Clean Air Act 1993

1993 CHAPTER 11

PART VI E+W+S

SPECIAL CASES

41 Relation to Environmental Protection Act 1990. E+W+S

[F1(1) Parts I to III 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, and

(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.]

Textual Amendments

F1 S. 41 repealed (1.4.2015 for S.) by Pollution Prevention and Control Act 1999 (c. 24), s. 7(3), **Sch. 3**; S.S.I. 2015/74, art. 2(2)(d)

[F3 41A Relation to the Pollution Prevention and Control Act 1999 [F2 and Regulatory Reform (Scotland) Act 2014]. S

(1) Where an activity is subject to regulations under section 2 of the Pollution Prevention and Control Act 1999 (regulation of polluting activities) [F4 or section 18 of the Regulatory Reform (Scotland) Act 2014] , Parts I to III of this Act shall not apply as from the determination date for the activity in question.

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(2) The "determination date", for an activity, is—

(a) in the case of an activity for which a permit **[**[F5]or authorisation**]** is granted, the date on which it is granted, whether in pursuance of the application, or on an appeal, of a direction to grant it;

(b) in the case of an activity for which a permit **[**[F6]or authorisation**]** is refused, the date of refusal or, on appeal, of the affirmation of the refusal;

[[F7](c) in the case of an activity that is an exempt waste operation, the date of the entry on the register maintained under **[**[F8]**[**[F9]paragraph 11 of Schedule 2**]** (exempt facilities: general) to the Environmental Permitting Regulations**]** of an establishment or undertaking in relation to that operation.**]**

(3) In subsection (2)**[**[F10]—

"exempt waste operation" has the meaning given in **[**[F11]the Environmental Permitting Regulations**]**;**]**

[[F12](a)**]** "permit" means a permit under regulations under section 2 of the Pollution Prevention and Control Act 1999 and the reference to an appeal is a reference to an appeal under those regulations.

[[F13]; and

(b) "authorisation" means an authorisation under regulations made under section 18 of the Regulatory Reform (Scotland) Act 2014, and the reference to an appeal is to an appeal under those regulations.**]**

[In this section—

[F14](4) **[**[F15]activity" includes—

(a) a waste operation**[**[F16], or mining waste operation, within the meaning of the Environmental Permitting Regulations;**]**, and

(b) a mining waste operation within the meaning of those Regulations;**]**

[[F17]"the Environmental Permitting Regulations" means **[**[F18]the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154)**]** .**]]]**

Textual Amendments

F2 Words in s. 41A title inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 4(7)**; S.S.I. 2014/160, art. 2(1)(2), sch.

F3 S. 41A inserted (E.W.) (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. para. 13**; and s. 41A inserted (S.) (28.9.2000) by S.S.I. 2000/323, reg. 36, **Sch. 10 para. 4(4)**

F4 Words in s. 41A(1) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 4(6)(a)**; S.S.I. 2014/160, art. 2(1)(2), sch.

F5 Words in s. 41A(2)(a) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 4(6)(b)(i)**; S.S.I. 2014/160, art. 2(1)(2), sch.

F6 Words in s. 41A(2)(b) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 4(6)(b)(ii)**; S.S.I. 2014/160, art. 2(1)(2), sch.

F7 S. 41A(2)(c) inserted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), **Sch. 21 para. 22(2)** (with reg. 72, Sch. 4)

F8 Words in s. 41A(2)(c) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), **Sch. 26 para. 10(2)** (with reg. 1(2), Sch. 4)

F9 Words in s. 41A(2)(c) substituted (E.W.) (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), **Sch. 29 para. 11(a)** (with regs. 1(3), 77-79, Sch. 4)

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F10 Words in s. 41A(3) inserted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), **Sch. 21 para. 22(3)** (with reg. 72, Sch. 4)

F11 Words in s. 41A(3) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), **Sch. 26 para. 10(3)** (with reg. 1(2), Sch. 4)

F12 S. 41A(3)(a): words in s. 41A(3) renumbered as s. 41A(3)(a) (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 4(6)(c)(i)**; S.S.I. 2014/160, art. 2(1)(2), sch.

F13 S. 41A(3)(b) and word inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 4(6)(c)(ii)**; S.S.I. 2014/160, art. 2(1)(2), sch.

F14 S. 41A(4) inserted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), **Sch. 21 para. 22(4)** (with reg. 72, Sch. 4)

F15 Words in s. 41A(4) substituted (E.W.) (7.7.2009) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2009 (S.I. 2009/1799), reg. 1, **Sch. 2 para. 3**

F16 Words in s. 41A(4) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), **Sch. 26 para. 10(4)(a)** (with reg. 1(2), Sch. 4)

F17 Words in s. 41A(4) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), **Sch. 26 para. 10(4)(b)** (with reg. 1(2), Sch. 4)

F18 Words in s. 41A(4) substituted (E.W.) (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), **Sch. 29 para. 11(b)** (with regs. 1(3), 77-79, Sch. 4)

42 Colliery spoilbanks. E+W+S

(1) This section applies to any mine or quarry from which coal or shale has been, is being or is to be got.

(2) The owner of a mine **[**[F19]or quarry**]**[F19] , or the operator of a quarry,**]** to which this section applies shall employ all practicable means—

(a) for preventing combustion of refuse deposited from the mine or quarry; and

(b) for preventing or minimising the emission of smoke and fumes from such refuse;

and, if he fails to do so, he shall be guilty of an offence.

(3) A person guilty of an offence under subsection (2) shall be liable on summary conviction—

(a) to a fine not exceeding level 5 on the standard scale; or

(b) to cumulative penalties on continuance in accordance with section 50.

(4) Neither the provisions of Part III of the Environmental Protection Act 1990 nor any provision of Parts I to III of this Act shall apply in relation to smoke, grit or dust from the combustion of refuse deposited from any mine or quarry to which this section applies.

[F20](5) . . . . . .

(6) In this section, "mine", **[**[F21]"quarry" and "owner" have the same meaning as in the [M1]Mines and Quarries Act 1954.**]**[F21]is to be construed in accordance with section 180 of the Mines and Quarries Act 1954

"operator", in relation to a quarry, has the meaning given by regulation 2(1) of the Quarries Regulations 1999 (S.I. 1999/2024);

"owner", in relation to a mine, is to be construed in accordance with section 181(1) and (4) of the Mines and Quarries Act 1954;

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"quarry" is to be construed in accordance with regulation 3 of the Quarries Regulations 1999.**]**

Textual Amendments

F19 Words in s. 42(2) substituted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 26(a)**; S.S.I. 2014/160, art. 2(1)(2), sch.

F20 S. 42(5) 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(xxxii)**

F21 Words in s. 42(6) substituted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 26(b)**; S.S.I. 2014/160, art. 2(1)(2), sch.

Marginal Citations

M1 1954 c. 70.

43 Railway engines. E+W+S

(1) Section 1(prohibition of emissions of dark smoke) shall apply in relation to railway locomotive engines as it applies in relation to buildings.

(2) In the application of section 1 to such engines, for the reference in subsection (1) of that section to the occupier of the building there shall be substituted a reference to the owner of the engine.

(3) The owner of any railway locomotive engine shall use any practicable means there may be for minimising the emission of smoke from the chimney on the engine and, if he fails to do so, he shall, if smoke is emitted from that chimney, be guilty of an offence.

(4) A person guilty of an offence under subsection (3) shall be liable on summary conviction—

(a) to a fine not exceeding level 5 on the standard scale; or

(b) to cumulative penalties on continuance in accordance with section 50.

(5) Except as provided in this section, nothing in Parts I to III applies to smoke, grit or dust from any railway locomotive engine.

Modifications etc. (not altering text)

C1 Power to exclude conferred (27.8.1993) by 1993 c. 11, **s. 45(1)(a)**

44 Vessels. E+W+S

(1) Section 1 (prohibition of emissions of dark smoke) shall apply in relation to vessels in waters to which this section applies as it applies in relation to buildings.

(2) In the application of section 1 to a vessel—

(a) for the reference in subsection (1) of that section to the occupier of the building there shall be substituted a reference to the owner of, and to the master or other officer or person in charge of, the vessel;

(b) references to a furnace shall be read as including references to an engine of the vessel; and

(c) subsection (5) of that section shall be omitted;

and a person guilty of an offence under that section in relation to a vessel shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

[[F22](2A) A smoke control order made under section 18 by a local authority in England may provide for vessels which are moored in the smoke control area to be subject to the operation of Schedule 1A.

(2B) For the purposes of a smoke control order which so provides—

(a) any reference in Part 3 and in section 54 to a building is to be read with any necessary modifications as a reference to such a vessel, but

(b) references in sections 24 and 25 to dwellings do not include such vessels.

(2C) In subsection (2A) the reference to vessels which are moored includes a vessel which is unmoored but which is stationary at a mooring place in circumstances where it might reasonably be moored.**]**

(3) For the purposes of this Act a vessel in any waters to which this section applies which are not within the district of any local authority shall be deemed to be within the district of the local authority whose district includes that point on land which is nearest to the spot where the vessel is.

(4) The waters to which this section applies are—

(a) all waters not navigable by sea-going ships; and

(b) all waters navigable by sea-going ships which are within the seaward limits of the territorial waters of the United Kingdom and are contained within any port, harbour, river, estuary, haven, dock, canal or other place so long as a person or body of persons is empowered by or under any Act to make charges in respect of vessels entering it or using facilities in it.

(5) In subsection (4) "charges" means any charges with the exception of light dues, local light dues and any other charges payable in respect of lighthouses, buoys or beacons and of charges in respect of pilotage.

(6) Except as provided in this section, nothing in Parts I to III applies to smoke, grit or dust from any vessel.

Textual Amendments

F22 S. 44(2A)-(2C) inserted (E.W.) (1.5.2022) by Environment Act 2021 (c. 30), s. 147(3), **Sch. 12 para. 7** (with s. 144, Sch. 12 para. 26); S.I. 2022/48, reg. 4(d)

45 Exemption for purposes of investigations and research. E+W+S

(1) If the local authority are satisfied, on the application of any person interested, that it is expedient to do so for the purpose of enabling investigations or research relevant to the problem of the pollution of the air to be carried out without rendering the applicant liable to proceedings brought under or by virtue of any of the provisions of this Act or the [M2]Environmental Protection Act 1990 mentioned below, the local authority may by notice in writing given to the applicant exempt, wholly or to a limited extent,—

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(a) any chimney from the operation of sections 1 (dark smoke), 5 (grit and dust), 20 (smoke in smoke control area) and 43 (railway engines) of this Act and Part III of the Environmental Protection Act 1990 (statutory nuisances);

(b) any furnace, boiler or industrial plant from the operation of section 4(2) (new furnaces to be as far as practicable smokeless);

(c) any premises from the operation of section 2 (emissions of dark smoke);

(d) any furnace from the operation of sections 6 or 8 (arrestment plant) and 10 (measurement of grit, dust and fumes by occupier), and

(e) the acquisition or sale of any fuel specified in the notice from the operation of section 23 (acquisition and sale of unauthorised fuel in smoke control area),

in each case subject to such conditions, if any, and for such period as may be specified in the notice.

(2) Any person who has applied to the local authority for an exemption under this section may, if he is dissatisfied with the decision of the authority on the application, appeal to the Secretary of State; and the Secretary of State may, if he thinks fit, by notice in writing given to the applicant and the local authority, give any exemption which the authority might have given or vary the terms of any exemption which they have given.

Marginal Citations

M2 1990 c. 43.

46 Crown premises, etc. E+W+S

(1) It shall be part of the functions of the local authority, in cases where it seems to them proper to do so, to report to the responsible Minister any cases of—

(a) emissions of dark smoke, or of grit or dust, from any premises which are under the control of any Government department and are occupied for the public service of the Crown or for any of the purposes of any Government department;

(b) emissions of smoke, whether dark smoke or not, from any such premises which are within a smoke control area;

(c) emissions of smoke, whether dark smoke or not, from any such premises which appear to them to constitute a nuisance to the inhabitants of the neighbourhood; or

(d) emissions of dark smoke from any vessel of Her Majesty's navy, or any Government ship in the service of the Secretary of State while employed for the purposes of Her Majesty's navy, which appear to them to constitute a nuisance to the inhabitants of the neighbourhood,

and on receiving any such report the responsible Minister shall inquire into the circumstances and, if his inquiry reveals that there is cause for complaint, shall employ all practicable means for preventing or minimising the emission of the smoke, grit or dust or for abating the nuisance and preventing a recurrence of it, as the case may be.

(2) Subsection (1) shall apply to premises occupied for the purposes of the Duchy of Lancaster or the Duchy of Cornwall as it applies to premises occupied for the public service of the Crown which are under the control of a Government department, with the substitution, in the case of the Duchy of Cornwall, for references to the responsible

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Minister of references to such person as the Duke of Cornwall or the possessor for the time being of the Duchy of Cornwall appoints.

(3) The fact that there subsists in any premises an interest belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, or belonging to a Government department or held in trust for Her Majesty for the purposes of a Government department, shall not affect the application of this Act to those premises so long as that interest is not the interest of the occupier of the premises, and this Act shall have effect accordingly in relation to the premises and that and all other interests in the premises.

(4) Section 44 (vessels) shall, with the omission of the reference in subsection (2) of that section to the owner, apply to vessels owned by the Crown, except that it shall not apply to vessels of Her Majesty's navy or to Government ships in the service of the Secretary of State while employed for the purposes of Her Majesty's navy.

(5) This Act (except Parts IV and V) shall have effect in relation to premises occupied for the service of a visiting force as if the premises were occupied for the public service of the Crown and were under the control of the Government department by arrangement with whom the premises are occupied.

(6) In this section—

"Government ship" has the same meaning as in **[**[F23] the Merchant Shipping Act 1995**]**; 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 [M3]Visiting Forces Act 1952.

Textual Amendments

F23 Words in definition of "Government ship" in s. 46(6) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 94(a)** (with s. 312(1), Sch. 14 para. 1)

Modifications etc. (not altering text)

C2 S. 46(1) functions made exercisable concurrently or jointly with the Welsh Ministers by 2006 c. 32, Sch. 3A para. 1 (as inserted (1.4.2018) by Wales Act 2017 (c. 4), s. 71(4), **Sch. 4 para. 1** (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(p))

Marginal Citations

M3 1952 c. 67.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 16(4A)(4B) inserted by S.I. 2023/908 reg. 16
- s. 19E-19H and cross-heading inserted by 2024 asc 2 s. 19(2)
- s. 20(5D)-(5F) inserted by 2021 c. 30 Sch. 12 para. 10(2)
- s. 21(4A)-(4D) inserted by 2021 c. 30 Sch. 12 para. 11(2)
- s. 28B inserted by 2024 asc 2 s. 20
- s. 63(2A) inserted by 2024 asc 2 Sch. 1 para. 20(b)
- Sch. 1 para. 1A1B inserted by 2024 asc 2 Sch. 1 para. 21(a)
- Sch. 1 para. 6B inserted by 2024 asc 2 Sch. 1 para. 21(c)
- Sch. 1A para. 3(5) inserted by 2024 asc 2 Sch. 1 para. 4(c)
- Sch. 1A para. 4(7) inserted by 2024 asc 2 Sch. 1 para. 5(d)
- Sch. 5 para. 12A12B inserted by 2024 asc 2 Sch. 1 para. 22(a)