their appointment.

(3) A member of the council may, by notice in writing addressed to the Secretary of State, resign his membership, and the chairman and deputy chairman of the council may by such a notice resign their office as such without resigning their membership.

5 A member of the council who ceases to be a member or ceases to be chairman or deputy chairman of the council shall be eligible for reappointment.

6 The Secretary of State may remove a member of the council from membership if he has—

(a) become bankrupt or made an arrangement with his creditors or, in Scotland, had his estate sequestrated or made a trust deed for behoof of his creditors or a composition contract; or

(b) been absent from meetings of the council for a period longer than six consecutive months without the permission of the council;

or if he is, in the opinion of the Secretary of State unable or unfit to discharge the functions of a member.

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Remuneration and allowances for members of council

7 (1) The council shall—

(a) pay to their members such remuneration and allowances (if any); and

(b) as regards any member or former member in whose case the Secretary of State may so determine, pay such pension, allowance or gratuity to or in respect of him, or make such payments towards the provision of such pension, allowance or gratuity,

as the Secretary of State may with the approval of the Treasury determine.

(2) If a person ceases to be a member of the council, and it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may require the council to pay to that person a sum of such amount as the Secretary of State may with the approval of the Treasury determine.

Staff

8 (1) There shall be a chief officer of the council.

(2) The first appointment of a chief officer shall be made by the Secretary of State after consultation with the chairman of the council (if there is a person holding that office when the appointment is made); and the council shall, with the approval of the Secretary of State, make the subsequent appointments.

9 The council may appoint such number of other employees as they may, with the approval of the Secretary of State given with the consent of the Treasury, determine.

10 The council shall pay to the chief officer and their other employees such remuneration and allowances as the council may, with the approval of the Secretary of State given with the consent of the Treasury, determine.

11 The council shall, in the case of such of their employees or former employees as they may, with the approval of the Secretary of State given with the consent of the Treasury, determine—

(a) pay such pensions, allowances or gratuities to or in respect of those employees,

(b) make such payments towards provision of such pensions, allowances or gratuities, or

(c) provide and maintain such schemes (whether contributory or not) for the payment of such pensions, allowances or gratuities,

as they may, with the approval of the Secretary of State given with the consent of the Treasury, determine.

Proceedings

12 (1) The council may regulate their own procedure (including making provision in relation to quorum).

(2) The proceedings of the council and any committee of the council shall not be invalidated by any vacancy amongst their members or by any defect in the appointment of any such member.

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Delegation of powers

13 (1) Anything authorised or required by or under any enactment to be done by the council may be done by any committee of theirs which, or by any member or employee of the council who, is authorised (generally or specially) for the purpose by the council.

(2) Nothing in sub-paragraph (1) above shall prevent the council from doing anything that a committee, member or employee has been authorised to do.

Committees

14 (1) The council may appoint persons who are not members of the council to be members of any committee established by the council (in addition to any members of the council).

(2) The council shall pay to a person so appointed such remuneration and allowances (if any) as the Secretary of State may with the approval of the Treasury determine.

(3) The council may regulate the procedure of any committee of theirs.

Documents

15 (1) F725 . . . . . .

(2) The application of the seal of the council shall be authenticated by the signature of any member or employee of the council who is authorised (generally or specially) for the purpose by the council.

(3) Any document purporting to be an instrument made or issued by the council and to be duly executed under the seal of the council, or to be signed or executed by a person authorised for the purpose by the council, shall be received in evidence and treated, without further proof, as being so made or issued unless the contrary is shown.

F726 16 . . . . . .

Textual Amendments

F726 Sch. 6 para. 16 repealed (01.04.1992) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), s. 27(2), **Sch.11**; S.I. 1991/2633, **art. 4**.

Public Records

17 In Schedule 1 to the M123 Public Records Act 1958 (definition of public records), in Part II of the Table at the end of paragraph 3 (organisations whose records are public records) there shall be inserted in the appropriate places entries relating to the Countryside Council for Wales and the Nature Conservancy Council for England.

Marginal Citations

M123 1958 c. 51.

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Land

18 (1) For the purposes of the application of any enactment or rule of law to land an interest in which belongs to the council, and which is managed as a nature reserve, the council shall be deemed to be a Government department; and any other land occupied by them shall be deemed, for the purpose of any rate on property, to be property occupied by or on behalf of the Crown for public purposes.

(2) In sub-paragraph (1) above "interest" and "land" have the meanings assigned to them by section 114 of the National Parks and Access to the [M124]Countryside Act 1949.

Marginal Citations

M124 1949 c. 97.

Reports, accounts etc.

19 The council shall—

(a) furnish the Secretary of State with such returns, accounts and other information with respect to their property and activities or proposed activities as he may from time to time require;

(b) afford to the Secretary of State facilities for the verification of information so furnished; and

(c) for the purpose of such verification, permit any person authorised in that behalf by the Secretary of State to inspect and make copies of the council's accounts, books, documents or papers and give that person such explanation of anything he is entitled to inspect as he may reasonably require.

Modifications etc. (not altering text)

C140 Sch. 6 para. 19 modified (E.) (1.1.2005) by The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004 (S.I. 2004/3196), **reg. 6(4)** (as amended (30.4.2005) by The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) (Amendment) Regulations 2005 (S.I. 2005/918), reg. 2(d)) (both S.I. 2004/3196 and S.I. 2005/918 were revoked (12.1.2006) by S.I. 2005/3459, reg. 10)

C141 Sch. 6 para. 19 modified (W.) (1.1.2005) by The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Regulations 2004 (S.I. 2004/3280), **reg. 6(5)** (as substituted (1.11.2006) by The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) (Amendment) Regulations 2006 (S.I. 2006/2831), reg. 2(5))

C142 Sch. 6 para. 19 modified (E.) (12.1.2006) by The Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2006 (S.I. 2005/3459), **reg. 6(5)**

20 (1) The council shall—

(a) as soon as possible after the 31st March following the date appointed under section 131(3) of this Act make to the Secretary of State a report on the exercise and performance of their functions down to that date, and

(b) make a similar report to him as to each period of twelve months thereafter as soon as possible after its end;

and a copy of each such report shall be laid before each House of Parliament by the Secretary of State.

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(2) Without prejudice to the generality of sub-paragraph (1) above, the report of the Countryside Council for Wales for any year shall include a statement of the action taken by the Council to promote the enjoyment of the countryside by members of the public who are disabled.

Modifications etc. (not altering text)

C143 Sch. 6 para. 20 amended (S.) (27.11.1991) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), s. 14(5), **Sch. 4 para. 2(1)(a)**; S.I. 1991/2633, art. 3, **Sch.**

C144 Sch. 6 para. 20 modified (E.) (1.1.2005) by The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004 (S.I. 2004/3196), **reg. 6(4)** (as amended (30.4.2005) by The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) (Amendment) Regulations 2005 (S.I. 2005/918), reg. 2(d)) (both S.I. 2004/3196 and S.I. 2005/918 were revoked (12.1.2006) by S.I. 2005/3459, reg. 10)

C145 Sch. 6 para. 20 modified (W.) (1.1.2005) by The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Regulations 2004 (S.I. 2004/3280), **reg. 6(5)** (as substituted (1.11.2006) by The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) (Amendment) Regulations 2006 (S.I. 2006/2831), reg. 2(5))

C146 Sch. 6 para. 20 modified (E.) (12.1.2006) by The Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2006 (S.I. 2005/3459), **reg. 6(5)**

21 (1) The council shall keep proper accounts and other records, and shall prepare for each financial year a statement of account in such form as the Secretary of State with the approval of the Treasury may direct and submit those statements of account to the Secretary of State at such time as he may with the approval of the Treasury direct.

(2) The Secretary of State shall, on or before 30th November in any year, transmit to the Comptroller and Auditor General the statements of account of the council for the financial year last ended.

(3) The Comptroller and Auditor General shall examine and certify the statements of account transmitted to him under this paragraph, and lay copies of them together with his report thereon before each House of Parliament.

(4) In this paragraph "financial year" means the period beginning with the day appointed under section 131(3) of this Act and ending with the 31st March following that date and each period of twelve months thereafter.

Modifications etc. (not altering text)

C147 Sch. 6 para. 21 amended (S.) (27.11.1991) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), s. 14(5), **Sch. 4 para. 2(1)(a)**; S.I. 1991/2633, art. 3, **Sch.**

Superannuation Act 1965 (c. 74)

22 In paragraph 7 of section 39(1) of the Superannuation Act 1965 (public offices)—

(a) there shall be inserted in the appropriate place the following entry—

"The Countryside Council for Wales.";

(b) for the entry relating to the Nature Conservancy Council there shall be substituted the following entries—

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"The Nature Conservancy Council for England.

The Nature Conservancy Council for Scotland."

Parliamentary Commissioner Act 1967 (c. 13)

23 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments and authorities subject to investigation)—

[F727(a) after the entry for the Countryside Commission for Scotland there shall be inserted the following entry—

"Countryside Council for Wales.";**]**

(b) for the entry relating to the Nature Conservancy Council there shall be substituted the following entries—

"Nature Conservancy Council for England.

Nature Conservancy Council for Scotland."

Textual Amendments

F727 Sch. 6 para. 23(a) repealed (1.7.1999) by 1998 c. 38, s. 152, **Sch. 18 Pt.I** (with ss. 137(1), 139(2), 141(1), 143(2)); S.I. 1999/1290, **art. 4**

House of Commons Disqualification Act 1975 (c. 24)

24 In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices), for the entry relating to members of the Nature Conservancy Council in receipt of remuneration there shall be substituted—

"Any member of the Nature Conservancy Council for England, the Nature Conservancy Council for Scotland or the Countryside Council for Wales in receipt of remuneration."

Inheritance Tax Act 1984 (c. 51)

25 In Schedule 3 to the Inheritance Tax Act 1984 (gifts for national purposes), for the entry relating to the Nature Conservancy Council there shall be substituted the following entries—

"Nature Conservancy Council for England.

Nature Conservancy Council for Scotland.

Countryside Council for Wales."

F728F728SCHEDULE 7

. . . . . .

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F728 Sch. 7 repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105, 107, Sch. 11 para. 126(2), **Sch. 12**; S.I. 2006/2541, **art. 2**

SCHEDULE 8

Section 130.

AMENDMENT OF ENACTMENTS RELATING TO COUNTRYSIDE MATTERS

National Parks and Access to the Countryside Act 1949 (c. 97)

1 (1) The National Parks and Access to the Countryside Act 1949 shall be amended as follows.

(2) For section 1 (the Countryside Commission) there shall be substituted the following section—

"**1 The Countryside Commission and the Countryside Council for Wales.**

(1) There shall be a Countryside Commission which shall exercise functions in relation to England for the purposes specified in subsection (2) below; and the Countryside Council for Wales (established by section 128 of the Environmental Protection Act 1990) shall exercise corresponding functions in relation to Wales for the corresponding purposes specified in section 130(2) of the Environmental Protection Act 1990.

(2) The purposes for which the functions of the Commission are exercisable are—

(a) the preservation and enhancement of natural beauty in England, both in the areas designated under this Act as National Parks or as areas of outstanding natural beauty and elsewhere;

(b) encouraging the provision or improvement, for persons resorting to National Parks, of facilities for the enjoyment thereof and for the enjoyment of the opportunities for open-air recreation and the study of nature afforded thereby."

(3) In section 3 (power of Minister to give directions), in subsection (1) after the word "Commission" in the first place it occurs there shall be inserted the words " or to the Council " and after that word in the second place it occurs there shall be inserted the words " or Council ".

(4) Before section 5 (National Parks) there shall be inserted the following section—

"**4A Application of Part II of this Act in Wales.**

(1) The provisions of this Part of this Act shall, subject to the next following subsection, apply to land in Wales as they apply to land in England.

(2) Where a provision of this Part of this Act confers a function on the Countryside Commission as respects England (or areas of any description in

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England), the Countryside Council for Wales shall have the corresponding function as respects Wales (or areas of a similar description in Wales).”

(5) In sections 5(2) and 6(1) the words “and Wales” shall be omitted.

(6) Before section 51 (long-distance routes) there shall be inserted the following section—

“**50A Application of Part IV of this Act in Wales.**

(1) The provisions of this Part of this Act shall, subject to the next following subsection, apply to land in Wales as they apply to land in England.

(2) Where a provision of this Part of this Act confers a function on the Countryside Commission as respects England (or land of any description in England), the Countryside Council for Wales shall have the corresponding function as respects Wales (or land of a similar description in Wales).”

(7) In section 51(1) the words “or Wales” shall be omitted.

(8) In sections 62(1) and 64(5) (consultation requirements as to land in National Parks), after the word “Commission” there shall be inserted the words “ (where the Park is in England) or the Council (where the Park is in Wales) ”.

(9) In section 65 (access orders), in subsection (5), after the word “Park” in both places in which it occurs, there shall be inserted the words “ in England ” and after that subsection there shall be inserted the following subsection—

“(5A) The preceding subsection shall apply in relation to National Parks in Wales, and the Council, as it applies in relation to National Parks in England, and the Commission.”

(10) In section 85 (general advisory duties)—

(a) for the words “the duties of the Commission” there shall be substituted the words “ their respective duties ”;

(b) after the word “Commission”, in the second place in which it occurs, there shall be inserted the words “ and the Council ”;

(c) in paragraph (b), after the word “Commission” there shall be inserted the words “ , or, as the case may be, to the Minister and to the Council, ”; and

(d) in paragraph (c), after the word “Commission” there shall be inserted the words “ (as respects England) or to the Council (as respects Wales) ”.

(11) After section 86 (information services provided by Commission regarding National Parks) there shall be inserted the following section—

“**86A Information services to be provided by Council.**

The provisions of section eighty-six of this Act shall apply to the Council in relation to National Parks and other land in Wales as they apply to the Commission in relation to National Parks and other land in England.”

F736(12) . . . . . .

F737(13) . . . . . .

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(14) In section 90(4) (consultation before making certain byelaws) after the word "Commission" there shall be inserted the words " (as regards land in England) or the Council (as regards land in Wales) ".

(15) In section 91(1) (consultation before making certain byelaws) after the word "Commission" there shall be inserted the words " (as regards land or waterways in England) or the Council (as regards land or waterways in Wales) ".

(16) In section 114 (interpretation), after the definition of "area of outstanding natural beauty" there shall be inserted the following definitions—

""the Commission" means the Commission established by section one of this Act;

"the Council" means the Countryside Council for Wales;".

(17) In the first Schedule (procedure for certain orders), in paragraph 2(5), after the word "Commission" where it first appears there shall be inserted the words " , the Council " and after that word in the second place it appears there shall be inserted the word " , Council ".

Textual Amendments

F736 Sch. 8 para. 1(12) repealed (1.4.2001 for E. and 1.5.2001 for W.) by 2000 c. 37, s. 102, **Sch. 16 Pt. V**; S.I. 2000/114, **art. 2(2)(i)(m)**; S.I. 2001/1410, **art. 2(i)(q)**

F737 Sch. 8 para. 1(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.**

The Countryside Act 1968 (c. 41)

2 (1) The Countryside Act 1968 shall be amended as follows.

(2) F738 . . . . . .

(3) F738 . . . . . .

(4) F738 . . . . . .

(5) In section 8 (sailing, boating and fishing in country parks), in subsection (5) after the word "Commission" there shall be inserted the words " (if the works are in England) or the Council (if the works are in Wales) ".

(6) In section 12 (facilities in or near National Parks)—

(a) F738 . . . . . .

(b) in subsection (5) after the word "Commission" there shall be inserted the words " (if the National Park is in England) or the Council (if the National Park is in Wales) ".

(7) In section 13 (control of boats etc. in National Parks) in subsection (4), after the word "Commission" there shall be inserted the words " (if the National Park is in England) or the Council (if the National Park is in Wales) ".

(8) In section 23 (provision of facilities by Forestry Commissioners), in subsection (5) for the word "shall" there shall be inserted the words " and the Countryside Council for Wales shall each ".

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(9) In section 38 (avoidance of pollution) after the words "the Commission" there shall be inserted the words " , the Council ".

(10) In section 41 (byelaws etc.)—

(a) in subsection (2), for the word "may" there shall be substituted the words " and the Council may each ";

(b) in subsection (5), after the word "Commission" there shall be inserted the words " (as respects a park or area in England) or the Council (as respects a park or area in Wales) ";

(c) in subsection (8), for the words "were a local authority" there shall be substituted the words " and the Council were local authorities ";

(d) in subsection (9), for the words "or the Commission" there shall be substituted the words " , the Commission or the Council ".

(11) In section 45 (agreements with landowners), in subsection (1) after the word "Commission" there shall be inserted the words " , the Council ".

(12) In section 46 (application of general provisions of 1949 Act), in subsection (2), at the end there shall be inserted " and any reference to the Nature Conservancy Council, so far as referring to the Countryside Council for Wales for purposes connected with their nature conservation functions (within the meaning of section 131 of the Environmental Protection Act 1990) shall include a reference to that Council for purposes connected with their countryside functions (whether conferred by this Act, the Act of 1949 or otherwise.) ".

(13) In section 49 (interpretation), after the definition of "bridleway" there shall be inserted the following definitions—

""the Commission" means the Countryside Commission;

"the Council" means the Countryside Council for Wales;".

Textual Amendments

F738 Sch. 8 para. 2(2)-(4)(6)(a) repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(2), 107, **Sch. 12**; S.I. 2006/2541, **art. 2**

Local Government Act 1972 (c.70)

F739 3 . . . . . .

Textual Amendments

F739 Sch. 8 para. 3 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.

Local Government Act 1974 (c.7)

4 F740 . . . in section 9 of that Act X1 (grants and loans by the Countryside Commission) —

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(a) in subsection (1), for the word "may" there shall be substituted the words " and the Countryside Council for Wales may each " and after the word "Commission" in the second place it appears there shall be inserted the words " or, as the case may be, the Council ";

(b) in subsection (2), after the word "Commission" there shall be inserted the words " or the Countryside Council for Wales ";

(c) in subsection (3), for the words "Countryside Commission's power" there shall be substituted the words " the power of the Countryside Commission and of the Countryside Council for Wales " and after the word "Commission" in the second place it appears there shall be inserted the words " or to the Council ".

Editorial Information

X1 In Sch. 8 para. 4 'that Act' is a reference to the Local Government Act 1974

Textual Amendments

F740 Words in Sch. 8 para. 4 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.

Highways Act 1980 (c. 66)

5 (1) The Highways Act 1980 shall be amended as follows.

(2) In section 105A (environmental assessment for highway projects) in subsection (6)(a), after the word "land" there shall be inserted the words " in England " and, at the end, there shall be inserted the words " or the Countryside Council for Wales, if it relates to land in Wales falling within that paragraph of that subsection ".

(3) In section 120 (orders for extinguishment or diversion of public paths), in subsection (2)(c), at the end there shall be inserted the words " (if the National Park is in England) or the Countryside Council for Wales (if the National Park is in Wales) ".

Wildlife and Countryside Act 1981 (c. 69)

6 (1) The Wildlife and Countryside Act 1981 shall be amended as follows.

(2) In section 34 (limestone pavement orders), in subsection (6) in the definition of "the Commission", the words "and Wales" shall be omitted.

(3) F741 . . . . . .

(4) F741 . . . . . .

(5) In section 47(2) (power of Secretary of State to give grants) after the word "Commission" there shall be inserted the words " or to the Countryside Council for Wales ".

(6) In section 49 (extension of power to appoint wardens), in subsection (1)(b), after the word "authority" in the second place it appears there shall be inserted the words " , the Countryside Council for Wales. " and, in subsection (4), after the word "Commission" in both places it appears there shall be inserted the words " or the Countryside Council for Wales ".

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Textual Amendments

F741 Sch. 8 para. 6(3)(4) repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(2), 107, **Sch. 12**; S.I. 2006/2541, **art. 2**

The Road Traffic Regulation Act 1984 (c.27)

7 In section 22 of the Road Traffic Regulation Act 1984 (traffic regulation orders in special areas), in subsection (1)(a)(iv), after the word "Commission" there shall be inserted the words " or the Countryside Council for Wales "[F742]. . .

Textual Amendments

F742 Words in Sch. 8 para. 7 repealed (1.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59), s. 168(2), **Sch.9**; for Scotland S.I.1991/2286, art. 2(2), **Sch.2** and for England and Wales S.I. 1991/2288, **art. 3**,Sch.

The Water Act 1989 (c. 15)

[F743]8 . . . . . .

Textual Amendments

F743 Sch. 8 para. 8 repealed (1. 12. 1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3** (with Sch. 2 para. 10, 14(1), 15)

SCHEDULE 9

Section 132.

AMENDMENT OF ENACTMENTS CONFERRING NATURE CONSERVANCY FUNCTIONS

National Parks and Access to the Countryside Act 1949 (c. 97)

1 (1) The National Parks and Access to the Countryside Act 1949 shall be amended as follows.

(2) After section 15 there shall be inserted the following section—

"**15A Meaning of "Nature Conservancy Council".**

In this Part of this Act references to "the Nature Conservancy Council" are references—

(a) in relation to land in England, to the Nature Conservancy Council for England;

(b) in relation to land in Scotland, to the Nature Conservancy Council for Scotland; and

(c) in relation to land in Wales, to the Countryside Council for Wales."

[F744](3) . . . . . .

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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(4) In section 103 (general provisions as to acquisition of land)—

(a) in subsection (1), after the words "the Nature Conservancy Council" there shall be inserted the words " (as defined in section 15A of this Act) "; and

F744(b) . . . . . .

(5) In section 106 (supplementary provisions as to bye-laws), in subsection (1), after the words "the Nature Conservancy Council" there shall be inserted the words " (as defined in section 15A of this Act) ".

Textual Amendments

F744 Sch. 9 para. 1(3)(4)(b) repealed (01.04.1992) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), s. 27(2), **Sch.11**; S.I. 1991/2633, **art.4**

Deer (Scotland) Act 1959 (c. 40)

F7452 . . . . . .

Textual Amendments

F745 Sch. 9 para. 2 repealed (01.04.1992) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), s. 27(2), **Sch.11**; S.I. 1991/2633, **art. 4** and expressed to be repealed (18.10.1996) by 1996 c. 44, ss. 13(2), 14(2), **Sch. 2**.

Deer Act 1963 (c. 36)

F7463 . . . . . .

Textual Amendments

F746 Sch. 9 para. 3 repealed (25. 10. 1991) by Deer Act 1991 (c. 54, SIF 4:3), ss. 17, 18(3), **Sch. 4**

Countryside Act 1968 (c. 41)

4 (1) The Countryside Act 1968 shall be amended as follows.

(2) In section 15 (areas of special scientific interest)—

(a) in subsection (2), the words "in the national interest" shall be omitted and, after the words "any such land" there shall be inserted the words " (or of any adjacent land) "; and

(b) F747 . . . . . .

(3) In section 37 (protection for interests in countryside) for the words "Nature Conservancy Council" there shall be substituted the words " , the Council, the Nature Conservancy Council for England and the Nature Conservancy Council for Scotland ".

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F747 Sch. 9 para. 4(2)(b) repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(2), 107, **Sch. 12**; S.I. 2006/2541, **art. 2**

Conservation of Seals Act 1970 (c. 30)

5 In section 10 of the Conservation of Seals Act 1970 (power to grant licences), after subsection (4) there shall be inserted the following subsection—

"(5) In this section a reference to "the Nature Conservancy Council" is a reference to the Nature Conservancy Council for England, the Nature Conservancy Council for Scotland or the Countryside Council for Wales, according as the area in question is in or is in waters adjacent to England, Scotland or Wales."

Badgers Act 1973 (c. 57)

F748 6 . . . . . .

Textual Amendments

F748 Sch. 9 para. 6 repealed (16.10.1992) by Protection of Badgers Act 1992 (c. 51), **s. 15(2)(3)**,Sch.

Import of Live Fish (Scotland) Act 1978 (c. 35)

F749 7 . . . . . .

Textual Amendments

F749 Sch. 9 para. 7 repealed (01.04.1992) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), s. 27(2), **Sch. 11**; S.I. 1991/2633, **art. 4**.

Import of Live Fish (England and Wales) Act 1980 (c. 27)

8 In section 1 of the Import of Live Fish (England and Wales) Act 1980 (power to limit imports), in subsection (2) after the word "Council" there shall be inserted the words " for England, the Countryside Council for Wales ".

Highways Act 1980 (c. 66)

9 In section 105A of the Highways Act 1980 (environmental assessment of highway projects), for subsection (6)(c) there shall be substituted the following paragraph—

"(c) the Nature Conservancy Council for England or the Countryside Council for Wales, if it relates to land in England or, as the case may be, in Wales, falling within paragraph (c)."

Animal Health Act 1981 (c. 22)

10 (1) The Animal Health Act 1981 shall be amended as follows.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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(2) In section 21 (destruction of wildlife on infection)—

(a) in subsection (3), after the word "Council" there shall be inserted the words " for the area to which it will apply ";

(b) in subsection (9), after the definition of "animals" there shall be inserted the following definition—

> ""Nature Conservancy Council" means the Nature Conservancy Council for England, the Nature Conservancy Council for Scotland or the Countryside Council for Wales,".

(3) F750 . . . . . .

Textual Amendments

F750 Sch. 9 para. 10(3) repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(2), 107, **Sch. 12**; S.I. 2006/2541, **art. 2**

Wildlife and Countryside Act 1981 (c. 69)

11 (1) The Wildlife and Countryside Act 1981 shall be amended as follows.

(2) In section 10(5) (consultation with Council required before taking or killing a bat) after the word "Council" there shall be inserted the words " for the area in which the house is situated or, as the case may be, the act is to take place ".

(3) F751 . . . . . .

(4) In section 16 (power to grant licences)—

(a) in subsection (9)(a) and (9)(c), before the word "Nature" there shall be inserted the word " relevant ";

(b) in subsection (10)(a), for the words "the Nature Conservancy Council" there shall be substituted the words " each of the Nature Conservancy Councils " and, after the word "exercise" there shall be inserted the words " in the area of that Council ";

(c) in subsection (10)(b), before the word "Council" there shall be inserted the word " relevant Nature Conservancy "; and

(d) after subsection (10) there shall be inserted the following subsection—

> "(11) For the purposes of this section a reference to a relevant Nature Conservancy Council is a reference to the Nature Conservancy Council for the area in which it is proposed to carry on the activity requiring a licence."

(5) F751 . . . . . .

(6) In section 24 (functions of Nature Conservancy Council)—

(a) F751 . . . . . .

(b) in subsection (2), for the words from "the Council" to the end there shall be substituted the words " to that advice being given. ";

(c) for subsection (3) there shall be substituted the following subsection—

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"(3) The Secretary of State shall lay before each House of Parliament a copy of any advice so given and the statements accompanying it."; and

(d) in subsection (4), for the word "Council" there shall be substituted the words " Nature Conservancy Councils ".

(7) In section 27 (interpretation of Part I)—

(a) in subsection (1), in the definition of authorised person, for the words "the Nature Conservancy Council" there shall be substituted the words " any of the Nature Conservancy Councils "; and

(b) F751 . . . . . .

(8) F751 . . . . . .

(9) F752 . . . . . .

(10) F752 . . . . . .

(11) F752 . . . . . .

(12) F751 . . . . . .

(13) F751 . . . . . .

Textual Amendments

F751 Sch. 9 para. 11(3)(5)(6)(a)(7)(b)(8)(12)(13) repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(2), 107, **Sch. 12**; S.I. 2006/2541, **art. 2**

F752 Sch. 9 para. 11(9)-(11) repealed (30.1.2001) by 2000 c. 37, ss. 102, 103(2), **Sch. 16 Pt. III**

Roads (Scotland) Act 1984 (c. 54)

F753 12 . . . . . .

Textual Amendments

F753 Sch 9 para. 12 repealed (01.04.1992) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), s. 27(2), **Sch. 11**; S.I. 1991/2633, **art. 4**.

Agriculture Act 1986 (c. 49)

13 In section 18 of the Agriculture Act 1986 (environmentally sensitive areas), in subsection (2)—

(a) in paragraph (a) after the word "Council" there shall be inserted the words " for England ";

(b) in paragraph (b) for the words "Countryside Commission and the Nature Conservancy Council" there shall be substituted the words " Countryside Council for Wales ";

F754 (c) . . . . . .

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F754 Sch. 9 para. 13(c) repealed (01.04.1992) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), s. 27(2), **Sch.11**; S.I. 1991/2633, **art. 4**.

Channel Tunnel Act 1987 (c. 53)

14 In paragraph 5 of Schedule 2, and in paragraph 17 of Schedule 3, to the Channel Tunnel Act 1987, after the words "Nature Conservancy Council" there shall be inserted the words " for England ".

Norfolk and Suffolk Broads Act 1988 (c. 4)

15 In the Norfolk and Suffolk Broads Act 1988, for each reference to the Nature Conservancy Council there shall be substituted a reference to the Nature Conservancy Council for England.

Electricity Act 1989 (c. 29)

16 In Schedule 9 to the Electricity Act 1989 (preservation of amenity)—

(a) in paragraph 2(2) for the words from "the Nature" to "Wales", where it first appears, there shall be substituted the words "and—

(a) where the activities which he is authorised by his licence to carry on include activities in England, the Nature Conservancy Council for England and the Historic Buildings and Monuments Commission for England; and

(b) where those activities include activities in Wales, the Countryside Council for Wales and"; and

F755(b) . . . . . .

Textual Amendments

F755 Sch. 9 para. 16(b) repealed (01.04.1992) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), s. 27(2), **Sch.11**; S.I. 1991/2633, **art. 4**.

Water Act 1989 (c. 15)

F756 17 . . . . . .

Textual Amendments

F756 Sch. 9 para. 17 repealed (1. 12. 1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3** (with Sch. 2 paras. 10, 14(1), 15)

F757F757SCHEDULE 10

. . . . . .

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F757 Sch. 10 repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105, 107, Sch. 11 para. 127, **Sch. 12**; S.I. 2006/2541, **art. 2**

SCHEDULE 11

Section 139.

TRANSITIONAL PROVISIONS AND SAVINGS FOR PART VII

PART I

COUNTRYSIDE FUNCTIONS

Preliminary

1 In this Part of this Schedule—

"the appointed day" means the day appointed under section 130(4) of this Act;

"the Commission" means the Countryside Commission;

"the Council" means the Countryside Council for Wales;

"relevant", in relation to anything done by or in relation to the Commission before the appointed day, means anything which, if it were to be done on or after the appointed day, would be done by or in relation to the Council or, as the case may be, by or in relation to both the Commission (so far as concerning England) and the Council (so far as concerning Wales).

Continuity of exercise of functions

2 (1) Any relevant thing done by or in relation to the Commission before the appointed day shall, so far as is required for continuing its effect on and after that date, have effect as if done by or in relation to the Council or, as the case may be, by or in relation to both the Council and the Commission.

(2) Any relevant thing which, immediately before the appointed day, is in the process of being done by or in relation to the Commission may be continued by or in relation to the Council or, as the case may be, by or in relation to both the Council and the Commission.

Construction of references to the Countryside Commission

3 (1) This paragraph applies to any provision of any agreement, or of any instrument or other document, subsisting immediately before the appointed day which refers (in whatever terms) to the Commission and does so (or is to be construed as doing so) in relation to, or to things being done in or in connection with, Wales.

(2) Any provision to which this paragraph applies shall, subject to sub-paragraphs (3) and (4) below, have effect on and after the appointed day with the substitution for, or the inclusion in, any reference to the Commission of a reference to the Council, according as the reference concerns Wales only or concerns both England and Wales.

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Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) Any provision to which this paragraph applies which refers in general terms to members of or to persons employed by or agents of the Commission shall have effect on and after the appointed day with the substitution for, or the inclusion in, any such reference of a reference to members of or persons employed by or agents of the Council, according as the reference concerns Wales only or concerns both England and Wales.

(4) Any provision to which this paragraph applies which refers to a member or employee of the Commission shall have effect on and after the appointed day with the substitution for, or the inclusion in, any such reference of—

(a) a reference to such person as the Council may appoint, or

(b) in default of appointment, to the member or employee of the Council who corresponds as nearly as may be to the member or employee in question,

according as the reference concerns Wales only or concerns both England and Wales.

4 (1) This paragraph applies to any provision of a local Act passed, or subordinate legislation made, before the appointed day which refers (in whatever terms) to the Commission and relates to, or to things being done in or in connection with, Wales.

(2) The Secretary of State may by order make such consequential modifications of any provision to which this paragraph applies as appear to him to be necessary or expedient.

(3) Subject to any exercise of the power conferred by sub-paragraph (2) above, any provision to which this paragraph applies shall have effect on and after the appointed day with the substitution for, or inclusion in, any reference to the Commission of a reference to the Council, according as the reference concerns Wales only or concerns both England and Wales.

Existing areas of outstanding natural beauty and long distance routes

5 (1) This paragraph applies to—

(a) any area of land which immediately before the appointed day is an area of outstanding natural beauty designated under section 87 of the 1949 Act of which part is in England and part is in Wales (referred to as "the two parts" of such an area); and

(b) any long distance route under Part IV of that Act of which some parts are in England and other parts in Wales.

(2) On and after the appointed day the two parts of an area to which this paragraph applies shall be treated as if each were a distinct area of outstanding natural beauty; and accordingly, so far as may be necessary for the purpose of applying paragraphs 2 and 3 above, anything done by or in relation to the Commission in relation to both parts of that area shall be treated as having been done in relation to the part in Wales by or in relation to the Council.

(3) On and after the appointed day any route to which this paragraph applies shall not cease, by virtue of this Part of this Act to be a single route for the purposes of Part IV of the 1949 Act; but any function which before that day is exercisable by or in relation to the Commission shall, on and after that day be exercisable by or in relation to the Commission (so far as concerns parts of the route in England) and by or in relation to the Council (so far as concerns parts of the route in Wales).

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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(4) On or after the appointed day the Commission and the Council shall each exercise any function of theirs in relation to an area or route to which this paragraph applies only after consultation with the other; and the Commission and the Council may make arrangements for discharging any of their functions in relation to such an area or route jointly.

PART II

NATURE CONSERVATION FUNCTIONS

Preliminary

6 In this Part of this Schedule—

"appointed day" means the date appointed under section 131(3) of this Act;

"appropriate new council" shall be construed in accordance with paragraph 7 below; and

"new council" means a council established by section 128(1) of this Act.

7 (1) In this Part of this Schedule a reference to "the appropriate new council" is, in relation to or to things done in connection with property, rights or liabilities of the Nature Conservancy Council which are transferred by section 135(2) of this Act to a new council, a reference to that new council.

(2) Subject to sub-paragraph (1) above, a reference in this Part of this Schedule to "the appropriate new council" is, in relation to anything else done before the appointed day by or in relation to the Nature Conservancy Council in the exercise of or in connection with any function of theirs (other than a function corresponding to a special function of the new councils)—

(a) a reference to the new council by whom the nature conservation function corresponding to that function is exercisable on and after that date; or

(b) where the thing done relates to a matter affecting the area of more than one new council, a reference to each new council by whom the nature conservation function corresponding to that function is exercisable on and after that date;

and in relation to anything done in the exercise of or in connection with any function of the Nature Conservancy Council corresponding to a special function of the new councils a reference to "the appropriate new council" is a reference to the joint committee or, where directions under section 133(5) of this Act have been given, the new council by whom the corresponding special function is dischargeable (on behalf of the new councils) on and after that day.

(3) Any question arising under this paragraph as to which new council is the appropriate new council in relation to any particular function of the Nature Conservancy Council may be determined by a direction given by the Secretary of State.

Continuity of exercise of functions

8 (1) Anything done (or deemed by any enactment to have been done) by or in relation to the Nature Conservancy Council before the appointed day shall, so far as is required

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for continuing its effect on and after that date, have effect as if done by or in relation to the appropriate new council.

(2) Anything which immediately before the appointed day is in the process of being done by or in relation to the Nature Conservancy Council may be continued by or in relation to the appropriate new council as if it had been done by or in relation to that council.

Construction of references to the Nature Conservancy Council

9 (1) This paragraph applies to any agreement, any instrument and any other document subsisting immediately before the appointed day which refers (in whatever terms) to the Nature Conservancy Council, other than a scheme provided by that Council under paragraph 12 of Schedule 3 to the [M125]Nature Conservancy Council Act 1973.

(2) Any agreement, instrument or other document to which this paragraph applies shall have effect on and after the appointed day with the substitution—

(a) for any reference to the Nature Conservancy Council of a reference to the appropriate new council;

(b) for any reference in general terms to members of or to persons employed by or agents of the Nature Conservancy Council of a reference to members of or persons employed by or agents of the appropriate new council; and

(c) for any reference to a member or officer of the Nature Conservancy Council of a reference to such person as the appropriate new council may appoint or, in default of appointment, to the member or employee of that council who corresponds as nearly as may be to the member or officer in question.

Marginal Citations
M125 1973 c. 54.

10 (1) This paragraph applies to any provision of a local Act passed, or subordinate legislation made, before the appointed day which refers (in whatever terms) to the Nature Conservancy Council.

(2) The Secretary of State may by order make such consequential modifications of any provision to which this paragraph applies as appear to him to be necessary or expedient.

(3) Subject to any exercise of the power conferred by sub-paragraph (2) above, any provision to which this paragraph applies shall have effect on and after the appointed day with the substitution for each reference to the Nature Conservancy Council of a reference to such one or more of the new councils as may be appropriate, according as the provision relates to, or to things being done in or in connection with, England, Scotland or Wales.

Pensions for Nature Conservancy Council staff

11 (1) The repeal by this Act of paragraph 12 of Schedule 3 to the [M126]Nature Conservancy Council Act 1973 shall not affect the operation on and after the appointed day of any scheme provided by the Nature Conservancy Council for the payment to or in respect of its officers of pensions, allowances or gratuities.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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(2) Any such scheme shall have effect on and after the appointed day with the substitution for any reference to the Nature Conservancy Council of a reference to the Secretary of State.

Marginal Citations
M126 1973 c. 54.

Existing nature reserves and areas of special scientific interest

12 (1) This paragraph applies to any land which, immediately before the appointed day is—

(a) a nature reserve (within the meaning of Part III of the 1949 Act) which is managed by, or under an agreement entered into with, the Nature Conservancy Council or which is the subject of a declaration under section 35 of the 1981 Act; or

(b) an area of special scientific interest which has been notified by the Nature Conservancy Council under section 28(1) of the 1981 Act or is treated by section 28(13) of that Act as having been notified under section 28(1)(a) of that Act or is an area to which an order under section 29(1) of that Act relates;

and of which part is in England and part is in Wales or, as the case may be, part is in England and part is in Scotland (referred to as "the two parts" of such a reserve or area).

(2) On and after the appointed day, the two parts of any reserve or area to which this paragraph applies shall be treated as if each were a distinct nature reserve or area of special scientific interest; and accordingly, so far as may be necessary for the purpose of applying paragraphs 8 and 9 above, anything done by or in relation to the Nature Conservancy Council affecting both parts of that reserve or area shall be treated as having been done by or in relation to each of the two parts separately.

(3) On and after the appointed day the new council exercising functions as respects either part of a reserve or area to which this paragraph applies shall exercise those functions only after consultation with the new council exercising functions as respects the other part; and those councils may make arrangements for discharging any of those functions jointly.

Modifications etc. (not altering text)
C149 Sch. 11 para. 12 amended (S.) (01.04.1992) and extension to Scotland continued (S.) (01.04.1992) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), **s. 4(8)**; S.I. 1991/2633, **art. 4**.

PART III

SUPPLEMENTARY

13 Paragraphs 3, 4, 5, 8, 9, 10 and 12 above are without prejudice to any provision made by or under this Part of this Act in relation to any particular functions, property, rights or liabilities; and, in particular, nothing in this Schedule applies in relation to contracts of employment made by the Countryside Commission or the Nature Conservancy Council.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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14 The Secretary of State may, in relation to any particular functions of the Countryside Commission or the Nature Conservancy Council, by order exclude, or modify or supplement any provision of this Schedule or make such other transitional provision as he may think necessary or expedient.

15 In this Schedule "the 1949 Act" means the National Parks and Access to the [M127]Countryside Act 1949 and "the [M128]1981 Act" means the Wildlife and Countryside Act 1981.

Marginal Citations

M127 1949 c. 97.

M128 1981 c. 69.

SCHEDULE 12

Sections 140 and 142.

INJURIOUS OR HAZARDOUS SUBSTANCES: ADVISORY COMMITTEE

1 The Secretary of State shall appoint the members of the committee, and shall appoint one of those members to be chairman.

2 The committee shall include persons who appear to the Secretary of State to be representative of—

(a) persons engaged in carrying on industrial or commercial undertakings;

(b) persons having scientific knowledge of matters concerning pollution of the environment;

(c) bodies concerned with the protection or improvement of the environment; and

(d) bodies concerned with the protection of persons using substances or articles subject to regulation under section 140 or 142 of this Act.

3 The Secretary of State may make provision by regulations with respect to the terms on which members of the committee are to hold and vacate office, including the terms on which any person appointed as chairman is to hold and vacate office as chairman.

4 The Secretary of State shall provide the committee with such services and other facilities as appear to him to be necessary or expedient for the proper performance of the committee's functions.

5 The Secretary of State may pay to the members of the committee such remuneration (if any) and such allowances as may be determined by the Secretary of State with the consent of the Treasury.

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SCHEDULE 13

Section 144.

AMENDMENTS OF HAZARDOUS SUBSTANCES LEGISLATION

PART I

ENGLAND AND WALES

1 The [M129]Planning (Hazardous Substances) Act 1990 shall be amended as provided in this Part of this Schedule.

Marginal Citations
M129 1990 c. 10.

2 (1) [F761] . . . . . .

(2) In section 7(3), for the words from "means" to "with" in the third place it occurs there shall be substituted the words " means consultations with the Health and Safety Executive and with ".

(3) In section 10(2), for the words from the beginning to "3" there shall be substituted the words " A hazardous substances authority ".

(4) In section 28(1)—

(a) in paragraph (a), for the words following the word "consent" there shall be substituted the words "made to that authority;

(aa) to applications under section 17(1) made to that authority;"; and

(b) after paragraph (d), there shall be inserted the following words—

" ; and every such register shall also contain such information as may be prescribed as to the manner in which applications for hazardous substances consent have been dealt with. "

(5) In section 29, in subsection (3) and (4), for the words "appropriate body" there shall be substituted the words " Health and Safety Executive ".

(6) In section 38(5) for the words "1 to 3" there shall be substituted " 1, 3 ".

(7) In section 39(1), in the definition of "hazardous substances authority", for the word "to", in the second place it occurs, there shall be inserted the word " and ".

Textual Amendments
F761 Sch. 13 para. 2(1) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), **Sch. 1 Pt. 13**

3 In section 7(1)(a) (applications for consent), after the word "applications" there shall be inserted the words " under this Act ".

4 In section 11 (deemed hazardous substances consent in transitional cases)—

(a) in subsection (2) for the words "immediately before the relevant date" there shall be substituted the words " while it was so present "; and

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(b) in subsection (7), in paragraph (a), at the beginning there shall be inserted the words "to the condition that" and, for paragraphs (b) and (c), there shall be substituted the words ", and

(b) to such other conditions (if any) as are prescribed for the purposes of this section and are applicable in the case of that consent."

5 In section 12 (deemed consent: government authorisation), at the end there shall be added the following subsection—

"(6) A government department or the Secretary of State shall, as respects any hazardous substances consent deemed to be granted by virtue of directions under this section, send to the hazardous substances authority concerned any such information as appears to be required by them for the purposes of a register under section 28."

6 F762 . . . . . .

Textual Amendments

F762 Sch. 13 para. 6 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), **Sch. 1 Pt. 13**

7 In section 22 (validity of decisions as to applications), in subsection (4), for the words "1971 Act" there shall be substituted the words " principal Act ".

8 In section 25(1)(c) (provisions of principal Act capable of application to hazardous substances contravention notices), after "184," there shall be inserted " 186, ".

9 Before section 27 there shall be inserted the following section—

"**26A Fees for consent applications.**

(1) Provision may be made by regulations for the payment of a fee of the prescribed amount to a hazardous substances authority in respect of an application for, or for the continuation of, hazardous substances consent.

(2) Regulations under this section may provide for the payment to the Secretary of State of a fee of the prescribed amount in respect of any application which is, by virtue of regulations under section 25, deemed to have been made for hazardous substances consent.

(3) Regulations under this section may provide—

(a) for the transfer of prescribed fees received by a hazardous substances authority in respect of any application which is referred to the Secretary of State under section 20;

(b) for the remission or refunding of a prescribed fee (in whole or in part) in prescribed circumstances or in pursuance of a direction given by the Secretary of State;

and the regulations may make different provision for different areas or for different cases or descriptions of cases."

10 **[**F763In section 303(6) of the M130Town and Country Planning Act 1990 (meaning of "Planning Acts" for purposes of fees chargeable under that section), at the end there shall be inserted the words " or the Planning (Hazardous Substances) Act 1990. "**]**

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F763 Sch. 13 para. 10 repealed (6.4.2009 for E. and otherwise prosp.) by Planning Act 2008 (c. 29) , ss. 238, 241, {Sch. 13} (with s. 226); S.I. 2009/400, **art. 5**, Sch. Pt. 2

Marginal Citations

M130 1990 c. 8.

PART II

SCOTLAND

F764 11 . . . . . .

Textual Amendments

F764 Sch. 13 paras. 11-13 repealed (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt.I** (with s. 5, Sch. 3).

F765 12 . . . . . .

Textual Amendments

F765 Sch. 13 paras. 11-13 repealed (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt.I** (with s. 5, Sch. 3).

F766 13 . . . . . .

Textual Amendments

F766 Sch. 13 paras. 11-13 repealed (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt.I** (with s. 5, Sch. 3).

F767 SCHEDULE 14

Section 148.

AMENDMENTS OF THE PREVENTION OF OIL POLLUTION ACT 1971

Textual Amendments

F767 Sch. 14, except so far as the amendments relate to offences under section 2(1) of the Prevention of Oil Pollution Act 1971, repealed (1.1.1996) by 1995 c. 21, ss. 314(1), 316(2), **Sch.12** (with s. 312(1), Sch. 14 para. 1).

1 The M131 Prevention of Oil Pollution Act 1971 shall be amended as follows.

Marginal Citations

M131 1971 c. 60.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

2 In section 19 (prosecutions), after subsection (4), there shall be inserted the following subsection—

"(4A) Any document required or authorised, by virtue of any statutory provision, to be served on a foreign company for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under section 2(2A) of this Act alleged to have been committed by the company as the owner of a vessel shall be treated as duly served on that company if the document is served on the master of the vessel; and any person authorised to serve any document for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under this Act (whether or not in pursuance of the foregoing provisions of this subsection) shall, for that purpose, have the right to go on board the vessel in question.

(4B) In subsection (4A) of this section a "foreign company" means a company or body which is not one to whom any of the following provisions applies—

(a) sections 695 and 725 of the Companies Act 1985;

(b) Articles 645 and 673 of the Companies (Northern Ireland) Order 1986,

so as to authorise the service of the document in question under any of those provisions."

3 After that section there shall be inserted the following section—

"**19A Power to detain vessels.**

(1) Where a harbour master has reason to believe that the master or owner of a vessel has committed an offence under section 2(2A) of this Act by the discharge from the vessel of oil, or a mixture containing oil, into the waters of the harbour, the harbour master may detain the vessel.

(2) Subsections (1) and (2) of section 692 of the Merchant Shipping Act 1894 (enforcing detention of ship) shall apply in relation to a vessel detained under subsection (1) of this section as they apply in relation to a ship detained under that Act but as if—

(a) in subsection (1) (penalties where ship proceeds to sea while subject to detention)—

(i) for the words from "any commissioned officer" to "and if" there were substituted the word " and "; and

(ii) for the reference to competent authority there were substituted a reference to the harbour authority; and

(b) in subsection (2) (penalties where a ship so proceeds to sea when any officer authorised to detain the ship is on board), for any reference to any officer authorised to detain the ship, or any surveyor or officer of the Secretary of State or any officer of Customs and Excise there were substituted a reference to the harbour master or any person acting on his behalf.

(3) Where a harbour master detains a ship other than a United Kingdom ship (within the meaning of section 21(2) of the Merchant Shipping Act 1979) under this section he shall immediately notify the Secretary of State who shall then inform the consul or diplomatic representative of the State whose

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flag the ship is entitled to fly or the appropriate maritime authorities of that State.

(4) A harbour master who exercises the power conferred by subsection (1) of this section shall immediately release the vessel—

(a) if no proceedings for the offence in question are instituted within the period of 7 days beginning with the day on which the vessel is detained;

(b) if such proceedings, having been instituted within that period, are concluded without the master or owner being convicted;

(c) if either—

(i) the sum of £55,000 is paid to the harbour authority by way of security, or

(ii) security which, in the opinion of the harbour authority, is satisfactory and is for an amount not less than £55,000 is given to the harbour authority,

by or on behalf of the master or owner; or

(d) where the master or owner is convicted of the offence, if any costs or expenses ordered to be paid by him, and any fine imposed on him, have been paid.

(5) The harbour authority shall repay any sum paid in pursuance of subsection (4)(c) of this section or release any security so given—

(a) if no proceedings for the offence in question are instituted within the period of 7 days beginning with the day on which the sum is paid; or

(b) if such proceedings, having been instituted within that period, are concluded without the master or owner being convicted.

(6) Where a sum has been paid, or security has been given, by any person in pursuance of subsection (4)(c) of this section and the master or owner is convicted of the offence in question, the sum so paid or the amount made available under the security shall be applied as follows—

(a) first in payment of any costs or expenses ordered by the court to be paid by the master or owner; and

(b) next in payment of any fine imposed by the court;

and any balance shall be repaid to the first mentioned person.

(7) Any reference in this section to a harbour master or a harbour authority shall, where the harbour in question consists of or includes the whole or any part of a dockyard port within the meaning of the Dockyard Ports Regulation Act 1865, be construed as including a reference to the Queen's harbour master for the port.

(8) For the purposes of this section in its application to England and Wales and, subject to section 30(4A) of this Act, in its application to Northern Ireland—

(a) proceedings for an offence are instituted—

(i) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 in respect of the offence,

(ii) when a person is charged with the offence after being taken into custody without a warrant,

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(iii) when a bill of indictment is preferred by virtue of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933;

and where the application of this paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times; and

(b) proceedings for an offence are concluded without the master or owner being convicted on the occurrence of one of the following events—

(i) the discontinuance of the proceedings;

(ii) the acquittal of the master or owner;

(iii) the quashing of the master or owner's conviction for the offence;

(iv) the grant of Her Majesty's pardon in respect of the master or owner's conviction for the offence.

(9) For the purposes of this section in its application to Scotland—

(a) proceedings for an offence are instituted—

(i) on the granting by the sheriff of a warrant in respect of the offence on presentation of a petition under section 12 of the Criminal Procedure (Scotland) Act 1975;

(ii) when, in the absence of a warrant or citation, the master or owner is first brought before a court competent to deal with the case;

(iii) when, in a case where he is liberated upon a written undertaking in terms of section 18(2)(a), 294(2)(a) or 295(1)(a) of the Criminal Procedure (Scotland) Act 1975, the master or owner appears at the specified court at the specified time;

(iv) when, in a case mentioned in paragraph (iii) above where the master or owner fails to appear at the specified court at the specified time, the court grants warrant for his apprehension;

(v) when summary proceedings are commenced in terms of section 331(3) of the Criminal Procedure (Scotland) Act 1975; and

(b) proceedings for an offence are concluded without the master or owner being convicted on the occurrence of one of the following events—

(i) the court makes a finding of not guilty or not proven against the master or owner in respect of the offence;

(ii) the proceedings are expressly abandoned (other than*pro loco et tempore*) by the prosecutor or are deserted simpliciter;

(iii) the conviction is quashed;

(iv) the accused receives Her Majesty's pardon in respect of the conviction.

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(10) This section shall not apply in relation to any vessel of Her Majesty's navy or to any Government ship (within the meaning of section 80 of the Merchant Shipping Act 1906)."

4 In section 20(1) (power of court to direct amount of unpaid fine to be levied by distress or poinding and sale of vessel) after the words "is not paid" there shall be inserted the words " , or any costs or expenses ordered to be paid by him are not paid, ".

5 In section 24(2) (application of Act to Government ships), for the words "and subsection (4) of section 16" there shall be substituted the words " , subsection (4) of section 16 and subsection (10) of section 19A ".

6 In section 25(1) (power to extend provisions of Act to Isle of Man, Channel Islands etc), after the words "other than section 3" there shall be inserted the words " or 19A ".

7 In section 30 (provisions as to Northern Ireland), after subsection (4), there shall be inserted the following subsection—

"(4A) In its application to proceedings in Northern Ireland, subsection (8)(a) of section 19A of this Act shall have effect as if—

(a) in sub-paragraph (i), for the references to section 1 of the Magistrates' Courts Act 1980 there were substituted a reference to Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981; and

(b) for sub-paragraph (iii) there were substituted—"

"(iii) when an indictment is presented under section 2(2)(c), (e) or (f) of the Grand Jury (Abolition) Act (Northern Ireland) 1969;".

SCHEDULE 15

Section 162.

CONSEQUENTIAL AND MINOR AMENDMENTS OF ENACTMENTS

F768 1 . . . . . .

Textual Amendments

F768 Sch. 15 para 1 repealed (1.4.1993) by 1992 c. 14, s. 117(2), **Sch.14**; S.I. 1993/575, **art. 2(d)**,Sch. (with art. 5)

Exclusion of Alkali Works Act for prescribed processes

2 In the M132Alkali, &c. Works Regulation Act 1906 there shall be inserted, after section 2, the following section—

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"**2A Relation to Environmental Protection Act 1990, Part I.**

(1) The preceding provisions of this Part of this Act shall not apply to any process which is a prescribed process as from the date which is the determination date for that process.

(2) The "determination date" for a prescribed process is—

(a) in the case of a process for which an authorisation is granted, the date on which the enforcing authority grants it, whether in pursuance of the application or, on an appeal, of a direction to grant it;

(b) in the case of a process for which an authorisation is refused, the date of the refusal or, on an appeal, of the affirmation of the refusal.

(3) In this section "authorisation", "enforcing authority" and "prescribed process" have the meaning given in section 1 of the Environmental Protection Act 1990 and the reference to an appeal is a reference to an appeal under section 15 of that Act.".

and, immediately before section 25, as section 24A, a section in the same terms as the section 2A inserted after section 2.

Commencement Information
I81 Sch. 15 para. 2 in force at 1.4.1991, see s. 164(3) and S.I. 1991/1042, **art. 2**

Marginal Citations
M132 1906 c. 14.

Stray dogs

3 **F769** . . . . . .

Textual Amendments
F769 Sch. 15 para. 3 repealed (E.W.) (6.4.2008) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 107, 108, **Sch. 5 Pt. 6**; S.I. 2008/956, **art. 2(b)**

Statutory nuisances

4 (1) The following provisions of the **M133**Public Health Act 1936 (matters deemed statutory nuisances) shall be amended as follows.

(2) In section 141, for the words "Part III of this Act" there shall be substituted the words " Part III of the Environmental Protection Act 1990 ".

(3) in section 259(1), for the words "Part III of this Act" there shall be substituted the words " Part III of the Environmental Protection Act 1990 ".

(4) In section 268—

(a) in subsection (1), for the words "Parts III" there shall be substituted the words " Part III of the Environmental Protection Act 1990 and Parts ";

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(b) in subsection (2), for the words "the said Part III" there shall be substituted the words " Part III of the Environmental Protection Act 1990 "; and

(c) in subsection (3), for the words "Part III of this Act" there shall be substituted the words " Part III of the Environmental Protection Act 1990 ".

Marginal Citations
M133 1936 c. 49.

5 (1) Section 151 of the [M134]Mines and Quarries Act 1954 (matters deemed statutory nuisances) shall be amended as follows.

(2) In subsection (2), for the words "Part III of the Public Health Act 1936" there shall be substituted the words " Part III of the Environmental Protection Act 1990 ".

(3) In subsection (3), for the words "Part III of the Public Health Act 1936" there shall be substituted the words " Part III of the Environmental Protection Act 1990 ".

[F770](4) . . . . . .

Textual Amendments
F770 Sch. 15 para. 5(4) 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**.

Marginal Citations
M134 1954 c. 70.

Exclusion of Clean Air Act 1956 for prescribed processes

[F771]6 . . . . . .

Textual Amendments
F771 Sch. 15 para. 6 repealed (27.8.1993) by 1993 c. 11, ss. 67(3), 68(2), **Sch.6**

Statutory nuisances

[F772]7 . . . . . .

Textual Amendments
F772 Sch. 15 para. 7 repealed (27.8.1993) by 1993 c. 11, ss. 67(3), 68(2), **Sch.6**

[F773]8 . . . . . .

Textual Amendments
F773 Sch. 15 para. 8 repealed (27.8.1993) by 1993 c. 12, ss. 50, 51(2), **Sch. 6 Pt.I** (with ss. 42, 46)

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9 In section 1(1)(g) of the Hovercraft Act 1986 (power to exclude noise nuisance proceedings), after the word "1974" there shall be inserted the words " or Part III of the Environmental Protection Act 1990. "

Goods vehicle operators' licences: pollution offences

10 (1) The following provisions of of the [M135]Transport Act 1968 shall be amended as follows.

[F774](2) . . . . . .

(3) In section 108(1) (statutory nuisance proceedings in relation to waterways), for the words "said Act of 1936" there shall be substituted the words " Environmental Protection Act 1990 ".

Textual Amendments

F774 Sch. 15, para. 10(2) repealed (1.1.1996) by 1995 c. 23, s. 60(2), **Sch. 8 Pt.I** (with ss. 54, 55); S.I. 1995/2181, **art.2** and para. 10(2)(a) repealed (1.1.1996) by 1994 c. 40, s. 81, **Sch. 17**; S.I. 1995/2835, **art. 2**.

Commencement Information

I82 Sch. 15 partly in force; Sch. 15 not in force at Royal Assent see s.164(2); Sch. 15 para. 10(3) in force at 14.1.1991 by S.I. 1991/96, **art. 2**

Marginal Citations

M135 1968 c. 73.

National Park Wardens

11 In section 42 of the [M136]Countryside Act 1968 (National Park Wardens), in subsection (4)(a), for the words "section 1 of the Litter Act 1983" there shall be substituted the words " section 87 of the Environmental Protection Act 1990 ".

Commencement Information

I83 Sch. 15, para. 11 in at force 1.4.1991, see s. 164(3) and S.I. 1991/1042, **art. 2**

Marginal Citations

M136 1968 c. 41

Exclusion of Clean Air Act 1968 for prescribed processes

[F775]12 . . . . . .

Textual Amendments

F775 Sch. 15 para. 12 repealed (27.8.1993) by 1993 c. 11, ss. 67(3), 68(2), **Sch.6**

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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Sale of electricity: Scotland

13 In section 170A(3) of the [M137]Local Government (Scotland) Act 1973 (restriction on sale of electricity by local authority) after the word "prescribed," there shall be inserted the words " or in cases where it is produced from waste, ".

Commencement Information
I84 Sch. 15, para. 13 in force at 1.4.1991, see s. 164(3) and S.I. 1991/1042, **art. 2**

Marginal Citations
M137 1973 c. 65.

Workplace emissions into the air

14 Section 5 of the [M138]Health and Safety at Work etc. Act 1974 (general duty in relation to harmful emissions into the air from prescribed premises) shall be amended by the insertion—

(a) in subsection (1), at the beginning, of the words "Subject to subsection (5) below,"; and

(b) after subsection (4), of the following subsections—

"(5) The foregoing provisions of this section shall not apply in relation to any process which is a prescribed process as from the date which is the determination date for that process.

(6) For the purposes of subsection (5) above, the "determination date" for a prescribed process is—

(a) in the case of a process for which an authorisation is granted, the date on which the enforcing authority grants it, whether in pursuance of the application or, on an appeal, of a direction to grant it;

(b) in the case of a process for which an authorisation is refused, the date of the refusal or, on an appeal, of the affirmation of the refusal.

(7) In subsections (5) and (6) above "authorisation", "enforcing authority" and "prescribed process" have the meaning given in section 1 of the Environmental Protection Act 1990 and the reference to an appeal is a reference to an appeal under section 15 of that Act."

Commencement Information
I85 Sch. 15, para. 14 in force at 1. 4. 1991, see s. 164(3) and S.I. 1991/1042, **art. 2**

Marginal Citations
M138 1974 c. 37.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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Water, noise and atmospheric pollution

15 (1) The following provisions of the [M139]Control of Pollution Act 1974 shall be amended as follows.

(2) In section 30D, after the words "and 1965" there shall be inserted the words " and of the Environmental Protection Act 1990 ".

(3) In section 61(9), at the end, there shall be inserted the words " (in relation to Scotland) or section 82 of the Environmental Protection Act 1990 (in relation to England and Wales) ".

(4) In section 65(8), at the end, there shall be inserted the words " (in relation to Scotland) or section 82 of the Environmental Protection Act 1990 (in relation to England and Wales) ".

(5) In section 74(2), after paragraph (b), there shall be inserted the following "; or

(c) under section 80(4) of the Environmental Protection Act 1990,".

[F776](6) . . . . . .

[F776](7) . . . . . .

[F776](8) . . . . . .

[F776](9) . . . . . .

Textual Amendments

F776 Sch. 15(6)-(9) repealed (27.8.1993) by 1993 c. 11, ss. 67(3), 68(2), **Sch.6**

Commencement Information

I86 Sch. 15 partly in force; Sch. 15 not in force at Royal Assent see s. 164(2); Sch. 15 paras. 15(3)-(5) in force at 14.1.1991 see s. 164(3) and S.I. 1991/96, **art. 2**
Sch. 15, para. 15 partly in force; Sch. 15 paras. 15(6)-(9) in force at 1. 4. 1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

Marginal Citations

M139 1974, c. 40.

[F777]16 . . . . . .

Textual Amendments

F777 Sch. 15 para. 16 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**.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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PROSPECTIVE

Exclusion of Part II of Control of Pollution Act 1974 for radioactive substances: Scotland

17 **[**[F778]For subsection (6) of section 56 of the [M140]Control of Pollution Act 1974 (interpretation of Part II) there shall be substituted the following subsection—

"(6) Except as provided by regulations made under this subsection, nothing in this Part of this Act applies to radioactive waste within the meaning of the Radioactive Substances Act 1960; but regulations may—

(a) provide for prescribed provisions of this Part of this Act to have effect with such modifications as the Secretary of State considers appropriate for the purposes of dealing with such radioactive waste;

(b) make such modifications of the Radioactive Substances Act 1960 and any other Act as the Secretary of State considers appropriate in connection with regulations made under paragraph (a) above."**]**

Textual Amendments

F778 Sch. 15 para. 17 repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 23(e)(iii)**; S.S.I. 2014/160, art. 2(1)(2), sch.

Marginal Citations

M140 1974 c. 40.

Statutory nuisances

[F779]18 . . . . . .

Textual Amendments

F779 Sch. 15 para. 18 repealed (1. 12. 1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch.3** (with Sch. 2 paras. 10, 14(1), 15)

Refuse Disposal: Scotland

19 (1) Section 1 of the [M141]Refuse Disposal (Amenity) Act 1978 (provision by waste disposal authorities of places etc. for disposal of refuse) shall be amended in relation to Scotland as follows.

(2) In subsection (1) at the end there shall be inserted the words " and to dispose of refuse so deposited ".

(3) In subsection (6) for the words from "mandamus" to the end of the subsection there shall be substituted the words " by proceedings under section 45 of the Court of Session Act 1988 ".

(4) In subsection (7) the definition of "local authority" and the word "and" which follows it shall be omitted.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I87 Sch. 15 para. 19 wholly in force at 1.4.1992 see S.I. 1992/266, art. 3

Marginal Citations
M141 1978 c. 3.

Street cleansing: Scotland

20 In section 25 of the [M142]Local Government and Planning (Scotland) Act 1982, for subsection (3) there shall be substituted—

"(3) In subsection (2) above "cleansing" means such cleansing as appears to the islands or as the case may be district council to be necessary in the interests of public health or safety or of the amenities of their area but does not include operations for the removal of snow or ice and "relevant land" means any land, in the open air, to which members of the public have access and which is not comprehended in a public road within the meaning of the Roads (Scotland) Act 1984.".

Commencement Information
I88 Sch. 15, para. 20 in force at 1.4.1991, see s. 164(3) and S.I. 1991/1042 , art. 2

Marginal Citations
M142 1982 c. 43.

Byelaws relating to straw or stubble burning

21 [F780] . . . . . .

Textual Amendments
F780 Sch. 15 para. 21 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), **Sch. 1 Pt. 13**

Functions assignable to London port health authority

22 In section 7(4) of the [M143]Public Health (Control of Disease) Act 1984 (enactments functions under which are assignable to London port health authority), after the paragraph (k) inserted by paragraph 23 of Schedule 6 to the [M144]Building Act 1984, there shall be inserted the following paragraphs—

"(l) Part I of the Environmental Protection Act 1990;
(m) Part III of the Environmental Protection Act 1990;".

Commencement Information
I89 Sch. 15 para. 22 partly in force at 1.1.1991 see s. 164(2) and wholly in force at 1.4.1991, see s. 164(3) and S.I. 1991/1042, **art. 2**

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations
M143 1984 c. 22.
M144 1984 c. 55.

Street cleaning, etc: restriction of traffic

F781 23 . . . . . .

Textual Amendments
F781 Sch. 15 para. 23 repealed (1.7.1992) by Road Traffic (Temporary Restrictions) Act 1991 (c. 26), s. 2(2), **Sch.2**; S.I. 1992/1218, **art.2**

Statutory nuisance

24 In section 76(1)(b) and (4)(a) of the M145 Building Act 1984, for the words "sections 93 to 96 of the Public Health Act 1936" there shall be substituted the words " section 80 of the Environmental Protection Act 1990 ".

Marginal Citations
M145 1984 c. 55.

PROSPECTIVE

Registers of deposits etc. at sea: Northern Ireland Assembly control of regulations

25 In section 25(3) of the M146 Food and Environment Protection Act 1985, after paragraph (a)(ii) there shall be inserted the following sub-paragraph—

"(iii) in section 14(8), for the words from "and any such power" onwards there shall be substituted the words " and any such regulations shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954; and "".

Marginal Citations
M146 1985 c. 48.

Constitution of authorities for waste disposal

26 In section 10 of the M147 Local Government Act 1985 (joint arrangements for waste disposal functions), in subsection (4), for the words "Part I of the Control of Pollution Act 1974" there shall be substituted the words " Part II of the Environmental Protection Act 1990 ".

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Commencement Information

I90 Sch. 15 para. 26 not in force at Royal Assent, see s. 164(3); Sch. 15 para. 26 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

M147 1985 c. 51.

Meaning of household waste: competition

27 In Schedule 1 to the [M148]Local Government Act 1988 (competition: collection of household waste), paragraph 1 shall be amended as follows—

(a) in sub-paragraph (1), the words "In the application of this Part to England and Wales," shall be omitted;

(b) in sub-paragraph (2)(a), for the words "section 12 of the Control of Pollution Act 1974" there shall be substituted the words " section 45 of the Environmental Protection Act 1990 ";

(c) in sub-paragraph (3), for the words "section 30(4) of the Control of Pollution Act 1974" there shall be substituted the words " section 75(8) of the Environmental Protection Act 1990 "; and

(d) sub-paragraph (4) shall be omitted.

Marginal Citations

M148 1988 c. 9.

Exclusion of Water Act 1989 controls of exercise of trade effluent functions in case of prescribed processes

[F782]28 . . . . . .

Textual Amendments

F782 Sch. 15, para. 28 repealed (1. 12. 1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch.3** (with Sch. 2 paras. 10, 14(1), 15)

Exclusion of Part III of Water Act 1989 for discharges from prescribed processes

[F783]29 . . . . . .

Textual Amendments

F783 Sch. 15 para. 29 repealed (1. 12. 1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3** (with Sch. 2 paras. 10, 14(1), 15)

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***Changes to legislation:** Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Contents of registers of National Rivers Authority

[F784]30 . . . . . .

Textual Amendments

F784 Sch. 15, para. 30 repealed (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch.3** (with Sch. 2 paras. 10, 14(1), 15)

Carriers of controlled waste

31 (1) The [M149]Control of Pollution (Amendment) Act 1989 shall be amended as follows.

(2) In the following provisions, for the words "disposal authority" and "disposal authorities" there shall be substituted the words " regulation authority " and " regulation authorities " respectively, that is to say, in sections 1(4)(a), 2(1), 2(b) and (e), (3)(a) and (e) and (4)(a), (b) and (c), 3(1), (2) and (6), 4(1), (3), (4), (5) and (8)(b) and (c), 5(1) and (4)(a), 6(1), (2), (3), (5), [F785]. . ., (7)(a) and (c), (8) and (9) and 7(1), [F785]. . ., (3)(a) and (8).

(3) In section 6(1) (offences justifying seizure of vehicles), in paragraph (a)(i)—

(a) after "1974" there shall be inserted the words " or section 33 of the Environmental Protection Act 1990 "; and

(b) after the word "unlicensed" there shall be inserted the words " deposit, treatment or ".

(4) In section 7 (enforcement)—

(a) in subsection (1), for the words from "91" to "information)" there shall be substituted the words " 68(3), (4) and (5), 69, 70 and 71 of the Environmental Protection Act 1990 (powers of entry, of dealing with imminent pollution and to obtain information) ";

(b) in subsection (2), paragraph (b) shall be omitted; and

[F786](c) . . . . . .

(5) In section 9(1)—

(a) in the definition of "controlled waste"—

(i) for the words ", subject to subsection (2) below," there shall be substituted the words " , at any time, "; and

(ii) for the words "in Part I of the Control of Pollution Act 1974" there shall be substituted the words " for the purposes of Part II of the Environmental Protection Act 1990 ",

(b) the definition of "disposal authority" shall be omitted; and

[F786](c) . . . . . .

(6) Section 9(2) shall be omitted.

Textual Amendments

F785 Words in Sch. 15, para. 31(2) repealed (1.4.1996) by 1995 c. 25, s. 120(3), **Sch.24** (with s. 7(6), 115, 117); S.I. 1996/186, **art.3**.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F786 Sch. 15, paras. 31(4)(c)(5)(c) repealed (1.4.1996) by 1995 c. 25, s. 120(3), **Sch.24** (with s. 7(6), 115, 117); S.I. 1996/186, **art.3**.

Commencement Information

I91 Sch. 15, para. 31 wholly in force at 1.4.1992; Sch. 15, para. 31(4)(b) in force at 1.1.1991 ; Sch. 15, para. 31(1)-(3)(4)(a)(c)(5)(b)(c) in force at 31.5.1991 by S.I. 1991/1319, **art. 2**; Sch. 15, para. 31(5)(a)(6) in force at 1.4.1992 by S.I. 1991/2829, **art. 2**.

Marginal Citations

M149 1989 c. 14.

SCHEDULE 16

REPEALS

F787 PART I

ENACTMENTS RELATING TO PROCESSES

Textual Amendments

F787 Sch. 16 Pt. I partly in force; Sch. 16 Pt. I not in force at Royal Assent see 164(3); repeal in Sch. 16 Pt. I relating to 1906 c. 14 in force for certain purposes at 1.12.1994 by S.I. 1994/2854, **art. 2** and in force (E.W.) at 16.12.1996 insofar as not already in force by S.I. 1996/3056, **art. 2**; repeals in Sch. 16 Pt. I relating to 1974 c. 37 and 1990 c. 43 in force (E.W.) at 16.12.1996 by S.I. 1996/3056, **art. 2**.

Chapter	Short title	Extent of repeal
1906 c. 14.	Alkali, &c. Works Regulation Act 1906.	The whole Act so far as unrepealed.
1956 c. 52.	Clean Air Act 1956.	Section 17(4).
		In section 29(1), in the proviso, paragraph (a).
		In section 31(1), the words from “(other” to “1906)”.
		Schedule 2.
1968 c. 62.	Clean Air Act 1968.	Section 11.
1972 c. 70.	Local Government Act 1972.	In section 180(3), paragraph (b).
1973 c. 65.	Local Government (Scotland) Act 1973.	In section 142(2), paragraph (b).
1974 c. 37.	Health and Safety at Work etc. Act 1974.	Section 1(1)(d) and the word “and” preceding it.
		Section 5.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

1974 c. 40.	Control of Pollution Act 1974.	In section 76(4), the words "or work subject to the Alkali Act". In section 78(1), the words "or work subject to the Alkali Act". In section 79(4), the words "or work subject to the Alkali Act". In section 80(3), the words "or work subject to the Alkali Act". In section 84(1), the definition of "a work subject to the Alkali Act". In section 103(1)(a), the words "Alkali Act or the". In section 105(1), the definition of "the Alkali Act".
1990 c. 43.	Environmental Protection Act 1990.	In section 79(10), the words following "Part I".

Note: The repeal of the Alkali, &c. Works Regulation Act 1906 does not extend to Northern Ireland.

PART II

ENACTMENTS RELATING TO WASTE ON LAND

Commencement Information

I92 Sch. 16 Pt. II partly in force; Sch. 16 Pt. II not in force at Royal Assent, see s. 164(3); Sch. 16 Pt. II in force for certain purposes at 31.5.1991 by S.I. 1991/1319; Sch. 16 Pt. II in force for certain further purposes at 1.4.1992 by S.I. 1991/2829 and S.I. 1992/266; Sch. 16 Pt. II in force for certain further purposes at 1.5.1994 and other ascertainable dates for limited purposes by S.I. 1994/1096, **arts. 2(1)(2)(3)**, 3 (as amended by S.I. 1994/2487, **art. 2** and S.I. 1994/3234, **art. 2**)

Chapter	Short title	Extent of repeal
1974 c. 40.	Control of Pollution Act 1974.	Sections 1 to 21. Sections 27 to 30.
1978 c. 3.	Refuse Disposal (Amenity) Act 1978.	Sections 1.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

1982 c. 45.	Civic Government (Scotland) Act 1982.	Sections 124 and 125 and in section 126, subsections (1) and (3).
1988 c. 9.	Local Government Act 1988.	In Schedule 1, in paragraph 1, in sub-paragraph (1) the words "in the application of this Part to England and Wales," and sub-paragraph (4).
1989 c. 14.	Control of Pollution (Amendment) Act 1989.	In section 7(2), paragraph (b) and the word "and" preceding it.
		In section 9, in subsection (1), the definition of "disposal authority" and subsection (2).
1989 c. 15.	Water Act 1989.	In Schedule 25, in paragraph 48, sub-paragraphs (1) to (6).
1989 c. 29.	Electricity Act 1989.	In Schedule 16, paragraph 18.
1990 c. 43.	Environmental Protection Act 1990.	In section 34(3)(b), the words following "below".
		Section 36(8).

Note: The repeal in the Refuse Disposal (Amenity) Act 1978 does not extend to Scotland.

PART III

ENACTMENTS RELATING TO STATUTORY NUISANCES

Chapter	Short title	Extent of repeal
1936 c. 49.	Public Health Act 1936.	Sections 91 to 100.
		Sections 107 and 108.
		Sections 109 and 110.
		In section 267(4), "III"
1956 c. 52.	Clean Air Act 1956.	Section 16.
		In section 30(1), the words from "or a nuisance" to "existed".
1960 c. 34.	Radioactive Substances Act 1960.	In Schedule 1—
		(a) In paragraph 3, the words "and ninety-two";

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

		(b) in paragraph 3, the words "subsection (2) of section one hundred and eight"; and (c) in paragraph 8, the words "and sixteen".
1961 c. 64.	Public Health Act 1961.	Section 72.
1963 c. 33.	London Government Act 1963.	In Schedule 11, in Part I, paragraph 20.
1963 c. 41.	Offices, Shops and Railway Premises Act 1963.	Section 76(3).
1969 c. 25.	Public Health (Recurring Nuisances) Act 1969.	The whole Act.
1972 c. 70.	Local Government Act 1972.	In section 180(3), paragraph (j). In Schedule 14— (a) in paragraph 4, the words "107(1) and (2), 108"; (b) paragraph 11; and (c) paragraph 12.
1974 c. 40.	Control of Pollution Act 1974.	In section 57, paragraph (a). Sections 58 and 59. In section 69, in subsection (1), paragraph (a) and, in paragraph (c), the words "section 59(2) or", and in subsection (3) the words "section 59(6) or" and paragraph (i). In Schedule 2, paragraphs 11 and 12.
1982 c. 30.	Local Government (Miscellaneous Provisions) Act 1982.	Section 26(1) and (2).
1989 c. 17.	Control of Smoke Pollution Act 1989.	Section 1.
1990 c. 8.	Town and Country Planning Act 1990.	In Schedule 17, paragraph 1.

Note: The repeals in the Clean Air Act 1956, the Control of Pollution Act 1974 and the Control of Smoke Pollution Act 1989 do not extend to Scotland.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART IV

ENACTMENTS RELATING TO LITTER

Commencement Information

I93 Sch. 16, Pt. IV in force at 1.4.1991, see s. 164(3) and S.I. 1991/1042, **art. 2**

Chapter	Short title	Extent of repeal
1974 c. 40.	Control of Pollution Act 1974.	Section 22(1) and (2).
1982 c. 43	Local Government and Planning (Scotland) Act 1982.	Section 25(1).
1983 c. 35.	Litter Act 1983.	Section 1 and 2. Section 12(1).
1986 c. ii.	Berkshire Act 1986.	Section 13.
1987 c. xi.	Exeter City Council Act 1987.	Section 24.
1988 c. viii.	City of Westminster Act 1988.	The whole Act.
1990 c. vii.	London Local Authorities Act 1990.	Section 43.

PART V

ENACTMENTS RELATING TO RADIOACTIVE SUBSTANCES

Chapter	Short title	Extent of repeal
1960 c. 34.	Radioactive Substances Act 1960.	Section 2(1). In section 4, subsection (1) and in subsection (2) the word “further”. Section 7(3)(a). Section 8(1)(a). In section 12, subsection (1), in subsection (2)(b) the words “of waste” and, at the end “and”, and in subsection (3)(b) the words “subsection (1) or”.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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		In section 19(1) the definition of "the Minister".
		Section 21(4).
		In Schedule 1, paragraphs 9 and 11.

PART VI

ENACTMENTS RELATING TO NATURE CONSERVATION AND COUNTRYSIDE MATTERS

Commencement Information

I94 Sch. 16 Part VI partly in force; Pt. VI not in force at Royal Assent see s. 164(3); Pt. VI partly in force at 1.4.1991 by S.I. 1991/685 and at 1.4.1992 by S.I. 1991/2829, **art. 4**

Chapter	Short title	Extent of repeal
1968 c. 41.	Countryside Act 1968.	In section 15(2), the words "in the national interest".
		Section 19.
		In section 46(2), the words "and (2)"
1973 c. 54.	Nature Conservancy Council Act 1973.	In section 1, subsections (1), (2) and (4) to (8).
		Sections 2 and 4.
		In Schedule 1, paragraphs 6, 10 and 12.
		In Schedule 3, Parts I and II.
1981 c. 69.	Wildlife and Countryside Act 1981.	In section 34(6) the words "and Wales".
		Section 38.
		In section 43(1A) the words "by the Countryside Commission".
		In Schedule 13, paragraph 5.

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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PART VII

ENACTMENTS RELATING TO HAZARDOUS SUBSTANCES

Commencement Information

I95 Sch. 16 Pt. VII partly in force; Sch. 16 Pt. VII not in force at Royal Assent see s. 164(3); repeals relating to the Planning (Hazardous Substance) Act 1990 in Sch. 16 Pt. VII in force at 1.1.1992 by S.I. 1991/2829, **art. 3**; repeals relating to the Town and Country Planning (Scotland) Act 1972 in Sch. 16 Pt. VII in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**; repeal in the Housing and Planning Act 1986 in Sch. 16 Pt. VII in force at 1.5.1993 by S.I. 1993/274, **art. 3**

Chapter	Short title	Extent of repeal
1972 c. 52.	Town and Country Planning (Scotland) Act 1972.	In section 56A(1), the words "and to section 56B below". Section 56B. In section 56E(2)(e) and 56K(5)(b), the words "or Health and Safety Commission". In section 56F(1), the words "and (3)". Section 56F(3). Section 56H(5). In section 56J(5), the words from "other" to "applies". In section 56M(3), the words "Subject to subsection (4) below,". Section 56M(4). In section 56N, in subsection (1)(b), the words from "or" to "would be" and subsection (2). In section 56O, the definition of "the appropriate body" and the word "and" immediately following.
1986 c. 63.	Housing and Planning Act 1986.	In Part II of Schedule 7, in paragraph 8 the word "56B,".
1989 c. 29.	Electricity Act 1989.	In Schedule 17, paragraph 37(1)(b).
1990 c. 10.	Planning (Hazardous Substances) Act 1990.	In section 1, the words "2 or".

Status: *Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.*
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	Section 2.
	Section 3(6).
	In section 9(2)(e) and 18(2)(b), the words “or Health and Safety Commission”.
	In section 11(7), the words “to the conditions that”.Section 13(7).
	In section 15(1), the words from “other” to “applies)”.
	Section 20(6).
	Section 21(7).
	Section 27(4).
	In section 28(1), the words “authority who are a” and the words “by virtue of section 1 or 3”.
	In section 28(1)(b), the words “or but for section 2 would be”.
	Section 28(2).
	In section 29(6), the definition of “the appropriate body” and the word “and” immediately following that definition.
	In section 30(1), the words “by virtue of section 1 or 3”.
	Section 33.
	In section 38(2), the words “(being a local planning authority)”.
	In section 39(2), the entries for “the 1971 Act”, “the appropriate Minister” and “operational land”.
	In section 39(4), the words “2,” and “and his undertaking a statutory undertaking”.
	In section 39(5), the word “2,”, in the first place it occurs and the words following “undertaker” in the second place it occurs.

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		In section 39(6), the words "and their undertakings statutory undertakings".Section 39(7) and (8).
1990 c. 11.	Planning (Consequential Provisions) Act 1990.	In Schedule 2, paragraph 82(2).

VALID FROM 01/04/2015

PART VIII

ENACTMENTS RELATING TO DEPOSITS AT SEA

Chapter	Short title	Extent of repeal
1985 c. 48.	Food and Environment Protection Act 1985.	Section 5(c), (d) and (e)(iii). Section 6(1)(a)(iii). Schedule 4.

PART IX

MISCELLANEOUS ENACTMENTS

Commencement Information

I96 Sch. 16 Pt. IX wholly in force; Sch. 16 Pt. IX partly in force at Royal Assent see s. 164(2); sch. 16 Pt. IX partly in force at 1.4.1992 by S.I 1992/266, art. 3; repeals in Sch. 16 Pt. IX relating to the Criminal Justice Act 1982 and the Criminal Justice Act 1988 in force at 18.2.1993 by S.I. 1993/274, **art. 2(1)**

Chapter	Short title	Extent of repeal
1906 c. 32.	Dogs Act 1906.	Section 4(1).
1974 c. 40.	Control of Pollution Act 1974.	Section 100.
1982 c. 45.	Civic Government (Scotland) Act 1982.	Section 128(1).
1982 c. 48.	Criminal Justice Act 1982.	Section 43.
1988 c. 9.	Local Government Act 1988.	Section 39(2) and (4).
1988 c. 33.	Criminal Justice Act 1988.	Section 58.

Status:
Point in time view as at 06/04/2009. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation:
Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.