



# Environment Act 1995

## 1995 CHAPTER 25

### PART I

#### THE ENVIRONMENT AGENCY AND THE SCOTTISH ENVIRONMENT PROTECTION AGENCY

### CHAPTER II

#### THE SCOTTISH ENVIRONMENT PROTECTION AGENCY

##### *Establishment of SEPA*

#### **20 The Scottish Environment Protection Agency**

- (1) There shall be a body to be known as the Scottish Environment Protection Agency (in this Act referred to as “SEPA”), for the purpose of carrying out the functions transferred or assigned to it by or under this Act.
- (2) Schedule 6 to this Act shall have effect with respect to SEPA.

##### *Transfer of functions, property etc. to SEPA*

#### **21 Transfer of functions to SEPA**

- (1) On the transfer date there shall by virtue of this section be transferred to SEPA—
  - (a) the functions of river purification authorities, that is to say—
    - (i) their functions with respect to water resources under or by virtue of Part III of the Rivers (Prevention of Pollution) (Scotland) Act 1951 (in this Part referred to as “the 1951 Act”) and Part II of the Natural Heritage (Scotland) Act 1991;
    - (ii) their functions with respect to water pollution under or by virtue of Part III of the 1951 Act, the Rivers (Prevention of Pollution) (Scotland) Act 1965 and Part II of the Control of Pollution Act 1974;

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- (iii) their functions as enforcing authority, in relation to releases of substances into the environment, under or by virtue of Part I of the 1990 Act;
  - (iv) their functions with respect to flood warning systems under or by virtue of Part VI of the Agriculture Act 1970; and
  - (v) the functions assigned to them by or under any other enactment apart from this Act;
  - (b) the functions of waste regulation authorities, that is to say, the functions conferred or imposed on them by or under—
    - (i) the Control of Pollution (Amendment) Act 1989; or
    - (ii) Part II of the 1990 Act,
 or assigned to them by or under any other enactment apart from this Act;
  - (c) the functions of disposal authorities under or by virtue of sections 3 to 10, 16, 17(1)(a) and 17(2)(b) to (d) of the Control of Pollution Act 1974;
  - (d) the functions of the chief inspector for Scotland constituted under section 16(3) of the 1990 Act, that is to say, the functions conferred or imposed on him by or under Part I of that Act or assigned to him by or under any other enactment apart from this Act;
  - (e) the functions of the chief inspector for Scotland appointed under section 4(2)(b) of the Radioactive Substances Act 1993, that is to say, the functions conferred or imposed on him by or under that Act or assigned to him by or under any other enactment apart from this Act;
  - (f) the functions conferred or imposed by or under the Alkali, &c, Works Regulation Act 1906 (in this section referred to as “the 1906 Act”) on the chief, or any other, inspector (within the meaning of that Act), so far as exercisable in relation to Scotland;
  - (g) so far as exercisable in relation to Scotland, the functions in relation to improvement notices and prohibition notices under Part I of the Health and Safety at Work etc. Act 1974 (in this section referred to as “the 1974 Act”) of inspectors appointed under section 19 of that Act by the Secretary of State in his capacity as enforcing authority responsible in relation to Scotland for the enforcement of the 1906 Act and section 5 of the 1974 Act;
  - (h) the functions of local authorities as enforcing authority, in relation to releases of substances into the air, under or by virtue of Part I of the 1990 Act; and
  - (i) the functions of the Secretary of State specified in subsection (2) below.
- (2) The functions of the Secretary of State mentioned in subsection (1)(i) above are, so far as exercisable in relation to Scotland—
- (a) the functions conferred or imposed on him by virtue of his being, for the purposes of Part I of the 1974 Act, the authority which is by any of the relevant statutory provisions made responsible for the enforcement of the 1906 Act and section 5 of the 1974 Act;
  - (b) his functions under, or under regulations made by virtue of, section 9 of the 1906 Act (registration of works), other than any functions of his as an appellate authority or any function of making regulations;
  - (c) his functions under section 19 of the Clean Air Act 1993 with respect to the creation of smoke control areas by local authorities; and
  - (d) his functions under section 30(1) of the Radioactive Substances Act 1993 (power to dispose of radioactive waste).

(3) River purification boards shall be dissolved on the transfer date.

## **22 Transfer of property, rights and liabilities to SEPA**

(1) On the transfer date—

- (a) the property, rights and liabilities of every river purification board shall, by virtue of this paragraph, be transferred to and vested in SEPA;
- (b) any property, rights and liabilities which are the subject of a scheme under this section—
  - (i) made by the Secretary of State; or
  - (ii) made by a local authority and approved by the Secretary of State,shall be transferred to and vested in SEPA by and in accordance with the scheme.

(2) The Secretary of State may, before the transfer date, make a scheme for the transfer to SEPA of such of—

- (a) his property, rights and liabilities; or
- (b) the property, rights and liabilities of any of the inspectors or chief inspectors mentioned in subsection (1) of section 21 above,

as appear to the Secretary of State appropriate to be so transferred in consequence of the transfer of any functions to SEPA by virtue of that subsection.

(3) It shall be the duty of every local authority to make a scheme, after consultation with SEPA, for the transfer to SEPA of—

- (a) such of the authority's property and rights as are held by it for the purposes of its functions as—
  - (i) a waste regulation authority;
  - (ii) a disposal authority under or by virtue of the provisions mentioned in section 21(1)(c) above;
  - (iii) enforcing authority, in relation to releases of substances into the air, by virtue of Part I of the 1990 Act; and
  - (iv) in the case of an islands council, a river purification authority; and
- (b) such of its liabilities as are liabilities to which it is subject by virtue of its being an authority mentioned in paragraph (a)(i) to (iv) above,

and to submit that scheme to the Secretary of State for his approval before such date as he may direct.

(4) Any local authority preparing a scheme in pursuance of subsection (3) above shall take into account any guidance given by the Secretary of State as to the provisions which he regards as appropriate for inclusion in the scheme.

(5) Where a scheme under subsection (3) above is submitted to the Secretary of State, he may—

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

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

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- (6) The Secretary of State may, in the case of any local authority which is required to make a scheme under subsection (3) above, himself make a scheme for the transfer to SEPA of such of the body's property, rights or liabilities as are mentioned in paragraph (a) or (b) of that subsection, if—
- (a) the authority fails to submit a scheme under that subsection to him for his approval before the due date; or
  - (b) the Secretary of State rejects a scheme under that subsection submitted to him by the authority;
- but nothing in this subsection shall prevent the Secretary of State from approving any scheme which may be submitted to him after the due date.
- (7) Where the Secretary of State makes a transfer scheme under subsection (6) above, he may recover his reasonable expenses in doing so, or such proportion of those expenses as he thinks fit, from the local authority in question by such means as appear to him to be appropriate including, without prejudice to that generality, setting off the expenses payable by the local authority against revenue support grant or non-domestic rate income payable by the Secretary of State to the local authority under paragraph 3 of Schedule 12 to the Local Government Finance Act 1992.
- (8) The Secretary of State may, at any time before the transfer date, modify any scheme made or approved by him under this section but only after consultation with SEPA and, in the case of a scheme which was approved by him (with or without modifications), after consultation with the local authority which submitted the scheme to him for approval.
- (9) Schedule 2 to this Act shall have effect in relation to transfers by or under this section.

## **23 Functions of staff commission**

The functions of the staff commission established under section 12 of the Local Government etc. (Scotland) Act 1994 shall include—

- (a) considering and keeping under review the arrangements for the transfer to SEPA, in consequence of this Act or of any scheme made under it, of staff employed by local authorities;
- (b) considering such staffing problems arising out of, consequential on or connected with any provision of, or scheme made under, this Act as may be referred to them by the Secretary of State or by any local authority;
- (c) advising the Secretary of State as to the steps necessary to safeguard the interests of the staff referred to in paragraph (a) above.

*Other functions etc. of SEPA*

## **24 Consultation with respect to drainage works**

- (1) Subject to subsection (2) below, any person proposing to carry out drainage works shall—
- (a) before commencing such works, consult SEPA as to precautions to be taken to prevent pollution to controlled waters as a result of the works; and
  - (b) in carrying out such works, take account of SEPA's views.

- (2) The Secretary of State may, by regulations made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, prescribe types of drainage works in relation to which subsection (1) above shall not apply.
- (3) In this section, “drainage works” has the same meaning as in the Land Drainage (Scotland) Act 1958 and “controlled waters” has the same meaning as in the Control of Pollution Act 1974.

## **25 Assessing flood risk**

- (1) Without prejudice to section 92 of the Agriculture Act 1970 (provision of flood warning systems), SEPA shall have the function of assessing, as far as it considers it appropriate, the risk of flooding in any area of Scotland.
- (2) If requested by a planning authority to do so, SEPA shall, on the basis of such information as it holds with respect to the risk of flooding in any part of the authority’s area, provide the authority with advice as to such risk.

## **26 Power of SEPA to purchase land compulsorily**

- (1) The Secretary of State may authorise SEPA, for the purpose of any of its functions, to purchase land compulsorily.
- (2) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply in relation to the compulsory purchase of land under this section as if this section had been in force immediately before the commencement of that Act and, in relation to such purchase of land, SEPA shall be treated as if it were a local authority within the meaning of that Act.

## **27 Power of SEPA to obtain information about land**

- (1) Where, with a view to performing a function conferred on it by any enactment, SEPA considers that it ought to have information connected with any land, it may serve on one or more of the persons mentioned in subsection (2) below a notice—
  - (a) specifying the land, the function and the enactment; and
  - (b) requiring the recipient of the notice to furnish to SEPA, within such period of not less than 14 days from the date of service of the notice as is specified in the notice—
    - (i) the nature of his interest in the land; and
    - (ii) the name and address of each person whom he believes is, as respects the land, a person mentioned in subsection (2) below.
- (2) The persons referred to in subsection (1) above are—
  - (a) the occupier of the land;
  - (b) any person—
    - (i) who has an interest in the land as owner, creditor in a heritable security or lessee; or
    - (ii) who directly or indirectly receives rent for the land; and
  - (c) any person who, in pursuance of an agreement between himself and a person interested in the land, is authorised to manage the land or to arrange for the letting of it.

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(3) A person who—

- (a) fails to comply with the requirements of a notice served on him in pursuance of subsection (1) above; or
- (b) in furnishing any information in compliance with such a notice makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **28 Power of SEPA to promote or oppose private legislation**

(1) SEPA may, where it is satisfied that it is expedient to do so—

- (a) with the consent of the Secretary of State, petition for the issue of a provisional order under the Private Legislation Procedure (Scotland) Act 1936; or
- (b) oppose any private legislation in Parliament.

(2) An application for the consent mentioned in paragraph (a) of subsection (1) above shall be accompanied by a concise summary of the purposes of the order petitioned for.

(3) In paragraph (b) of subsection (1) above, “private legislation in Parliament” includes—

- (a) a provisional order and a Confirmation Bill relating to such an order; and
- (b) any local or personal Bill.

## **29 Procedure relating to making of byelaws**

The following provisions of the Local Government (Scotland) Act 1973—

- (a) section 202 (procedure etc. for byelaws);
- (b) section 202C (revocation of byelaws);
- (c) section 204 (evidence of byelaws),

shall apply in relation to SEPA as they apply in relation to a local authority, provided that in the application of the said section 202 to SEPA for subsection (13) there shall be substituted—

“(13) The Scottish Environment Protection Agency shall send a copy of any byelaws made by it to the proper officer of the local authority for any area to the whole or any part of which the byelaws will apply.”.

## **30 Records held by SEPA**

(1) Subject to subsection (3) below—

- (a) this section applies to all records (in whatever form or medium)—
  - (i) transferred to and vested in SEPA by or under section 22 above;
  - (ii) created or acquired by it in the exercise of any of its functions; or
  - (iii) otherwise in its keeping;
- (b) SEPA shall ensure that the records, other than such as are mentioned in paragraph (c) below, are preserved and managed in accordance with such arrangements as it, after consulting the Keeper of the Records of Scotland, shall put into effect;
- (c) records which in SEPA’s opinion are not worthy of preservation may be disposed of by it;

- (d) SEPA may from time to time revise the arrangements mentioned in paragraph (b) above but before making any material change to those arrangements shall consult the Keeper; and
  - (e) SEPA—
    - (i) shall secure that the Keeper has, at all reasonable hours, unrestricted access to the records preserved by it;
    - (ii) may afford members of the public, free of charge or on payment of reasonable charges, facilities for inspecting and for obtaining copies or extracts from those records.
- (2) Nothing in subsection (1)(e)(ii) above permits infringement of copyright or contravention of conditions subject to which records are in SEPA's keeping.
- (3) Insofar as any provision of any enactment, being a provision which relates to records of a specific kind, is (but for this subsection) inconsistent with subsection (1) above, that subsection is subject to the provision in question.

#### *General powers and duties*

### **31 Guidance on sustainable development and other aims and objectives**

- (1) The Secretary of State shall from time to time give guidance to SEPA with respect to aims and objectives which he considers it appropriate for SEPA to pursue in the performance of its functions.
- (2) The guidance given under subsection (1) above must include guidance with respect to the contribution which, having regard to SEPA's responsibilities and resources, the Secretary of State considers it appropriate for SEPA to make, by the performance of its functions, towards attaining the objective of achieving sustainable development.
- (3) In performing its functions, SEPA shall have regard to guidance given under this section.
- (4) The power to give guidance to SEPA under this section shall be exercisable only after consultation with SEPA and such other bodies or persons as the Secretary of State considers it appropriate to consult in relation to the guidance in question.
- (5) A draft of any guidance proposed to be given under this section shall be laid before each House of Parliament and the guidance shall not be given until after the period of 40 days beginning with the day on which the draft was so laid or, if the draft is laid on different days, the later of the two days.
- (6) If, within the period mentioned in subsection (5) above, either House resolves that the guidance, the draft of which was laid before it, should not be given, the Secretary of State shall not give that guidance.
- (7) In reckoning any period of 40 days for the purposes of subsection (5) or (6) 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.
- (8) The Secretary of State shall arrange for any guidance given under this section to be published in such manner as he considers appropriate.

### **32 General environmental and recreational duties**

- (1) It shall be the duty of the Secretary of State and of SEPA, in formulating or considering any proposals relating to any functions of SEPA—
  - (a) to have regard to the desirability of conserving and enhancing the natural heritage of Scotland;
  - (b) to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural, engineering or historic interest;
  - (c) to take into account any effect which the proposals would have on the natural heritage of Scotland or on any such buildings, sites or objects; and
  - (d) to have regard to the social and economic needs of any area or description of area of Scotland and, in particular, to such needs of rural areas.
- (2) Subject to subsection (1) above, it shall be the duty of the Secretary of State and of SEPA, in formulating or considering any proposals relating to any functions of SEPA—
  - (a) to have regard to the desirability of preserving for the public any freedom of access (including access for recreational purposes) to areas of forest, woodland, mountains, moor, bog, cliff, foreshore, loch or reservoir and other places of natural beauty;
  - (b) to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural, engineering or historic interest; and
  - (c) to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility.
- (3) In this section—
  - “building” includes structure; and
  - “the natural heritage of Scotland” has the same meaning as in section 1(3) of the Natural Heritage (Scotland) Act 1991.

### **33 General duties with respect to pollution control**

- (1) SEPA’s pollution control powers shall be exercisable for the purpose of preventing or minimising, or remedying or mitigating the effects of, pollution of the environment.
- (2) SEPA shall, for the purpose—
  - (a) of facilitating the carrying out of its pollution control functions; or
  - (b) of enabling it to form an opinion of the general state of pollution of the environment,
 compile information relating to such pollution (whether the information is acquired by SEPA carrying out observations or is obtained in any other way).
- (3) If required by the Secretary of State to do so, SEPA shall—
  - (a) carry out assessments (whether generally or for such particular purpose as may be specified in the requirement) of the effect, or likely effect, on the environment of existing or potential levels of pollution of the environment and report its findings to the Secretary of State; or
  - (b) prepare and send to the Secretary of State a report identifying—
    - (i) the options which SEPA considers to be available for preventing or minimising, or remedying or mitigating the effects of, pollution of the



- environment, whether generally or in cases or circumstances specified in the requirement; and
- (ii) the costs and benefits of such options as are identified by SEPA pursuant to sub-paragraph (i) above.
- (4) SEPA shall follow developments in technology and techniques for preventing or minimising, or remedying or mitigating the effects of, pollution of the environment.
- (5) In this section, “pollution control powers” and “pollution control functions” in relation to SEPA, mean respectively its powers or its functions under or by virtue of—
- (a) the Alkali, &c. Works Regulation Act 1906;
  - (b) Part III of the 1951 Act, the Rivers (Prevention of Pollution) (Scotland) Act 1965 and Parts I, IA and II of the Control of Pollution Act 1974;
  - (c) Part I of the Health and Safety at Work etc. Act 1974;
  - (d) the Control of Pollution (Amendment) Act 1989;
  - (e) Parts I, II and IIA of the 1990 Act;
  - (f) section 19 of the Clean Air Act 1993;
  - (g) the Radioactive Substances Act 1993; and
  - (h) regulations made by virtue of section 2(2) of the European Communities Act 1972, to the extent that the regulations relate to pollution.

### **34 General duties with respect to water**

- (1) It shall be the duty of SEPA—
- (a) to promote the cleanliness of—
    - (i) rivers, other inland waters and ground waters in Scotland; and
    - (ii) the tidal waters of Scotland; and
  - (b) to conserve so far as practicable the water resources of Scotland.
- (2) Without prejudice to section 32 above, it shall be the duty of SEPA, to such extent as it considers desirable, generally to promote—
- (a) the conservation and enhancement of the natural beauty and amenity of inland and coastal waters and of land associated with such waters; and
  - (b) the conservation of flora and fauna which are dependent on an aquatic environment.
- (3) Subsection (1) above is without prejudice to section 1 of the Water (Scotland) Act 1980 (general duties of Secretary of State and water authorities as respects water resources and supplies).
- (4) In subsection (1) above, “tidal waters” means any part of the sea or the tidal part of any river, watercourse or inland water (whether natural or artificial) and includes the waters of any enclosed dock which adjoins tidal waters.

### **35 Environmental duties as respects Natural Heritage Areas and sites of special interest**

- (1) Where an area of land—
- (a) has been designated, under section 6(2) of the Natural Heritage (Scotland) Act 1991 (in this section referred to as “the 1991 Act”) as a Natural Heritage Area; or

(b) is, in the opinion of Scottish Natural Heritage (in this section referred to as “SNH”), of special interest by reason of its flora, fauna or geological or physiographical features,

and SNH consider that it may at any time be affected by schemes, works, operations or activities of SEPA or by an authorisation given by SEPA, SNH shall give notice to SEPA in accordance with subsection (2) below.

- (2) A notice under subsection (1) above shall specify—
- (a) in the case of an area of land mentioned in paragraph (a) of that subsection, SNH’s reasons for considering that the area is of outstanding value to the natural heritage of Scotland; and
  - (b) in the case of an area of land mentioned in paragraph (b) of that subsection, SNH’s reasons for holding the opinion there mentioned.
- (3) Where SNH has given notice under subsection (1) above in respect of an area of land and—
- (a) in the case of an area of land mentioned in paragraph (a) of that subsection, the designation is cancelled or varied under section 6(7) of the 1991 Act; or
  - (b) in the case of an area of land mentioned in paragraph (b) of that subsection, SNH ceases to be of the opinion there mentioned,
- SNH shall forthwith notify SEPA of that fact.
- (4) Where SEPA has received notice under subsection (1) above with respect to any area of land, it shall (unless SNH has given notice under subsection (3) above with respect to the land) consult SNH before carrying out or authorising any schemes, works, operations or activities which appear to SEPA to be likely—
- (a) in the case of an area of land mentioned in subsection (1)(a), significantly to prejudice the value of the land, or any part of it, as a Natural Heritage Area; and
  - (b) in the case of an area of land mentioned in subsection (1)(b), to destroy or damage any of the flora or fauna or features by reason of which SNH formed the opinion there mentioned.
- (5) Subsection (4) above shall not apply in relation to anything done in an emergency if particulars of what is done and of the emergency are notified by SEPA to SNH as soon as practicable after the thing is done.
- (6) In this section, “authorisation” includes any consent, licence or permission.
- (7) Any expression used in this section and in Part I of the 1991 Act and not defined in this Act shall be construed in accordance with that Part.

### **36 Codes of practice with respect to environmental and recreational duties**

- (1) The Secretary of State shall have power by order to approve any code of practice issued (whether by him or by another person) for the purpose of—
- (a) giving practical guidance to SEPA with respect to any of the matters for the purposes of which sections 32, 34(2) and 35 above have effect; and
  - (b) promoting what appear to him to be desirable practices by SEPA with respect to those matters,
- and may at any time by such an order approve a modification of such a code or withdraw his approval of such a code or modification.

- (2) In discharging its duties under section 32, 34(2) or 35 above, SEPA shall have regard to any code of practice, and any modifications of a code of practice, for the time being approved under this section.
- (3) The Secretary of State shall not make an order under this section unless he has first consulted—
  - (a) SEPA;
  - (b) Scottish Natural Heritage;
  - (c) Scottish Enterprise;
  - (d) Highlands and Islands Enterprise;
  - (e) the East of Scotland Water Authority;
  - (f) the West of Scotland Water Authority;
  - (g) the North of Scotland Water Authority; and
  - (h) such other persons as he considers it appropriate to consult.
- (4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument; and any statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.