



# Environment Act 1995

## 1995 CHAPTER 25

### PART I

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

### CHAPTER III

#### MISCELLANEOUS, GENERAL AND SUPPLEMENTAL PROVISIONS RELATING TO THE NEW AGENCIES

#### *Charging schemes*

#### **41 Power to make schemes imposing charges.**

- (1) Subject to the following provisions of this section and section 42 below—
- (a) in the case of any particular licence under Chapter II of Part II of the 1991 Act (abstraction and impounding), the Agency may require the payment to it of such charges as may from time to time be prescribed;
  - (b) in relation to other environmental licences, there shall be charged by and paid to a new Agency such charges as may from time to time be prescribed; and
  - (c) [F1as a means of recovering costs incurred by it in performing functions conferred by regulations made for the purpose of implementing Council Directive 91/689/EECthe Agency may require the payment to it of such charges as may from time to time be prescribed;]

and in this section “prescribed” means specified in, or determined under, a scheme (in this section referred to as a “charging scheme”) made under this section by the new Agency in question.

- (2) As respects environmental licences, charges may be prescribed in respect of—
- (a) the grant or variation of an environmental licence, or any application for, or for a variation of, such a licence;
  - (b) the subsistence of an environmental licence;

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- (c) the transfer (where permitted) of an environmental licence to another person, or any application for such a transfer;
  - (d) the renewal (where permitted) of an environmental licence, or any application for such a renewal;
  - (e) the surrender (where permitted) of an environmental licence, or any application for such a surrender; or
  - (f) any application for the revocation (where permitted) of an environmental licence.
  - [<sup>F2</sup>(g) any other approval, consent, consideration or determination carried out by the Agency relating to any obligations of the United Kingdom under the Community Treaties or any application for such an approval of consent, consideration or determination.]
- [<sup>F3</sup>(2A) But, in relation to a relevant environmental licence, charges may not be prescribed in respect of waste from premises used for agriculture within the meaning of the Agriculture Act 1947.]
- (3) A charging scheme may, for the purposes of subsection (2)(b) above, impose—
    - (a) a single charge in respect of the whole of any relevant licensed period;
    - (b) separate charges in respect of different parts of any such period; or
    - (c) both such a single charge and such separate charges;
 and in this subsection “relevant licensed period” means the period during which an environmental licence is in force or such part of that period as may be prescribed.
  - (4) Without prejudice to subsection (7)(a) below, a charging scheme may, as respects environmental licences, provide for different charges to be payable according to—
    - (a) the description of environmental licence in question;
    - (b) the description of authorised activity in question;
    - (c) the scale on which the authorised activity in question is carried on;
    - (d) the description or amount of the substance to which the authorised activity in question relates;
    - (e) the number of different authorised activities carried on by the same person.
  - (5) A charging scheme—
    - (a) shall specify, in relation to any charge prescribed by the scheme, the description of person who is liable to pay the charge; and
    - (b) may provide that it shall be a condition of an environmental licence of any particular description that any charge prescribed by a charging scheme in relation to an environmental licence of that description is paid in accordance with the scheme.
  - (6) Without prejudice to subsection (5)(b) above, if it appears to a new Agency that any charges due and payable to it in respect of the subsistence of an environmental licence have not been paid, it may, in accordance with the appropriate procedure, suspend or revoke the environmental licence to the extent that it authorises the carrying on of an authorised activity.
  - (7) A charging scheme may—
    - (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities;
    - (b) provide for the times at which, and the manner in which, the charges prescribed by the scheme are to be paid;

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- (c) revoke or amend any previous charging scheme;
  - (d) contain supplemental, incidental, consequential or transitional provision for the purposes of the scheme.
- (8) If and to the extent that a charging scheme relates to licences under Chapter II of Part II of the 1991 Act (abstraction and impounding), the scheme shall have effect subject to any provision made by or under sections 125 to 130 of that Act (exemption from charges, imposition of special charges for spray irrigation, and charges in respect of abstraction from waters of the British Waterways Board).
- (9) A new Agency shall not make a charging scheme unless the provisions of the scheme have been approved by the Secretary of State under section 42 below.
- (10) In this section—
- “the appropriate procedure” means such procedure as may be specified or described in regulations made for the purpose by the Secretary of State;
  - “authorised activity” means any activity to which an environmental licence relates.
  - [<sup>F4</sup>“relevant environmental licence” means any registration mentioned in paragraph (j) of the definition of “environmental licence” which applies in relation to the Agency]
- (11) Any power to make regulations under this section shall be exercisable by statutory instrument; and a statutory instrument containing any such regulations shall be subject to annulment pursuant to a resolution of either House of Parliament.

#### Textual Amendments

- F1** S. 41(1)(c) substituted (E.) (16.7.2005) by [The Hazardous Waste \(England and Wales\) Regulations 2005 \(S.I. 2005/894\)](#), regs. 1(1)(b), **59** (with regs. 59(3), 75) and s. 41(1)(c) substituted (W.) (16.7.2005) by [The Hazardous Waste \(Wales\) Regulations 2005 \(S.I. 2005/1806\)](#), regs. 1(2)(ii), **59(2)** (with regs. 12-17, 71)
- F2** S. 41(2)(g) added (S.) (11.4.2003) by [The Landfill \(Scotland\) Regulations 2003 \(S.S.I. 2003/235\)](#), reg. 21, **Sch. 6 para. 1** (with regs. 4, 6)
- F3** S. 41(2A) inserted (E.W.) (15.5.2006) by [The Waste Management \(England and Wales\) Regulations 2006 \(S.I. 2006/937\)](#), regs. 1(2), **3(2)**
- F4** Words in s. 41(10) inserted (E.W.) (15.5.2006) by [The Waste Management \(England and Wales\) Regulations 2006 \(S.I. 2006/937\)](#), regs. 1(2), **3(3)**

#### Modifications etc. (not altering text)

- C1** S. 41 applied (with modifications) (2.12.1998) by [S.I. 1998/2746](#), **reg. 16(1)**  
 S. 41: certain functions made exercisable only after consultation with the Assembly (W.) (1.7.1999) by [S.I. 1999/672](#), **art. 5, Sch. 2**
- C2** S. 41 restricted (E.W.) (3.11.2003) by [End-of-Life Vehicles Regulations 2003 \(S.I. 2003/2635\)](#), regs. 1(2)(b), **49(2)** (with regs. 3, 4)
- C3** S. 41 applied (with modifications) by SI 2002/1559, Sch. 4 para. 5(15) (as inserted (E.W.) (15.5.2006) by [The Waste Management \(England and Wales\) Regulations 2006 \(S.I. 2006/937\)](#), regs. 1(2), **9(15)**)

#### Commencement Information

- I1** S. 41 wholly in force at 1.4.1996; s. 41 not in force at Royal Assent see s. 125(3); s. 41 in force for specified purposes at 21.9.1995 by [S.I. 1995/1983](#), **art. 3**; s. 41 in force for further specified purposes

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at 1.2.1996 by [S.I. 1996/186, art 2](#); s. 41 in force at 1.4.1996 insofar as not already in force by [S.I. 1996/186, art 3](#)

#### [<sup>F5</sup>41A Charges in respect of greenhouse gas emissions permits

- (1) Without prejudice to subsections (1)(b) and (2) of section 41 above, the following charges may be prescribed under that section as respects permits (“greenhouse gas emissions permits”) granted under the Greenhouse Gas Emissions Trading Scheme Regulations 2005 (“the regulations”)—
  - (a) charges in respect of, or in respect of an application for, the allocation of allowances to an operator;
  - (b) charges in respect of, or in respect of an application for, the retention of allowances by an operator ceasing to carry on an activity to which they relate;
  - (c) charges in respect of the revocation of a greenhouse gas emissions permit;
  - (d) charges in respect of the subsistence of an account required to be held in the trading scheme registry by an operator (“operator registry charges”).
- (2) If the Agency—
  - (a) proposes to prescribe operator registry charges, or to amend any provision for such charges included in a charging scheme, and
  - (b) notifies SEPA of its proposals,
 the Agency and SEPA shall each include in a charging scheme (subject to approval by the Secretary of State under section 42(2) below) provision giving effect to the proposals.
- (3) If the Agency revises any proposals of which it has given notification under subsection (2) above, and notifies SEPA accordingly, the obligations imposed by that subsection apply in relation to the proposals as revised.
- (4) A notification under subsection (2) or (3) above shall include details of the amount of the proposed charges.
- (5) SEPA shall pass on to the Agency any operator registry charges that it receives.
- (6) A charging scheme made by the Agency may require the payment to the Agency of such charges as may from time to time be prescribed in respect of—
  - (a) the creation of an account in the trading scheme registry, other than one that is required to be held by an operator;
  - (b) the subsistence of such an account;
  - (c) the updating of information provided to the Agency in relation to such an account.
- (7) In this section—
 

“allowance” and “operator” have the same meaning as in the regulations;

“charging scheme” and “prescribed” have the same meaning as in section 41;

“trading scheme registry” means the registry established under the regulations.]

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**Textual Amendments**

**F5** S. 41A inserted (21.4.2005) by [The Greenhouse Gas Emissions Trading Scheme Regulations 2005 \(S.I. 2005/925\)](#), [Sch. 6 para. 1\(2\)](#) (with reg. 3)

**Modifications etc. (not altering text)**

**C4** Ss. 41A(2)-(5) applied by Pollution Prevention and Control Act 1999 (c. 24), Sch. 1 para. 9A(2) (as inserted (21.4.2005) by [The Greenhouse Gas Emissions Trading Scheme Regulations 2005 \(S.I. 2005/925\)](#), [art. 1](#), [Sch. 6 para. 2\(2\)\(a\)](#) (with reg. 3))

**42 Approval of charging schemes.**

- (1) Before submitting a proposed charging scheme to the Secretary of State for his approval, a new Agency shall, in such manner as it considers appropriate for bringing it to the attention of persons likely to be affected by the scheme, publish a notice—
  - (a) setting out its proposals; and
  - (b) specifying the period within which representations or objections with respect to the proposals may be made to the Secretary of State.
- (2) Where any proposed charging scheme has been submitted to the Secretary of State for his approval, he shall, in determining whether or not to approve the scheme or to approve it subject to modifications,—
  - (a) consider any representations or objections duly made to him and not withdrawn; and
  - (b) have regard to the matter specified in subsection (3) below.
- (3) The matter mentioned in subsection (2)(b) above is the desirability of ensuring that, in the case of each of the descriptions of environmental licence specified in the paragraphs of the definition of that expression in section 56 below, the amounts recovered by the new Agency in question by way of charges prescribed by charging schemes are the amounts which, taking one year with another, need to be recovered by that new Agency to meet such of the costs and expenses (whether of a revenue or capital nature)—
  - (a) which it incurs in carrying out its functions,
  - (b) in the case of environmental licences which are authorisations under section 13(1) of the <sup>M1</sup>Radioactive Substances Act 1993—
    - (i) which the [<sup>F6</sup>Food Standards Agency] incurs in carrying out [<sup>F6</sup>its] functions under or in consequence of that Act, and
    - <sup>F7</sup>(ii) . . . . .
 as the Secretary of State may consider it appropriate to attribute to the carrying out of those functions in relation to activities to which environmental licences of the description in question relate.
- (4) Without prejudice to the generality of the expression “costs and expenses”, in determining for the purposes of subsection (3) above the amounts of the costs and expenses which the Secretary of State considers it appropriate to attribute to the carrying out of a new Agency’s or the [<sup>F8</sup>Food Standard Agency’s] functions in relation to the activities to which environmental licences of any particular description relate, the Secretary of State—
  - (a) shall take into account any determination of the new Agency’s financial duties under section 44 below; and

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- (b) may include amounts in respect of the depreciation of, and the provision of a return on, such assets as are held by the new Agency, [<sup>F9</sup>or the Food Standards Agency], for purposes connected with the carrying out of the functions in question.
- (5) If and to the extent that a charging scheme relates to any licence under Chapter II of Part II of the 1991 Act (abstraction and impounding), the Secretary of State may consider it appropriate to attribute to the carrying out of the Agency's functions in relation to activities to which such a licence relates any costs and expenses incurred by the Agency in carrying out any of its functions under Part II of that Act or under section 6(2) above.
- (6) Subsection (5) above is without prejudice to what costs and expenses the Secretary of State may consider it appropriate to attribute to the carrying out of any functions of a new Agency, the Minister or the Secretary of State in relation to activities to which environmental licences of any particular description relate.
- (7) The consent of the Treasury shall be required for the giving of approval to a charging scheme [<sup>F10</sup>submitted by the Agency]. . . .
- (8) It shall be the duty of a new Agency to take such steps as it considers appropriate for bringing the provisions of any charging scheme made by it which is for the time being in force to the attention of persons likely to be affected by them.
- (9) If and to the extent that any sums recovered by a new Agency by way of charges prescribed by charging schemes may fairly be regarded as so recovered for the purpose of recovering the amount required to meet (whether in whole or in part)—[<sup>F11</sup>such of the costs and expenses incurred by the Food Standards Agency as fall within subsection (3) above] those sums shall be paid by that new Agency [<sup>F12</sup>to the Food Standards Agency].
- (10) For the purposes of subsection (9) above, any question as to the extent to which any sums may fairly be regarded as recovered for the purpose of recovering the amount required to meet the costs and expenses falling within [<sup>F13</sup>that subsection shall be determined by the Secretary of State].
- (11) In this section “charging scheme” has the same meaning as in section 41 above.

#### Textual Amendments

- F6** Words in s. 42(3)(b)(i) substituted (1.4.2000) by 1999 c. 28, s. 40(1)(2), **Sch. 5 para. 44(1)(2)(a)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F7** S. 42(3)(b)(ii) repealed (1.4.2000) by 1999 c. 28, s. 40(1)(2)(4), Sch. 5 para. 44(1)(2)(b), **Sch. 6** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F8** Words in s. 42(4) substituted (1.4.2000) by 1999 c. 28, s. 40(1)(2), **Sch. 5 para. 44(1)(3)(s)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F9** Words in s. 42(4)(b) substituted (1.4.2000) by 1999 c. 28, s. 40(1)(2), **Sch. 5 para. 44(1)(3)(b)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F10** Words in s. 42(7) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(3)**; S.I. 1998/3178, **art. 3**
- F11** Words in s. 42(9) substituted for paras. (a) and (b) (1.4.2000) by 1999 c. 28, s. 40(1)(2), **Sch. 5 para. 44(1)(5)(a)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F12** Words in s. 42(9) substituted (1.4.2000) by 1999 c. 28, s. 40(1)(2), **Sch. 5 para. 44(1)(5)(b)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**

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**F13** Words in s. 42(10) substituted (1.4.2000) by 1999 c. 28, s. 40(1)(2), **Sch. 5 para. 44(1)(6)** (with s. 38, 40(2)); S.I. 2000/1066, **art. 2**

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**Modifications etc. (not altering text)**

**C5** S. 42 applied (with modifications) (2.12.1998) by S.I. 1998/2746, **reg. 16(1)**

S. 42: certain functions made exercisable only after consultation with the Assembly (W.) (1.7.1999) by S.I. 1999/672, **art. 5, Sch. 2**

S. 42 modified (1.7.1999) by S.I. 1999/672, **art. 2, Sch. 1**

**C6** S. 42 applied (with modifications) by SI 2002/1559, Sch. 4 para. 5(15) (as inserted (E.W.) (15.5.2006) by **The Waste Management (England and Wales) Regulations 2006** (S.I. 2006/937), regs. 1(2), **9(15)**)

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**Marginal Citations**

**M1** 1993 c. 12.

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